

GB-Shrewsbury: AMCV 263 - Independent Mental Health Advocacy

Competitive Contract Notice

1. Title: GB-Shrewsbury: AMCV 263 - Independent Mental Health Advocacy
2. Awarding Authority:
Shropshire Council
Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom
Tel. +44 1743252992, Email: procurement@shropshire.gov.uk, URL: www.shropshire.gov.uk
Contact: [REDACTED] - Procurement Manager, Attn: Procurement Team
3. Contract Type: Services
Sub Type: Health and social services.
4. Description: Social services. Shropshire Council and Telford and Wrekin Council currently hold separate contracts with the same provider for an Independent Mental Health Advocacy (IMHA) service. These contracts expire on 31.03.19 and the Councils are letting a joint tender again and seek to appoint one single provider to work across both Council areas from 1.04.19. Contracts will be for an initial 3 years with an option for both Councils to extend for a further two.

Both Councils will hold separate contracts with the successful provider.

Both Councils have a budget for this service and price bids will not be accepted above the following amounts:

Shropshire Council £45,650 per annum
Telford and Wrekin Council £26,669 per annum

Tenders are invited from providers for the initial period up to 31.03.22.

The Council is looking to appoint a single provider:

- who is able to deliver a service starting on 01.04.19
- that can demonstrate their understanding of IMHA and their ability to deliver this Service

Applicants should note that it is considered that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') may apply to this contract. Applicants are advised to seek their own legal advice in this regard.

5. CPV Codes:
85320000 - Social services.

6. NUTS Codes :
UKG22 - Shropshire CC

7. Main Site or Location of Works, Main Place of Delivery or Main Place of Performance: Shropshire CC,

8. Reference Attributed by the Awarding Authority: AMCV 263

9. Estimated Value of Requirement: Category H: 100K to 500K

Currency: GBP

10. Deadline for Expression of Interest: 03/12/2018 12:00:00

11. Address to which they must be sent:

Shropshire Council
Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom
Email: procurement@shropshire.gov.uk, URL: www.shropshire.gov.uk

12. Other Information:

Other Information: The contracting authority considers that this contract may be suitable for economic operators that are small or medium enterprises (SMEs). However, any selection of tenderers will be based solely on the criteria set out for the procurement.

To view this notice, please click here:

<https://www.delta-esourcing.com/delta/viewNotice.html?noticeId=353809934>

Suitable for VCO: Yes
Procedure Type:OPEN
Period of Work Start date: 01/04/2019
Period of Work End date: 31/03/2022
Is this a Framework Agreement?: no

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6 November 2018

Tel: (01743) 252993

Fax: (01743) 255901

Please ask for: [REDACTED]

Email: procurement@shropshire.gov.uk

AMCV 263

Dear Bidder

AMCV 263 – INDEPENDENT MENTAL HEALTH ADVOCACY

You have been invited to tender for the above requirement. With this letter please find copies of the following documents:

1. Instructions to Tenderers
2. Tender Response Document
3. TUPE Confidentiality Letter
4. Shropshire's Form of Contract
5. Telford & Wrekin's Terms & Conditions
6. Service Specification for both Councils

Tenders should be made on the enclosed Tender Response Document. Your Tender must be completed, signed and returned together with a signed copy of the 'Instructions for Tendering' through our Delta Tenderbox. You are recommended to keep a copy of all tender documents and supporting documents for your own records.

Please pay particular attention to the points below concerning the returning of tenders.

Returning of Tenders

- The deadline for returning tenders is **noon on, 3rd December 2018** any tenders received after this time will not be accepted
- Tenders are to be submitted through Delta, our electronic tender portal
 - Please ensure that you allow yourself at least two hours when responding prior to the closing date and time, especially if you have been asked to upload documents. If you are uploading multiple documents you will have to individually load one document at a time or you can opt to zip all documents in an application like WinZip. Failure to submit by the time and date or by the method requested will not be accepted.
 - Once you upload documentation ensure you follow through to stage three and click the 'response submit' button. Failure to do so, will mean the documents won't be viewable by the Council.

Tenders **cannot** be accepted if:

- Tenders are received by post, facsimile or email

personal info

- Tenders are received after **12 noon on the given deadline**

Freedom of Information

Under the provisions of the Freedom of Information Act 2000 from 1 January 2005, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. Information about your organisation, which Shropshire Council may receive from you may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.

Therefore if you provide any information to Shropshire Council in the expectation that it will be held in confidence, you must make it clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as "commercial in confidence" will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be given.

Other Details

Please note that if supplementary questions are raised by any tenderer prior to the closing of tenders and Shropshire Council decides that the answers help to explain or clarify the information given in the Tender Documents, then both the questions and the answers will be circulated to all enterprises invited to submit a tender.

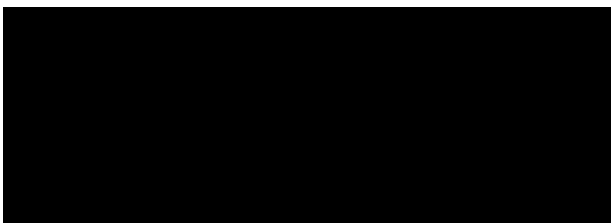
As part of its sustainability policy, Shropshire Council encourages tenderers to minimise packaging, particularly presentational or retail packaging.

Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council's involvement

Please also note that Shropshire Council is committed to achieving Social Value outcomes through maximising the social, economic and/or environmental impact of all its procurement activity. Specific requirements for this contract are set out within the Tender Response Document and in addition for your further information the council's Social Value Framework guidance can be found at www.shropshire.gov.uk/doing-business-with-shropshire-council.

If you have any queries relating to this invitation to tender, please contact me on telephone number 01743 252993.

Yours faithfully



Procurement Manager
Commissioning & Procurement
procurement@shropshire.gov.uk
Tel: 01743 252993
Enc



INSTRUCTIONS FOR TENDERING

**AMCV 263 – INDEPENDENT
MENTAL HEALTH ADVOCACY**

Shropshire Council Instructions for tendering

Contract Description:

Shropshire Council and Telford and Wrekin Council currently hold separate contracts with the same provider for an Independent Mental Health Advocacy (IMHA) service. These contracts expire on 31.03.19 and the Councils are letting a joint tender again and seek to appoint one single provider to work across both Council areas from 1.04.19. Contracts will be for an initial 3 years with an option for both Councils to extend for a further two.

Each Council will need to demonstrate that the service is providing value for money. The successful provider will therefore need to ensure that records are kept and supplied regularly to the Councils, in accordance with the Service Specification, on the work being undertaken under each contract and volumes are expected to reflect the funding split across the Councils as detailed under Price below.

The IMHA service is offered to individuals who are:

- Detained under the Mental Health Act 1983 (even if they are currently on leave of absence from hospital) apart from those Service Users detained under sections 4, 5(2), 5(4), 135 or 136
- Conditionally discharged restricted Service Users
- Subject to guardianship under the Mental Health Act
- On supervised community treatment
- Those being considered for a treatment to which section 57 of the Act applies
- Those under 18 and being considered for electro-convulsive therapy or any other treatment to which section 58A of the Act applies.

The Service will include assisting individuals receiving the service to: understand the legal provisions to which they are subject under the Legislation and the rights and safeguards to which they are entitled; obtain information about the conditions or restrictions they are subject to; obtain information on medical treatment being given, proposed or being discussed and understand the reasons for the treatment; understand and exercise their rights.

Contracts

Both Councils will again hold separate contracts with the successful provider.

Telford and Wrekin's Terms and Conditions Contract and Shropshire Council's Form of Contract are included with the tender documentation and the Service Specification is also included which has been drafted jointly by the Councils. The Service Specification will be included in each contract when completing contracts with the provider.

Price

Both Councils have a budget for this service and price bids will not be accepted above the following amounts:

Shropshire Council	£45,650 per annum
Telford and Wrekin Council	£26,669 per annum

Tender & Contract

Tenders are invited from providers for the initial period up to 31.03.22.

The Council is looking to appoint a provider:

- who is able to deliver a service starting on 01.04.19
- that can demonstrate their understanding of IMHA and their ability to deliver this Service

TUPE

Applicants should note that it is considered that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') may apply to this contract. Applicants are advised to seek their own legal advice in this regard.

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1.0 Invitation to Tender

- 1.1 You are invited to tender for the provision of an Independent Mental Health Advocacy Service as detailed in the Tender Response Document. The contract will be for an initial period of **3 years** commencing on the **1st April 2019** with the option to extend for a further period of up to 2 years.
- 1.2 Tenders are to be submitted in accordance with Shropshire's Form of Agreement and Telford & Wrekin's Terms and Conditions enclosed and the instructions outlined within this document.
- 1.3 Tenders must be submitted in accordance with the following instructions. Tenders not complying in any particular way may be rejected by Shropshire Council (the Council) whose decision in the matter shall be final. Persons proposing to submit a Tender are advised to read the Invitation to Tender documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their Tender is accepted.
- 1.4 The Invitation to Tender documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Invitation to tender document other than on an "in confidence" basis to those who have a legitimate need to know or who they need to consult for the purpose of preparing the tender as further detailed in these Instructions for Tendering.
- 1.5 Tenderers shall not at any time release information concerning the invitation to tender and/or the tender documents for publication in the press or on radio, television, screen or any other medium without the prior consent of the Council.
- 1.6 The fact that a Tenderer has been invited to submit a tender does not necessarily mean that it has satisfied the Council regarding any matters raised in the pre-tender questionnaire submitted. The Council makes no representations regarding the Tenderer's financial stability, technical competence or ability in any way to carry out the required services. The right to return to any matter raised in any pre-tender questionnaire submitted as part of the formal tender evaluation is hereby reserved by the Council.
- 1.7 The Invitation to Tender is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a tenderer to submit a tender or enter into a Contract or any other contractual agreement.
- 1.8 Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council's involvement.

2.0 Terms and Conditions

- 2.1 Every Tender received by the Council shall be deemed to have been made subject to the Shropshire's Form of Agreement and Telford & Wrekin's Terms and Conditions enclosed and these Instructions for Tendering unless the Council shall previously have expressly agreed in writing to the contrary.

2.2 The Tenderer is advised that in the event of their Tender being accepted by the Council, they will be required to undertake the required services.

3.0 Preparation of Tenders

3.1 Completing the Tender Response Document

3.1.1 Tenders should be submitted using the 'Tender Response Document' following the instructions given at the front of the document. The Tenderer's attention is specifically drawn to the date and time for receipt of Tenders and that no submission received after the closing time will be considered.

3.1.2 All documents requiring a signature must be signed;

- a) Where the Tenderer is an individual, by that individual;
- b) Where the Tenderer is a partnership, by two duly authorised partners;
- c) Where the Tenderer is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose.

3.1.3 The Invitation to Tender Documents are and shall remain the property and copyright of the Council

3.2 Tender Preparation and Costs

3.2.1 It shall be the responsibility of Tenderers to obtain for themselves at their own expense all information necessary for the preparation of their Tender. No claim arising out of want of knowledge will be accepted. Any information supplied by the Council (whether in the Tender Documentation or otherwise) is supplied only for general guidance in the preparation of tenders.

3.2.2 Any Tenderer considering making the decision to enter into a contractual relationship with the Council must make an independent assessment of the Tender opportunity after making such investigation and taking such professional advice as it deems necessary.

3.2.3 Tenderers will be deemed for all purposes connected with their Tender submission where appropriate to have visited and inspected the Council, its assets, all the locations in respect of the delivery of the services/supplies/works and to have satisfied themselves sufficiently as to the nature, extent and character of the services supplies/works sought, and the human resources, materials, software, equipment, machinery, and other liabilities and other matters which will be required to perform the contract.

3.2.4 The Council will not be liable for any costs incurred by Tenderers in the preparation or presentation of their tenders.

3.2.5 Tenderers are required to complete all pricing schedules in the Invitation to tender documents. The terms "Nil" and "included" are not to be used but a zero or figures must be inserted against each item. Unit rates and prices must be quoted in pounds sterling and whole new pence.

- 3.2.6** It shall be the Tenderer's responsibility to ensure that all calculations and prices in the Tender documentation are correct at the time of submission.
- 3.2.7** The Tenderer is deemed to have made him/herself acquainted with the Council's requirements and tender accordingly. Should the Tenderer be in any doubt regarding the true meaning and intent of any element of the specification he is invited to have these fully resolved before submitting his Tender. No extras will be allowed for any loss or expense involved through any misunderstanding arising from his/her failure to comply with this requirement.
- 3.2.8** Any Tender error or discrepancy identified by the Council shall be drawn to the attention of the Tenderer who will be given the opportunity to correct, confirm or withdraw the Tender.
- 3.2.9** The Tender Documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Tender document other than on an In Confidence basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing the Tender.

3.3 Parent Company Guarantee

It is a condition of contract that if the tendering company is a subsidiary then its Ultimate Group/Holding Company must guarantee the performance of this contract and provide a letter to that effect signed by a duly authorised signatory of the Ultimate Group/Holding Company if requested to do so by the Council. Where the direct parent company cannot provide an adequate guarantee in the opinion of the Council, the Council will look to another group or associate company, with adequate assets, to be the guarantor. In cases where the contract is with a Joint Venture Company (JVC) or a Special Purpose Vehicle (SPV) company, which may have two or more parent companies and which may not be adequately capitalised or have sufficient financial strength on its own to support the risk and obligations it has under the contract, 'joint and several' guarantees / indemnities from the parent companies of the JVC or SPV may be sought.

3.4 Warranty

The Tenderer warrants that all the information given in their Tender and if applicable their Request to Participate Questionnaire is true and accurate. The information provided will be deemed to form part of any contract formed under this contract.

The Tenderer warrants that none of their current Directors have been involved in liquidation or receivership or have any criminal convictions

4.0 Tender Submission

- 4.1** Tenders must be submitted strictly in accordance with the letter of instruction accompanying this Invitation to Tender. Tenders must be submitted by the deadline of **noon, 3rd December 2018**.
- 4.2** No unauthorised alteration or addition should be made to the Specification and Tender Response Document, or to any other component of the Tender document. If any such alteration is made, or if these instructions are not fully complied with,

the Tender may be rejected.

- 4.3 Qualified tenders may be submitted, but the Council reserves the right not to accept any such tender. The Council's decision on whether or not a Tender is acceptable will be final.
- 4.4 Tenderers should note that their Tender must remain open and valid and capable of acceptance for a period of at least 90 days.
- 4.5 Tenderers should note that Tenders and supporting documents must be written in English and that any subsequent contract, which may or may not be entered into, its formation, interpretation and performance, shall be subject to and in accordance with the laws of England and subject to the jurisdiction of the Courts of England and Wales.
- 4.6 Where Tender submissions are incomplete the Council reserves the right not to accept them.

5.0 Variant Bids

- 5.1 The Council is interested in alternative solutions which would provide and develop opportunities for savings in service costs, service improvement or other financial benefits. In particular, the Council wishes to encourage solutions which also deliver benefits and added value to the local economy, residents and the business community.
- 5.2 Tenderers may submit, at their discretion, a Tender offering a different approach to the project as a "Variant Bid". However, to permit comparability, at least one bid must be submitted strictly in accordance with the Invitation to Tender Documents (the "Compliant Tender"). Any Tender variant proposed must clearly state how it varies from the requirements of the Compliant Tender Documents, and be explicit in demonstrating the benefits that will accrue to the Council from adopting this approach. Tenderers will be required to identify which submission, in their view, demonstrates best value to the Council.
- 5.3 Variant Bids must contain sufficient financial and operational detail to allow any Variant Bid to be compared with the standard Tender, permitting its considerations in written form.

6.0 The Transfer of Undertakings (Protection of Employment) regulations 2006

- 6.1 Tenderers should note that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') will apply to this contract. Also compliance with the provisions in relation to Local Authority Pensions will also be required. Tenderers are advised to seek their own legal advice about the practicality of these regulations and should reflect the financial implications of such a transfer in their tender submissions.
- 6.2 Details of employees of companies/and of the Council who are currently carrying out the work that is included in the Contract can be requested by emailing procurement@shropshire.gov.uk Tenderers should note, however, that where the Council provides information to them for the purposes of TUPE, such information may originate from a third party. As the Council has no control over the

compilation of such third party information, the Council gives no guarantee or assurance as to the accuracy or completeness of such information and cannot be held responsible for any errors or omissions in it.

7.0 Tender Evaluation

7.1 The Tenderers may be called for interview to seek clarification of their tender or additional or supplemental information in relation to their tender. The presentations will not carry any weighting to the final score achieved by Tenderers, but will be used to clarify and moderate issues raised in the Tenderer's submissions. Any areas of discrepancy between submissions and information gained from the presentations will be reviewed and scores previously awarded will be amended if necessary.

7.2 If the Council suspects that there has been an error in the pricing of a Tender, the Council reserves the right to seek such clarification, as it considers necessary from the Tenderer in question.

8.0 Clarifications

8.1 Tenderers are responsible for clarifying any aspects of the tendering process and/or the Invitation to Tender documents in the manner described below.

8.2 If you are unsure of any section and require further clarification, please contact via our Delta Tenderbox.

8.3 Where appropriate, the Authorised Officer named above may direct the Tenderer to other officers to deal with the matter.

8.4 All queries should be raised as soon as possible (in writing), in any event not later than **26th November 2018**.

8.5 All information or responses that clarify or enhance the tendering process will be supplied to all Tenderers on a uniform basis (unless expressly stated otherwise). These responses shall have the full force of this Instruction and where appropriate the Conditions of Contract. If a Tenderer wishes the Council to treat a question as confidential this must be expressly stated. The Council will consider such requests and will seek to act fairly between the Tenderers, whilst meeting its public law and procurement duties in making its decision.

8.6 Except as directed in writing by the Authorised Officer, and confirmed in writing to a Tenderer, no agent or officer or elected Member (Councillor) of the Council has any express or implied authority to make any representation or give any explanation to Tenderers as to the meaning of any of the Tender Documents, or as to anything to be done or not to be done by a Tenderer or to give any warranties additional to those (if any) contained in the ITT or as to any other matter or thing so as to bind the Council in any way howsoever.

9.0 Continuation of the Procurement Process

9.1 The Council shall not be committed to any course of action as a result of:

- i) issuing this Invitation to Tender;
- ii) communicating with a Tenderer, a Tenderer's representative or agent in respect of this procurement exercise;
- iii) any other communication between the Council (whether directly or through its agents or representatives) and any other party.

9.2 The Council reserves the right at its absolute discretion to amend, add to or withdraw all, or any part of this Invitation to Tender at any time during the tendering stage of this procurement exercise.

9.3 At any time before the deadline for receipt of tender returns the Council may modify the Invitation to Tender by amendment. Any such amendment shall be numbered and dated and issued by the Council to all participating tenderers. In order to give prospective Tenderers reasonable time in which to take the amendment into account in preparing its Tender return, the Council may in its sole discretion, extend the deadline for submission of the tender returns. The Council reserves the right to amend, withdraw, terminate or suspend all or any part of this procurement process at any time at its sole discretion.

10.0 Confidentiality

10.1 All information supplied by the Council in connection with or in these Tender Documents shall be regarded as confidential to the Council unless the information is already within the public domain or subject to the provisions of the Freedom of Information Act 2000.

10.2 The Contract documents and publications are and shall remain the property of the Council and must be returned upon demand.

10.3 Tenderers shall ensure that each and every sub-contractor, consortium member and/or professional advisor to whom it discloses these papers complies with the terms and conditions of this ITT.

10.4 The contents of this Invitation to Tender are being made available by the Council on condition that:

10.4.1 Tenderers shall at all times treat the contents of the Invitation to tender and any related documents as confidential, save in so far as they are already in the public domain and Tenderers shall not, subject to the provisions relating to professional advisors, sub-contractors or other persons detailed below, disclose, copy, reproduce, distribute or pass any of the contents of the Invitation to tender to any other person at any time or allow any of these things to happen;

10.4.2 Tenderers shall not use any of the information contained in this Invitation to tender for any purpose other than for the purposes of submitting (or deciding whether to submit) the tender; and

10.4.3 Tenderers shall not undertake any publicity activity within any section of the media.

10.5 Tenderers may disclose, distribute or pass this Invitation to tender to their professional advisors, sub-contractors or to another person provided that:

- 10.5.1 this is done for the sole purpose of enabling an Invitation to tender to be submitted and the person receiving the Information undertakes in writing to keep the Invitation to Tender confidential on the same terms as if that person were the Tenderer; or
- 10.5.2 the Tenderer obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the Invitation to Tender; or
- 10.5.3 the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement or to any Contract(s) which may arise from it; or
- 10.5.4 the Tenderer is legally required to make such a disclosure.
- 10.6 The Council may disclose detailed information relating to the Invitation to Tender to its officers, employees, agents, professional advisors or Governmental organisations and the Council may make any of the Contracts and procurement documents available for private inspection by its officers, employees, agents, professional advisors, contracting authorities or Governmental organisations.

10.7 **Transparency of Expenditure**

Further to its obligations regarding transparency of expenditure, the Council may be required to publish information regarding tenders, contracts and expenditure to the general public, which could include the text of any such documentation, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act to be determined at the absolute discretion of the Council.

11.0 **Freedom of Information**

- 11.1 Please note that from 1 January 2005 under the provisions of the Freedom of Information Act 2000, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. One of the consequences of those new statutory responsibilities is that information about your organisation, which Shropshire Council may receive from you during this tendering process may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.
- 11.2 In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the Act, Shropshire Council may consider it appropriate to ask you for your views as to the release of any information before we make a decision as to how to respond to a request. In dealing with requests for information under the Act, Shropshire Council has to comply with a strict timetable and it would therefore expect a timely response to any such consultation within five working days.
- 11.3 If, at any stage of this tendering process, you provide any information to Shropshire Council in the expectation that it will be held in confidence, then you must make it clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as “commercial in confidence” will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be given.

11.4 Shropshire Council will not be able to accept that trivial information or information which by its very nature cannot be regarded as confidential should be subject to any obligation of confidence.

11.5 In certain circumstances where information has not been provided in confidence, Shropshire Council may still wish to consult with you as to the application of any other exemption such as that relating to disclosure that will prejudice the commercial interests of any party. However the decision as to what information will be disclosed will be reserved to Shropshire Council.

For guidance on this issue see: <http://www.ico.gov.uk>

12.0 Disqualification

12.1 The Council reserves the right to reject or disqualify a Tenderer's Tender submission where:

12.1.1 The tenderer fails to comply fully with the requirements of this Invitation to tender or is in breach of clause 15 of the Council's General Terms and Conditions relating to Bribery and Corruption or is guilty of a serious or intentional or reckless misrepresentation in supplying any information required; or

12.1.2 The tenderer is guilty of serious or intentional or reckless misrepresentation in relation to its tender return and/or the procurement process.

12.1.3 The tenderer directly or indirectly canvasses any member, official or agent of the Council concerning the award of the contract or who directly or indirectly obtains or attempts to obtain information from any such person concerning any other Tender or proposed Tender for the services. The Canvassing Certificate must be completed and returned as instructed.

12.1.4 The Tenderer :

a) Fixes or adjusts the amount of his Tender by or in accordance with any agreement or arrangements with any other person; or

b) Communicates to any person other than the Council the amount or approximate amount of his proposed Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for preparation of the Tender for insurance purposes); or

c) Enters into an agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender to be submitted; or

d) Offers or agrees to pay or give or does pay or gives any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any Tender or proposed Tender for the services any act or omission.

12.2 Any disqualification will be without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a

Tenderer may attract. The Non-Collusive Tendering Certificate must be completed and returned as instructed.

- 12.3** The Council reserves the right to disqualify an Applicant from further participating in this procurement process where there is a change in the control or financial stability of the Tenderer at any point in the process up to award of a contract and such change of control or financial stability has a materially adverse effect on the Tenderer's financial viability or ability to otherwise meet the requirements of the procurement process.

13.0 **E-Procurement**

As part of its procurement strategy Shropshire Council is committed to the use of technology that can improve the efficiency of procurement. Successful Tenderers may be required to send or receive documents electronically. This may include purchase orders, acknowledgements, invoices, payment advices, or other procurement documentation. These will normally be in the Council's standard formats, but may be varied under some circumstances so as not to disadvantage small and medium suppliers.

14.0 **Award of Contract**

14.1 **Award Criteria**

The Award Criteria has been set out within the Tender Response Document accompanying this invitation to tender. The Council is not bound to accept the lowest or any Tender.

14.2 **Award Notice**

The Council will publish the name and addresses of the successful Tenderers in the Official Journal of the European Union (OJEU) where appropriate. The Contracting Authority reserves the right to pass all information regarding the outcome of the Tendering process to the Office of Fair Trading to assist in the discharge of its duties. Additionally, the Council will adhere to the requirements of the Freedom of Information Act 2000 and Tenderers should note this statutory obligation.

14.3 **Transparency of Expenditure**

Further to its obligations regarding transparency of expenditure, the Council may also be required to publish information regarding tenders, contracts and expenditure to the general public, which could include the text of any such documentation, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act to be determined at the absolute discretion of the Council.

15.0 **Value of Contract**

Shropshire Council cannot give any guarantee in relation to the value of this contract

16.0 Acceptance

- 16.1** Tenders must be submitted strictly in accordance with the terms of the Council's Invitation to Tender documentation and acceptance of the tender shall be conditional on compliance with this Tender Condition.
- 16.2** The Tender documentation including, the General and Special Terms and Conditions of Contract, the Tender Response document, these Instructions to Tender, together with the formal written acceptance by the Council will form a binding agreement between the Contractor and the Council.
- 16.3** The Tenderer shall be prepared to commence the provision of the services on the start date of the contract being **1st April 2019**

17.0 Payment Terms

Tenderers should particularly note that the principles governing public procurement require that, as far as is reasonably possible, payments for Goods, Works or Services are made after the provision. Therefore any indication of a pricing strategy within a Tender which provides for substantial payments at the outset of the Contract will be examined carefully to decide whether or not a Tender in such form can be accepted. If in the opinion of the Council such substantial payments appear excessive in relation to the requirements of the Contract the Council reserves, without prejudice to any other right to reject any Tender it may have, the right to require the Tenderer to spread such proportion of the costs as are considered excessive over the duration of the Contract.

18.0 Liability of Council

- 18.1** The Council does not bind himself to accept the lowest or any tender.
- 18.2** The Council does not accept any responsibility for any pre-tender representations made by or on its behalf or for any other assumptions that Tenderers may have drawn or will draw from any pre-tender discussions.
- 18.3** The Council shall not be liable to pay for any preparatory work or other work undertaken by the Tenderer for the purposes of, in connection with or incidental to this Invitation to Tender, or submission of its Tender response or any other communication between the Council and any other party as a consequence of the issue of this Invitation to Tender.
- 18.4** The Council shall not be liable for any costs or expenses incurred by any Tenderer in connection with the preparation of a Tender return for this procurement exercise, its participation in this procurement whether this procurement is completed, abandoned or suspended.
- 18.5** Whilst the Tender Documents have been prepared in good faith, they do not purport to be comprehensive nor to have been formally verified. Neither the Council nor any of its staff, agents, elected Members, or advisers accepts any liability or responsibility for the adequacy, accuracy or completeness of any information given, nor do they make any representation or given any warranty, express or implied, with respect to the Tender Documents or any matter on which either of these is based (including, without limitation, any financial details contained within the Specification and Contract Documentation). Any liability is hereby

expressly disclaimed save in the event of fraud, or in the event of specific warranties provided within the Contract Documentation.

19.0 The Contractor agrees that where requested in writing during the term of any Agreement for the supply Goods Works or Services it will ensure that an appropriately authorised representative of the Contractor shall attend a Committee meeting of the Council upon being invited to do so by the Council

20.0 **Declaration**

We, as acknowledged by the signature of our authorised representative, accept these Instructions to Tender as creating a contract between ourselves and the Council. We hereby acknowledge that any departure from the Instructions to Tender may cause financial loss to the Council.

Signed (1) Status.....

Signed (2) Status.....

(For and on behalf of)

Date

AMCV 263 – INDEPENDENT MENTAL HEALTH ADVOCACY

Confidentiality Undertaking Regarding TUPE

[Date] 2018

[NAME]

Your ref: *

Our ref: *

Dear Bidder

We have taken legal advice in this matter and anticipate preparing a tender on the basis that the Transfer of Undertakings Regulations (Protection of Employment) Regulations 2006 and the EC Acquired Rights Directive 23 of 2001 may apply to this Contract. We also understand that there is confidential information relating to employees which will be provided on receipt of this letter.

We now formally request from you full details of the current provider staff and conditions of employment.

We hereby acknowledge that this information is confidential. We undertake: -

1. To treat the information in the strictest confidence
2. That the information will be used solely for the purpose of preparing this Tender
3. That it will not be disclosed to any other party for any purpose whatsoever, except for the purpose of preparing this Tender and we will not make copies thereof

We acknowledge that all documents and other information received from the Council as detailed above shall remain the current provider's property and that we will hold them as bailee for the current provider, exercising reasonable care to keep them safe from access by unauthorised persons. We shall also return them to the Council forthwith on written request.

We acknowledge that we shall fully indemnify the current provider against all losses claims damages fines costs and other liabilities as a consequence of or arising from our failure to comply with our obligations to keep such information confidential.

DATED THIS DAY OF

Signature (as in Form of Tender)

Duly authorised to sign for and on behalf of the Tenderer (print full name and address of Tenderer)

Please return to procurement@shropshire.gov.uk, Procurement & Contracts Team, Shropshire Council, Shirehall, Abbey Foregate, SY2 6ND

Dated.....20

BETWEEN

SHROPSHIRE COUNCIL

and

[add in legal entity of the Service Provider]

FOR

THE PROVISION OF AN INDEPENDENT MENTAL HEALTH ADVOCACY SERVICE

AMCV 263

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THIS AGREEMENT is made the _____ day of _____ 20____ hereinafter called “the AGREEMENT” between (1) SHROPSHIRE COUNCIL of Shirehall Abbey Foregate Shrewsbury SY2 6ND (“the Council”) and (2) **[add in legal entity name]** of **[add in legal entity address]** Company Number _____ (the “Service Provider”).
(together ‘the Parties’)

NOW IT IS AGREED as follows:

DEFINITIONS

For the purpose of this Agreement the following words shall have the following meanings:

Associated Person	in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest.
Best Value	the requirement under section 3 of the Local Government Act 1999 for local authorities to secure continuous improvement.
Bribery Act	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 the legislation.
Commencement Date	1st April 2019
Commercially Sensitive Information	comprises the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business which the Service Provider has indicated to the Council in writing that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss;
Confidential Information Agreement	all information as defined by Clause 31. means this agreement
Contract Documents	means all of the documents annexed to, contained and referred to within this Agreement
Contracts Manager	the nominated officer of the Council authorised to oversee contractual arrangements in respect of the Service.
Council Data	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are

embodied in any electronic, magnetic, optical or tangible media, and which are:

(a) supplied to the Service Provider by or on behalf of the Council; or which the Service Provider is required to generate, process, store or transmit pursuant to this Agreement; or

(b) any Personal Data for which the Council is the Data Controller

Council Software	software which is owned by or licensed to the Council, including software which is or will be used by the Service Provider for the purposes of providing the Services but excluding the Service Provider Software
Data Controller	shall have the meaning given to the term "controller" as set out in Article 4 of the GDPR
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
Data Processor	shall have the meaning given to the term "processor" as set out in Article 4 the GDPR
Data Protection Impact Assessment	an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation'	means: i) all applicable Law about the processing of personal data and privacy; and ii) The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 including if applicable legally binding guidance and codes of practice issued by the Information Commissioner; and iii) to the extent that it relates to processing of personal data and privacy, any Laws that come into force which amend,

	supersede or replace existing Laws including the GDPR, the (LED Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time including the DPA 2018 (subject to Royal Assent)
Data Protection Officer	Shall have the meaning given in the GDPR
Data Subject	shall have the same meaning as set out in the GDPR
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
Employment Checks	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, disclosure and barring checks and occupational health checks.
Exempt Information	any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Agreement or otherwise relating to the Parties to this Agreement which potentially falls within an exemption to FOIA (as set out therein)
Expiry date	Means the later of the Initial Expiry Date or the last day of any agreed extension period further to clause 16(a) below or such other date as this Agreement is terminated in accordance with its terms
First Point of Contact	the Council's office which the Council will ensure that the Service Provider has up to date telephone and email contact details for
FOIA	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause.
FOIA notice	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner.

Formal Complaint	A complaint that cannot be resolved through any instant remedial action and is not a service request.
GDPR	Means the General Data Protection Regulation in force in the UK with effect from 25th May 2018
Information	has the meaning given under section 84 of the Freedom of Information Act 2000
Initial Expiry Date	31.03.22
Initial Term	means the period commencing on the Commencement Date and expiring on the Initial Expiry Date
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply
LED	Law Enforcement Directive (Directive (EU) 2016/680)
Malicious Software	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence
Notice	a written communication issued in accordance with Clause 9 of this Agreement
Officer(s)	those officers of the Council who are authorised by the Council to perform functions in connection with this Agreement
Option to Extend	means the Council's option to extend the Initial Term by a period of up to 2 years commencing from and including the date following the Initial Expiry Date
Outcomes	means the targets, results or objectives as specified in the Schedules to this Agreement
Payment Review	The review of Payment as detailed in Clause 5
Parties	the Service Provider and the Council and 'Party' shall mean either one of them

Payment	the amount payable by the Council to the Service Provider in accordance with this Agreement as detailed in Clause 2
Performance Indicators	The performance indicators relating to this Agreement issued by the Council from time to time
Personal Data	shall have the same meaning as set out in the GDPR
Personal Data Breach	means: anything which constitutes a "personal data breach" as set out in in Article 4 of the GDPR
Processor Personnel	means all directors, officers, employees, agents, consultants and contractors of the Data Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement
Prohibited Act	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) committing any offence;</p> <p>(i) under the Bribery Act;</p> <p>(ii) under legislation creating offences concerning fraudulent acts;</p> <p>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or</p> <p>(d) defrauding, attempting to defraud or conspiring to defraud the Council.</p>
Protective Measures	appropriate technical and organisational measures 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
Public body	as defined in the FOIA 2000
Receiving Party	means a party to this Agreement to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response
Regulatory Bodies	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;
Regulated Activity	in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Regulated Provider	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006
Relevant Transfer	means a relevant transfer for the purposes of TUPE
Report	means a formal Report to be prepared by the Service Provider recording and evaluating the Outcomes together with recommendations for future actions
Request for Information	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
Review	means a formal review of the progress of the Services and the achievement of the Outcomes
Service	means the service as detailed in the Service Specification
Service Users	the persons or client group designated from time to time by the Council to receive the Service
Specification	the Specification contained in the Schedules to this Agreement
Staff	all employees, agents, consultants and contractors of the Service Provider and/or of any Sub-contractor paid or unpaid;
Sub-Contract	any contract or agreement, or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Goods,

	Works or Services or any part thereof, or facilities or services necessary for the provision of the Goods, Works or Services or any part of the Goods, Works or Services, or necessary for the management, direction or control of the Goods, Works or Services or any part of thereof
Sub-Contractor	the third parties that enter into a Sub-Contract with the Service Provider
Sub-processor	any third party appointed to process Personal Data on behalf of the Service Provider related to this Agreement.
Tender Submission	means the tender dated [.....] submitted by the Service Provider and accepted by the Council
Term	means the period commencing on the Commencement Date and expiring on the Expiry Date
Third Party	a person (other than the Service User or the Council) who agrees to make a contribution to the cost of the Service
Third Party Software	software which is proprietary to any third party which is or will be used by the Service Provider for the purposes of providing the Services
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) and the Acquired Rights Directive
Working Days	Monday to Friday inclusive (not including national bank holidays)
Writing	includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received EXCEPT with respect to Clause 9 (Notices) of this Agreement where the term "Writing" does not include facsimile transmission or electronic mail with respect to the service or receipt of Notices.

INTERPRETATIONS

- 1 Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 2 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.

- 3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 4 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:
- i references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
 - ii the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 5 Words in the singular shall include the plural and vice versa.
- 6 A reference to one gender shall include a reference to the other genders.
- 7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 8 Any obligation in these terms and conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 9 References to clauses are to the clauses of these terms and conditions.
- 10 Where any statement is qualified by the expression so far as the Service Provider is aware or to the Service Provider's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 11 Where there is any conflict or inconsistency between the provisions of these terms and conditions or any other document forming part of the agreement with the Council, such conflict or inconsistency shall be resolved in a manner at the Council's sole discretion.

WHEREAS:

- (A) The Council wishes to receive an Independent Mental Health Advocacy Service
- (B) The Service Provider has the skills, background and experience in providing the Services required by the Council
- (C) The Service Provider is willing to provide the Services as defined below and the Council is willing to appoint the Service Provider to provide the Services in accordance with the provisions of this Agreement

1 AGREEMENT AND TERM

- 1(a) In consideration of the Payment the Service Provider will provide to the Service Users the Service in accordance with the terms of this Agreement.
- 1(b) This Agreement shall commence on the Commencement Date and shall continue until the Initial Expiry Date subject to Clause 10 and 16 in accordance with the terms of this Agreement.

2 PAYMENT

- 2(a) ***In each Financial Year of the Term a maximum of £0.00 (x pounds only) per annum shall be payable by the Council to the Service Provider for the Service,***
- 2(b) Payment will be made by the Council within 30 days of receipt of an invoice for those charges properly incurred in accordance with the delivery of the Service and invoices are to be submitted to the Council monthly in arrears,
- 2(c) The Service Provider shall not make a charge to the Service User or any third party for the Service provided.
- 2(d) The Council reserves the right to set off against the price of the goods or services any sums owed or becoming due to the Council from the Service Provider.
- 2(e) If either Party fails to make any Payment to the other Party under this Agreement within 30 days of receipt of an undisputed invoice then the Party who should make payment shall pay interest on the overdue amount at the statutory rate above the Bank of England base rate from time to time further to the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after Judgment.

3 COMPLIANCE

- 3(a) The Council undertakes to:
- 3(a)(i) make the Payments to the Service Provider in accordance with Clause 2
- 3(a)(ii) liaise with the Service Provider regarding the provision of the Service where appropriate.
- 3(a)(iii) Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Service Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3(b) The Service Provider undertakes to comply with the following in the provision of the Service:
- 3(b)(i) provide the Service in accordance with the Specification and with all due diligence care and skill expected of a suitable and experienced provider of such services

- 3(b)(ii) ensure that no aspect of the Service funded by the Payment is or appears to be party political in intention use or presentation
- 3(b)(iii) acknowledge in all publicity wherever reasonably practicable the Council's funding of the Service
- 3(b)(iv) the Safeguarding adults: multi-agency policy and procedures for the West Midlands
- 3(b)(v) all equal opportunities legislation and anti-discriminatory practices including those identified in Clause 30 Equalities
- 3(b)(vi) ensure that Staff and Subcontractors are made aware of the Council's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request
- 3(b)(vii) the Data Protection Act Legislation
- 3(b)(viii) the standard required of a local authority under the Human Rights Act 1998. The Service Provider shall protect and shall not do anything in breach of Service Users' rights under the Act.
- 3(b)(ix) the principles of Best Value
- 3(b)(x) the Health and Safety at Work Act 1974 and any relevant health and safety regulations approved codes of practice and HSE guidance
- 3(b)(xi) declare to the Council at the end of each Financial Year any amount of underspend of the Payment and return the underspend to the Council if requested to do so by the Council.
- 3(b)(xii) The Services shall only be performed/delivered by the Service Provider unless otherwise agreed in writing between the Parties
- 3(b)(xiii) The Service Provider shall provide the Services in accordance with all current and relevant statutory provisions, regulations or other legislation from time to time in force relating to the provision of the Services
- 3(b)(xiv) The Service Provider shall during the Term ensure that every person employed by the Service Provider in the provision of the Services is properly trained and instructed with regard to his/her tasks in relation to the Services
- 3(b)(xv) before the Service Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Service Provider must without limitation, complete the Employment Checks and any other checks required by the Disclosure and Barring Service]
- 3(b)(xvi) The Service Provider shall carry out its own risk assessments relevant to the

Services

- 3(b)(xvii) The Service Provider shall have a written procedure for dealing with complaints about the Service in accordance with clause 37 hereof
- 3(b)(xviii) The Service Provider agrees that where requested in writing during the term of this Agreement it will ensure that an appropriately authorised representative of the Service Provider shall attend a Committee meeting of the Council upon being invited to do so by the Council
- 3(b)(xix) To support the national agenda of Public Health England the Service Provider will engage with future public health initiatives on the promotion of physical activity for adults and older adults.
- 3(b)(xx) In performing his obligations under this Agreement, the Service Provider shall and shall ensure that each of its sub-contractors shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015
- 3(c) Prior to the engagement by the Service Provider of any staff or sub-contractor engaged to provide any part of the Services where such individuals will have contact with children up to the age of eighteen years old or where the performance of the Services may involve contact with vulnerable adults (as defined in the Safeguarding Vulnerable Groups Act 2006) the Service Provider shall procure in respect of all staff or potential staff or other persons intended to perform any part of the Services:
 - 3(c)(i) that each person being considered for engagement be questioned as to whether he/she has any convictions; and
 - 3(c)(ii) that the results of a Disclosure and Barring Service (DBS) check of the most extensive available kind is obtained in accordance with Part V of the Police Act 1997 (as amended) and that each DBS check should include a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Service may involve contact with children and/or Safeguarding Vulnerable Groups Act 2006 where the performance of the Service may involve contact with vulnerable adults.
 - 3(c)(iii) provide evidence to the Council that a DBS check has been carried out on appropriate Staff if requested
- 3(d) The Parties agree that there shall be, on dates to be agreed, regular informal reviews of the progress of the development of the Services between the Service Provider and the Council to ensure that the Outcomes/Performance Indicators are being achieved.
- 3(e) In the event that an informal review reveals that Outcomes/Performance Indicators are not being met, a formal Review meeting shall take place between the Parties upon 14

- days written notice being given to the Service Provider by the Council
- 3(f) The Review meeting shall record in writing any amendments to the Outcomes/Performance Indicator agreed between the Council and the Service Provider.
- 3(g) Where following a Review, the Council acting reasonably determines that the Service Provider has not met the Outcomes/Performance Indicators the Council may:
- 3(g)(i) serve the Service Provider with a written notice (“Notice”) within one month of the Review meeting specifying which of the Outcomes/Performance Indicators it considers that the Service Provider has not met or failed to achieve and giving the Service Provider one calendar month from the date of the Notice to remedy the failure
- 3(g)(ii) if after one calendar month from the date of the Notice the Service Provider has failed to remedy the failure specified in the Notice then this will be considered to be a breach of the terms of this Agreement and the Agreement may be terminated in accordance with the provisions contained in clause 16 herein
- 3(g)(iii) The Council shall take into account any verbal or written representations made by the Service Provider before proceeding to take any action to terminate this Agreement pursuant to this clause.
- 3(h) Should the Service Provider provide the Service to Service Users who lack the mental capacity to make particular decisions it must familiarise itself with and adhere to the Council’s Mental Capacity Act Deprivation of Liberty Safeguards Multi-Agency Guidance and Procedure.
- 3(i) If for any reason the Service Provider is unable to comply with any of its obligations under this Agreement it shall notify the Council’s Contracts Manager forthwith in Writing of its failure and the reasons. Compliance with this clause shall not prejudice the Council’s rights under clauses 10 (Breach) and 16 (Extension and Termination).
- 3(j) The Service Provider warrants that the signing [execution] of this Agreement on its behalf has been validly authorised and the obligations expressed as being assumed by the Service Provider under this Agreement constitute valid legal and binding obligations of the Service Provider enforceable against the Service Provider in accordance with their terms.
- 3(k) The Service Provider warrants that:
- 3(k)(i) it has full capacity and authority to enter into this Agreement
- 3(k)(ii) it has obtained all necessary and required licences, consents and permits to provide the Services

- 3(k)(iii) it shall be responsible for all costs, fees, expenses and charges for training necessary or required for the Staff to perform the Services
- 3(k)(iv) that none of its current Directors have been involved in liquidation or receivership or have any criminal convictions
- 3(l) The Service Provider acknowledges and confirms that:
 - 3(l)(i) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
 - 3(l)(ii) it has received all information requested by it from the Council pursuant to sub-clause 3(l)(i) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
 - 3(l)(iii) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to sub-clause 3(l)(ii);
 - 3(l)(iv) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - 3(l)(v) it has entered into this Agreement in reliance on its own diligence
 - 3(l)(vi) as at the Commencement Date, the Service Provider warrants and represents that all information contained in the Tender Submission remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement AND shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services
 - 3(l)(vii) The Service Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Service Provider in accordance with sub-clause 3(l)(vi) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Service Provider could not reasonably have known that the information incorrect or misleading at the time such information was provided.
- 3(m) The Service Provider will ensure that they make themselves aware, and operate to, local

and national best practice guidelines, policies and protocols that are issued from time to time. The Service Provider should note that the Council may choose to undertake targeted monitoring around this requirement.

4 VARIATION

- 4(a) This Agreement may only be varied by consent of both of the Parties and any such variation must be in writing and signed by an authorised officer from the Service Provider and an appropriately authorised officer of the Council authorised under the Council's Constitution and it must be annexed to this Agreement and shall record the date from which the agreed variation shall have effect.
- 4(b) The Service Provider will not enter into any negotiations either directly or indirectly with any Service User or Third Party the effect of which would be to vary or amend the terms of this Agreement without the prior written agreement of the Council.

5 PAYMENT REVIEW

- 5(a) The Service Provider may request the Council to review the Payment under this Agreement on the 1st of April following the first full year of operation of the Service and once in each subsequent year of the Agreement provided that such request is submitted to the Council by 1st of March in the previous Financial Year to which the increase will apply.
- 5(b) Following such review the Council may increase the fee payable to the Service Provider which shall be linked to the annual inflationary provision to the Council as determined by the Council's Chief Finance Officer or Officer of equal standing
- 5(c) Should any payment review not be concluded by the 1st of April then the Payment for the preceding Financial Year shall remain in full force until such time as any revised Payment is agreed.
- 5(d) An agreed revised Payment submitted in accordance with 5(c) above shall be back-dated to that date.
- 5(e) The Council's decision after the completion of the payment review shall be final.
- 5(f) The Service Provider shall not be entitled to vary the Payment during the existence of this Agreement unless with the prior written consent of the Council.
- 5(g) The Service Provider shall not charge, and the Council shall not be liable, for any expenses, charges, costs, fees except the Payments as set out in this Agreement
- 5(h) Unless otherwise agreed in writing by the Council, the Service Provider will pay any of its appointed sub-contractors within the time period specified in the Sub-Contract but in any event no later than 30 days from receipt of an undisputed invoice.

6 VAT

The Payment does not include VAT and if VAT is payable then the Council will pay this in addition to the Payment provided that the Service Provider supplies the Council with an appropriate VAT notice.

7 AGENCY

- 7(a) The Service Provider is an independent contractor and nothing in this Agreement shall render it an agent of the Council and the Service Provider shall not hold itself out as the Council's agent nor shall it have the power or the right to bind the Council to any obligation.
- 7(b) Under the terms of this Agreement the Service Provider shall not have and shall in no way represent itself as having the power to make vary discharge or waive any by-law or regulation of any kind.

8 ACCOUNTING

- 8(a) The Service Provider will facilitate the inspection of all financial records held in connection with the Service and shall produce a copy of its annual audited accounts as soon as is reasonably practicable if requested to do so by the Council.
- 8(b) The Service Provider shall provide such financial information as the Council may reasonably require from time to time to assess the financial viability and monitor the performance of the Service Provider.
- 8(c) The Service Provider shall compile maintain and keep the information and records as required in the Specification and such information as the Council may from time to time reasonably require to enable the Council to submit any information or data required for the purposes of the Performance Indicators.
- 8(d) The Council may by Notice in Writing to the Service Provider authorise the statutory auditors of the Council or any regulatory body to which the Council is subject including but without limitation the Commissioner for Local Administration to exercise any of the rights exercisable under this clause by the Council. For these purposes the "statutory auditors of the Council" shall include any body appointed by the Council

9 NOTICES

- 9(a) The Service Provider shall comply with and give any Notices required under the Agreement or required by any Act of Parliament any instrument rule or order made under any Act of Parliament or any regulation or by-law of any local authority which may have jurisdiction in respect of the Service Provider.
- 9(b) Any Notice under this Agreement must be in Writing and can only be sent by:
- 9(b)(i) recorded delivery post or
 - 9(b)(ii) personal delivery

- 9(c) The Service Provider's address for the purpose of delivery of a Notice is as set out above and all Notices sent to the Service Provider under this Agreement must be sent to the Service Provider's **[add in Job Title]**.
- 9(d) The Council's address for the purpose of delivery of a Notice is set out above and a copy must be sent to Service Manager Operations and a separate copy must also be sent to the Council's Contracts Manager.
- 9(e) All such Notices if delivered by hand shall be deemed to be served immediately and if posted shall be deemed to have been served two days after the date when posted unless the party upon whom the Notice was purported to be served has informed the serving party within 24 hours of partial receipt that the Notice was not received in full.

10 BREACH

- 10(a) In the event that the Service Provider is in breach of his obligations under this Agreement then the Council shall serve a Notice requiring the Service Provider to take such action as the Council deems necessary to remedy the breach upon the terms and within the time stipulated in the Notice.
- 10(b) The following obligations are conditions of this Agreement and any breach of them shall be deemed a fundamental breach which shall determine this Agreement immediately by the giving of a written Notice:
- 10(b)(i) Failure to comply with a Notice to remedy a breach pursuant to clause 10(a)
- 10(b)(ii) Assignment by the Service Provider of any of his obligations under this Agreement without the prior written consent of the Council
- 10(b)(iii) If the Service Provider was convicted of any offence the effect of which under the provisions of any legislation would prevent the Council from contracting with him or maintaining any existing contractual relationship
- 10(b)(iv) If the Service Provider is issued with a Notice from the Health and Safety Executive or Registration Body prohibiting it from operating.

11 PREVENTION OF BRIBERY

- 11(a) The Service Provider:
- 11(a)(i) shall not, and shall procure that all Service Provider Staff shall not, in connection with this Agreement commit a Prohibited Act;
- 11(a)(ii) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 11(b) The Service Provider shall:

- 11(b)(i) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 11(b)(ii) the Service Provider shall, within 10 Working Days of a request from the Council, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) the Service Provider's compliance with this clause 11 and provide such supporting evidence of compliance with this clause 11 by the Service Provider as the Council may reasonably request.
- 11(c) If any breach of clause 11 is suspected or known, the Service Provider must notify the Council immediately.
- 11(d) If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 11(a), the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Agreement.
- 11(e) The Council may terminate this Agreement by written notice with immediate effect, and recover from the Service Provider the amount of any loss directly resulting from the cancellation, if the Service Provider or Service Provider Staff (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 11(a). At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 11(e), the Council shall give consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:
 - 11(e)(i) with the authority; or,
 - 11(e)(ii) with the actual knowledge of any one or more of the directors of the Service Provider or the Sub- Service Provider (as the case may be); or
 - 11(e)(iii) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.
- 11(f) Any notice of termination under clause 11(e) must specify:
 - 11(f)(i) the nature of the Prohibited Act;
 - 11(f)(ii) the identity of the party whom the Council believes has committed the Prohibited Act; and

- 11(f)(iii) the date on which this Agreement will terminate.
- 11(g) Despite clause 18 (Disputes), any dispute relating to:
- 11(g)(i) the interpretation of clause 11; or
 - 11(g)(ii) the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.
- 11(h) Any termination under clause 11(e) will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

12 INSURANCE

- 12(a) The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all legal liability which may be incurred by the Service Provider, arising out of the Service Provider's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS).
- 12(b) Where the Service Provider is providing Services of a professional nature, or the Council otherwise specifies that professional indemnity insurance is required, the Service Provider shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain policy cover which indemnifies the contractor for negligent acts arising out of the performance of this Agreement. To comply with its obligations under this clause, and as a minimum, the Service Provider shall ensure professional indemnity insurance held by the Service Provider and by any agent, Sub-Contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS) in respect of each and every claim.
- 12(c) The Service Provider shall hold and maintain any professional indemnity insurance required under this Agreement for a minimum of 6 years following the expiration or earlier termination of this Agreement.
- 12(d) The Service Provider warrants that it has complied with this clause 12 and warrants that any insurance policy or policies effected and maintained in accordance with this clause do not contain any endorsements or exclusions which have the effect of voiding, reducing or limiting the cover required in respect of the Services.
- 12(e) The Service Provider shall prior to commencement of this Agreement provide the Council and thereafter upon request, or at least annually during the Term, with:

- (a) copies of the relevant insurance policy documents (including details of any warranties or exclusions); and
- (b) receipts or other evidence of payment of the latest premiums due under those policies; and
- (c) any other evidence reasonably requested by the Council to confirm that the required insurances are in force and effect and meet in full the requirements of this Clause 12.

Receipt of such evidence by the Council shall not in itself constitute acceptance by the Council or relieve the Service Provider of any of its liabilities and obligations under this Agreement.

12(f) The Service Provider shall:

- (a) ensure nothing is done to invalidate any insurance policy or cause the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part, including ensuring that any warranties under the policy are complied with;
- (b) notify the Council as soon as reasonably practicable when it becomes aware of any relevant fact, circumstance or matter which, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

12(g) For the avoidance of doubt, the terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Agreement.

12(h) Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":

12(i)(i) if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Service Provider shall immediately submit to the Council:

- (a) details of the policy concerned; and
- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

12(i)(ii) if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Service Provider shall:

- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement;
or
- (b) if the Service Provider is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Council full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

13 INDEMNITY

- 13(a) The Service Provider shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other [reasonable] professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:
- (a) The performance, defective performance or otherwise of this Agreement by the Service Provider or the Service Provider Staff
 - (b) Any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the provision of the Services
 - (c) Any claim made against the Council by a third party arising out of, or in connection with, the supply 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 by the Service Provider or the Service Provider's Staff; and
 - (d) Any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with the delivery of the Services and performance of this Agreement to the extent that the defective performance is attributable to the acts or omissions of the Service Provider or the Service Provider's Staff
- 13(b) The Council shall indemnify the Service Provider against all reasonable claims, costs and expenses which the Service Provider may incur and which arise, directly from the Council's breach of any of its obligations under this Agreement.
- 13(c) Nothing in this Agreement shall limit or exclude the liability of either Party for:
- (a) death or personal injury resulting from negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) the indemnities given in this clause 13.

14 AUTHORISED OFFICER AND SERVICE PROVIDER REPRESENTATIVE:[NOT USED]

15 INTELLECTUAL PROPERTY

- 15(a) In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:
- 15(a)(i) in the course of performing the Services; or
 - 15(a)(ii) exclusively for the purpose of performing the Services, shall vest in the Council on creation.
- 15(b) Unless stated expressly in writing in this Agreement, neither Party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Agreement
- 15(c) The Service Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.
- 15(d) This provision shall survive the expiration or termination of the Agreement.

16 EXTENSION AND TERMINATION

- 16(a) Unless terminated in accordance with this Clause 16 or Clause 10 or 11, this Agreement will remain in force for the Initial Term and it is agreed between the Parties that the Council may exercise its Option to Extend this Agreement as follows:
- 16(a)(i) If the Council decides to exercise its Option to Extend the Initial Term it shall notify the Service Provider in writing at least 3 months in advance of the Initial Expiry Date. Where the Parties agree an extension of the Initial Term the provisions of this Agreement between the Council and the Service Provider shall be the terms to be applied to the extended contract period, save for any agreed variations in writing by the Parties to the terms of this Agreement or Payments which are to apply during the extension period.
 - 16(a)(ii) If the Council decides that it does not wish to exercise its Option to Extend then this Agreement shall terminate on the Initial Expiry Date and the provisions of clause 17 (Consequences of Termination) shall apply.
- 16(b) This Agreement may be terminated prior to the Expiry Date in the following circumstances:-
- 16(b)(i) by either the Council or the Service Provider by giving **6 months'** Notice in Writing to the other party.

- 16(b)(ii) by the Council if in the reasonable opinion of the Council it is no longer practicable to maintain a satisfactory or viable relationship with the Service Provider because the Service Provider or its Staff have acted unlawfully or fraudulently or there has been a serious breakdown of mutual trust between the Parties.
- 16(b)(iii) by the Council if the Service Provider becomes the subject of a voluntary arrangement under section 1 Insolvency Act 1986 or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; has a receiver manager administrator or administrative receiver appointed over all or any parts of its undertaking assets or income; has passed a resolution for its winding up; has a petition presented to any court for its winding up or for an administration order; or if any distraint execution or other process is levied or enforced on any property of the other and is not paid out withdrawn or discharged within 14 days.
- 16(b)(iv) by either Party if the other Party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.
- 16(b)(v) by either Party where the other Party commits a series of minor breaches which, when taken together, amount to a material breach;
- 16(b)(vi) by either Party where the other Party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- 16(b)(vii) by the Council forthwith by notice where the Service Provider commits a material breach as a result of a failure to comply with a Notice issued in accordance with clause 10 (Breach).
- 16(b)(viii) by either Party where the other Party ceases to carry on its business or substantially the whole of its business;
- 16(c) in the event of this Agreement being terminated at any time prior to the Expiry Date for any reason then the Council's obligations under Clause 2 (Payment) will cease no further Payment will be made and the Service Provider shall repay to the Council all (if any) of the Payment already received (after the liabilities of the Service Provider in the provision of the Service in accordance with this Agreement have been met).
- 16(d) If the Agreement is terminated as provided by Clause 10 (Breach) or 11 (Prevention of Bribery) or 16 (Extension and Termination) above the Council shall:
 - 16(d)(i) cease to be under any obligation to make further Payment until the cost loss

and/or damage resulting from or arising out of the termination of the Agreement shall have been calculated and provided such calculation shows a sum or sums due to the Service Provider;

- 16(d)(ii) be entitled to make other arrangements and if necessary pay other persons to provide the Services
- 16(d)(iii) be entitled to deduct from any sum or sums which would have been due from the Council to the Service Provider under this Agreement or be entitled to recover the same from the Service Provider as a debt any loss or damage to the Council resulting from or arising out of the termination of this Agreement and further such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating this Agreement and in making alternative arrangements for the provision of the Services provided that the Council will be under a duty to take all reasonable action to mitigate the loss or damage pursuant to this clause.
- 16(e) Whilst this Agreement affords the Council and the Service Provider reciprocal rights to terminate as per the terms of Clause 16(b)(i) the Parties acknowledge that the expectation of most Service Users is that the Parties will not act unreasonably or to the prejudice of the Service Users so far as is reasonably practicable.
- 16(e) Where notice to terminate is given pursuant to this clause 16, this Agreement shall terminate with effect on the date specified in the notice.

17 CONSEQUENCES OF TERMINATION

- 17(a) Other than as set out in this Agreement, neither Party shall have any further obligations to the other under this Agreement after its termination
- 17(b) Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect
- 17(c) Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies obligations or liabilities of the Parties existing at termination
- 17(d) Notwithstanding its obligations in this clause 17, if a Party is required by law, regulation, or government or regulatory body to retain any documents or materials containing the other Party's Confidential Information, it shall notify the other Party in writing of such retention, giving details of the documents and/or materials it must retain.
- 17(e) upon termination of this Agreement for any reason, the Service Provider shall, at its own cost, deliver, and require that its employees, agents and sub-contractors deliver, to the Council all information and any other property of the Council which are in the possession or control of the Service Provider or the Service Provider's employees, agents or Sub-

Contractors at the date of termination.

18 DISPUTES

18(a) If any dispute or difference shall arise between the Parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the same shall be dealt with as follows:-

18(a)(i) In the first instance a special meeting of both the Parties shall be arranged on 14 days' written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute

18(b) If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve the Council's Chief Executive or the Service Provider's senior officer or such other authorised officer of either party whose details have been notified to the other party, with notice of the dispute and those officers shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice

19 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING

19(a) Neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other Party PROVIDED that the Council may,

(a)(i) assign any of its rights under this Agreement; or

(a)(ii) transfer all of its rights or obligations by novation, to another person without the Service Provider's consent where such assignment, transfer or novation is to an Associated Person of the Council;

19(b) Any consent required under Clause 19(a) must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.

19(c) The Service Provider will not, without the written consent of the Council, sub-contract its right or obligations under this Agreement nor allow Services to be provided other than through the Service Provider's Staff and using its own equipment.

19(d) In the event that consent is given by either Party to the other Party to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the sub-contracting Party to the consenting Party immediately it is issued

19(e) Subject to clause 19(a), in the event that either Party wishes to assign its rights and obligations under this Agreement, the assignor must obtain a written undertaking from the assignee to the consenting Party that it will be bound by the obligations of the assignor under this Agreement.

19(f) Notwithstanding the Service Provider's right to sub-contract pursuant to this clause 19, the Service Provider shall remain responsible for all acts and omissions of its Sub-

contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own and shall be responsible for the work of the Sub-contractor whose work shall be undertaken to the same standard as stated in the Specification.

- 19(g) Where 20% or more of the Service Provider's overall workforce is made up of people from agencies (or not employed directly by the Service Provider) this may be considered assignment or subcontracting of the Service Provider's obligations under this Agreement and require written consent of the Council which it shall be absolutely entitled to withhold.

20 FORCE MAJEURE

- 20(a) Subject to the provisions of clause 20(b) neither the Service Provider nor the Council shall be liable for any delay or failure in performing its obligations hereunder for any circumstances beyond its reasonable control such as (but not restricted to) flood fire and civil unrest but the Council shall in such circumstances be entitled to take such action as is reasonable and necessary to protect the interest of the Service Users.

- 20(b) Save where such delay or failure is caused by the act or omission of the other party (in which event the rights remedies and liabilities of the Parties shall be those conferred and imposed by the other terms of this Agreement and by Law):-

20(b)(i) any charges arising from such delay or failure shall be borne by the party incurring the same

20(b)(ii) either party may if such delay or failure continues for more than 90 (ninety) days terminate this Agreement forthwith on giving Notice (as determined by Clause 9) to the other party in which event neither party shall be liable to the other by reason of such termination.

- 20(c) For the avoidance of doubt "force majeure" shall not include any labour dispute between the Service Provider and its Staff or the failure to provide the Service by any of the Service Provider's Sub-contractors.

21 WAIVER

Failure at any time by either party to enforce any of the provisions hereof shall not be construed as a waiver of any such provisions and shall not affect the validity or any part of it or the right of the Council to enforce any provision of this Agreement in accordance with its terms.

22 SEVERANCE

If any of the provisions of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

23 LAW

This Agreement shall be governed and construed in accordance with the laws of England and the Parties agree to submit to the jurisdiction of the English Courts.

24 THIRD PARTY RIGHTS

Unless the right of enforcement is expressly provided it is not intended that a third party should have the right to enforce a provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

25 REMEDIES CUMULATIVE

Any remedy or right which the Council may exercise in relation to a breach committed by the Service Provider shall be in addition to and shall be capable of being exercised without prejudice to all other rights and remedies available to the Council.

26 CONCLUSION OF AGREEMENT

Upon the expiry or termination of this Agreement and upon the Council's request the Service Provider must give an officer of the Council or any person the Council specifies copies of all data information files records documents and the like (in whatever form that they may be held) which the Council earlier supplied to the Service Provider for the purposes of this Agreement or which were produced or augmented by the Service Provider in connection with the carrying out of obligations under this Agreement and the Service Provider must retain Service User records for a minimum of 6 years after the expiry this Agreement

27 SUSTAINABILITY

The Service Provider will at all times use its best endeavours to source all materials used to provide the Service from sustainable and renewable sources.

28 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)

28(a) The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

28(b) The Service Provider shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Service Provider acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.

28(c) The Service Provider shall:

28(c)(i) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

28(c)(ii) provide the Council, at the Service Provider's expense, with a copy of all

Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and

- 28(c)(iii) provide, at the Service Provider's expense, all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 28(d) The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and in considering any response to a Request for Information the Council may consult with the Service Provider prior to making any decision or considering any exemption.
- 28(e) In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 28(f) The Service Provider acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the EIR to disclose information concerning the Service Provider or the Services:
 - 28(f)(i) in certain circumstances without consulting the Service Provider; or
 - 28(f)(ii) following consultation with the Service Provider and having taken their views into account; provided always that where sub-clause 28(f)(i) above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 28(g) The Service Provider shall ensure that all Information required to be produced or maintained under the terms of this Agreement, or by law or professional practice or in relation to the Agreement is retained for disclosure for at least the duration of the Agreement plus one year together with such other time period as required by the Agreement, law or practice and shall permit the Council to inspect such records as requested from time to time.
- 28(h) The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under

FOIA, or any other law, of any information (including Exempt Information) whether relating to this Agreement or otherwise relating to any other party.

29 TUPE

Where a Relevant Transfer applies Schedule 2 of this Agreement will apply.

30 EQUALITIES

- 30(a) The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of Goods, Services or Works under this Agreement, or in its employment practices.
- 30(b) Without prejudice to the generality of the foregoing, the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 30(c) In addition, the Service Provider in providing services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it .
- 30(d) The Service Provider will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Equalities and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.
- 30(e) In the event of any finding of unlawful discrimination being made against the Service Provider during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights Commission over the same period, the Service Provider shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 30(f) The Service Provider will provide a copy of its policies to the Council at any time upon request. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Service Provider's compliance with the above conditions.

31 CONFIDENTIAL INFORMATION

- 31(a) The Service Provider will keep confidential any information it becomes aware of by reason of the operation of this Agreement and any other information which the Council may from time to time determine as relevant to this Agreement and shall not use divulge or communicate the same to any third party without the consent in writing of the Council.

- 31(b) The Service Provider shall at all times keep confidential all information held or known in respect of its past or present Service Users.
- 31(c) Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
 - 31(c)(i) treat the other Party's Confidential Information as confidential; and
 - 31(c)(ii) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent
- 31(d) Clause 31(c) shall not apply to the extent that:
 - 31(d)(i) such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information
 - 31(d)(ii) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner
 - 31(d)(iii) such information was obtained from a third party without obligation of confidentiality
 - 31(d)(iv) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement
 - 31(d)(v) it is independently developed without access to the other party's Confidential Information.
- 31(e) The Service Provider may only disclose the Council's Confidential Information to the Service Provider's Staff who are directly involved in the provision of the Service and who need to know the information, and shall ensure that such Service Provider's Staff are aware of and shall comply with these obligations as to confidentiality.
- 31(f) The Service Provider shall not, and shall procure that the Service Provider's Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.
- 31(g) The Service Provider shall ensure that its employees and agents are aware of and comply with Clause 31 and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by the Service Provider, its employees or agents.
- 31(h) The Service Provider its Staff and any person employed or engaged by the Service Provider in connection with this Agreement shall:
 - 31(h)(i) only use the Confidential Information for the purposes of this Agreement

- 31(h)(ii) not disclose any of the Confidential Information to any third party without the prior written consent of the Council which consent the Council shall be absolutely entitled to refuse
- 31(h)(iii) not use the Confidential Information for the solicitation of business from the Council
- 31(i) Nothing in this Agreement shall prevent the Council from disclosing the Service Provider's Confidential Information:
 - 31(i)(i) to any consultant, contractor or other person engaged by the Council
 - 31(i)(ii) for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council.
- 31(j) The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to this Agreement is made aware of the Council's obligations of confidentiality.
- 31(k) The provisions of this Clause shall survive the expiration or termination of this Agreement

32 COUNCIL DATA

- 32(a) The Service Provider shall not delete or remove any copyright or proprietary notices contained within or relating to the Council Data.
- 32(b) The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council and in particular the Service Provider shall not store any Council Data, which the Council has notified the Service Provider requires storage in an encrypted format, on any portable device or media unless that device is encrypted.
- 32(c) To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council as requested by the Council in any format specified reasonably requested by the Council.
- 32(d) The Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data and shall take such back up copies of the Council Data at regular intervals appropriate to the frequency of the revision of the Council Data.
- 32(e) The Service Provider shall ensure that any system on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council's security policy to include, but not limited to, the following requirements:
 - 32(e)(i) Access to the system is restricted to Service Provider Staff with a legitimate need to access the Council Data

- 32(e)(ii) The system is kept up to date with the latest versions of operating system and anti-virus updates
- 32(e)(iii) Transfer of data to and from the system is conducted in a secure manner.
- 32(f) If the Council Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's default so as to be unusable, the Council may:
 - 32(f)(i) require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Council Data as soon as practicable; and/or
 - 32(f)(ii) itself restore or procure the restoration of Council Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so including the restoration of the Council Data
- 32(g) If at any time the Service Provider suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Council via the Council's ICT Helpdesk immediately and inform the Council of the remedial action the Service Provider proposes to take.
- 32(h) The Service Provider shall check for and delete Malicious Software and if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 32(i) Any cost arising out of the actions of the Parties taken in compliance with the provisions of sub-clause 32(h) above shall be borne by the Parties as follows:
 - 32(i)(i) by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software or the Council Data (whilst the Council Data was under the control of the Service Provider); and
 - 32(i)(ii) by the Council if the Malicious Software originates from the Council Software or the Council Data (whilst the Council Data was under the control of the Council).

33 DATA PROTECTION

- 33(a) Both parties will comply with all applicable requirements of the Data Protection Legislation and agree to take account of any guidance issued by the Information Commissioner's Office. This clause 33 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 33(b) Where there is any conflict, ambiguity or inconsistency between this clause (including any associated definitions) and the remainder of this Agreement this clause 33 shall take precedence.

- 33(c) The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is as set out in this agreement which includes Schedule 3 which sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 33(d) The Service Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 33(e) The Service Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33(f) The Data Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule 3 unless the Processor is required to do otherwise by Law. If it is so required the Data Processor shall promptly notify the Data Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the
 - (i) the nature of the data to be protected;
 - (ii) the harm that might result from a Data Loss Event;
 - (iii) the state of technological development; and
 - (iv) the cost of implementing any measures;
 - (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 3;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any

Processor Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Data Processor's duties under this clause;
- (B) are subject to appropriate confidentiality undertakings with the Data Processor or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Agreement; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (E) are obliged to keep the Personal Data confidential; and
- (F) shall not store any Personal Data on any portable device or media unless that device is encrypted and

- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
 - (i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Data Processor 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 Data Controller in meeting its obligations); and
 - (iv) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Agreement unless the Data Processor is required by Law to retain the Personal Data.

33(g) Subject to clause 33(h), the Data Processor shall notify the Data Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's

- obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 33(h) The Data Processor's obligation to notify under clause 33(g) shall include the provision of further information to the Data Controller in phases, as details become available.
- 33(i) Taking into account the nature of the processing, the Data Processor shall provide the Data Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 33(g) (and insofar as possible within the timescales reasonably required by the Data Controller) including by promptly providing:
- (a) the Data Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Data Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Data Controller following any Data Loss Event;
 - (e) assistance as requested by the Data Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Data Controller with the Information Commissioner's Office.
- 33(j) The Data Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Data Controller determines that the processing is not occasional;
 - (b) the Data Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Data Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33(k) The Data Processor shall allow for audits of its Data Processing activity by the Data Controller or the Data Controller's designated auditor.

- 33(l) Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 33(m) Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Data Processor must:
- (a) notify the Data Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Data Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 33(m) such that they apply to the Sub-processor; and
 - (d) provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.
- 33(n) The Data Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 33(o) The Data Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 33(p) The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Data Controller may on not less than 30 Working Days' notice to the Data Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 33(q) Where the Parties include two or more Joint Controllers as identified in Schedule 3 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement in replacement of Clauses 33(a)-33(p) for the Personal Data under Joint Control (or this Clause 33 shall be replaced by Joint Controller clauses)

34 COUNCIL DATA AND PERSONAL INFORMATION AUDITS

- 34(a) Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit for the following purposes:
- 34(a)(i) to review the integrity, confidentiality and security of the Council Data
 - 34(a)(ii) to review the Service Provider's compliance with the Data Protection Act Legislation, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services
- 34(b) The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.

- 34(c) Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 34(c)(i) all information requested by the Council within the permitted scope of the audit
 - 34(c)(ii) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services
 - 34(c)(iii) access to Service Provider's Staff
- 34(d) The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Service.
- 34(e) The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days' notice of its intention to conduct an audit.
- 34(f) The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 34(g) This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Agreement which may be conducted as specified in this Agreement.

35 AGREEMENT STATUS AND TRANSPARENCY

- 36(a) Further to the Local Government Transparency Code 2014 the Council is obliged to publish details of expenditure exceeding £500. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and any associated tender documentation provided by the Service Provider (the Tender Submission) is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA.
- 35(b) Notwithstanding any other term of this Agreement, the Service Provider hereby gives his consent for the Council to publish this Agreement and the Tender Submission in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 35(c) The Council may consult with the Service Provider to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.
- 35(d) The Service Provider shall assist and cooperate with the Council to enable the Council to publish this Agreement and the Tender Submission.

36 DEPRIVATION OF LIBERTIES SAFEGUARDS

36(a) The Service Provider must always apply the principles of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards. The Service Provider should always consult the relevant codes of practice for further detailed guidance.

37 COMPLAINTS PROCEDURE

37(a) The Service Provider shall:

37(a)(i) inform complainants that they may refer their complaint in respect of the services provided under this Agreement direct to the Council;

37(a)(ii) promptly (and in any event within two Working Days of receipt) refer all Formal Complaints received in respect of the services provided on behalf of the Council under this Agreement to the Council for resolution and

37(a)(iii) co-operate fully in any Council investigation into a complaint referred to the Council and provide any documents or information reasonably requested by the Council in relation to the complaint within the timescales specified by the Council.

37(b) The Service Provider shall operate a complaints procedure in respect of any services provided under this Agreement, to the entire satisfaction of the Council, and comply with the requirements of any regulatory body to which the Service Provider is subject (including any change in such requirements) and ensure that its complaints procedure meets the following minimum standards:

37(b)(i) is easy to access and understand;

37(b)(ii) informs complainants that they may refer their complaint in respect of services provided under this Agreement direct to the Council;

37(b)(iii) clearly sets out time limits for the Service Provider to respond to complaints referred to it and for keeping the complainant and the Council informed of progress with such complaints;

37(b)(iv) provides confidential record keeping to protect employees under this Agreement and the complainant

37(b)(v) provides information to management so that services can be improved

37(b)(vi) provides effective and suitable remedies

37(b)(vii) is regularly monitored and audited and which takes account of complainant and Council feedback.

37(c) The Service Provider shall make its complaints procedure available upon request.

37(d) The Service Provider shall ensure that all its employees and persons employed in the performance of this Agreement are made aware of its complaints procedure.

37(e) Where the Service Provider is undertaking an investigation into a complaint, the Service Provider shall ensure that, under no circumstances, is the complaint investigated by a

member of its staff who may be part of the complaint and that the investigation is carried out by someone who is independent of the matter complained of.

- 37(f) The Service Provider shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the Council on request or at 12 monthly intervals in any event.
- 37(g) The Service Provider should note that if a complaint is made to the Council by a third party relating to the goods, services or works provided on behalf of the Council under this Agreement, the Local Government Ombudsman has the power to investigate such a complaint and the Council requires the Service Provider to fully to co-operate in any such investigation. If the Council is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Service Provider the Service Provider shall indemnify the Council in respect of the costs arising from such maladministration or injustice.

38 SAFEGUARDING

- 38(a) Where the Service or activity being undertaken in this Agreement is a Regulated Activity the Service Provider shall:
 - 38(a)(i) ensure that all individuals engaged in the provision of the Service or activity, and prior to commencing the provision of the service or activity, are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - 38(a)(ii) monitor the level and validity of the checks under this clause 38(a) for each member of the Service Provider's Staff.
- 38(b) The Service Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of a Service or activity that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 38(c) The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 38 have been met.
- 38(d) The Service Provider shall refer information about any person carrying out the Services or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such

person has harmed or poses a risk of harm to the Service Users, children or vulnerable adults.

38(e) The Service 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 Service Users.

38(f) Where the service requirement or specification specifies that the Service or activity to be provided under this Agreement involves a Regulated Activity, or the Council otherwise notifies the Service Provider, acting reasonably, that the Service Provider's Staff are required to be subject to a Disclosure and Barring Service check, the Service Provider shall comply with clause 38(a) above.

39 COUNTERPARTS

39(a) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

39(b) Transmission of the executed signature page of a counterpart of this Agreement (a) by fax or (b) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

40 ENTIRE AGREEMENT

This Agreement, the schedules and the documents annexed to it or otherwise referred to in it as appropriate issued in connection with this Agreement contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to the subject matter.

41 CONFLICT OF TERMS

If there is any ambiguity or inconsistency in or between the Contract Documents the Council shall determine, at its sole discretion, the priority of the documents.

42 EMERGENCY PLANNING

The Service Provider will ensure that it has business continuity plans in place for a range of emergency situations should they arise for example pandemic influenza, power cuts etc.

SCHEDULE 1 SERVICE SPECIFICATION AND STANDARDS

TO BE INSERTED

SCHEDULE 2

PLEASE NOTE THIS IS A FORM OF AGREEMENT FOR TENDERING PURPOSES. ALTERNATIVE CLAUSES 3 AND 4 MAY BE USED DEPENDENT ON WHETHER STAFF TRANSFER TO THE SUCCESSFUL PROVIDER AT COMMENCEMENT OF AGREEMENT

Section 1: EMPLOYMENT PROVISIONS

Unless otherwise stated, the following definitions shall apply:

Data Protection Legislation: the Data Protection Act 1998 GDPR, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

"Direct Loss" all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of reasonably and necessarily incurred legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from the Authority or any Former Provider to the Provider or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-Contractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11 of the Employment Regulations :

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the transferor;
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;

(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive ;

Former Provider: a provider supplying services to the Authority before the Service Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Provider (or any sub-contractor of any such sub-contractor);

Indirect Losses means loss of profits (other than profits directly and solely attributable to carrying on of the Business), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

Notified Sub-contractor: a Sub-contractor identified in Annex C to whom Transferring Authority Employees and/or Transferring Former Provider Employees will transfer on a Relevant Transfer Date;

Provider Personnel: all directors, officers, employees, agents, consultants and contractors of the Provider and/or any Sub-contractor engaged in the performance of the Provider's obligations under this Contract;

Provider's Final Personnel List: a list provided by the Provider of all Provider Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

Provider's Provisional Personnel List: a list prepared and updated by the Provider of all Provider Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Provider and who are expected, if they remain in the employment of the Provider or of any sub-contractor as the case may be until immediately before the termination date or the expiry date of the (as appropriate), would be Transferring Provider Employees;

Relevant Transfer: a transfer of employment to which the Employment Regulations applies;

Replacement Services: any services which are the same as or substantially similar to the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;

Replacement Provider: any third party provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);

Replacement Sub-contractor: a sub-contractor of the Replacement Provider to whom Transferring Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

Retendering Information: as defined in paragraph 6.10;

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Provider or any Sub-contractor to a Replacement Provider or a Replacement Sub-contractor;

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Provider or Sub-Contractor to the Authority or any Replacement Provider giving rise to a Relevant Transfer;

Staffing Information: in relation to all persons identified on the Service Provider's Provisional Personnel List or Provider's Final Personnel List, as the case may be, such information as the Authority may

reasonably request (subject to all applicable provisions of the Data Protection Legislation, but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other Employee Liability Information

Sub-Contractor: the contractors engaged by the Provider to provide goods, services or works to, for or on behalf of the Provider for the purposes of providing the Services to the Authority.

Transferring Authority Employees: employees of the Authority whose contracts of employment transfer with effect from the Effective Date to the Provider by virtue of the application of the Employment Regulations. A list of the Transferring Authority Employees, as at the date of execution of the Agreement, is attached at Annex A.

Transferring Former Provider Employees: employees of a Former Provider whose contracts of employment transfer with effect from the Effective Date to the Provider or Sub-contractor by virtue of the application of the Employment Regulations. An indicative list of the Transferring Former Provider Employees, as at the date of execution of the Agreement, is attached at Annex B.

Transferring Provider Employees: those employees of the Provider and/or the Provider's Sub-contractors wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry date or the termination date of the Agreement to whom the Employment Regulations will apply on the Service Transfer Date whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Service Provider

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, the Provider shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Provider, Replacement Provider or Replacement Sub-contractor, as the case may be.

3. PROCEDURE IN THE EVENT OF TRANSFER (ALTERNATIVE CLAUSE WHERE NO STAFF TRANSFER AT COMMENCEMENT OF CONTRACT)

3.1 The Authority and the Provider agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Provider.

3.2 If any employee of the Authority and/or a Former Provider claims, or it is determined in relation to any employee of the Authority and/or a Former Provider, that his/her contract of employment has been transferred from the Authority and/or the Former Provider to the Provider and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Provider shall, and shall procure that the relevant Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Provider; and
- (b) the Authority and/or the Former Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Provider or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Provider (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

3.3 If an offer referred to in clause 3.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Provider), the Provider shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

3.4 If by the end of the 15 Working Day period specified in clause 3.2(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Provider and/or the Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

4. INDEMNITIES (ALTERNATIVE CLAUSE WHERE NO STAFF TRANSFER AT COMMENCEMENT OF CONTRACT)

4.1 Subject to the Provider and/or the relevant Sub-contractor acting in accordance with the provisions of clause 3.2 to clause 3.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to clause 4.4, the Authority shall:

- (a) indemnify the Provider and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in clause 3.2 made pursuant to the provisions of clause 3.4 provided that the Provider takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) procure that the Former Provider indemnifies the Provider and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Provider made pursuant to the provisions of clause 3.4 provided that the Provider takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

4.2 If any such person as is described in clause 3.2 is neither re employed by the Authority and/or the Former Provider as appropriate nor dismissed by the Provider and/or any Sub-contractor within the 15 Working Day period referred to in clause 3.4 such person shall be treated as having transferred to the Provider and/or the Sub-contractor (as appropriate) and the Provider shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

4.3 Where any person remains employed by the Provider and/or any Sub-contractor pursuant to clause 4.2, all Employee Liabilities in relation to such employee shall remain with the Provider and/or the Sub-contractor and the Provider shall indemnify the Authority and any Former Provider, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Provider, against any Employee Liabilities that either of them may incur in respect of any such employees of the Provider and/or employees of the Sub-contractor.

4.4 The indemnities in clause 4.1:

(a) shall not apply to:

- (i) in any case in relation to any alleged act or omission of the Provider and/or any Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
- (ii) any claim that the termination of employment was unfair because the Provider and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in clause 3.2(a) is made by the Provider and/or any Sub-contractor to the Authority and, if applicable, Former Provider within six months of the Effective Date.

3. TRANSFER OF EMPLOYEES TO THE PROVIDER ON THE EFFECTIVE DATE (ALTERNATIVE CLAUSE WHERE STAFF TRANSFER AT COMMENCEMENT OF CONTRACT)

3.1 The Authority and the Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of Transferring Former Provider Employees shall transfer to the Provider or Sub-Contractor. The Provider shall comply and shall

procure that each Sub-Contractor shall comply with their obligations under the Employment Regulations. The Relevant Transfer shall occur on the Effective Date.

3.2 NOT USED

3.3 Subject to paragraph 3.4, the Authority shall indemnify and keep indemnified the Provider against any losses, except indirect losses incurred by the Provider or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Authority Employee arising out of the employment of any Transferring Authority Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Authority Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Provider or any relevant Sub-Contractor's failure to comply with regulation 13 of the Employment Regulations) and any such claim is not in connection with the transfer of the Services by virtue of the Employment Regulations on the Effective Date.

3.4 The Provider shall be liable for and indemnify and keep indemnified the Authority and any Former Provider against any Employment Liabilities arising from or as a consequence of:

- (i) any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider taking on or after the Effective Date;
- (ii) any of the employees informing the Authority and any Former Provide they object to being employed by the Provider or Sub-Contractor; and
- (iii) any change in identity of the Transferring Authority Employees' and Transferring Former Provider Employees' employer as a result of the operation of the Employment Regulations or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Effective Date.

3.5 The Provider shall be liable for and indemnify and keep indemnified the Authority and any Former Provider against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Authority Employees, the Transferring Former Provider Employees, and any other person who is or will be employed or engaged by the Provider or any Sub-Contractor 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.

3.6 The Provider shall immediately on request by the Authority and/or the Former Provider provide details of any measures that the Provider or any Sub-Contractor of the Provider envisages it will take in relation to any Transferring Authority Employees and any Transferring Former Provider Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Provider will give confirmation of that fact, and shall indemnify the Authority and any Former Provider against all Employment Liabilities resulting from any failure by it to comply with this obligation.

4. NOT USED (ALTERNATIVE CLAUSE WHERE STAFF TRANSFER AT COMMENCEMENT OF CONTRACT)

5. PROCUREMENT OBLIGATIONS

Where in this schedule the Authority accepts an obligation to procure that a Former Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Provider contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Provider does or does not act accordingly.

6. RETENDERING AND PRE-SERVICE TRANSFER OBLIGATIONS

6.1 The Provider agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six month period),

it shall provide at no cost to the Authority and in a suitably anonymised format so as to comply with the Data Protection Legislation, the Provider's Provisional Personnel List, together with the Staffing

Information in relation to the Provider's Provisional Personnel List and it shall provide an updated Provider's Provisional Personnel List at such intervals as are reasonably requested by the Authority.

6.2 At least 28 Working Days prior to the Service Transfer Date, the Provider shall provide to the Authority or at the direction of the Authority to any Replacement Provider and/or any Replacement Sub-contractor:

- (a) the Provider's Final Personnel List, which shall identify which of the Provider Personnel are Transferring Provider Employees; and
- (b) the Staffing Information in relation to the Provider's Final Personnel List (insofar as such information has not previously been provided).

6.3 The Authority shall be permitted to use and disclose information provided by the Service Provider under clause 6.1 and clause 6.2 for the purpose of informing any prospective Replacement Provider and/or Replacement Sub-contractor.

6.4 The Provider:

- (a) shall promptly notify the Authority forthwith in writing of any material changes to the information provided pursuant to clause 6.1 and clause 6.2 as and when such changes arise; and
- (b) warrants, for the benefit of the Authority, any Replacement Provider, and any Replacement Sub-contractor that all information provided pursuant to clause 6.1 and clause 6.2 shall be true and accurate in all material respects at the time of providing the information.

6.5 From the date of the earliest event referred to in clause 6.1(a), clause 6.1(b) and clause 6.1(c), the Provider agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Provider's Provisional Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Service Provider Personnel listed on the Provider Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Provider Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Personnel List save by due disciplinary process, and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Provider or relevant Sub-contractor or received from any persons listed on the Provider's Provisional Personnel List regardless of when such notice takes effect.

6.6 During the Term, the Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

6.7 The Provider shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Provider and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Provider's Final Personnel List who is a Transferring Provider Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

6.8 The Authority regards compliance with this paragraph 6 as fundamental to the Agreement. In particular, failure to comply with paragraphs 6.1 and 6.2 in respect of the provision of accurate information about the Transferring Provider Employees shall entitle the Authority to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 6.8 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Provider's failure to comply with paragraphs 6.1 or 6.2, as the case may be.

6.9 Any change to the Staffing Information which would increase the total employment costs of the staff in the six months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Provider shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

6.10 The Provider shall indemnify and shall keep indemnified in full the Authority and at the Authority's request any Replacement Provider against all Direct Losses arising from any claim by any party as a result of the Provider or sub-contractor failing to provide or promptly to provide the Authority and/or any Replacement Provider where requested by the Authority with any information required under this Clause 6.1 to 6.4 inclusive ("the Retendering Information") and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply to the extent that such information was originally provided to the Provider or any sub-contractor by the Authority and was materially inaccurate or incomplete when originally provided.

7. EMPLOYMENT REGULATIONS EXIT PROVISIONS

7.1 The Authority and the Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Provider and/or a Replacement Sub-contractor. Such change in the identity of the provider of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Provider further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Provider and the Transferring Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Provider and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Provider Employee.

7.2 The Provider shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Provider Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring

Provider Employees and other employees or former employees of the Provider or each Sub-contractor (who had been engaged in the provision of the Services) arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Provider and/or the Sub-contractor (as appropriate); and (ii) the Replacement Provider and/or Replacement Sub-contractor.

7.3 Subject to clause 7.4, the Provider shall indemnify the Authority and/or the Replacement Provider and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission of the Provider or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Provider or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Provider Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Provider Employees which the Provider or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Provider to the Authority and/or Replacement Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Provider or any Sub-contractor other than a Transferring Provider Employee for whom it is alleged the Authority and/or the Replacement Provider and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Provider or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Provider to comply with regulation 13(4) of the Employment Regulations.

7.4 The indemnities in clause 7.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Provider and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the

Replacement Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
(b) arising from the Replacement Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

7.5 If any person who is not a Transferring Provider Employee claims, or it is determined in relation to any person who is not a Transferring Provider Employee, that his/her contract of employment has been transferred from the Provider or any Sub-contractor to the Replacement Provider and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

(a) the Authority shall procure that the Replacement Provider shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Service Provider; and

(b) the Provider may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Provider and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

7.6 If such offer is accepted, or if the situation has otherwise been resolved by the Provider or a Sub-contractor, the Authority shall procure that the Replacement Provider shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

7.7 If after the 15th Working Day period specified in clause 7.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Provider and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

7.8 Subject to the Replacement Provider and/or Replacement Sub-contractor acting in accordance with the provisions of clause 7.5 to clause 7.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Provider shall indemnify the Replacement Provider and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of clause 7.7 provided that the Replacement Provider takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

7.9 The indemnity in clause 7.8:

(a) shall not apply to:

(i) in any case in relation to any alleged act or omission of the Replacement Provider and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or

(ii) any claim that the termination of employment was unfair because the Replacement Provider and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in clause 7.5(a) is made by the Replacement Provider and/or Replacement Sub-contractor to the Provider within six months of the Service Transfer Date.

7.10 If any such person as is described in clause 7.5 is neither re-employed by the Provider or any Sub-contractor nor dismissed by the Replacement Provider and/or Replacement Sub-contractor within the time scales set out in clause 7.5 to clause 7.7, such person shall be treated as a Transferring Provider Employee and the Replacement Provider and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

7.11 Not Used.

7.12 The Provider shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Provider and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Provider and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Provider and/or Replacement Sub-contractor, shall promptly provide to the Provider and each Sub-contractor in writing such information as is necessary to enable the Provider and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

7.13 Subject to clause 7.14, the Authority shall procure that the Replacement Provider indemnifies the Provider on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Provider Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Provider and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Provider and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Provider Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Provider Employees which the Replacement Provider and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Replacement Provider and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Provider and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Provider Employees on or after their transfer to the Replacement Provider or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Provider or Replacement Sub-contractor to, or in respect of, any Transferring Provider Employee on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Provider or Sub-contractor, to the Replacement Provider or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Replacement Provider or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

7.14 The indemnities in clause 7.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee

Liabilities arising from the failure by the Provider and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

7.15 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer to a Replacement Provider will be fulfilled.

7.16 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause 6 and 7, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

7.17 Despite clause 7.16, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Annex A. Admission Agreement (Not Used)

Annex B. Transferring Council Employees

There are no Transferring Council Employees

Annex C. Transferring Former Provider Employees

[insert details where applicable]

SCHEDULE 3

Processing, Personal Data and Data Subjects

The Service Provider shall comply with any further written instructions with respect to processing by the Council.

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Data Controller and Data Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Contractor is the Data Processor in accordance with Clause 33(a)</p> <p>Note this schedule may be varied in the event that agreement is reached between the Council and the Provider that both are data controllers.</p>
Subject matter of the processing	Personal information about Service Users to ensure that the Service Provider is able to safely meet their Assessed Needs.
Duration of the processing	For the period of Service delivery to a Service User plus 6 years after the last date on which the Service is delivered.
Nature and purposes of the processing	<p>The Service Provider is to provide a Service as ordered by the Council to meet its obligations under the Care Act 2014. The nature of the processing of the data may include, but not be limited to, the following, in order to deliver a statutory service to Service Users:</p> <ul style="list-style-type: none"> • Collecting, maintaining and storing Service User records in all formats • Sharing Service User information across the Service Provider's organisation and with other appropriate external agencies to include: appropriate Regulatory Bodies; the Police; health services. • Completion of returns relating to multi-agency safeguarding and complaints processes. <p>The purpose of processing the data is to enable the Service Provider to provide a quality service to Service Users in accordance with Schedules 1 and 2 of this Agreement and to safeguard individual Service Users where there are concerns about their wellbeing.</p>
Type of Personal Data	Personal data:

	<p>Service User details as follows: Name; address; date of birth; next of kin; personal accounts;</p> <p>Special category data: Gender and ethnic origin; GP; medical and health/care related details relevant to their support plan; current risk assessment; mental capacity; mental impairment; relevant offence details where appropriate.</p>
Categories of Data Subject	Service Users
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Information where no longer required should be destroyed securely, unless specifically instructed by the Council that it must be returned to the Council. Personal data relating to Service Users must be retained for 6 years from the date the Service to the individual Service User ceased.

..... Head of Legal & Democratic Services

..... Legal Services Manager People/Places

SIGNED by)
authorised signatory on behalf of)
the SERVICE PROVIDER)

Name.....

Position in Organisation.....



BOROUGH OF TELFORD and WREKIN

and

{INSERT NAME OF PROVIDER}

TERM AND CONDITIONS

FOR THE PROVISION OF

INDEPENDENT MENTAL HEALTH ADVOCACY

REF: IMHA19/22

1 April 2019 to 31 March 2022

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RECITALS

WHEREAS:

- A. The Council has selected the Provider to provide the Services (as defined in the Schedule C (Service Specification)) and the Provider is willing and able to provide the Services in consideration for the payment of the Charges (as set out in Schedule C (Service Specification)) and in accordance with the terms and conditions of this Agreement.
- B. The Agreement consists of these Conditions, the Particulars (Schedule A), the Service Specification (Schedule C) and Schedule Ds. In the event of conflicting interpretations, these documents shall take precedence in the order stated above. Except as otherwise expressly provided, the documents comprising this Agreement are to be mutually explanatory of one another.
- C. The Council and the Provider have agreed that the Provider shall provide and the Council shall co operate with it in providing the Services subject to and in accordance with the terms and conditions of this Agreement.
- D. The Council is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the Council wishes to procure are Best Value functions.
- E. The Provider has agreed to provide the Services at the Premises subject to, and in accordance with, the terms and conditions of this Agreement.

PART 1 GENERAL PROVISIONS

1. Definitions and Interpretations

1.1 In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

DEFINITION TABLE	
Word/Phrase	Definition
1999 Act	Shall mean the Local Government Act 1999
Activity	means any levels of services and/or Service User flows set out in the Service Specification
Advocacy Service	Shall mean a Service that will support or encourage a person/s to exercise their rights in order to uphold their rights.
Agreement	Shall mean the terms and conditions of this Agreement and Schedule A to Schedule I and Appendices hereto.
Assessment	Shall mean the assessment undertaken by the Council leading to the Care Plan.
Authorised Representative	Shall mean an individual authorised to Enter and View health and social premises as part of a Local Healthwatch's function as described in the Health and Social Care Act 2012
BACS	Shall mean Bankers Automated Clearing Service
Best Value	Shall mean the duty imposed on the Council by Part 1 of the 1999 Act and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act
Bribery Act	the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
Carer	means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage
Commencement Date	Shall mean 1 April 2019
Confidential Information	Shall mean information in accordance with Clause Error! Reference source not found. (Confidentiality)
Contracting Authority	Shall mean any Contracting Authority as defined in Regulation 3 of the Public Contracts Regulations 2015 other than the Council
Contract Price	Shall mean the fee that the Council will pay to the Provider for the Service in accordance with Schedule E (Financial Provision).
Contract Review	Shall mean a review of the Provider's provision of and compliance with the Agreement

Controller	as defined in the Data Protection Legislation.
(The) Council	Shall mean the Borough of Telford and Wrekin (operating as Telford and Wrekin Council)
Council Policies and Procedures	Policies and Procedures can be accessed through request to the Council's Representative.
Council's Representative	Shall mean the person nominated pursuant to Clause 8 (The Council's Representative).
Data Protection Act / DPA	Shall mean the Data Protection Act 2018 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commission or relevant government department in relation to such legislation
Data Subject	as defined in the Data Protection Legislation.
DBS	Shall mean the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.
Default	Shall mean any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement. and in respect of which such Party is liable to the other
Dispute Resolution	Shall mean the process to be followed if the Parties fail to agree upon any issue arising under this Agreement as set out in Clause 81
Enhanced Disclosure	Shall mean a disclosure secured in accordance with the DBS Service.
Enter and View	Shall mean the power under the Health and Social Care Act 2012 granted to Local Healthwatch where an Authorised Individual can enter health and social care premises to observe and assess the nature and quality of those Services and obtain the views of people using them
Expert	person appointed in accordance with Clause 80 (Dispute Resolution)
Expiry Date	Shall mean 31 March 2022 unless Extender or Terminated in as set out in clause 2 (Term)
Extended Term	Shall mean the extension of the duration of the Agreement agreed in accordance with Clause 2 (Term)
Financial Year	Shall mean the period from 1 April in any year to 31 March in the following year
FOIA	Shall mean 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	any circumstance not within a party's reasonable control including, without limitation: <ul style="list-style-type: none"> a) acts of God, flood, drought, earthquake or other natural disaster; b) epidemic or pandemic; c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of

	<p>sanctions, embargo, or breaking off of diplomatic relations;</p> <p>d) nuclear, chemical or biological contamination or sonic boom;</p> <p>e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;</p> <p>f) collapse of buildings, fire, explosion or accident; and</p> <p>g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Provider's workforce or the workforce of any Subcontractor of the Provider).</p>
Formal Complaint	Shall mean any complaint that is referred into and dealt with under the Complaints Procedure
Former Provider	Shall mean Shropshire Independent Advocacy Service (SIAS)
Fraud	Shall mean any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown
General Change in Law	Shall mean a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which would affect or relate to a comparable supply of Services of the same or a similar nature to the supply of the Services
Implementation Period	Shall mean the period of time agreed by the Provider and the Council after the tender has been awarded before the Service is fully operational. The period commencing January 2019 and ending on 31 st March 2019
Information	Shall have the meaning given under section 84 of the Freedom of Information Act 2000
Initial Term	Shall mean the period from the Commencement Date to the Expiry Date or such earlier date of termination or partial termination of the agreement
Instant Review Meeting	Shall mean a Notice which the Council is entitled to serve on the Provider stating that one or more of the Annual Contract Reviews has been brought forward at less than twenty-eight (28) days Notice
Intellectual Property Rights	Shall mean patents, inventions, trade marks, Service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
Invitation to Tender	Shall mean the statement of Service requirement issued by the Council in respect of the performance of the Services. The Invitation to Tender has been incorporated into this Agreement
Law	<p>Law means:</p> <p>(i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;</p> <p>(ii) any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;</p>

	<p>(iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</p> <p>(iv) National Standards;</p> <p>(v) Guidance; and</p> <p>(vi) any applicable industry code</p> <p>(vii) bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply</p> <p>in each case in force in England and Wales</p>
Liaison	Shall mean ongoing cooperation of the Parties
Material Breach	Shall mean a default that the Parties have been unable to remedy
Mediator / Mediation Provider	an individual who is appointed in accordance with Clause 80 (Dispute Resolution) to mediate between parties if they are in dispute
Month	Shall mean calendar month
Named Employee	Shall have the meaning given to it in Clause 39 (Disclosure and Barring Service)
Notice	Shall mean any written communication issued to a Party that is sent by hand, registered post or by the recorded delivery Service, or electronic mail.
Parent Company	Shall mean the organisation that has a controlling stake in the Provider
Party	Shall mean the Provider or the Council being the signatories to this Agreement and "Parties" shall be construed accordingly
Persistent Breach	shall mean where the Provider has committed more than two Defaults during any consecutive period of six (6) Months, whether or not these are the same Defaults or different Defaults and even if the Default was put right
Placement	Shall mean the provision of the Service and receipt of associated Services as detailed within Schedule C (Service Specification) to a Service User in the Premises.
Price	Shall mean the price exclusive of any applicable VAT payable to the Provider by the Council under the Agreement for the full and proper performance by the Provider of its obligations under the Agreement but before taking into account the effect of any adjustment of Price
Processor	as defined in the Data Protection Legislation.
Prohibited Act	<p>the following constitute Prohibited Acts:</p> <p>a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <p>(i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;</p> <p>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;</p> <p>c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii)</p>

	<p>defrauding, attempting to defraud or conspiring to defraud the Authority;</p> <p>d) any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK.</p>
(The) Provider	Shall mean < insert name of the provider> and its successors in title and assigns
Provider's Representative	Shall mean the person nominated pursuant to Clause 9 (The Provider's Representative)
Quality Standards	Shall mean the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body that a skilled and experienced operator engaged in the same type of industry or business as the Provider would reasonably and ordinarily be expected to comply
Rehabilitation Plan	Shall mean the plan for the Service User as more particularly detailed within Schedule C (Service Specification).
Registration Standards	Shall mean such standards of Service as is necessary to achieve registration under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and any regulations and standards from time to time made there under
Regulated Activity	in relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) (or any superseding legislation), and in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) (or any superseding legislation).
Regulated Activity Provider	as defined in Section 6 of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) (or any superseding legislation)
Regulatory Body/Bodies	Shall mean those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly. However, this does not include any body of which membership is voluntary
Relevant Transfer	a relevant transfer for the purposes of TUPE.
Replacement Provider	Shall mean any other Provider appointed by the Council to supply any Service which is substantially similar to any of the Services which the Council receives in substitution for any of the Services following the termination or partial termination of this Agreement
Requests for Information	Shall have the meaning set out in FOIA or any apparent request for Information under the FOIA or the Environment Information Regulations
RIDDOR	Shall mean the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

Schedule	Shall mean a document attached to, and forming part of, this Agreement
Serious Breach	Shall mean a Default by the Provider which materially prejudices the health, safety or welfare of a Service User
Service	Shall mean the provision of the Services specified in Schedule C (Service Specification) in accordance with the Invitation to Tender
Service Specification	Shall mean the description of the Service to be provided under this Agreement and attached as Schedule C (Service Specification)
Service User	Shall mean any person in receipt of the Services as detailed in Schedule C (Service Specification) who has been assessed for Care under the National Health Service and Community Care Act 1990; and/or meets Local Authority Eligibility Criteria for Care
Service User Representative	Any person making a representation on the behalf of the Service User in either personal and professional capacity.
Service Outcome	the required impacts or end results of the Services, which are described in the Service Specification
Service User Outcome	the required impacts or end results of the provision of Services for the Service User.
Staff	Shall mean the persons who are employed or deployed by the Provider to provide the Services. All persons employed by the Provider to perform its obligations under the Agreement together with the Provider's servants, agents, volunteers, suppliers and sub-contractors used in the performance of its obligations under the Agreement.
Suspension	Shall mean temporary cessation by the Council of the any of the Services associated with this Agreement
Tender	Shall mean the documents which form the basis of the Agreement
Term	Shall mean the period from the Commencement Date to Expiry Date of the Agreement (unless an extension has been agreed) in accordance with Clause 2 (Term).
TUPE Regulations	Shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Transfers of Undertakings Directive 2001
UK Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
Variation	Shall mean an amendment to this Agreement or to the Services or any of the schedules in accordance with Clause 55 (Variation).
VAT	Shall mean Valued Added Tax chargeable under English Law for the time being and any similar additional tax.
Volunteer	Shall mean any unpaid member of Staff who is not an employee of the Provider
Working Day	Shall mean between 09:00 and 17:00 Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays

1.2 Except as otherwise expressly provided, the documents comprising this Agreement are to be mutually explanatory of one another.

- 1.3 Any references to any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force, and to include any EU Directives, by-laws, licences, statutory instruments, rules, regulations, orders, Notices, directions, consents or permissions made under the same.
- 1.4 An obligation in this Agreement by either of the Parties, not to do something, shall be construed as including an obligation to use reasonable endeavours not to permit it to be done by a third party (whether with express or implied authority, or otherwise).
- 1.5 Time shall not be of the essence, unless otherwise stated.
- 1.6 Any requirement in this Agreement for the Council to give its consent or agreement means the consent or agreement must be given in writing (subject to any contrary provision) by an officer of the Council who has the necessary delegated authority.
- 1.7 The headings in this Agreement are for ease of reference only and the words in italics are for explanatory purposes only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 1.8 The expression 'person' used in this Agreement shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.
- 1.9 References in this Agreement to the "Council" and the "Provider" shall include their respective successors in title and any reference to any government department or other relevant authority is deemed to include its or their successors.
- 1.10 Words denoting one gender include the other genders.
- 1.11 Words in the singular shall include the plural and vice versa.
- 1.12 Words denoting individuals shall be treated as including a body of persons corporate or unincorporated.
- 1.13 References to Clauses, sections, paragraphs, Schedules and Appendices are references to the Clauses, sections, paragraphs, Schedules and appendices of this Agreement (subject to any contrary indication).
- 1.14 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words, or be construed as being limited to the same class as the preceding words where a wider construction is possible.
- 1.15 The Schedules form part of the Agreement and shall have effect as if set out in full in the body of the Agreement and any reference to Agreement includes the Schedules.
- 1.16 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2. Term

- 2.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with the succeeding provisions of this Agreement, or otherwise, for a period of three (3) years (the Initial Term), when it shall expire automatically without Notice.
- 2.2 The Council shall have the right, by giving written Notice no later than three (3) Months before the end of the Initial Term, to extend the Agreement for a further period of up to two (2) years (the Extended Term).
- 2.3 During any Extended Term, the respective obligations of the Parties under this Agreement shall continue in full force and effect (subject only to any Variation) until the expiry of the Extended Term.
- 2.4 Unless it is terminated earlier in accordance with the succeeding provisions of this Agreement, or otherwise, this Agreement shall expire automatically without Notice at the end of the Extended Term.

3. Scope of the Agreement

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

4. The Council's Obligations

- 4.1 In the absence of any express statement to the contrary, the Council's obligations under this Agreement are obligations of the Council in its capacity as a contracting counter party only.
- 4.2 Nothing contained in this Agreement shall restrict or fetter the exercise by the Council in its capacity as a Local Authority, of its various rights, discretions, duties, powers and obligations under any statute, statutory instrument, order, regulation, byelaw or other Law, in particular in relation to social Service functions.

5. The Provider's Obligations

- 5.1 The Provider shall ensure that the Services commence and are fully operational with effect from midnight immediately prior to the Commencement Date (time being of the essence).
- 5.2 The Provider must deliver the Services in accordance with the terms and conditions of the Agreement and in particular (without limitation) Schedule C

(Service Specification).

- 5.3 The Provider agrees that the Council has the power to inspect and examine the performance of the Services and compliance with the terms of this Agreement at the Provider's premises or at any other premises where any part of the Service is being performed.
- 5.4 The Provider must at all times deliver the Services in accordance with all applicable legal requirements which apply under any Law.
- 5.5 Neither the Provider nor its Staff shall in any circumstances hold itself or themselves out as being the agent or employee of the Council, or purport to enter into any contract on behalf of the Council, or bind the Council to any undertaking unless otherwise agreed in writing by the Council (at its absolute discretion).
- 5.6 The Provider shall be registered and shall remain registered throughout the Term with any relevant Regulatory Bodies.

6. The Entirety of the Contract

- 6.1 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, the 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).
- 6.2 This Agreement may be executed by the Parties in counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all counterparts together shall constitute one and the same instrument.

7. Notices

- 7.1 Except as otherwise expressly provided within the Agreement, no Notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.
- 7.2 Any Notice which is served under this Agreement by either Party on the other shall be sent by either electronic mail or recorded delivery, to the appropriate person and the relevant address as specified in Schedule A (The Particulars).
- 7.3 Any Notice which is served in accordance with this Clause 7 (Notices) shall be deemed to have been given either (as applicable) two (2) Working Days after the date on which it was posted, or within four (4) hours in the case of an electronic transmission (provided that the same is received on a Working Day and if not, then on the first Working Day thereafter, or sooner if the other Party acknowledges receipt sooner).

8. The Council's Representative

- 8.1 The Council shall appoint a Council Representative to act on behalf of the Council for all purposes connected with the Agreement (in the absence of any other indication). Details of the Council's Representative are set out in Schedule A (The Particulars).
- 8.2 The Council shall immediately give Notice to the Provider of any change in the identity, address and telephone numbers of the Council's Representative. The Council shall also give the maximum possible Notice to the Provider before changing the Council Representative.
- 8.3 The Council's Representative may from time to time appoint one or more persons to act for the Council's Representative generally or for specified purposes or periods. As soon as is reasonably practicable after any such appointment is made the Council's Representative shall give written Notice thereof to the Provider.
- 8.4 Any Notice, information, instruction or other communication given to the Council's Representative or any person appointed to act as the Council's Representative shall be deemed to have been given to the Council.

9. The Provider's Representative

- 9.1 The Provider shall appoint a Representative to act on behalf of the Provider for all purposes connected with the Agreement. Details of the Provider's Representative are set out in Schedule A (The Particulars).
- 9.2 The Provider's Representative may from time to time appoint one or more persons to act for the Provider's Representative generally or for specified purposes or periods. As soon as is reasonably practicable after any such appointment is made the Provider's Representative shall give written Notice thereof to the Council.
- 9.3 Any Notice, information, instruction or other communication given to the Provider's Representative or those appointed to act as the Provider's Representative shall be deemed to have been given to the Provider.
- 9.4 The Provider shall immediately give Notice to the Council of any change in the identity, address and telephone numbers of the Provider's Representative. The Provider shall also give the maximum possible Notice to the Council before changing its Provider's Representative.

10. Ambiguities and Conflicts

- 10.1 If either of the Parties becomes aware of any ambiguities or discrepancies in the Agreement, then they shall immediately serve Notice of these on the Council's Representative, who shall then issue each of the Parties with an appropriate clarification or an appropriate Variation.
- 10.2 If there is any conflict at any time between the provisions of the Agreement or any other document which is referred to in or attached to this Agreement, then the conflict shall be resolved in accordance with the following order of priority:

- (a) Clauses 1 to 80 of these Conditions (inclusive) and including any documents incorporated by reference therein;
- (b) Schedule A (The Particulars) to this Agreement;
- (c) Schedule C (Service Specification) to this Agreement;
- (d) Schedule D to Schedule I of this Agreement (inclusive);
- (e) any document which is varied pursuant to Clause 55 (Variation);
- (f) any other document which is referred to in or annexed to this Agreement

11. Conflicts of Interest

- 11.1 The Provider must take appropriate steps to ensure that neither the Provider nor any agent, supplier, sub-contractor or member of Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be, an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Agreement. The Provider will promptly disclose to the Council full particulars of any such conflict of interest, or potential conflict of interest, which may arise.
- 11.2 The Council reserves the right to terminate the Agreement immediately by Notice in writing 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 pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Agreement. The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 11.3 The provision of this Clause 11 (Conflicts of Interest) shall apply throughout the Term and thereafter for a period of twenty-four (24) months after expiry or termination of this Agreement.
- 11.4 The Provider shall be deemed to have satisfied itself about all aspects of this Agreement before submitting the Tender and to have obtained its own independent legal advice with regard to the same.
- 11.5 The Provider shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably have influenced the Tender.
- 11.6 The Provider:
 - (a) as at the Commencement Date, warrants and represents that all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement; and
 - (b) shall promptly notify the Council in writing if it becomes aware during the performance of the Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and

adversely affects its ability to perform the Services or meet any Quality Standards.

12. TUPE

- 12.1 The parties agree that the provisions of Schedule G (TUPE) shall apply to any Relevant Transfer of staff under this Agreement.

PART 2 PROVISION OF THE SERVICES

13. The Services

- 13.1 The Services shall commence in accordance with the requirements of the Agreement.
- 13.2 The Services purchased by the Council under this Agreement shall be provided only to:
- (a) People who live in the Borough of Telford and Wrekin
 - (b) People to whom care Services are being or may be provided in the Borough of Telford and Wrekin
 - (c) People from the Borough of Telford and Wrekin to whom Services are being provided in any place.
- 13.3 The Services shall be provided by the Provider in accordance with Service levels outlined in Schedule C (Service Specification).
- 13.4 The Provider shall at all times comply with and take into account all applicable Laws, the requirements of any court with relevant jurisdiction and also any relevant local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of either the United Kingdom or of the European Union.
- 13.5 The Provider must notify the Council in writing of any changes in management to the Services delivered under this Agreement.

14. Standard of Work

- 14.1 When providing the Services, the Provider shall comply with:
- (a) the standards and other requirements which are set out in all relevant current and future statutory provisions that apply to this Agreement and the Services, and also the applicable requirements of any relevant Regulatory Body;
 - (b) Schedule C (Service Specification) and all other local requirements that are set out in or referred to in this Agreement with regard to the standards with which the Services must comply subject to Clause 55 (Variation).

15. Self-Directed Support – not used

15.1 Not used.

16. Provider's Staff

- 16.1 The Provider shall employ sufficiently trained, suitably qualified and experienced staff to ensure that the Services are provided throughout the Term in compliance in all respects with the Contract Standards and as detailed more fully in Schedule C (Service Specification) and (where applicable) the other Schedules.
- 16.2 The Provider shall ensure that it has sufficient Staff to provide the Services in Schedule C (Service Specification) during any period of Staff absence due to sickness, maternity leave, Staff holidays or otherwise.
- 16.3 The Provider shall ensure that the Staff employed for the provision of the Services shall at all times exercise due care and diligence in the execution of their duties.
- 16.4 The Provider shall also ensure that its Staff are given appropriate training, instruction and are adequately supervised at all times with regard to their provision of the Services.
- 16.5 The Provider shall:
- (a) ensure and monitor all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service;
 - (b) implement an equal opportunities policy when selecting its Staff, provided that the ability to provide good quality Services shall be the main criterion;
 - (c) implement a thorough system of staff selection by requiring the completion of a comprehensive written job application form, which requires the applicant to (inter alia) disclose full details of the following to ensure their suitability to provide the Services to the Service Users:
 - (i) their individual qualifications, employment experience and character information;
 - (ii) 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).
 - (d) obtain at least two (2) written references for each potential Staff 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);
 - (e) diligently follow up each written reference by a telephone call to the relevant referee in order to verify the reference;
 - (f) not appoint any person as a member of its Staff if the Provider is unable to

secure a satisfactory and reliable reference from the relevant individual's immediate previous employer in accordance with sub-clauses (c) and (d) of this Clause (subject to any contrary written approval from the Council's Representative);

- (g) comply with the requirements of sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006.
- (h) not allow any member of Staff to commence employment in relation to the provision of the Services prior to the Provider's receipt of a satisfactory DBS check that complies with the requirements of Disclosure and Barring Service;
- (i) give Notice to the Council immediately if any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Provider (or any employee of a sub-contractor involved in the provision of the Services);
- (j) comply diligently throughout the Term with the DBS requirements which are set out in Schedule G (Disclosure and Barring Service).
- (k) The Council's Representative (acting reasonably) shall be entitled to require the Provider to remove immediately from the provision of the Services any member of Staff who has not been appointed in accordance with clauses 16.1 to 16.5. The Provider shall however have the right to make representations to the Council's Representative about any such requirement. After taking any representations into account, the Council's Representative 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.

16.6 The Provider shall bear its own cost arising from any Notice, instruction or decision of the Council under this Clause 16 (Provider's Staff) provided that the Council acts reasonably.

16.7 The Provider to ensure a recruitment and retention policy is in place, and updated at least annually.

17. Rights of Access and Inspection

17.1 The Provider shall allow officers of the Council to have reasonable access to the Provider's premises, equipment, financial and bank account records (including both personal and business bank account records of any directors or proprietors) Staff records and Staff, to enable the Council to ascertain that (firstly) the Services are being provided in accordance with the Agreement and (secondly) all Safeguarding requirements are being met.

17.2 Any information which is made available to the Council under this Clause 17 (Rights of Access and Inspection) shall be treated as Confidential Information by the Council.

17.3 The Provider shall upon reasonable Notice from the Council permit or procure permission for the authorised representatives of the Telford and Wrekin Healthwatch to have access to and observe the carrying-on of activities and

provide appropriate information to the Telford and Wrekin Healthwatch to enable it to carry out its functions (subject to Clause 17.4).

- 17.4 The Provider shall, upon request, provide appropriate information to the Telford and Wrekin Healthwatch in respect of the Services provided under this Agreement to enable it to carry out its functions.
- 17.5 Clause 17.3 shall not apply if the presence of the authorised representative of the Telford and Wrekin Healthwatch would compromise the effective provision of the Services by the Provider, or the privacy or dignity of any Service User.

PART 3 PERFORMANCE and MONITORING

18. Quality Assurance and Performance Monitoring

- 18.1 The Provider's Representative and the Council's Representative shall attend a Contract Monitoring Review meeting at a mutually convenient time and location but shall be at least once during every year of the Term to discuss:
- (a) The manner and extent of the Provider's provision of the Services pursuant to this Agreement and the Schedules.
 - (b) Any other relevant issues which may arise from time to time. With specific reference to Part 3 (Performance and Monitoring) of the Terms and Conditions and Schedule C (Service Specification) and Schedule E (Monitoring Quality and Performance).
- 18.2 Contract Monitoring Reviews may be carried out at a different time upon agreement by both Parties or if applicable in accordance with Clause 55 (Variation).
- 18.3 The Provider shall throughout the Term demonstrate and maintain a properly documented and effective system of quality assurance in relation to the Services.
- 18.4 The Provider shall at all times co-operate with the Council's processes for monitoring and evaluating the quality of the Services and compliance with this Agreement in whatever way is reasonably requested by the Council, including the compliance by the Provider with the performance monitoring arrangements which are set out in Schedule C (Service Specification) and Schedule D (Monitoring Quality and Performance).
- 18.5 The Provider shall provide the Council with such monitoring information including activity statistics and financial data in the format of a report on a quarterly basis or as the Council may reasonably require upon two (2) weeks Notice to ensure the Services are provided in accordance with the provisions of this Agreement detailed requirements outlined in Schedule D (Monitoring Quality and Performance).

19. Service Outcomes

- 19.1 The Provider and the Council shall each follow and diligently comply with the this Clause 19 (Service Outcomes) and Schedule C (Service Specification) in order to ensure that the Provider is offering Services which deliver, or work towards delivering, the Service Outcomes.
- 19.2 The Provider shall be proactive and cooperative (at its own expense) in working with the Council to maintain and develop the Service Outcomes in order to ensure that the Services are progressively developed to meet changing needs and demands as the Term proceeds.
- 19.3 The Provider shall also work with the Council (at its own expense) to support the development of processes and practices that monitor and develop the assessment of individual Service User Outcomes.

20. Contract Review

- 20.1 The Council shall periodically undertake a review of the Provider's performance of the Services (in whole or in part, at the Council's discretion) under this Agreement. The frequency and format of the Contract Reviews shall be as prescribed in Schedule C (Service Specification).
- 20.2 The Provider shall co-operate with the Council from time to time in evaluating the effectiveness and appropriateness of the Service.
- 20.3 The Provider is obliged to inform Service Users of the outcome of any review reports issued by the Council in an appropriate format as agreed by the Parties.
- 20.4 The Provider shall provide the Council with such monitoring information including activity statistics and financial data as the Council may reasonably require upon two (2) weeks written Notice to ensure the Services are provided in accordance with the provisions of this Agreement detailed requirements outlined in Schedule D(Monitoring Quality and Performance).
- 20.5 The Provider shall (at its own expense) afford all reasonable cooperation, resources and facilities to enable the Council to carry out Contract Reviews without interference and shall provide to the Council all reasonable information required by it for such purposes.

21. Change Control Procedure

- 21.1 If either Party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 21.2 If either Party requests a change to the scope or execution of the Services, the Provider shall, within a reasonable time, provide a written estimate to the Council of the following information:
 - (a) the likely time required to implement the change;
 - (b) any necessary Variations to the Provider's charges arising from the change;
and

(c) any other impact of the change on this Agreement.

21.3 If the Council wishes the Provider to proceed with the change, the Provider has no obligation to do so unless and until the Parties have agreed any necessary Variations to its charges, the Services, and any other relevant terms of this Agreement to take account of the change and this agreement has been varied in accordance with Clause 55 (Variation).

22. Information Provision and Exchange

22.1 The Provider must compile and maintain such information as may reasonably be required by the Council. In specifying the information to be compiled and maintained for this purpose the Council will have regard to any directions or guidance which any governing, statutory or Regulatory Body may issue relating to the form and extent of such information.

22.2 It is the responsibility of the Provider to inform the Council immediately (normally the first Working Day) and confirm in writing to the Council's Representative within twenty-four (24) hours, if any of the following occur:

- (a) Formal Complaints received from the Service User or a Representative of the Service User
- (b) Allegations of, or actual abuse to a Service user

22.3 The Provider must also notify the Council of the following:

- (a) Major Injury to a Service User as defined in RIDDOR.
- (b) Outcomes of any Regulatory Body visits / reports
- (c) Termination of employment for any member of staff due to misconduct.
- (d) Any significant changes (temporary or permanent) to the Service Provision as specified in the Schedules.
- (e) As a result of any misconduct or mismanagement on the Provider's part a Regulatory Body directs an inquiry into or serves Notice or makes an order of any kind in relation to the Provider;
- (f) Or any registration which the Provider must maintain in order to provide any of the Services is withdrawn or cancelled or is threatened to be withdrawn or cancelled.

22.4 Subject to the provisions of Clauses 43 (Data Protection) and Clause **Error! Reference source not found.** (Confidentiality), the Provider shall facilitate the electronic exchange, between the Parties, of any or all data, information, files, records, documents and the like, in relation to provision of Services under this Agreement.

23. Council's Best Value Duty

- 23.1 The Parties agree and acknowledge that the 1999 Act applies to the Services and the Provider shall, at no cost to the Council, provide all reasonably necessary assistance to allow the Council to comply with its general duty under Section 3 of the 1999 Act throughout the Term.

24. Complaints

- 24.1 The Provider shall with effect from the Commencement Date implement and maintain a Complaints Procedure entitling a Service User, a Service User Representative, a Commissioner, the Local Healthwatch, or any Healthcare or Social Care Professional involved in the care to make a formal complaint about any aspect of the provision of the Services. The Complaints Procedure should provide for the complaint to be properly investigated and the Service User should receive a written response.
- 24.2 The Provider's Complaints Procedure must be fully integrated with and compatible with the Council's procedure for dealing with complaints which the Council may at its absolute discretion amend from time to time.
- 24.3 All Service Users shall be informed of their right to make a complaint and shall be provided with a copy of the Provider's Complaints Procedure.
- 24.4 The Provider is required to make Service Users aware that they may also make a complaint direct to the Council, any relevant Regulatory Body or Advocacy Service.
- 24.5 At the reasonable request of the Council's Representative, the Provider's Representative shall supply full details to the Council of any complaint which has been made to the Provider about the Services and the Provider's response to the complaint in question.
- 24.6 The Provider shall notify the Council of any changes to the Provider's Complaints Procedure.
- 24.7 The Council may use any information, statistics or records, relating to complaints made to the Council under the Council's complaints procedure, to assess performance of the Provider and compliance to this Agreement.

25. Whistleblowing

- 25.1 The Provider shall ensure that it has a 'whistleblowing' procedure that is in accordance with best practice and guidance and the Provider shall implement this procedure no later than the Commencement Date and maintain the same throughout the Term of the Agreement.
- 25.2 The Provider confirms that the Council is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and the Provider declares that any of its Staff who make a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and it will make its Staff aware of this provision.

- 25.3 The Provider further declares that any provision in any contract (for the avoidance of doubt including any contract of employment) purporting to preclude a member of its Staff from making a protected disclosure is void

PART 4 FEES and PAYMENT

26. Purchasing Agreement

- 26.1 From the Commencement Date and thereafter during the Term the Provider shall provide an IMHA Service to Service Users in accordance with Schedule C (Service Specification).
- 26.2 From the Commencement Date and thereafter during the Term the Council shall purchase the Services and the Provider will provide the Services to eligible residents within the Borough of Telford and Wrekin.

27. Financial Arrangements

- 27.1 In consideration of the provision of the Services under this Agreement, the Council shall pay the Charges to the Provider for the Services which it provides in compliance with this Agreement, in accordance with Clause 27 (Financial Arrangements) and Schedule E (Financial Provision).
- 27.2 The provisions of Schedule E (Financial Provision) shall also apply generally to this Agreement in order to regulate the financial arrangements between the Parties in relation to the Services.
- 27.3 The Provider shall not, under any circumstances, attempt to secure any additional contributions from the Service User or Service User Representative for (or in relation to) any of the Service provisions under this Agreement.
- 27.4 The Council may reduce payment in respect of any Services which the Provider has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.
- 27.5 In the event that the cost to the Provider of performing its obligations under the Agreement increases or decreases as a result of a change of Law, the provisions of Clause 79 (Legislative Change) shall apply.

28. Payment and VAT

- 28.1 The Council shall pay the Provider upon receipt of an invoice in Quarterly in advance.
- 28.2 The Council shall pay by BACS transfer to the Provider's bank account.
- 28.3 For the avoidance of doubt the Council will not be liable for any initial set-up costs prior to and after (and on) the Commencement Date.

- 28.4 Invoices must be sent electronically to <insert email>
- 28.5 The Price does not include VAT. If VAT is payable then the Council must pay this in addition to the Price provided.
- 28.6 In consideration for the provision of the Services under this Agreement, the Council shall pay the Provider the Charges in accordance with this Clause 28 (Payment and VAT) and Schedule E (Financial Provision).
- 28.7 The Charges shall be paid in pounds sterling, unless otherwise specified in Schedule E (Financial Provision).
- 28.8 The provisions of Schedule E (Financial Provision) shall also apply generally to this Agreement in order to regulate the financial arrangements between the Parties in relation to the Services.
- 28.9 The Provider acknowledges that the payment of the Charges to the Provider by the Council is to cover all overheads incurred (or to be incurred) by the Provider in complying with the provisions of this Agreement and therefore no other sum shall be payable by the Council for the Services unless either, expressly provided for under this Agreement, or otherwise agreed in writing by the Council (at the Council's absolute discretion).
- 28.10 If the Council gives its written consent to the Provider, to enable the Provider to either employ agency personnel to supplement its Staff, or to provide part of the Services via a sub-contractor, then the onus for the payment of any related costs or fees which are consequentially incurred shall lie entirely with the Provider. Therefore there shall be no alteration to the charges, as a consequence of the circumstances which are referred to in this clause, unless the Council (in its absolute discretion) specifically agrees in writing to the contrary.
- 28.11 A failure by the Provider to comply with the financial requirements referred to in Clause 27 (Financial Arrangements) will be regarded as a breach of the Terms of the Agreement.
- 28.12 The Council may reduce payment in respect of any Services which the Provider has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Council.
- 28.13 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Agreement under Clause 68 (Termination of Services) for failure to pay undisputed charges.

29. Withholding of Payment

- 29.1 The Council may withhold payments if the Provider does not provide the Council with the information required in Clauses 22 (Information Provision and Exchange), 30.1 (Provider's Financial Responsibilities) and Schedule E (Financial Provision) and Schedule D (Monitoring Quality and Performance) within the required timescales. Details of the timescales for the provision of information will be made available and will be sent to the Provider on commencement of the Agreement.

The payment will be released on receipt of the information and no interest will be payable for the late payment.

30. Provider's Financial Responsibilities

30.1 The Provider shall provide upon request, to the Council's Representative, a copy of its audited accounts and specific accounts relating to the provision of Services under this Agreement (both to be in a format and containing such reasonable information as may be agreed by the parties) within six (6) Months of the relevant accounting reference date.

31. Fee Review

31.1 The Contract Value shall apply for the Initial Contract Period. In the event that the Council agrees to extend the Initial Contract Period pursuant to clause 2 (Term) the Council shall, in the 6 month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Provider (for a period of not more than 30 Working Days) to agree a Variation in the Contract Value.

31.2 If the Parties are unable to agree a Variation in the Contract Price in accordance with clause B31.1, the Contract shall terminate at the end of the Initial Contract Period.

31.3 If a Variation in the Contract Price is agreed between the Council and the Provider, the revised Contract Value will take effect from the first day of any period of extension and shall apply during such period of extension. Any change will be made in accordance with Clause 55 (Variation).

32. Recovery of Sums Due

32.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any Default), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Agreement or under any other agreement or Contract with the Council.

32.2 Any overpayment by either Party, whether of the Agreement Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the party in receipt of the overpayment.

32.3 The Provider shall make all payments the Council as and when they fall due without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council or Provider.

32.4 The Parties agree that any payment which is due from one Party to the other Party under this Agreement shall be late for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 if the Party required to make the payment

fails to do so within thirty (30) Days of the latest date of the same becoming properly payable under this Agreement.

- 32.5 A Party requesting payment may charge interest to the Party withholding payment at a rate of two per cent (2%) per annum above the base lending rate of the Bank of England from time to time, from the date that the monies became overdue as provided for in Clause 32.3 and thereafter until payment is received.
- 32.6 For the avoidance of doubt no interest shall be payable in respect of any withheld disputed monies if it is found that the Party withholding payment was correct in doing so.
- 32.7 The Parties agree that Clauses 32.3 to 32.5 (inclusive) provide a substantial remedy in respect of any late payment of sums due under this Agreement. Therefore the Late Payment of Commercial Debts (Interest) Act 1998 shall not apply to this Agreement.

33. Termination of Central Government Funding

- 33.1 Clause 33 (Termination of Central Government Funding) shall apply (notwithstanding any provisions to the contrary contained in the Agreement) if all or any funding or payments which are to be provided or made by the Council pursuant to the Agreement are either:
 - (a) is dependent (directly or indirectly) upon receipt or availability of, or continued receipt or availability of finance from central government, and such finance ceases to be available to or receivable by the Council; or
 - (b) become limited or no longer payable in the same amounts to the Council or at all by reason of central government impositions.
- 33.2 If, this clause applies:
 - (a) the Council shall no longer be bound or required to pay any funding or payments pursuant to the Agreement (at the absolute and unfettered discretion of the Council);
 - (b) it is acknowledged, understood and agreed by the Parties that insofar as may be permitted by 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;
 - (c) the Council shall have no indebtedness or liability whatsoever or howsoever, for any loss, damage, expense, action, claim or demand arising by reason of this clause taking effect.
- 33.3 If Clause 33 (Termination of Central Government Funding) takes effect and the Council exercises its discretion under sub-clause 33.1 not to either make any further payments to the Provider or be bound to pay the same, then the Council shall serve Notice on the Provider to that effect and with effect from the date of Service of the said Notice the Council shall not be obliged to place any orders or 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).

34. The Euro

- 34.1 Any requirement in Law to account for the Services in Euros (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Provider at nil charge to the Council.
- 34.2 The Council shall provide reasonable assistance to the Provider to facilitate any change which is implemented under Clause 34.1.

PART 5 STATUTORY OBLIGATIONS, CODES OF PRACTICE and REGULATIONS

35. Adult Protection Procedure

- 35.1 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 Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 35.2 The Provider shall:
- (a) ensure that all Staff are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - (b) monitor the level and validity of the checks under this Clause 35 (Adult Protection Procedure) for each member of Staff.
- 35.3 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 35.4 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 a Regulated Activity or who may otherwise present a risk to children or vulnerable adults.
- 35.5 The Provider shall immediately notify the Council and the Disclosure and Barring Service about any member of Staff where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or vulnerable adults.
- 35.6 The Provider shall immediately notify the Council in writing of any information that

is required under this Clause or it reasonably requests to enable it to be satisfied that the obligations of this Clause have been met.

35.7 The Provider shall adopt Safeguarding Policies and such policies shall comply with the Council's safeguarding policy as amended from time to time appended at Schedule F (Safeguarding Policies and Procedures).

36. Compliance with Relevant Requirements and Relevant Policies

36.1 The Provider shall and shall procure that persons associated with it or other persons who are performing Services in connection with this Agreement shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) comply with the Council's Ethics, Anti-bribery and Anti-corruption Policies in each case as the Council or the relevant industry body may update them from time to time.
- (d) not do, or omit to do, any act that will cause or lead the Council to be in breach of any of the Relevant Requirements or Relevant Policies;
- (e) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Agreement;
- (f) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 36 (Compliance With Relevant Requirements And Relevant Policies) , and will enforce them where appropriate;
- (g) if requested, provide the Council with any reasonable assistance, at the Provider's own cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements (or Relevant Policies);
- (h) within one (1) month prior to the Commencement Date of this Agreement, and annually thereafter, certify to the Council in writing and signed by The Provider's Representative of the Provider's compliance with this Clause 36 (Compliance With Relevant Requirements And Relevant Policies) by the Provider and all persons associated with it or other persons who are performing Services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

36.2 The Provider shall indemnify the Council against any losses, liabilities, damages,

costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Council as a result of any breach of this Clause 36 (Compliance With Relevant Requirements And Relevant Policies) by the Provider or any breach of provisions equivalent to this Clause 36 (Compliance With Relevant Requirements And Relevant Policies) in any Subcontract by any Subcontractor.

36.3 Additional audit and record keeping

- (a) The record keeping, audit and other related terms and obligations set out in Clause 43 (Data Protection), Clause **Error! Reference source not found.** (Confidentiality), 44 (Security of Confidential Information) and Clause 48 (Audit and the Audit Commission) shall equally apply to the Provider's compliance with this Clause 36 (Compliance With Relevant Requirements And Relevant Policies) and, without limitation, shall extend to all payments made by the Provider in connection with this Agreement.
- (b) Without prejudice to Clause 43 (Data Protection), Clause **Error! Reference source not found.** (Confidentiality), 44 (Security of Confidential Information) and Clause 48 (Audit and the Audit Commission), if the Council reasonably suspects the Provider or any person associated with the Provider of breach of this Clause 36 (Compliance With Relevant Requirements And Relevant Policies), the Council and its third party representatives shall have the right to immediately access and take copies of any records and any other information held at the Provider's premises and to meet with the Provider's personnel to audit the Provider's compliance with its obligations under this Clause 36 (Compliance With Relevant Requirements And Relevant Policies). The Provider shall give all necessary assistance to the conduct of such audit during the term of this agreement and for a period of three (3) years after termination of this agreement.
- (c) The rights of audit granted in clause 48 (Audit and the Audit Commission) and this Clause 36.3 shall continue for three (3) years after termination of this agreement.
- (d) Audit access by any third party representative of the Council shall be subject to such representative agreeing confidentiality obligations equivalent to those in Clause **Error! Reference source not found.** (Confidentiality) in respect of the information obtained, always provided that all information obtained may be disclosed to the Council.

36.4 The Provider warrants and represents that:

- (a) its responses to the Council's anti-bribery and anti-corruption due diligence questionnaire are complete and accurate;
- (b) neither the Provider nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving bribery or corruption, fraud or dishonesty;
 - (ii) having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement

proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or

- (iii) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts;

- 36.5 The Provider shall promptly notify the Council if, at any time during the term of this agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Clause 36.4 at the relevant time.
- 36.6 Breach of this Clause 36 (Compliance with Relevant Requirements and Relevant Policies) shall be deemed a material breach under Clause 64 (Termination on Default).
- 36.7 If the Council terminates this agreement for breach of this Clause 36 (Compliance With Relevant Requirements And Relevant Policies), the Provider shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.
- 36.8 Regardless of any other provision in this agreement, the Council shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.
- 36.9 No subcontract shall be entered into without the prior written approval of the Council.
- 36.10 Any subcontract shall be recorded in writing and shall:
- (a) impose on and secure from the Subcontractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Provider in this Clause 36 (Compliance with Relevant Requirements and Relevant Policies) (except for this Clause 36.10) in each case for the benefit of the Council, such provisions to be directly enforceable by the Council under the Contract (Rights of Third Parties) Act 1999:
 - (b) include an undertaking from the subcontractor in favour of the Council (directly enforceable by the Council under the 1999 Act) not to enter into any further Subcontract with any third party;
 - (c) include provisions, directly enforceable by the Council under the 1999 Act, granting the Council and its representatives:
 - (i) the same direct access to the premises, records, information and personnel of the subcontractor as the Council has to the premises, records, information and personnel of the Provider; and
 - (ii) the same auditing rights in respect of the subcontractor's compliance with the relevant terms and conditions as the Council has regarding

the Provider's compliance with this Clause 36 (Compliance with Relevant Requirements and Relevant Policies);

- (d) include provisions allowing termination of the subcontract by the Provider in accordance with Clause 68 (Termination of Services) and a provision for automatic termination of the subcontract in the event of, and at the same time as, the termination of this agreement.

36.11 After any subcontract has been entered into, the Provider shall:

- (a) within thirty (30) days of it being entered into, provide the Council with a copy of the subcontract;
- (b) be responsible for the observance and performance by the Subcontractor of the relevant Terms and Conditions, and shall be directly liable to the Council for any breach by the subcontractor of any of the relevant Terms and Conditions;
- (c) notify the Council in the case of any such breach; and
- (d) if the subcontractor fails to perform or observe any of the relevant Terms and Conditions, and if requested by the Council, immediately give the subcontractor Notice, specifying the breach complained of, and:
 - (i) where the breach is not capable of remedy, terminating the subcontract immediately; or
 - (ii) where the breach is capable of remedy, giving Notice that the subcontract is to terminate thirty (30) days from the date of the Notice being given unless the subcontractor has remedied the breach within that period.

36.12 For the purpose of this Clause 36 (Compliance with Relevant Requirements and Relevant Policies):

- (a) the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act, and section 8 of that Act respectively and, for the purpose of this Clause 33, a person associated with the Provider includes but is not limited to any subcontractor;
- (b) subcontract means:
 - (i) any subcontract; and
 - (ii) any agreement or commitment to enter into a subcontract, relating to Services to be supplied under this agreement (in their entirety or any part of them), whether formal or informal and whether or not in writing.
- (c) subcontractor means any party to the relevant subcontract which has agreed to supply any Services to the Provider.

37. Human Rights

37.1 The Provider shall comply with the Human Rights Act 1998 as if it were a 'Public Authority' within the meaning of the Human Rights Act 1998. The Provider shall

also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998

37.2 The Provider shall indemnify the Council from and against any liability, loss, claim or proceedings arising out of any violation of the Human Rights Act 1998 by the Provider in the course of providing the Services.

38. Discrimination

38.1 Throughout the Term, the Provider shall:

- (a) comply with the requirements of the Equality Act 2010 and the Human Rights Act 1998 or other relevant legislation;
- (b) promote race equality, equal opportunities and anti-discrimination in relation to the use and operation of the Services and also in relation to the Provider's related employment practices;
- (c) use its best endeavours in relation to the Services (without prejudice to the general application of the preceding provisions of this Clause) to:
 - (i) eliminate unlawful racial discrimination;
 - (ii) promote good relations between people of different racial groups;
 - (iii) promote equality of opportunity; and
 - (iv) monitor the effectiveness of its policies in achieving compliance with the requirements of this Clause.

38.2 The Provider shall indemnify the Council against all liabilities resulting from any failure by it to comply with Clause 38.1

38.3 The Provider shall take all reasonable steps to secure the strict observance of Clause 38.1 by all Staff and agents of the Provider and all suppliers and subcontractors employed in the execution of the Agreement. The Provider shall also provide such information as the Council may reasonably require for the purpose of assessing the Provider's continuing compliance with this Clause 38 (Discrimination) at any time during the Term.

39. Rights of Third Parties

39.1 Except as expressly provided within this agreement, a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any clause of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that act.

39.2 The rights of the Parties to terminate, rescind or agree any Variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

40. Health and Safety

- 40.1 In relation to Staff, the Provider shall at all times comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Laws pertaining to the health and safety of Staff and others who may be affected by the Provider's acts or omissions in providing the Services and shall require that any sub-contractors also comply strictly with this requirement.
- 40.2 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.
- 40.3 The Provider shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Agreement and the acts of its Staff. The Provider shall notify the Council in writing if any method or practice set out in Schedule C (Service Specification) shall be or shall become an unsafe method of work.
- 40.4 In accordance with Clause 59 (Suspension of Services) Council reserves the right to serve Notice on the Provider to suspend the provision of the Services in whole or in part without paying compensation to the Provider if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of either the Health and Safety at Work etc Act 1974 or any of the provisions within this Clause 39.1 (Health and Safety).

41. Smoking Policy

- 41.1 The Provider must put in place, and operate to, a Smoking Policy for as long as this Agreement is in force, and provide the Council with a copy of the policy if requested to do so.
- 41.2 The Provider must ensure that its Smoking Policy complies with all relevant statutory obligations.

42. Environmental Requirements

- 42.1 The Provider shall perform this Agreement in accordance with the Council's Environmental Policy, which is available upon request.

PART 6 PROTECTION OF INFORMATION

43. Data Protection

- 43.1 The Parties acknowledge and accept that the provision of the Services will involve the transfer of personal data to the Provider and the subsequent processing of personal data which will be governed by the provisions of the Data Protection Act 2018.
- 43.2 The Parties acknowledge their respective duties under the DPA and shall give all

reasonable assistance to each other where appropriate or necessary to comply with such duties.

- 43.3 The Provider agrees to comply with Data Processing Agreement shown at Schedule H.

44. Security of Confidential Information

- 44.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Provider undertakes to maintain throughout the Term appropriate effective security systems.
- 44.2 The Provider shall immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and shall keep a concise chronological record of such breaches. The Provider shall use its best endeavours to recover any such Confidential Information or data however it may be recorded. 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 of security in relation to Confidential Information or data relating to this Agreement.
- 44.3 Subject only to the preceding provisions of this Clause, neither Party shall release Confidential Information to any third party, provided that this restriction shall not apply (firstly) in circumstances where this is inherently necessary to enable the Services to be provided in accordance with this Agreement, or (secondly) if the Party in question is required to make such disclosure pursuant to and in accordance with either, the provisions of the Freedom of Information Act 2000 or the Audit Commission Act 1998, or (thirdly) in circumstances where such disclosure is necessary to comply with the requirements of either, any other enactment, or any order made by any court of law.
- 44.4 If required by the Council in relation to the Services, the Provider shall provide reasonable assistance to the Council to enable the Council to comply with the various requirements of any relevant access to information legislation, including (but not by way of limitation) the FOIA and the DPA 2018.
- 44.5 Each of the Parties acknowledges the duties and obligations which are placed on the Council by access to information legislation (including, but not by way of limitation, the FOIA and the DPA 2018). While the Council agrees as far as practicable to use its reasonable endeavours to afford the Provider an opportunity to comment in advance on any disclosure of information which the Council has been requested to make pursuant to the said legislation, the exercise of the Council's discretion in such matters shall be absolute.
- 44.6 The provisions of this Clause 44 (Security of Confidential Information) shall apply throughout the Term and indefinitely after their respective expiry or termination of the Agreement.

45. Freedom of Information

- 45.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with its information disclosure obligations.
- 45.2 The Provider agrees to indemnify the Council in respect of all claims which may directly arise as a consequence of any act or omission by the Provider which prohibits or delays the Council complying with its legal obligations.
- 45.3 The Provider shall and shall procure that any sub-contractors under this agreement (if any) shall:
- (a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) in no event respond directly to a request for information unless expressly authorised to do so by the Council;
 - (c) provide the Council with a copy of all information in its possession or power in the form that the Council requires (acting reasonably) within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council requesting that information; and
 - (d) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance which is set out in either Section 10 of the FOIA or regulation 5 of the EI Regulations (as applicable).
- 45.4 The Council shall be responsible for determining at its absolute discretion whether in relation to this Agreement any information:
- (a) is exempt from disclosure in accordance with the provisions of either the FOIA or the EI Regulations; and
 - (b) is to be disclosed in response to a request for information, and therefore in no event will the Provider respond directly to a request for information about this Agreement unless it is expressly authorised to do so by the Council.
- 45.5 The Provider acknowledges that the Council may, in acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA (issued under Section 45 of the FOIA, November 2004), be obliged under the FOIA or the EI Regulations to disclose information:
- (a) without consulting with the Provider; or
 - (b) following consultation with the Provider and having taken its views into account.
- 45.6 The Provider must ensure that all information produced in the course of the operation of the Agreement or relating to the Agreement is retained for disclosure and must permit the Council to inspect such records as requested by it from time

to time during the Term.

- 45.7 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 45.4.

46. Publicity, Media and Official Enquiries

- 46.1 Without prejudice to the Council's obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement in any way, or use each other's crests or logos, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 46.2 The Provider shall not publish any material referring to the Agreement or the Council without the prior written agreement of the Council, such consent not to be unreasonably withheld or delayed.
- 46.3 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 46.1 by all their servants, employees, agents and consultants. The Provider shall take all reasonable steps to ensure the observance of the provisions of Clause 46.1 by its sub-contractors
- 46.4 Notwithstanding the provisions of Clause 46.1, the Council shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Council, including any examination of this Agreement by the Audit Commission or otherwise
- 46.5 The provisions of this Clause 46 (Publicity, Media and Official Enquiries) shall apply throughout the Term and indefinitely after the Expiry Date or Termination.

47. Intellectual Property Rights

- 47.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights:
- (a) furnished to or made available to the Provider by the Council pursuant to this Agreement shall remain the property of the Council;
 - (b) prepared by or for the Provider for use, or intended use, in relation to the performance of this Agreement shall belong to the Council and the Provider shall not, and shall procure that the Provider's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the proper performance of the Agreement) without prior approval use or disclose any such Intellectual Property Right, or any other information (whether or not relevant to the Agreement) which the Provider may obtain in performing the Services (except information which is already in the public domain).
- 47.2 The Provider shall obtain approval before using any material in relation to the performance of the Agreement which is or may be subject to any third party's Intellectual Property Right. The Provider shall also procure that the owner of any

such rights either grants to the Council a non-exclusive licence, or if itself a licensee of those rights, grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material. The Provider shall also ensure that any such licence or sub-licence shall be non-exclusive, perpetual and irrevocable and includes the right to sub-licence, transfer, novate or assign the same to other Contracting Authorities, any Replacement Provider, or to any other third party providing Services to the Council and shall be granted to the Council at no additional cost to the Council.

- 47.3 It is a condition of this Agreement that the Services will not infringe any Intellectual Property Right of any third party and the Provider shall during and after the Term on written demand indemnify and keep indemnified the Council from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim relates to the use of data (or other information or materials) which has been supplied by the Council and which is not required to be verified by the Provider under any provision of this Agreement.
- 47.4 The Council shall notify the Provider in writing of any claim or demand which is brought against the Council for infringement or alleged infringement of any Intellectual Property Right in relation to this Agreement in respect of materials supplied or licensed by the Provider. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any such claim for breach of this Clause 46, provided always that the Provider shall:
- (a) consult with the Council in good faith on all substantive issues which arise during the conduct of such litigation and any related negotiations;
 - (b) take due and proper account of the interests of the Council; and
 - (c) not settle or compromise any claim without the Council's prior written consent (which shall not be unreasonably withheld or delayed).
- 47.5 The Council shall at the written request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action which is brought against the Council or the Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Agreement and the Provider shall reimburse the Council on demand for all costs and expenses (including, but not limited to, legal costs and disbursements) which are properly incurred by the Council in doing so.
- 47.6 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Provider in connection with the performance of the Agreement.
- 47.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made under this Agreement or in the reasonable opinion of the Provider is likely to be made, the Provider may at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed) either:

- (a) modify any or all of the Services without reducing the performance or functionality of the same in terms of generating the Service Outcomes, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms of this Agreement shall apply mutatis mutandis to such modified Services and with any necessary changes to such modified Services or to the substitute Services; or
- (b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council (acting reasonably).

47.8 On the Expiry Date or earlier Termination of this Agreement the Provider shall at the request of the Council immediately return to the Council all materials, work or Records held, including any back-up media.

47.9 The provisions of this Clause 47 (Intellectual Property Rights) shall apply throughout the Term and indefinitely after its expiry or termination.

48. Audit and the Audit Commission

48.1 The Provider shall keep and maintain until seven (7) years after the Term of the Agreement has been completed, or as long a period as may be agreed between the Parties in writing, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. This timescale is subject to change to reflect current legislative/regulative and operational requirements.

48.2 The Provider shall on request afford the Council (or its designated representatives) reasonable access to the records which are referred to in Clause 48.1 to enable the Council to conduct an audit (as may be required by the Council, acting reasonably):

- (a) to review the integrity, confidentiality and security of any data relating to the Council or any Service Users;
- (b) to review the Provider's compliance with the DPA 1998, the FOIA, in accordance with Clause 43 (Data Protection) and Clause 45 (Freedom of Information) and any other legislation applicable to the Services;
- (c) to review any records created during the provision of the Services;
- (d) to review any books of account kept by the Provider in connection with the provision of the Services;
- (e) to carry out the audit and certification of the Council's accounts; and
- (f) to carry out an examination pursuant to the Local Government and Public Involvement in Health Act 2007 of the economy, efficiency and effectiveness with which the Council has used its resources.

48.3 Any irregularities which are identified by the Council in any Service User's financial records may be subject to a further investigation by the Council and the Provider shall cooperate fully with the Council to enable the Council to undertake any such

investigation.

49. Transparency

- 49.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 49.2 Notwithstanding any other term of this Agreement hereby gives his consent for the Authority to publish the Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public.

50. Information

- 50.1 Subject to Clause 43 (Data Protection) and Clause **Error! Reference source not found.** (Confidentiality), at the Council's reasonable request, the Provider must provide to the Council such information and data as may reasonably be required to enable the Council to prepare the necessary documentation to appoint another organisation to provide the Services in the Provider's place.
- 50.2 All information requested must be provided to the Council within timescales outlined by the Council in the request.
- 50.3 The requirement set out in Clause 21 (Information Provision and Exchange) does not include any information or data which is considered commercially sensitive, other than that which is necessary to share in relation to TUPE.

51. Overview Committee/Scrutiny Committee

- 51.1 If required by the Council to do so the Provider shall throughout the period of this Agreement and for a period of six years after expiry of this Agreement give all reasonable assistance to the Council including attending the Council's Overview Committee and/or Scrutiny Committee in order to answer questions pertaining to this Agreement should the need arise.
- 51.2 In the event that the Council requires the Provider's assistance after the expiry of this Agreement as referred to in Clause 51 (Overview Committee/Scrutiny Committee) the Council shall pay the reasonable expenses of the Provider arising as a result of providing such assistance.

PART 7 CONTROL OF THE AGREEMENT

52. Transfer (assign) and Sub-Contracting

- 52.1 Except where 52.4 and apply 52.5 applies, the Provider shall not assign, novate, sub-contract or in any other way dispose of its interest under this Agreement or

any part of it without prior written approval of the Council, at the Council's discretion.

- 52.2 The Provider shall give a minimum of six (6) months' Notice to the Council of any such intention.
- 52.3 Sub-contracting any part of the Agreement shall not relieve the Provider of any of its obligations or duties under the Agreement.
- 52.4 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 52.5 The Provider shall not use the Services of agency staff to deliver the Services without prior approval, such approval not to be unreasonably withheld.
- 52.6 The Provider shall impose contract obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the subcontractor complies with such terms.
- 52.7 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Provider to the Council within five (5) Working Days of the making of any such request.
- 52.8 Notwithstanding Clause 52.1, the Provider may assign to a third party ("the assignee") the right to receive payment of the Agreement Price or any part thereof due to the Provider under this Agreement (including any interest which the Council incurs for any delayed payments to the Provider. Any assignment under this Clause 52.4 shall be subject to:
- (a) reduction of any sums in respect of which the Council exercises its right of recovery under Clause 32 (Recovery of Sums Due);
 - (b) all related rights of the Council under the contract in relation to the recovery of sums due but unpaid; and
 - (c) the Council receiving notification under both Clauses 52.5 and 52.6
- 52.9 In the event that the Provider assigns the right to receive the Agreement price under Clause 52.4, the Provider or the assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.
- 52.10 The Provider shall ensure that the assignee notifies the Council of the assignee's contact information and bank account details to which the Council shall make payment
- 52.11 The provisions of Clause 27 (Financial Arrangements) shall continue to apply in all other respects after the assignment and shall not be amended without the approval of the Council.
- 52.12 Provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Agreement.
- 52.13 Any change in the legal status of the Council such that it ceases to be a

Contracting Council shall not, subject to Clause 52.8, affect the validity of the Agreement. In such circumstances, the Agreement shall bind and inure to the benefit of any successor body to the Council.

- 52.14 If the rights and obligations under the Agreement are assigned, novated or otherwise disposed of pursuant to Clause 52.6 to a body which is not a Contracting Council or if there is a change in the legal status of the Council such that it ceases to be a Contracting Council (in the remainder of this Clause both such bodies being referred to as the “transferee”):
- (a) the rights of termination of the Council in Clauses 66 (Termination on insolvency and change of control) and 64 (Termination on Default) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, or Default of the transferee; and
 - (b) the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof with the prior consent in writing of the Provider.
- 52.15 The Council may disclose to any transferee any Confidential Information of the Provider which relates to the performance of the Provider’s obligations under the Agreement. In such circumstances the Council shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Provider’s obligations under the Agreement and for no other purpose and shall take all reasonable steps to ensure that the transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 52.16 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Agreement.
- 52.17 The Provider shall give the Council’s Representative at least twenty (20) Working Days’ Notice if there is to be a Change of Control. There will be no automatic assignment of this Agreement in these circumstances and Clause 51 (Overview Committee/Scrutiny Committee) shall apply regardless of any such change in control.

53. Novation

- 53.1 This Agreement is personal to the Provider. The Provider shall not novate or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Council such consent not to be unreasonably withheld.
- 53.2 Subject to Clause 53.1 the Council shall be entitled to:
- (a) assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any contracting Council (a "Contracting Council"); or
 - (b) novate this Agreement to any other body (including but not limited to any

private sector body) which substantially performs any of the functions that previously had been performed by the Council;

- 53.3 Provided that where such assignment, novation or other disposal increases the burden of the Provider's obligations pursuant to this Agreement, the Provider shall be entitled to such additional payments as may be agreed between the parties to compensate for such additional burdens.
- 53.4 Any change in the legal status of the Council such that it ceases to be a Contracting Council shall not, subject to Clause 52 (Transfer (assign) and Sub-Contracting), affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Council.
- 53.5 If this Agreement is novated to a body which is not a Contracting Council pursuant to Clause 53.1 or if a successor body which is not a Contracting Council becomes the Council pursuant to Clause 53.4 (in the remainder of this Clause both such bodies are referred to as the "transferee"):
- 53.6 The transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the Provider;
- 53.7 The Council shall be entitled to disclose to any transferee any confidential information of the Provider which relates to the performance of the Services by the Provider. In such circumstances the Council shall authorise the transferee to use such confidential information only for purposes relating to the performance of the Services and for no other purposes and, for the avoidance of doubt, the transferee shall be bound by the confidentiality undertaking contained herein in relation to such confidential information.
- 53.8 Each of the Parties shall at their own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of whatever further actions (including the execution of further documents) that the other Party requires (acting reasonably) from time to time for the purpose of giving that other Party the full benefit of the provisions of this Agreement.

54. Waiver

- 54.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 54.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 7 (Notices).
- 54.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

55. Variation

- 55.1 The Council reserves the right (provided that it acts reasonably), on giving reasonable Notice to the Provider, from time to time to require changes to the Services (including the removal of Services, the addition of new Services, or increasing or decreasing the Services, or specifying the order in which the Services are to be performed, or the locations where the Services are to be provided) for any reasons whatsoever, provided also that any such Variation does not amount to a material change to Schedule C (Service Specification).
- 55.2 Any Variation will be communicated by Notice to the Provider.
- 55.3 All Variations shall be documented in writing by the Parties in the form of Variation to the Agreement, which on each occasion must be signed by both Parties.
- 55.4 The Council shall specify a time limit within which the Provider shall respond to a Variation. Such time limits shall be reasonable having regard to the nature of the Variation.
- 55.5 In the event of a Variation taking effect, the Charges may also be varied. Any Variation in the Charges shall be calculated by the Council and agreed in writing with the Provider (such agreement not to be unreasonably withheld or delayed) and shall be such amount as properly and fairly reflects the nature and extent of the impact of the Variation in question on the Charges in all the circumstances.
- 55.6 The Provider shall upon request by the Council provide such information as may be reasonably required to enable any such Variation of the Charges to be calculated by the Council.
- 55.7 In the event that the Provider is unable to accept the Variation to Schedule C (Service Specification) or where the Parties are unable to agree a change to the Agreement Price, the Council may;
- (a) allow the Provider to fulfil its obligations under the Agreement without the Variation to Schedule C (Service Specification);
 - (b) terminate the Agreement with immediate effect, except where the Provider has already delivered all or part of the Services or where the Provider can show evidence of substantial work being carried out to fulfil the requirements of the Schedule C (Service Specification); and in such case the Parties shall attempt to agree upon a resolution to the matter.
 - (c) where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause 80 (Dispute Resolution).

56. Severability

- 56.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect throughout the remainder of the Term.

56.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

57. Breach and Remedies in the Event of Inadequate Performance

57.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Agreement, then the Council shall notify the Provider, and where considered appropriate by the Council, investigate the complaint. The Council may, in its sole discretion, uphold the complaint and take further action in accordance with Clause 64 (Termination on Default) of the Agreement.

57.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Agreement by the Provider, then the Council may, without prejudice to its rights under Clause 64 (Termination on Default), do any of the following:

- (a) without terminating the Agreement, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Agreement;
- (b) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Agreement Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) terminate, in accordance with Clause 64 (Termination on Default), the whole of the Agreement.

57.3 Without prejudice to its right under Clause 32 (Recovery of Sums Due), the Council may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

57.4 Without prejudice to any other rights and remedies the Council may have pursuant to the Agreement, the Provider shall reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Provider's delay in the performance of its obligations under the Agreement and which delay the Provider has failed to remedy following reasonable Notice from the Council.

57.5 If the Provider fails to supply any of the Services in accordance with the provisions of the Agreement and such failure is capable of remedy, then the Council shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure)

within ten (10) Working Days or such other period of time as the Council may direct.

57.6 In the event that:

- (a) the Provider fails to comply with Clause 57.4 above and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory duty; or
- (b) the Provider persistently fails to comply with Clause 57.4 above, the Council may terminate the Agreement with immediate effect by Notice in writing

58. Remedies Cumulative

58.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for Default or breach of the Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

59. Suspension of the Services

59.1 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.

59.2 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 placement of Service Users, and the Provider shall comply diligently with any such suspension from and including the relevant specified date.

59.3 If the Council serves a Suspension Notice upon the Provider, then the Council may suspend the provision of the payments (or any relevant part thereof), 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.

59.4 Any suspension of the Services (or any part thereof) under Clause 59.1 shall be reviewed by the Council not later than three (3) months after the Service of the relevant Suspension Notice (subject to Clause 59.4).

59.5 The Council shall ensure that any investigation which is carried out under Clause 59.1 is undertaken as quickly and diligently as possible and the Provider shall co-operate with any such investigation, including by providing information promptly to the Council if requested.

59.6 If during the suspension either, the Council shall request information from the Provider with respect to the investigation, and/or the Council shall request a

written undertaking from the Provider to take particular steps and/or to refrain from particular action in order to avoid the repetition of a Default, then in calculating and applying the three (3) month time limit which is stated in Clause 59.3, the period of time which is taken by the Provider to meet the request shall be disregarded.

- 59.7 The Council shall make available to the Provider a copy of the report of the findings of any investigation which is undertaken pursuant to Clause 59.1 as soon as practicable after the investigation has been completed and the report has been made available to the Council.
- 59.8 Upon either, the cessation by the Council of any suspension of the Services (or any part thereof) which is implemented under Clause 59.1 or the closure of any investigation which is initiated by the Council under Clause 59.1, the Council shall serve Notice on the Provider to confirm the lifting of the suspension in question.
- 59.9 If the Council confirms any alleged Default or other alleged event pursuant to this Clause 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 the provisions of Part 9 (Default and Termination) of the Agreement.

PART 8 LIABILITIES

60. Indemnity and Insurance

- 60.1 Neither Party limits or excludes its liability to the other Party for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable Law.
- 60.2 The Provider shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the Agreement including but not limited to any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, wilful Default, fraud of itself or its Staff or its sub-contractors or any other loss which is caused directly or indirectly by any act or omission of the Provider.
- 60.3 This Clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.
- 60.4 Subject always to Clause 60.2 in no event shall either Party be liable to the other

for:

- (a) indirect or consequential loss or damage; and/or
- (b) loss of profits, business revenue, goodwill or anticipated (or otherwise) savings.

- 60.5 The provisions of Clause 60.2 shall not be taken as limiting the right of either Party to claim from the other Party for anything resulting directly from the default of the other Party.
- 60.6 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.
- 60.7 During the Term of this Agreement the Provider and any sub-contractor shall effect and maintain, with a reputable insurance company a policy or policies of insurance in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the 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.
- 60.8 As a minimum, the levels of cover are set out in Schedule A(The Particulars).
- 60.9 Within twenty (20) Working Days of the formation of this Agreement and on an annual basis for the remainder of the Term the Provider shall produce to the Council's Representative copies of all insurance policies referred to in this Clause 60 (Indemnity and Insurance) and the particulars, or a certificate from the insurer or broker to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies
- 60.10 The Provider shall hold adequate insurance for all vehicles which are used by the Provider to deliver the Services and ensure that any Staff using their personal motor vehicles to carry Service Users have valid business insurance on their motor vehicles. The Provider shall also produce a copy of each such insurance policy (or any such specific insurance policy which is requested by the Council) to the Council's Representative if requested to do so, provided that if the Council requests this information more often than once a year without good reason then the Council shall meet the Provider's reasonable costs in complying with any such additional request.
- 60.11 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the Agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 60.12 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause 60.2.

- 60.13 It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability on its part which is referred to in Clause 60.1 and Schedule A(The Particulars).
- 60.14 If the Council is of the opinion (acting reasonably) that any of the policies of insurance do not provide sufficient cover to comply with this Clause 60 (Indemnity and Insurance) then the Provider must rectify (or if applicable, ensure that the sub-Provider rectifies) the position as soon as possible.
- 60.15 The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

61. Warranties and Representations

61.1 The Provider warrants and represents that:

- (a) The Provider warrants that it has the necessary legal authority in the United Kingdom where it is established for the purpose of controlling the processing of the data and to use it for the purpose set out herein, and to give warranties and fulfil the undertakings set out herein.
- (b) The Provider will not enter into any arrangement to process the data outside the United Kingdom without the written permission of the Council
- (c) The Provider has in place security programs and procedures appropriate to the risks presented by the processing, to ensure that unauthorised persons will not have access to the data and that any persons it authorises to have access to the data will be bound by Agreement or otherwise to respect and maintain the confidentiality and security of the data.
- (d) The Provider warrants that it will comply with the obligations set out in Clause 5 (The Provider's Obligations) and apply them to the processing of the data originally provided or subsequently amended.
- (e) in entering the Agreement it has not committed any Fraud;
- (f) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement;
- (g) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;
- (h) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Agreement;

- (i) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- (j) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Agreement;
- (k) the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (l) the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

62. Financial Instability and Financial Distress

62.1 Within twenty (20) Working Days of receiving a written request from the Council, the Provider shall submit to the Council (free of charge) a copy of its latest annual accounts.

62.2 The provisions of Clause 62.4 and Clause 62.5 shall apply if any of the following contingencies occur at any time during the Term:

- (a) the Provider fails to submit statutory accounts before any statutory deadline;
- (b) a County Court Judgment is made against the Provider for a sum greater than or equal to 1% of the Provider's annual turnover, and the debt is not settled within twenty-eight (28) days;
- (c) the Acid Test Ratio, calculated from the Provider's last annual accounts, falls below a ratio of 1:1;
- (d) the Provider makes a loss in any financial year exceeding 5% of its turnover for the year in question;
- (e) in respect of any premises which are essential to the delivery of the Services, any landlord makes an application to the courts to recover unpaid rent or for the forfeiture of the lease or tenancy of such premises;
- (f) any person holding a mortgage or other charge over any premises which are essential to the delivery of the Services makes an application to the courts to recover unpaid loan obligations, or for possession of the premises, or for any similar order;
- (g) the Council has reasonable grounds to believe that any of the events which are set out in the preceding sub-Clauses of this Clause has occurred, or is about to occur.

62.3 If any of the contingencies which are listed in Clause 62.2 occur, then the Provider shall serve Notice on the Council within two (2) Working Days of the date of the occurrence in question. If this Clause applies, then the Provider shall:

- (a) on receipt of a written request from the Council, furnish the Council with a copy of the Provider's latest accounts and a cash flow forecast for any coming period specified by the Council
 - (b) a reference from its bankers; and
 - (c) such other evidence that it is and will remain a going concern as the Council may reasonably require.
 - (d) meet the Council within five (5) Working Days of receipt of the written request which is referred to in Clause 62.3(a) in order to discuss its position with the Council and answer such questions as the Council may reasonably ask.
- 62.4 If upon considering the information which is referred to in Clause 62.3 the Council considers that the Provider is no longer a going concern or that there is a significant risk that the Provider will cease to be a going concern within six (6) months, then the below Clause 62.5 shall apply.
- 62.5 If this Clause 62 (Financial Instability and Financial Distress) applies then the Council may serve a financial distress Notice on the Provider.
- 62.6 Any financial distress Notice which is issued by the Council shall be sent to the Provider's last known electronic mail address and the Council shall use its reasonable endeavours to contact the Provider by telephone to advise it that the financial distress Notice has been served. A copy shall then also be sent by the Council to the Provider immediately by recorded post.
- 62.7 Each financial distress Notice shall:
- (a) state that it is a financial distress Notice;
 - (b) set out the reasons why the Council believes that the Provider is no longer a going concern, or is at significant risk of ceasing to be a going concern within the next six (6) Months; and
 - (c) state that the Agreement is to terminate on either the date which is one (1) Month from and including the date of the Service of the financial distress Notice, or on such later date as the Council may specify (acting reasonably).
- 62.8 If following the receipt of a financial distress Notice the Provider does not accept that the Council is correct in its assessment that the Provider is either, no longer a going concern, or at a significant risk of ceasing to be a going concern within the next six (6) months, then it may serve on the Council, within ten (10) Working Days of receipt of the financial distress Notice, a Notice of appeal (the "Appeal Notice").
- 62.9 The Provider shall ensure that its Appeal Notice sets out the full grounds for its appeal against the financial distress Notice in question. The Provider shall also enclose with the Appeal Notice full, concise and pertinent information and evidence in support of the appeal.
- 62.10 The Council shall consider any Appeal Notice which is served on it by the Provider and shall at the Provider's request meet the Provider and/or its financial advisers within five (5) Working Days of the date of the Service of the Appeal Notice to discuss the same.

- 62.11 The Council shall notify the Provider within ten (10) Working Days of receipt of any Appeal Notice whether or not the Council accepts the appeal in question.
- 62.12 If the Council rejects any Appeal Notice which is served on it by the Provider, then the matter may be submitted by the Provider for determination in accordance with Clause 80 (Dispute Resolution).

PART 9 DEFAULT AND TERMINATION

63. Default and Default Notices

- 63.1 If the Council identifies any Default in the performance of the Agreement by the Provider, then the Council shall normally attempt to secure the rectification of the Default in question (and/or prevent any repetition of it) to its reasonable satisfaction, by either liaising with the Provider or carrying out a Contract Review, rather than immediately resorting to the Service of a Default Notice pursuant to Clause 63.2 (in the interest of promoting a close working partnership between the Parties). However in circumstances where the Council considers that the breach of the Agreement is sufficiently serious and the Default Notice is a reasonable and proportionate response, the Council may nevertheless proceed directly to service a Default Notice.
- 63.2 If the Provider is in breach of any of its obligations under this Agreement at any time, then, subject to Clause 63.1 and provided that the breach of contract in question is not de minimis in nature, the Council may serve a Default Notice on the Provider, in which the Council shall:
- (a) summarise the facts which constitute the Default in question;
 - (b) state precisely which provisions of this Agreement the Provider has failed to comply with;
 - (c) state the measures (if any and if practicable) which the Council requires the Provider to undertake (acting reasonably) to remedy the Default to the Council's reasonable satisfaction, or otherwise to avoid any repetition of the breach;
 - (d) state the period of time (having reasonable regard to the nature of the breach) within which the breach must be rectified by the Provider in accordance with the Default Notice and to the Council's reasonable satisfaction;
 - (e) state the sum which is to be charged by the Council pursuant to sub-Clause 63.3(b).
- 63.3 If the Council serves a Default Notice on the Provider pursuant to and in accordance with Clause 63.2:
- (a) then the Provider shall diligently comply with the requirements (if any) of the Default Notice;
 - (b) then the Council may deduct a sum of up to £500 (as assessed liquidated damages and not as a penalty) from any sums which are payable by it to the

Provider under this Agreement in order to reimburse the Council for any administrative costs which it has incurred in connection with the investigation of the Default in question and the preparation/Service of the related Default Notice (subject to the Council having first complied with sub-Clause 63.2(e)); and

- (c) the Provider fails to comply with the Default Notice, then the Council may take any proper steps (if practicable) which are reasonably necessary to remedy the Default and may also deduct any expenses which are incurred by it as a consequence (as assessed liquidated damages and not as a penalty) from any sums which are payable by it to the Provider under this Agreement, provided that such expenses are first notified in writing to the Provider.

64. Termination on Default

64.1 The Council may terminate the Agreement by written Notice to the Provider with immediate effect if the Provider commits a Default and if:

- (a) the Provider has not remedied the Default to the satisfaction of the Council within twenty-five (25) Working Days, or such other period as may be specified by the Council, after issue of a written Notice specifying the Default and requesting it to be remedied; or
- (b) after having committed a Default the Provider then commits a further Default which in the opinion of the Council (acting reasonably) is not of a de minimis nature in which case the Council's termination Notice to the Provider under this Clause shall also:
 - (i) summarise the facts which constitute the Default in question;
 - (ii) state precisely which provisions of this Agreement the Provider has failed to comply with; or
 - (iii) the Default is not, in the opinion of the Council, capable of remedy; or
 - (iv) the Default is a material breach of the Agreement.

64.2 In the event that through any Default of the Provider, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

65. Alternative Remedies on Default by the Provider

65.1 If the Provider commits any Default which is not de minimis in nature and which is either not capable of being remedied, or is considered to be serious by the Council (acting reasonably) or is equivalent to any previous Default by the Provider then (without prejudice to any other rights or remedy to which the Council is entitled) the Council may do any of the following:

- (a) initiate a Contract Review;

- (b) without terminating the Agreement itself, serve Notice on the Provider in order to suspend the Agreement by opting to provide or procure from an alternative source the provision of all or any part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to provide all or any such part of the Services in accordance with the Agreement;
- (c) without terminating the whole of the Agreement, serve Notice on the Provider in order to terminate the Agreement in respect of any part of the Services only (whereupon a corresponding reduction in the Instalments shall be implemented by the Council) and thereafter itself provide or procure a third party to provide such part of the Services.

65.2 If the Council exercises its rights under either Clause 65.1(b) or Clause 65.1(c), then the Council may (subject to the Council using its reasonable endeavours to mitigate any such additional expenditure) charge the Provider for any reasonable costs which are properly incurred by it as a consequence (as assessed liquidated damages and not as a penalty) and either deduct the resulting amount from the next or any subsequent Instalment which becomes due to the Provider, or otherwise recover the same as a debt from the Provider. Such costs shall include any reasonable additional costs which are incurred by the Council in respect of the provision of the Services, or any part of the Services, throughout what would otherwise have been the remainder of the Term (either by the Council or any Replacement Provider) to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for the same under this Agreement.

66. Termination on insolvency and change of control

66.1 The Council may terminate the Agreement with immediate effect by Notice in writing where the Provider is a company and in respect of the Provider:

- (a) the other party 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 [(being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986,] OR [(being a partnership) has any partner to whom any of the foregoing apply]; or
- (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party]; or
- (c) a petition is filed, a Notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party]; or
- (d) 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

given or if an administrator is appointed, over the other party (being a company); or

- (e) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days; or
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause (a) to clause (g) (inclusive); or
- (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (j) there is a change of control of the other party (within the meaning of Section 1124 of the Corporation Tax Act 2010).

67. Serious Default and Suspension

- 67.1 If the Council determines that the Provider has committed a Serious Default the Council may convene a Contract Review Meeting between the Council's Representative and the Provider's Representative, and any other officers whom the Parties feel it is appropriate to attend.
- 67.2 In the event of the Provider committing a Serious Default, either a one off incident or as a failure to remedy a Default or Persistent Default in the prescribed timescale, the Council reserves the right to notify Healthwatch England of the Serious Default.
- 67.3 If at any time either Party believes it is appropriate, any Defaults, or Serious Defaults can be referred to the Multi Agency Adult Protection Policy and Procedure. In such circumstances the expectations of the Provider shall be in accordance with Clause 35 (Adult Protection Procedure)
- 67.4 If, despite the best endeavours of the Parties, attempts to resolve Defaults, Persistent Defaults or Serious Defaults fail, the Provider shall be deemed to have committed a Material Default and the Council reserves the right to terminate this Agreement in accordance with Clauses 67.3, 67.4, and 68.3.

68. Termination of Services

- 68.1 The Council shall have the right to terminate the Agreement at any time by giving

six (6) months written Notice to the Provider.

68.2 The Council may at any time by giving not less than six (6) months Notice in writing terminate this Agreement as from the date of Service of such Notice if:

- (a) any of the circumstances detailed in Clause 36 (Corrupt Gifts and Payments of Commission) arise; or
- (b) there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Provider or its Parent Company provided that the Council shall only be permitted to exercise its rights pursuant to this Clause for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Council has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
- (c) the Provider, being a company, passes a resolution, or the Court makes an order that the Provider or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Provider or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Provider or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 113, 1(a) and is for an amount of not less than ten thousand pounds (£10,000) or any similar event occurs under the law of any other jurisdiction; or
- (d) the Provider, being an individual, or where the Provider is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently

insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction;
- (e) the Provider, being a company, seeks to change the Registration Categories, such that the revised Registration Category is not in accordance with the Registration Categories indicated within this Agreement;

68.3 Without prejudice to Clause 68.2, either Party may at any time by giving Notice in writing terminate this Agreement with immediate effect as from the date of Service

of such Notice, if:

- (a) either Party is in Serious Default of any obligation under this Agreement and; the Serious Default is not capable of remedy;
- (b) the Provider is issued with a Notice from the Health and Safety Executive prohibiting it from operating;

68.4 Without prejudice to Clauses 68.1, 68.2 and 68.3 above either Party shall have the right to terminate the Agreement at any time by giving twelve (12) months Notice in writing to the other Party which period of Notice may be extended at any time before its expiry upon the agreement in writing of both Parties.

68.5 In the event of the termination of this Agreement the Council shall be entitled to copies of all records relating to the Service unless prohibited by law, and the Council shall be at liberty to use the same in its absolute discretion.

68.6 In the event of this Agreement being terminated during any Notice period both Parties shall ensure that the interests of the Service Users are met. During any such Notice period;

- (a) in the event of this Agreement being terminated the Council's obligations under Clause 27, (Financial Arrangements) will cease and the Provider shall repay to the Council all (if any) of the payments already received.
- (b) This agreement can be suspended for forty-five (45) working days, if data security has been seriously breached. This should be detailed in writing and be evidenced by the Provider to the Council. Any suspension will be subject to a risk assessment and a resolution meeting between nominated representatives of the Provider and the Council being held. This meeting will take place within fourteen (14) working days of the identification of any breach. The suspension may be lifted when the cause of the breach has been satisfactorily investigated and appropriate measures have been taken to address the situation.

69. Break Clause

69.1 The Parties shall have the right to terminate this Agreement in whole or in part at any time by giving at least six (6) months Notice (or any lesser period of Notice by agreement only between the Parties).

70. Default by the Council and Termination by the Provider

70.1 If the Council is in material breach of any of its obligations under this Agreement at any time, then, provided that the breach of contract in question is not de minimis in nature, the Provider may serve a Default Notice on the Council, in which the Provider shall:

- (a) summarise the facts which constitute the Default in question;
- (b) state precisely which provisions of this Agreement the Council has failed to comply with;

- (c) state the measures (if any and if practicable) which the Provider requires the Council to undertake (acting reasonably) to remedy the Default to the Provider's reasonable satisfaction, or otherwise to avoid any repetition of the Default;
- (d) state the period of time (having reasonable regard to the nature of the breach) within which the breach must be rectified by the Council.

70.2 If the Council fails to comply with any Default Notice which is served by the Provider in accordance with Clause 70.1 (and the Default Notice is not in dispute between the Parties) then the Provider may terminate this Agreement (if the Council is in material Default of an obligation) by giving the Council at least sixty (60) Working Days Notice (or any lesser period of time by agreement only between the Parties, each acting reasonably).

70.3 The Provider shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

71. Remedies Cumulative

71.1 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election for such remedy to the exclusion of other remedies.

72. Consequences of Termination

72.1 The termination or expiry of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

72.2 Where the Council terminates the Agreement under Clause 66.1 (Serious Default and Suspension), or terminates the provision of any part of the Agreement under that Clause, and then makes other arrangements for the provision of Services, the Council shall be entitled to recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Term. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under Clause 66 (Serious Default and Suspension), no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements.

72.3 In the event of any termination of this Agreement pursuant to Clause 66.1 (Serious Default and Suspension) the Council shall, in respect of any non-discharged Services, be entitled without prejudice to the Council's other rights and remedies, to obtain a refund of any Price paid by the Council in respect of any Services which have not been performed by the Provider in accordance with the terms of the non-discharged Agreement.

72.4 The Council shall not be liable under Clause 72 (Consequences of Termination) to

pay any sum which:

- (a) was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or
- (b) has failed to make a claim in accordance with the procedural requirements of the insurance policy;

- 72.5 When added to any sums paid or due to the Provider under the Agreement, exceeds the total sum that would have been payable to the Provider if the Agreement had not been terminated prior to the end of this Agreement.
- 72.6 Is a claim by the Provider for loss of profit, due to early termination of the Agreement.
- 72.7 At the end of the Agreement (howsoever arising) and/ or after the Term the Provider shall provide assistance to the Council and any new Provider appointed by the Council to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. Where the end of Agreement arises due to the Provider's default, the Provider shall provide such assistance free of charge. Otherwise the Council shall pay the Provider's reasonable costs of providing the assistance, and the Provider shall take all reasonable steps to mitigate such costs.
- 72.8 In the event of the termination of this Agreement by either Party, the provisions of this Clause 72 (Consequences of Termination) and Clause 1 (Definitions and Interpretations), Clause 36 (Compliance with Relevant Requirements and Relevant Policies), Clause **Error! Reference source not found.** (Confidentiality), Clause 72 (Consequences of Termination), Clause 79 (Legislative Change), Clause 78 (Law and Jurisdiction) and the provisions of Schedule A to Schedule I attached hereto shall survive the termination of this Agreement.
- 72.9 Where the Council re-lets the Agreement or any part thereof pursuant to Clause 66.1 (Serious Default and Suspension) the Provider shall make good to the Council all loss damages and expenses it may incur or be liable to in consequence of such re-letting as aforesaid for the period for which this Agreement shall have been accepted by the Council.
- 72.10 Save as otherwise expressly provided in the Agreement:
- (a) termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations accrued under the Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Agreement shall not affect the continuing rights, remedies or obligations of the Council or the Provider under Clause 27 (Financial Arrangements), Clause 32 (Recovery of Sums Due), Clause 43 (Data Protection Act), Clause **Error! Reference source not found.** (Confidentiality), Clause 45 (Freedom of Information), Clause 47 (Intellectual Property Rights), Clause 48 (Audit and Audit Commission), Clause 71 (Remedies Cumulative), Clause 60 (Indemnity and Insurance), Clause 72

(Consequences of Termination and Clause 78 (Law and Jurisdiction)).

72.11 If either party terminates the Agreement relating to the accessing of data and its subsequent processing, the Provider shall immediately (within seven (7) days) securely return/transfer, if requested to do so by the Council, all data provided under this Agreement, in its possession or control, and certify in writing to the Council that it has done so, unless this is prohibited by the national law or regulator of the country in which the Provider processes the data. Where this is the case, to the extent allowed under such requirements, the data will be kept confidential and will no longer be processed.

73. Continuing Rights and Remedies

73.1 Save as otherwise expressly provided for in this Agreement to the contrary, 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 in relation to either of the Parties prior to the termination or expiry taking effect (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 at such termination or expiry (as applicable).

74. Disruption

74.1 The Provider shall ensure that it has business continuity plans in place for a range of emergency situations should they arise including but not limited to pandemic influenza and power cuts and severe weather conditions. The Provider will make this plan available to the Council at any time when requested.

74.2 The Provider shall take reasonable care to ensure that in the execution of this Agreement it does not disrupt the operations of the Council, its employees or any other Provider employed by the Council.

74.3 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Agreement.

74.4 In the event of industrial action by the Staff or the Provider's suppliers the Provider shall seek the Councils approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under this Agreement.

74.5 The Provider shall inform the Council's Representative promptly and confirm in writing if the Provider is unable to or fails to provide the Services or any part thereof to a material degree or if the Provider is aware of anything which prevents or hinders or which may prevent or hinder the Provider from materially complying with this Agreement.

74.6 If the Provider is temporarily unable to fulfill the requirements of this Agreement owing to disruption of normal business by direction of the Council, an appropriate

allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense incurred by the Provider in fulfilling the provisions of the Agreement as a result of such disruption.

- 74.7 If the Provider's proposals referred to in this Clause 74 (Disruption) are considered insufficient or unacceptable by the Council, then this Agreement may be terminated in accordance with Clause 72 (Consequences of Termination) and Clause 73 (Continuing Rights and Remedies)

75. Force Majeure

- 75.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Agreement for a period in excess of three (3) Months, either Party may terminate the Agreement with immediate effect by Notice in writing.
- 75.2 Any failure or delay by the Provider in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.
- 75.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 75.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

76. Business Continuity

- 76.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. Organisations which provide Services which underpin the Council's Service provision must therefore be able to continue to provide the Services in the event of an emergency. The Provider shall therefore prepare and implement a robust and viable business continuity plan that ensures the continuation of the provision of the Services throughout the Term in accordance with the requirements of the Civil Contingencies Act 2004.
- 76.2 The Provider shall ensure that its Business Continuity Plan includes:
- (a) an introduction identifying the purpose of the Business Continuity Plan, its limitations and, exclusions and the individual members of Staff responsible for implementing the Business Continuity Plan;

- (b) the clear aims and objectives that the Business Continuity Plan will achieve;
- (c) the tasks and activities of the Provider's business and the risks associated with each of these tasks and activities;
- (d) a full description of the policies, processes and procedures which are in place to support the Business Continuity Plan;
- (e) the roles and responsibilities of the Provider, its Staff and its partners in implementing the Business Continuity Plan;
- (f) the command and control arrangements which will operate to support the effectiveness of the Business Continuity Plan;
- (g) the communications arrangements that will ensure that the Business Continuity Plan is widely understood by Staff and so that a business continuity management culture is embedded within the Provider's business in relation to the Services; and
- (h) a Schedule detailing how and when the actions within the Business Continuity Plan will be tested, reviewed and updated by the Provider each year.

76.3 The Provider shall:

- (a) 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 Term);
- (b) allow the Council (at its discretion) from time to time during the Term to monitor the Provider's business continuity arrangements;
- (c) 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
- (d) 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.

77. Handover

77.1 The Provider shall not make any charge to the Council or any Replacement Provider for any expenditure which is incurred (howsoever) in carrying out the handover arrangements which are set out in this Clause 77 (Handover).

77.2 Within one (1) month of the Expiry Date or earlier determination of the Term, the Provider shall serve Notice on the Council to seek confirmation as to whether or not the Council requires to take possession of the Provider's Service User files and other records and working papers (whether in paper or electronic form) in relation to the Services.

77.3 Within ten (10) Working Days of receiving the Provider's Notice under Clause 77.2, the Council shall serve a counter-Notice on the Provider setting out the

Council's requirements (acting reasonably) with which the Provider must comply with regard to the Service User files and other records and working papers which are referred to in the Service Specification.

- 77.4 When implementing the arrangements in this Clause 77 (Handover), the Provider shall use all reasonable endeavours to transfer to the Council (or any Replacement Provider) all data in accordance with an industry standard format (or any other format reasonably specified by either the Council or the Replacement Provider in question) relating to the Services including (without limitation) all requests made to the Provider for any of the Services to be undertaken which have not been actioned or completed by the Provider.
- 77.5 The Provider shall also comply with the requirements of Schedule G(TUPE) in relation to the provision of information by the Provider to the Council about the Staff who are engaged in the provision of the Services (whether or not employed by the Provider).
- 77.6 The Provider shall co-operate free of charge and in good faith at all times with the Council and any Replacement Provider to facilitate an efficient take over of the performance of the Agreement in order to ensure a seamless handover of the Services then in progress.
- 77.7 The provisions of this Clause 77 (Handover) shall remain in force indefinitely between the Parties following the expiry or earlier termination of the Term.

PART 10 DISPUTE AND LAW

78. Law and Jurisdiction

- 78.1 Subject to the provisions of Clause 80 (Dispute Resolution), 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 Wales and the Parties shall therefore submit to the exclusive jurisdiction of the courts of England and Wales.

79. Legislative Change

- 79.1 The Provider shall take all steps which are reasonably necessary to ensure that the Services are performed in accordance with the terms of this Agreement following any change in Law.
- 79.2 The Provider shall bear the cost of complying with all such statutes, enactments, orders, regulations or other similar instruments as are referenced in this Agreement and any amendments thereto.
- 79.3 If a Qualifying Change in Law occurs or is due to occur during the Term, then either Party may serve Notice on the other to express an opinion on its likely effect on this Agreement, providing detail in its opinion of:

- (a) any change in the Services or the Charges which appears to be reasonably necessary as a consequence of the Qualifying Change in Law in question;
- (b) whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law; and
- (c) whether any relief from compliance with the obligations in this Agreement is required, including (without limitation) the obligation of the Provider to achieve either, the Commencement Date, or any subsequent milestones which are specified in the Service Specification, or any Service level requirements or Contract Standards at any time.

79.4 As soon as practicable after receipt of any Notice pursuant to Clause 79.3 the Parties shall discuss and agree the matters which are referred to in the sub-Clauses to that Clause and any ways in which the Provider can (acting reasonably) mitigate the effect of the Qualifying Change in Law in question, including:

- (a) the provision by the Provider of evidence that it has authorized any increase in costs or authorised any reduction in costs (including the costs of its sub-contractors);
- (b) demonstrating that a foreseeable qualifying Change in Law had been taken into account by the Provider before it occurred;
- (c) giving evidence as to how the Qualifying Change in Law has affected the cost of providing the Services; and
- (d) demonstrating that any expenditure that has been avoided by the Provider has been taken into account in the Provider's proposals for amending the Charges.

79.5 Any change to the Charges, or relief from the Provider's obligations, which is agreed by the Parties pursuant to this Clause 79 (Legislative Change) shall be documented and implemented by the Parties via a Variation in accordance with Clause 55 (Variation).

80. Dispute Resolution

80.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a "Dispute") then, except as expressly provided in this Agreement, the Parties shall follow the dispute resolution procedures set out in this Clause:

- (a) either Party shall give to the other written Notice of the Dispute the immediate time that they become aware of such a Dispute. The Notice shall set out its nature and full particulars (a "Dispute Notice"), together with relevant supporting documentation. On Service of the Dispute Notice both contracting parties shall attempt in good faith to resolve the Dispute within five (5) working days from the date of the Dispute Notice;
- (b) if the Parties are for any reason unable to resolve the Dispute within five (5) Working Days of Service of the Dispute Notice (or it becomes apparent in a shorter time period that the Dispute is unlikely to be resolved), the Dispute

shall be referred to the Council's Representative and the Provider's Representative who shall attempt in good faith to resolve it within ten (10) Working Days from the date of the Dispute Notice; and

- (c) if the Council's Representative and the Provider's Representative are for any reason unable to resolve the Dispute within fifteen (15) Working Days of the date of the Dispute Notice, then either Party may request by Notice to the other that the Dispute is referred to an Expert for determination.

80.2 For the purposes of this Clause 80 (Dispute Resolution), the "Expert" is the person appointed by the Parties in accordance with Clauses 80.3 and 80.4.

80.3 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the president of the Law Society.

80.4 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within ten (10) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to the other Party as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- (e) the Parties shall initially pay and bear the cost of the Expert in equal proportions;
- (f) the process shall be conducted in private and shall be confidential; and the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

80.5 The Council shall have no liability howsoever arising from any dispute or responsibility or liability between the Provider and Shropshire Council in connection with this Service and its procurement process.

81. Modern Slavery Act 2015

81.1 The Provider undertakes, warrants and represents that:

- (a) neither the Provider nor any of its officers, employees, agents or subcontractors has:

- (i) committed an offence under the Modern Slavery Act 2015 (a "MSA **Offence**"); or
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (iii) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - (b) it shall comply with the Modern Slavery Act 2015 and the Council's Modern Slavery Policy
 - (c) it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Provider's obligations under this Clause
 - (d) such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations.
- 81.2 Any breach of this Clause 81 by the Provider shall be deemed a material breach of the agreement and shall entitle the Council to terminate the agreement.
- 81.3 The Provider shall prepare and deliver to the Council each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 81.4 The Provider shall conduct a programme of regular training for its officers, employees, agents, subcontractors and other members of its supply chain to ensure compliance with the Modern Slavery Policy.
- 81.5 The Provider shall keep a record of all training offered and completed by its officers, employees, agents, subcontractors and other members of its supply chain to ensure compliance with the Modern Slavery Policy and shall make a copy of such records available to the Council on request.
- 81.6 The Provider shall indemnify defend and hold harmless the Council and its directors, officers and employees in full and on demand from and against any and all liabilities, claims, fines, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part resulting from a breach of the Modern Slavery Policy.

82. Compliance With The Counter-Terrorism And Security Act 2015 And The (Risk Of Being Drawn Into Terrorism) (Guidance) Regulations 2015

82.1 The Provider shall:

- (a) comply with all applicable laws, statutes, regulations, and guidance relating to Counter Terrorism including but not limited to the Counter-Terrorism and Security Act 2015 and the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements ;
- (c) comply with the Authority's code and plan for compliance with the Relevant Requirements.
- (d) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under The Counter-Terrorism and Security Act 2015 and the Counter-Terrorism and Security Act 2015 (Risk of Being Drawn into Terrorism) (Guidance) Regulations 2015, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 82.1(b), and will enforce them where appropriate;
- (e) promptly report to the Authority any behaviours or actions or other activity of any kind observed, perceived or suspected by the Provider in connection with the performance of this agreement which may be in breach of the Relevant Requirements and/or the Relevant Policies;
- (f) within one month of the date of this agreement, and annually thereafter, certify to the Authority in writing signed by an officer of the Provider, compliance with this clause 82 by the Provider and all persons associated with it under clause 82.2. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

82.2 The Provider shall ensure that any person associated with the Provider who is performing services [or providing goods] in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this clause 82 (Relevant Terms). The Provider shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.

82.3 Breach of this clause 82 shall be deemed a material breach under clause 64 (Termination at Default).

82.4 For the purpose of this clause 82 the meaning of adequate procedures shall be determined in accordance with the Relevant Requirements and the Relevant Policies. For the purposes of this clause 82 a person associated with the Provider includes [but is not limited to] any subcontractor of the Provider

APPENDICES

Schedule A The Particulars

Contract Title	INDEPENDENT MENTAL HEALTH ADVOCACY
Contract Reference	IMHA19/22
Council	The Borough of Telford and Wrekin
Provider	<insert name of the provider>
Commencement Date	1 APRIL 2019
Expiry Date	31 MARCH 2022
Term (including option to extend)	Two (3) Years plus an option to extend up to two (1) Years
Services	As set out in Schedule C (Service Specification)
Service Specification	As set out in Schedule C (Service Specification)
Address for Notices	The Council: Telford & Wrekin Council Legal, Procurement and Commissioning 2 nd Floor Wing C Darby House Lawn Central Telford TF3 4JA

Council Operational Contact Details	

The Parties' Representatives		
	Council's Representative	Provider's Representative
Name	██████████	
Position	Commissioning Specialist Telford & Wrekin Council 4A Darby House Lawn Central Telford TF3 4JA	<insert details of the provider>
Contact Details	Telephone: 01952 388883 ██████████	

Schedule B The Signatures

THE COUNCIL'S SIGNATURE BOX

..... (1st authorised signatory)

SIGNED above on behalf of the Borough of Telford and Wrekin

Signatory 1 on behalf of the Borough of Telford and Wrekin

1. Name:..... (Print capital letters)

2. Designation:..... (Print capital letters)

THE PROVIDER'S SIGNATURE BOX

..... (1st authorised signatory)

..... (2nd authorised signatory)

SIGNED above on behalf of <insert name of the provider>

*(Signatures required from two (2) duly authorised signatories – i.e. trustees/directors/
company secretary, etc.)*

Signatory 1 for the Provider

1. Name:..... (Print capital letters)

2. Designation:..... (Print capital letters)

Signatory 2 for the Provider

1. Name:..... (Print capital letters)

2. Designation:..... (Print capital letters)

Schedule C The Service Specification

For the purposes of tender exercise, service specification was published separately on e-Sourcing portal but shall form part of the contract, once awarded.

Schedule D Monitoring Quality and Performance

D.1 Principles

- D.1.1 The following provisions apply to the Services, and associated elements of the Services, delivered by the Provider in accordance with this Agreement.
- D.1.2 The methods, systems, tool and templates used by the Council, for the purposes of delivering and monitoring quality and performance, will be periodically reviewed in order to ensure they remain appropriate and effective to manage the Services delivered in accordance with this Agreement.
- D.1.3 The Council intends to adopt proactive contract monitoring, supported by a developmental approach to managing performance under the Agreement: Features of this approach include:
 - D.1.3.1 Recognising four elements of proactive contract monitoring: performance management information; Outcomes; quality information and operation of contract.
 - D.1.3.2 Acknowledging that some reactive contract monitoring will occur but focussing on proactive monitoring as a way of increasing the chances of creating conditions for successful Service delivery.
 - D.1.3.3 Adopting open communication of problems and challenges within the Service.
 - D.1.3.4 Committing to working together to learn from what has gone wrong and agreeing changes and developments to resolve problems and improve Service quality.

D.2 Process

D.2.1 Engagement and Information Provision

- D.2.1.1 Successful contract monitoring will rely, in part, on the Council and the Provider sharing, and responding to, information relating to the operation of the Service.
- D.2.1.2 Our expectations in relation to information provision and access to information, to allow proactive monitoring, are provided for within the Terms and Conditions: Part 3 – Performance and Monitoring and Clause 22 Information Provision and Exchange. The latter clause also includes provision of information about unexpected or impromptu activity that, in relation to protecting Service User safety, may require more reactive monitoring.
- D.2.1.3 Additionally, these clauses outline our expectations in relation to engagement with the Council to facilitate a developmental approach to managing performance; and in relation to Clause 35 (Adult Protection Procedure) and Clause 24 (Complaints).
- D.2.1.4 The Data Processing Agreement details the expectation

between the Council and the Provider in relation to information sharing and confidentiality to meet obligations of the Data Protection Act (2018) – Schedule H

- D.2.1.5 The Provider shall permit Officers of the Council to enter the Provider's office at all reasonable times for the purpose of monitoring and reviewing the Service and to inspect all records kept in accordance with the Service delivery and operation of the Agreement.

D.3 Monitoring Activity

- D.3.1 The monitoring of all Services will be undertaken in line with and agreed process. This approach will include contributing to the development of a quality framework that will encompass performance targets, outcome judgements and indicators. All performance targets will be agreed and refined with the Provider.
- D.3.2 The primary source of information for contract monitoring will be Desktop performance information and Monitoring visits.
- D.3.3 Proactive monitoring will rely mainly on desk top analysis of information available about, or requested from, the Provider, and reports and surveys produced within the Council. The table at Appendix D1 describes the reports and statistics the Council will consider so as to evidence compliance with the Agreement. This information may be requested at any point by Quality Monitoring Officers or as a minimum should be provided in the form of a report from the Provider presented at the annual Contract Review.
- D.3.4 The Council may undertake checks on quality for monitoring purposes by whichever means it considers suitable including:
 - D.3.4.1 Random visits to Service Users
 - D.3.4.2 Use of questionnaires or other feedback
 - D.3.4.3 Monitoring visits to validate quality assurance framework and performance information
- D.3.5 On request from the Council, the Provider will submit a financial summary that details costs and revenue associated with the support Service
- D.3.6 Further monitoring will be triggered where scoring or scoring patterns over a period of time gives cause for concern, or where information from the various sources outlined in Appendix D1 combine to suggest further engagement between the Council and the Provider may be required: In these circumstances the Councils' Contract Quality Monitoring Officer will contact the Provider and expect all, or some, of the following:
 - D.3.6.1 To undertake a visit to the Service
 - D.3.6.2 To meet and speak to Staff, Service Users or their friends and family
 - D.3.6.3 To be sent additional information regarding any aspect of delivery of the Service.
- D.3.7 The aim of the work of the Contract Quality Monitoring Officer will be to gather or validate evidence relating to the general operation of the Service, or any particular issues that desk top monitoring raises.

- D.3.8 A second trigger for more detailed reactive monitoring, as described above, may result from submission of information under Clause 22 Information Provision and Exchange, which details the quality monitoring requirements. (Appendix D1).
- D.3.9 An annual Contract Review meeting will be held between the Council and the Provider at a mutually agreed time and date at which information collated through the monitoring process will be used to assess the provision of the Services.
- D.3.10 The annual Contract Review meeting will entail:
- D.3.10.1 Desktop review
 - D.3.10.2 Discussing information from Quality Monitoring Officers
 - D.3.10.3 Addressing any issues with regards to contract compliance, including complaints
 - D.3.10.4 Providers' queries/concerns
 - D.3.10.5 Provider presenting a report detailing and evidencing the performance of the contract using the measure detailed in the contract schedules.
 - D.3.10.6 The Provider will be required to seek Service Users' views not less than once every twelve months and provide case studies and evidence of outcomes being met at the contract review
- D.3.11 A Service quality review will be undertaken by the Council towards the end of the contract term during a period of time mutually agreed by the Provider and the Council. The Service quality review will be used to inform Commissioners and will help determine future Services.
- D.4 National Minimum Data Set (NMDS-SC)
- D.4.1 The Provider, and any parent company, will register as an employer on the NMDS-SC through www.nmds-sc-online.org.uk.
- D.4.2 The Provider will keep the data set records up-to-date throughout the Term of the Agreement to ensure accurate reports can be produced. The Council may, acting reasonably, request a copy of the report as part of quality and performance monitoring of the Agreement.
- D.5 Action Planning
- D.5.1 The outcome of desktop and "on site" monitoring activity will be shared with the Provider and used to determine the need for changes or improvements. These will be set out via correspondence between the Parties, or via Agreement to work up an "Action Plan" (AP), depending on the nature of the issues that need to be addressed. The focus for the correspondence or AP will be on working together to address issues of concern and deliver improvements.
- D.5.2 The AP may focus on corrective and development activity in relation to a specific issue, or may need to cover a number of issues. The content of the AP will depend on the concerns or trigger areas that have been raised and the additional evidence and validation information gathered in response to these concerns. Referral into the adult protection procedure, and the

associated actions agreed, will operate within the context of developmental action planning and monitoring of this Agreement.

- D.5.3 The AP (attached at Appendix D2) will be developed and agreed by both Parties; its key features will include:
 - D.5.3.1 Agreeing the problem or problems to be addressed
 - D.5.3.2 Agreeing what measures can be taken to resolve the problems
 - D.5.3.3 Deciding who will undertake what actions, in what order, and by when
 - D.5.3.4 Deciding how progress within the AP will be monitored
 - D.5.3.5 Determining how the effectiveness of the AP can be measured
 - D.5.3.6 Committing to communicating the wider learning outcomes from the AP
- D.5.4 Support Provider and Council engagement around the AP will be undertaken within the ethos generated by the principles set out in section Schedule D of this Terms and Conditions Social Care.
- D.6 Default, Suspension and Termination
 - D.6.1 The provisions under the Contract Terms and Conditions of this Agreement relating to default and suspension (Clause 63: *Defaults and Default Notices*; Clause 65: *Termination on Default* and Clause 67, *Serious Default and Suspension*) will apply within the context of this Schedule in relation to both the supply of monitoring information from the Provider and also the ability to meet the performance and quality standards set and monitored in line with this schedule and in particular of the AP.
 - D.6.2 The forms of communication, the AP, and the outcome of the Parties working together, as described in this schedule, shall constitute the notices and liaison required under Clause 64: *Defaults and Default Notices*; Clause 65: *Termination on Default* and Clause 67 *Serious Default and Suspension*.
 - D.6.3 Notwithstanding the principles and process described in this schedule the outcome of contract monitoring, including working to the AP, may result in the Council exercising its rights under Clause 63: *Defaults and Default Notices*; Clause 65 *Termination on Default*; Clause 67 *Serious Default and Suspension*; 68 *Termination of Services*; and Clause 72: *Consequences of Termination*

Appendix D1

Proactive Contract Monitoring: Elements and Information Sources

Element/ Source	Performance Management Information	Outcomes	Quality of Service	Operation of Contract
Descriptor	Information about the activity within the Service – e.g. hours available, referrals, support categories, utilisation of hours, profiles of Service Users.	Understand legal provisions. Support to exercise service user rights Supporting rights of other people e.g. nearest relative.	Service Users, Council’s and other related professionals	Nature of the working relationship between the Parties in relation to this Agreement.
Primary Sources of Information	<p>Service Reviews and Contract reviews at a frequency that is to be determined and regularly reviewed according to risk Standards compliance Quarterly report from Provider detailed in Part 3, Clause 18 of the contract Terms and Conditions</p> <p>Desktop performance information requested by Quality Monitoring Officer as and when required. Information gathered from visits to the Service undertaken by Quality Monitoring Officers</p>	<p>Review of the Performance statistics and Support records. Case studies Service User and Stakeholder feedback Outcome of engagement on Adult Protection issues Schedule C, Clause 5, IMHA O8, Outcomes and Service Performance Indicators of the contract Terms and Conditions</p> <p>Desktop performance information requested by Quality Monitoring Officer as and when required. Information gathered from visits to the Service undertaken by Quality Monitoring Officers</p>	<p>Outcome of complaints and compliments Quarterly Reports from Provider detailed in Schedule C, Clause 5, IMHA 03;08, Outcomes and Service Performance Indicators of the contract Terms and Conditions. Desktop performance information requested by Quality Monitoring Officer as and when required.</p> <p>Information gathered from visits to the Service undertaken by Quality Monitoring Officers</p>	<p>Council data from the Contracting and Commissioning Teams relating to communications, information submission, problem solving. Information from annual review meetings</p> <p>Continued... Quarterly report from Provider detailed in Part 3, Clause 18 of the contract Terms and Conditions</p>

D1.1 Indicators and Monitoring

Outcomes Sought	Indicators	Monitoring
IMHA O1: Service User understanding of IMHA	<ul style="list-style-type: none"> i. Information leaflet ii. Availability of service 	Case Records Service User Feedback Contract Review
IMHA O2: Improved access to IMHA Service	<ul style="list-style-type: none"> i. Shared information and data ii. Partnership working across all agencies and professionals 	Contract Review Quarterly Reports
IMHA O3: Service Users should have their complaints listened to and acted on properly	<ul style="list-style-type: none"> i. Service Users know how to make a complaint, and are supported in doing so. 	Complaints procedure Documented outcomes for each complaint Use of Advocacy / representation Contract Review Meetings Quarterly Reports
IMHA O4: Service User's personal records, should be accurate and kept safe and confidential.	<ul style="list-style-type: none"> i. Service User files should be properly maintained and utilised by all staff who are involved in their support. ii. Policies and procedures regarding handling information and the safe disposal of confidential information should be in place and utilised. 	Data Protection policy and procedure Confidentiality Policy & Procedure Staff Handbook and appropriate Disciplinary Procedure for dealing with breaches Secure systems for storing information Quality Monitoring Reviews Contract Review Meetings Quarterly Reports
IMHA O5: Current Activity	<ul style="list-style-type: none"> i. Total number of eligible patients. ii. Total number of referrals iii. Source of referrals iv. Referrals broken down by Age, Gender, Ethnicity and location v. Qualifying factors vi. Recurring patients 	Support Records Annual Report Contract Review Meetings Quarterly Reports
IMHA O6: Identified Need	<ul style="list-style-type: none"> i. Individual issues ii. Collective issue iii. Outcomes achieved 	Case studies Service User Feedback Contract Review Meetings Quarterly Reports
IMHA O7: Service Capacity	<ul style="list-style-type: none"> i. Time taken on individual cases 	Support Record Contract Review Meetings Quarterly Reports
IMHA O8: Reflective practice	<ul style="list-style-type: none"> i. complaints. ii. Safeguarding iii. Lessons learnt iv. Service improvement 	Support Record Service User Feedback Feedback from partner agencies Risk Assessments Quality Monitoring Reviews Contract Review Meetings Quarterly Reports

IMHA O9: Sustainability	<ul style="list-style-type: none"> i. Annual financial accounts ii. Management accounts and strategies iii. Future challenges iv. Risk log 	<ul style="list-style-type: none"> Contract Review Meetings Quarterly Reports
IMHA O10: Sign posting to other services	<ul style="list-style-type: none"> i. Wherever possible Service Users must be encouraged and supported to access other relevant services 	<ul style="list-style-type: none"> Support records Case studies Service user feedback Contract Review Meetings Quarterly Reports

D.6.4 Service Performance Targets

D.6.4.1 The Service performance will be measured against the following criteria. Targets set are specific to the individual Service and reflect the needs groups and Service limitations.

D.6.4.2 Failure to meet the targets set may lead to default and/or renegotiation of the Contract at annual review

		Target	Measured through
IMHA T1: Service Utilisation	The full service available will be fully utilised at all times during the term of the contract.	100% of Service	Report at Contract Review
IMHA T2: Staffing	<ul style="list-style-type: none"> i. Service Users should be cared for by staff who are properly qualified and able to do their job. ii. There should be enough members of staff to keep people safe and meet their health and welfare needs. iii. Staff should be properly trained and supervised, and have chance to improve their skills. 	100% compliance	<ul style="list-style-type: none"> Evidence of DBS checks Induction Programme Staff Files Staffing mix, and staff rota. Training and Development programme Supervision schedule and policy. Quality Monitoring Reviews
IMHA T3: Delivery of a personalised service which demonstrates Service User engagement	<ul style="list-style-type: none"> i. The service should demonstrate how it ensure a personalised approach to care planning and service delivery. ii. Service users should be actively engaged in their care, and the delivery of the overall service. 	Evidence compliance.	<ul style="list-style-type: none"> Support Record Service Users Meetings Service User Feedback Advocacy Services Contract Review Meetings Quarterly Reports Case Studies. Quality Monitoring Reviews

D.6.5 Continual Service Improvement Plan

- D.6.5.1 The Provider is expected to evidence continuous improvements to ensure the best possible outcomes for the service users. Evidence should be made available to the Council.
- D.6.5.2 The views of service users should be regularly sought with regards to feedback of the existing service and as part of a programme of continuous improvement.

Appendix D2 Action Plan Template

ACTION PLAN (AP)					
Provider Representative					
Provider					
Address 1					
Address 2					
Address 3					
Postcode					
Telephone:					
Email:					
Date Initiated					
Council Representative					
Issues identified prior to monitoring visit					
QMO desktop information Requirements / Recommendations:-					
Issues identified:-					
Number of Complaints / VAs in last 12 Months:-					
Issues arising from monitoring visit					
	Measures to be taken	Who will undertake actions	Deadline for actions	Actions to be followed up	Actions completed
1					
2					
3					
FOR INTERNAL USE ONLY					
Follow up actions from VA investigations					
Process for reviewing effectiveness of the AP					
Wider learning outcomes					
File note file path					

Schedule E Financial Provision

E.1. General Provision

- E.1.1 This Contract will operate on a block contract basis.
- E.1.2 The Provider will be expected to take account of and be responsible for covering the costs associated with running the service,
- E.1.3 The Provider will be expected to identify cost savings through the duration of the contract.
- E.1.4 Any associated costs in relation to transfer of staff from the previous provider to the Provider are not chargeable to the Council.
- E.1.5 The Council will not be liable for any initial set-up, transfer or implementation costs prior to, during and after the Commencement Date.

E.2. Contract Value

E.2.1 The Contract Price per annum is:

Year 1: 2019/20	Year 2: 2020/21	Year 3: 2021/22

E.3. Pricing

E.3.1 The contract will be invoiced in equal payments, a quarter of the yearly value.

Quarter	Year 1: 2019/20	Year 2: 2020/21	Year 3: 2021/22
Q1			
Q2			
Q3			
Q4			
Total			

E.3.2 Prices shall be considered to be fixed for the initial term of the contract.

E.4. Method of Payments

E.4.1 The Provider shall invoice the Council quarterly in advance, in accordance with the above table of payments. First payment for Quarter 1 shall be invoiced in April 2019 for the period of April to June 2019.

E.4.2 Invoices shall be paid by BACS transfer to the Provider's bank account.

E.4.3 The invoice must contain the following information:

- Name of the Provider
- Address of Provider
- Contract reference number (as defined by the Commissioner)
- Invoice date

- Invoice period
- Invoice reference number
- Total cost

E.4.4 The Provider shall submit quarterly invoices via email to *insert name*

Schedule F Safeguarding Policies and Procedures

- F.1 The Provider shall adapt Policies and Procedure that comply with best practice and are in line with local safeguarding policies, procedures and standards as determined by Telford and Wrekin Safeguarding Adult's Board
http://www.telfordsafeguardingadultsboard.org/sab/downloads/file/12/safeguarding_adult_regional_policy_and_procedure
- F.2 In cases of actual or suspected Abuse to a Service User the Provider must report such issues to Family Connect Safeguarding Services as follows:
- Telephone: (01952) 385 385 (Monday to Friday, 9am to 5pm excluding Bank Holidays) or use the on-line referral form <http://webforms.telford.gov.uk/form/189>
 - Telephone (01952) 676 500 (out of hours & Bank Holidays)
 - If you believe a crime has been committed:
 - West Mercia Police telephone: (0300) 333 3000 or 101
 - In an emergency telephone: 999
- F.3 In cases of actual or suspected abuse to a Service User who is a Vulnerable Adult the Provider must ensure strict adherence to the West Midlands Multi-Agency Safeguarding Adults Policy and Procedure in order to protect the Service User, and in so doing shall comply with requirements of any investigation carried out by the Council or other appropriate agency.
- F.4 In cases where an adult may have need for care and support, a safeguarding concern must be raised with the safeguarding adult's team.
- If you believe a crime has been committed:
 - West Mercia Police: Telephone 101
 - In an emergency: Telephone 999
- F.5 The Council's Representative must be notified immediately in writing by the Provider of all instances of suspected Abuse of any Service User which comes to the attention of the Provider by any means pursuant to the operation of this Agreement. For the avoidance of doubt this includes instances which do not relate to any member of Staff or other persons engaged in the provision of the Services.
- F.6 The Provider shall immediately notify the Council in writing of any information that is required under this clause or it reasonably requests to enable it to be satisfied that the obligations of this clause have been met.

Schedule G TUPE

- G.1 The Council and Provider agree that TUPE applies to this Contract and that contracts of employment of any **Relevant Employee** (the employees that are subject to a Relevant Transfer) will have effect (subject to Regulation 4 (7) of TUPE) thereafter as if originally made between those employees and the Provider and/or its subcontractor.

Relevant Transfer means a transfer in accordance with the provisions of TUPE

Relevant Transfer Date means the date on which a Relevant Employee transfers to the Provider and/or to one or more of its Sub- contractors.

- G.2 The Provider will be responsible or will procure that any relevant Sub- Contractor is responsible for all remuneration, benefits, entitlements, or outgoings in respect of a Relevant Employee, including and without limitation, any wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions from and including the Relevant Transfer Date.

- G.3 The Provider will indemnify and keep indemnified in full the Council against any direct losses incurred as a result of a breach of these obligations or any breach of TUPE.

- G.4 If the Council has notified the Provider that it intends to tender or retender any Services, the Provider must within 20 Business Days following written request (unless otherwise agreed in writing) provide the Council with anonymised details of Staff engaged in the provision of the relevant Services who may be subject to TUPE. The Provider must indemnify and keep indemnified the Council and any new Provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this clause.

- G.5 During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not and must procure that its sub-contractors do not, without the prior written consent of the Council, in relation to any persons engaged in the provision of the Services or the relevant Service:

- (a) terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);

- (b) increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any sub-contractor by more than 5% (except in the ordinary course of business);
- (c) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
- (d) replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
- (e) assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.

G.6 The Provider will indemnify and keep indemnified the Council and any previous provider who provided any service equivalent to the Services or any of them against any Losses in respect of:

- (a) any failure by the Provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the Provider;
- (b) any claim by any person that any proposed or actual substantial change by the Provider to the persons' working conditions or any proposed measures of the Provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the Provider; and/or
- (c) any claim by any person in relation to any breach of contract arising from any proposed measures of the Provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the Provider.

G.7 The Provider will indemnify and keep indemnified the Council and any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or any Service, against any Losses in respect of:

- (a) the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any sub-contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any sub-contractor;
- (b) claims brought by any other person employed or engaged by the Provider and/or any sub-contractor who is found to or is alleged to transfer to the Council or new provider under TUPE; and/or
- (c) any failure by the Provider and/or any sub-contractor to comply with its obligations under TUPE in connection with any transfer to the Council or new provider.

G.8 The Council will use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any sub-contractor against any Losses in respect of:

- (a) any failure by the new provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new provider;
- (b) any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service; and/or
- (c) any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service

Schedule H Data Processing Agreement

General Data Protection Regulations

Telford & Wrekin Council & [3rd Party Supplier]

WHEREAS:-

A. The Data Controller and the Data Processor (taking the meanings accorded in Section B 2), have entered into an Agreement to secure the provision and processing of personal and special category personal data (hereinafter referred to as the 'data') solely for the purpose of processing providing IMHA services in accordance with Service Specification. The data sets will be directly provided by [insert details] via [insert details]. The Data Processor's data centre is [insert details].

The Data Processor will process authorised data sets (as per Appendix 1), solely for the purpose of providing IMHA services in accordance with Service Specification, as shown in Schedule B, and in accordance with the obligations of the Data Processor, as shown in Schedule C, in order to support their contractual obligations.

The Data Processor will ensure all of their staff and any sub-contracted staff (sub-contracted only when permission given by the Data Controller) have undertaken and continue to receive relevant training around data protection and information security.

B. IT IS HEREBY AGREED BETWEEN THE PARTIES IN SCHEDULE A TO THIS AGREEMENT AS FOLLOWS:-

1. Agreement

Clearly defined processing requirements of personal and special category personal data between the Data Controller ("Telford & Wrekin Council") and the Data Processor ("[insert details]"), whereby the Data Processor provides [insert details] for the purposes referred to in Schedule B, subject to the warranties and obligations hereinafter contained.

2. Definitions & Interpretations

- a) Data Controller – means Telford & Wrekin Council as the organisation who determines the purposes of which the personal data is to be processed;
- b) Data Processor – means [insert supplier] as the organisation who will process the information on behalf of the Data Controller
- c) Data Subject – means an individual who is the subject of personal data
- d) Personal Data – means data that relates to a living individual who can be identified: from the data; or from data or other information that is in the possession of or is likely to come into the possession of the Data Controller
- e) Processing - means obtaining, recording, or holding the information or data or carrying out any operation or set of operations on the information or data including: organisation, adaptation or alteration; retrieval, consultation or use; disclosure by transmission, dissemination or otherwise making available; or

alignment, combination, blocking, erasure or destruction of the information or data.

- f) General Data Protection Regulations (GDPR) – European law governing the processing of personal data. The use of the term ‘General Data Protection Regulations’ in this agreement covers both the European law and any equivalent UK data protection law.

3. Warranty and Obligations of Data Processor

- a) The Data Processor warrants that it has the necessary legal authority in the United Kingdom where it is established for the purpose of controlling the processing of the data and to use it for the purpose(s) set out herein, and to give warranties and fulfil the undertakings set out herein.
- b) The Data Processor will process the data exclusively for purposes and in accordance with the means of processing listed in Schedule B to the exclusion of any other purposes or means of processing.
- c) The Data Processor will not enter into any arrangement to process the data outside the United Kingdom without the written permission of Data Controller.
- d) The Data Processor has in place security programs and procedures appropriate to the risks presented by the processing, to ensure that unauthorised persons will not have access to the data and that any persons it authorises to have access to the data will be bound by contract or otherwise to respect and maintain the confidentiality and security of the data.
- e) The Data Processor warrants that it will comply with the obligations set out in Schedule C and apply them to the processing of the data originally provided or subsequently amended.

4. Applicable Law

The parties to this Agreement shall be subject to English law and specifically the General Data Protection Regulations (or alternative UK legislation) in respect of such processing as is governed by this Agreement.

5. Rights of Data Subjects

The obligations of the Data Processor set out in Schedule C are conferred as third party rights on those data subjects, in respect of whom data is accessed for processing under the terms of this Agreement. Therefore, this processing may be the subject of proceedings under the appropriate legal enactments in the Member State in which the Data Processor is established, in respect of the processing of accessed data that is the subject of this Agreement.

6. Suspension of Contract

This agreement can be suspended for [insert number] working days, if security has been seriously breached. This should be detailed in writing and be evidenced by the Data Processor to the Data Controller. Any suspension will be subject to a risk assessment and a resolution meeting between nominated representatives of the

Data Processor and the Data Controller being held. This meeting will take place within [insert number] working days of the identification of any breach. The suspension may be lifted when the cause of the breach has been satisfactorily investigated and appropriate measures have been taken to address the situation.

7. Indemnity

The Data Processor will indemnify the Data Controller against all claims, costs and fines that may arise in connection with data breaches which are the result of the failure of [insert supplier name], its employees, agents or sub-contractors to properly perform their functions.

8. Consequences of Termination of the Contract

If either party terminates the Agreement relating to the accessing of data and its subsequent processing, the Data Processor shall immediately (within 7 days) securely return/transfer, if requested to do so by the Data Controller, all data provided under this Agreement, in its possession or control, and certify in writing to the Data Controller that it has done so, unless this is prohibited by the national law or regulator of the country in which the Data Processor processes the data. Where this is the case, to the extent allowed under such requirements, the data will be kept confidential and will no longer be processed.

SCHEDULES

SCHEDULE A

Data Controller:

Telford & Wrekin Council,
Addenbrooke House
Ironmasters Way
Telford
TF3 4NT

United Kingdom

Data Protection Registration Number: **Z5142391**

Name	Title	Description of Role	Contact Details

And Data Processor:

[Insert supplier name and address]

Data Protection Registration Number: [insert supplier ICO registration number]

Name	Title	Description of Role	Contact Details

Data Sets to be covered by this Agreement:

- personal details
- family details
- education, training and employment details
- financial details
- goods and services provided
- lifestyle and social circumstances
- visual images, personal appearance and behavior,
- details held in the patients record
- responses to surveys

Sensitive classes of information that may include:

- racial and ethnic origin
- offences and alleged offences
- criminal proceedings, outcomes and sentences
- physical or mental health details
- religious or similar beliefs
- sexual life
- health information

SCHEDULE B

Purpose of Processing the Personal Data:

[insert supplier name] ("Data Processor") has been contracted by Telford & Wrekin Council ("Data Controller") to provide Independent Mental Health Advocacy for the sole purpose of providing IMHA services in accordance with Service Specification.

Both personal and special category personal data sets are to be processed and the conditions within the General Data Protection Regulations that support this are:

Article 6 – Lawfulness of processing conditions for PII

6 (1) (b) – Processing is necessary for the performance of a contract with the data subject or take steps to enter into a contract.

6 (1) (c) – Processing is necessary for compliance with a legal obligation.

6(1)(d) – Processing is necessary to protect the vital interests of a data subject or another person

Article 9 – Lawfulness of processing conditions for special category PII

9(2) (c) – Processing is necessary to protect the vital interests of a data subject or another individual where the data subject is physically or legally incapable of giving consent

[insert supplier name] ("Data Processor") must only process personal data in accordance with Telford & Wrekin Council ("Data Controller") instruction.

DURATION, REVIEW AND TERMINATION

This Agreement is effective from the signatory date below until the end of the contract period, which is **DATE TO BE CONFIRMED**

SIGNATORIES:

This Agreement was executed on **INSERT DATE WHEN SIGNED**.

Date: _____

Date: _____

Date: _____

SCHEDULE C

Obligations of the Data Processor

1. The Data Processor will make such arrangements as are necessary to ensure it has fulfilled, and will continue to fulfil to comply with the requirements of the General Data Protection Regulations including the warranties set out in Section B.3 of this agreement.
2. Unless there is specific provision elsewhere in this Agreement, the Data Processor shall process the data exclusively for the purposes outlined in Schedule B and shall not disclose, either free of charge or in return for payment, the data to any other legal or natural person, including when there is a legal obligation, a regulatory obligation or where the Data Processor is responding to a request from a regulatory body, in which case the Data Controller must, where this is permitted by such law, be informed in order to establish consent or grounds for non-disclosure, prior to such disclosure.
3. The Data Processor shall, as far as is practicable, notify the Data Controller of any measures to which it is subject that will have an impact on the access and processing of data made under the Agreement.
4. Where the nature of the data being processed warrants it, the Data Controller reserves the right to demand that a Disclosure and Barring Service check is undertaken on any staff that will have access to the data and confirm (within 7 days) whether such checks have identified any relevant convictions, cautions or other information that may warrant concern.
5. The Data Processor will not disclose or transfer the personal and special category personal data to a third party except with the express authority of the Data Controller.
6. The Data Processor must identify to the Data Controller their Data Protection Officer or other person responsible for compliance with data protection legislation.
7. The Data Processor must have a documented data protection policy in place and shall if requested provide a copy to the Data Controller.
8. If so requested by the Data Controller, the Data Processor must provide evidence of measures taken with regard to staff reliability, staff training, data access restrictions and disciplinary procedures.
9. The Data Processor must not subcontract any part of this contract without the prior consent of Telford & Wrekin Council.
10. No further use may be made of the data without the written consent of the Data Controller or as specified in this Agreement. No further use shall be made of any depersonalised data, based on the data supplied without the prior written authority of the Data Controller.
11. The Data Processor must not copy, store, print, transmit or produce in any other format (hard or soft) copies of the data that it is authorised to process.

12. Authorised persons of the Data Processor may only process the data by secure means, including encryption of portable, mobile devices or any other processing equipment that may be vulnerable, in order to prevent unauthorised access or disclosure.
13. Should the Data Controller be required to comply with a request for access to information by a data subject, the Data Processor will assist the Data Controller by providing such information to the Data Controller and supply any copies of the data in its present format within stated timescales. If any of the processing carried out by the Data Processor consists of decisions taken automatically, full details of the logic will be provided to the Data Controller on commencement of the Agreement, except where these details would constitute a trade secret. The Data Processor must make provision for automated decisions to be taken in a non-automated manner, if such a request is made by a data subject.
14. Hard and soft copy data must be protected by adequate technical and organisational security controls. Any equipment or device (portable or otherwise) used for processing the data electronically must be encrypted and protected by physical and technical controls to prevent unauthorised disclosure, theft or corruption. PCs/laptops (or similar) and any storage devices used (including 'cloud' storage facilities), must always be handled in a secure manner. Hard copy data must be kept secure to also prevent unauthorised disclosure, theft or corruption (e.g. locked in secure cabinets when it is not being used, not kept with portable devices).
15. As data may only be made available to authorised persons, care must be taken not to allow any unauthorised person to see it as hard or soft copy, in temporary or permanent stored form or hear its content discussed in a conversation.
16. Adequate protection must be put in place to ensure any electronic data processed on behalf of the Data Controller does not become infected, eg by malicious code, virus.
17. The Data Processor will provide data subjects with a secure means of inputting and amending personal and special category personal data.
18. No connection may be made from third party equipment holding the data electronically to any other system, except for a secure connection to the Data Processor's own network, unless adequate provisions are made and approved prior to implementation by the Data Controller, to prevent access to the data by unauthorised persons.
19. No modem or similar device shall connect the equipment holding electronic data to a live telephone line or other type of network connection except as required for the purposes and connections allowed above.
20. The Data Controller reserves the right to inspect any equipment or premises used to carry out the processes and procedures of which this Agreement is the subject. The Data Controller reserves the right to screen any employees of the Data Processor to the extent allowed by law. The Data Controller will provide 14 days' notice of the requirement to undertake such inspections or requirement for screening.

21. The Data Controller shall not be responsible for any loss, damage, harm or detriment if it is not in any way responsible for the event giving rise to loss, damage, harm or detriment relating to this contract.
22. The Data Processor will provide the data subject with the same rights of active 'opt in' to receive direct marketing (as per PEC Regulations 2003), correction, blocking, suppression or deletion available to such an individual in accordance with the law, which is applicable to the Data Processor.
23. The Data Processor shall, where necessary, maintain the accuracy and integrity of the data and keep it up to date. The Data Processor shall comply with all instructions from the Data Controller to rectify, delete and update any data and shall confirm to the Data Controller within 14 days that it has done so.
24. The Data Processor will provide data subjects with a complaints handling process.
25. The Data Processor will ensure any actual breaches of physical or technological security that may or has impacted confidentiality, integrity or availability of the Data Controller's data are immediately reported to the Data Controller's Information Governance Manager within 24 hours of the breach.
26. The Data Processor will ensure any actual breaches of the General Data Protection Regulations and/or the terms and conditions of this Agreement that may or has impacted the Data Controller's compliance with data protection legislation are reported to the Data Controller's Information Governance Manager within 24 hours of the breach.
27. The Data Processor will be liable for damage caused by their processing in breach of Telford & Wrekin Council instruction and/or contrary to the requirements of GDPR.
28. The Data Processor shall comply fully with the instructions of the Information Commissioners Office where investigations take place in respect of processing Telford & Wrekin Council data under this contract.
29. The Data Processor should keep a record of their processing of personal data, e.g. type of data processed, purpose of processing, etc. which Telford & Wrekin Council require under this agreement.

Schedule D: Freedom of Information Act 2000

1. The Data Processor acknowledges that the Data Controller has legal responsibilities to make information available under the Freedom of Information Act 2000.
2. The Data Processor shall give reasonable assistance to the Data Controller to comply with the Act.
3. In particular, the Data Processor shall supply all such information and records (together with reasonable assistance to locate the same) which are needed by the Data Controller to comply with its obligations under the Act.
4. The Data Processor acknowledges that the Data Controller shall have the discretion to disclose any information which is the subject to the contract with the Data Processor to any person who makes a request under the Act and which in the opinion of the Data Controller it has to disclose to discharge its responsibilities under the Act.
5. When exercising its rights under the Act the Data Controller shall consult with the Data Processor and may take account of any reasonable suggestions made by it.

Schedule I - Provider Tender

SCHEDULE SERVICE SPECIFICATION AND STANDARDS

1 INTRODUCTION

- 1.1 This Service Specification is for the provision of Independent Mental Health Advocacy
- 1.2 The Service is to be delivered from its current location in the Redwoods Centre, Shrewsbury.

2 SERVICE OVERVIEW

- 2.1 Ensure the service is offered to Service Users who are designated “qualifying patients” by the Legislation as below:
 - 2.1.1 Detained under the Mental Health Act 1983 (even if they are currently on leave of absence from hospital) apart from those Service Users detained under sections 4, 5(2), 5(4), 135 or 136
 - 2.1.2 Conditionally discharged restricted Service Users
 - 2.1.3 Subject to guardianship under the Mental Health Act
 - 2.1.4 On supervised community treatment
 - 2.1.5 Those being considered for a treatment to which section 57 of the Act applies
 - 2.1.6 Those under 18 and being considered for electro-convulsive therapy or any other treatment to which section 58A of the Act applies.
 - 2.1.7 Assist Service Users to understand the legal provisions to which they are subject under the Legislation and the rights and safeguards to which they are entitled.
 - 2.2 Assist Service Users to obtain information about any of the following:
 - 2.2.1 The provisions of the legislation under which they qualify for an IMHA
 - 2.2.2 Any conditions or restrictions they are subject to for example as a condition of leave of absence from hospital, as a condition of a community treatment order or as a condition of conditional discharge
 - 2.2.3 The medical treatment being given, proposed or being discussed and the legal authority under which this would be given
 - 2.2.4 The reasons for that treatment (or proposed treatment) and the legal authority for providing that treatment, and the safeguards and other requirements of the Act which would apply to that treatment
 - 2.2.5 The requirement that would apply in connection with the giving of the treatment
 - 2.2.6 Their rights under the Legislation and how those rights can be exercised.
 - 2.3 Encourage and enable Service Users to exercise their rights. This help will include:
 - 2.3.1 Supporting Service Users in accessing information and to support greater understanding what is happening to them
 - 2.3.2 Supporting Service Users in exploring options, to make more informed decisions and actively engaging with decisions that are being made
 - 2.3.3 Supporting Service Users in articulating their own views
 - 2.3.4 Speaking on the Service User’s behalf and representing them where required
 - 2.4 Supporting Service Users in other ways to ensure they can participate in the decisions that are made about their care and treatment.
 - 2.5 Support the rights which other people (e.g. nearest relatives) have in relation to Service Users under the Legislation.
 - 2.6 Support the rights of the Service User and seek advice from others e.g. a lawyer.
 - 2.7 Support the rights of the Service User and the rights of their nearest relative to any entitlement to legal aid.
 - 2.8 Act independently of any person who is professionally concerned with the Service User's medical treatment or who comes to visit or interview a Service User.
- ### **3 INFORMATION**
- 3.1. The Service Provider shall have leaflets available to Service Users which: explain the role of an Independent Mental Health Advocate (IMHA); contain information about the Service Provider’s confidentiality and complaints policies; explain how Service Users

can contact their advocate; explain the Provider's referral policy. The Service Provider will ensure the information leaflets are in an accessible format wherever possible.

- 3.2 The Service provider shall ensure regular communication with the provider of mental health services (Midlands Partnership Foundation Trust) to ensure
- 3.3 A mutual understanding roles and responsibilities
- 3.4 Mental Health Staff are aware of the service and statutory obligations
- 3.5 Constructive feedback is given on any emerging issues or trends
- 3.6 An agreed process for resolving operational issues

4 OPERATION

The Service Provider shall:

- 4.1 ensure advocacy is delivered on an individual basis (or 1 to 1) with Service Users. In general the Service Provider will support the Service User in their chosen course of action unless this action puts the Service User the IMHA or others at risk of danger or the action is illegal.
- 4.2 have policies in place that address the delivery of non-instructed advocacy to capture all Service Users who are unable to instruct IMHA services themselves.
- 4.3 ensure the Service is not provided for the IMHA to act as an "expert witness" or be expected to function as "appropriate adults" as defined in the Police and Criminal Evidence Act 1984.
- 4.4 ensure IMHAs do not give Service Users advice on topics not related to the Service nor will they state a preference for a particular course of action.
- 4.5 The Service Provider is expected to work flexibly in identifying an appropriate time to meet with Service Users.

5 SERVICE SCOPE

The Service Provider shall

- 5.1 ensure the IMHA takes instruction from the person they are supporting, and act only on their behalf in line with the Mental Health Act Code of Practice.
- 5.2 focus on the specific issues which relate to restrictions, treatment or accommodation, placed on people through the provisions of the mental health act.
- 5.3 represent the Service User's wishes (as far as those wishes are known) and ensure the Service User's rights are respected. The Provider will provide support to Service Users who are unable to express their wishes clearly, or where the Service User does not have the mental capacity to instruct or has difficulties communicating, working within best interest decision making
- 5.4 ensure the Service is appropriate to people's needs and the Service Provider must also recognise that an individual's needs may change over time and respond accordingly.

6 ACCESS CRITERIA

The Service shall be provided to Service Users who are 16 years or older.

7 REFERRAL

The Service Provider shall

- 7.1 ensure all referrals to the Service are made directly by self-referral or through a third party such as: hospital managers; the responsible clinician or approved mental health professional; local authority staff.
- 7.2 respond to a referral for IMHA support within 3 days; it is acknowledged that the Service may not be provided as quickly as this in certain circumstances, for instance when the Service User is too unwell to engage with the Service. This response will be made direct to the Service User, and where the referral is made via a Third Party the referring body will be notified that a response has been made. The Service Provider is not expected to provide 24 hour and 7 day a week responses to requests or to react to emergency calls. The provider is expected to provide a flexible service which reflects the nature of the services.
- 7.3 reserve the right to not provide or to withdraw the Service where:
 - an IMHA is threatened either verbally or physically by the Service User
 - the support requested could be more appropriately carried out by another agency

- the support requested falls outside the scope of this Service. In this instance the provider will notify the Service User in writing of its reasons, and will advise on alternative provision or support.

7.4 make available a copy of their referral policy on request which will include how they prioritise responses to referrals.

8 PROTOCOLS FOR VISITING SERVICE USERS

The Service Provider shall

- 8.1 ensure Advocates follow policies in line with protocols agreed with the National Health Service Trust or other service provider when visiting Service Users in individual wards or units.
- 8.2 ensure Advocates follow the Service Provider's policies regarding meeting Service Users in the community.
- 8.3 ensure that the Service User is happy to meet with the IMHA, especially where the referral was received from a third party. No pressure shall be put on a Service User or third party to engage with the Service Providers Service.
- 8.4 explain to the Service User the role of an IMHA and what the IMHA can and cannot do and that the Service Providers Service is free and independent of statutory service provision.
- 8.5 explain the Service Provider's confidentiality policy including circumstances when confidentiality can be broken and will ensure as far as possible that this is understood by the Service User.
- 8.6 ensure that they work in such a way that adheres to the Service User's wishes and empowers the Service User and remains issue focused.
- 8.7 work to a broadly circular process as follows - listen, discuss options, agree action, research and gather information, review options in light of information, confirm action, provide support through the action requested, review outcome, try another option of outcomes if necessary, close case issue.

9 CONSENT TO ACT

The Service Provider shall ensure that:

- 9.1 The IMHA will always obtain written consent from a Service User to act for them if possible. A copy of this consent form will be shown to any third party the IMHA contacts when carrying out the Service User's wishes.
- 9.2 Where it is not possible to obtain written consent due to the Service User's lack of capacity the IMHA keeps a written record to show that the signature was requested and the reason for it not being possible to obtain it working within the parameters of best interest decision making.

10 INDEPENDENT MENTAL HEALTH ADVOCATE CONDUCT

The Service Provider shall ensure that

- 10.1 IMHAs behave professionally at all times. Awareness raising and promotion of the service is essential.
- 10.2 IMHAs attempt to form good relationships with other staff and agencies.
- 10.3 IMHAs do not express comments about staff to Service Users except where an IMHA needs to express or imply a view in order to explore a Service User's views if the IMHA has witnessed inappropriate behaviour by staff. Any such exceptions must be reported by the IMHA to their line manager as soon as possible.
- 10.4 IMHAs endeavour to ensure that their personal feelings about a member of staff or their actions do not influence their working relationship with that member of staff.
- 10.5 the IMHA recognises the role of family members, significant others and nearest relatives.

11 CASE RECORDING

The Service Provider shall

- 11.1 keep a record of all work undertaken on behalf of a Service User for six years after completion.
- 11.2 ensure its facilities for storing records such as filing cabinets must be lockable and in a secure environment. Evidence must be available that any statutory requirements

- relating to the premises have been complied with
- 11.3 ensure Advocacy support records are divided into sections on each discrete issue pursued. Dates when the IMHA first started supporting a Service User on a particular issue should be recorded as well as the time taken and the date completed.
 - 11.4 collate all statistical data onto an agreed computerised database using agreed formatting and categorisation issues.
 - 11.5 ensure the following information is recorded in respect of each Service User:
 - 11.5.1 name, address, date of birth
 - 11.5.2 gender, ethnic origin and significant, relevant items of personal/medical history and critical incidents
 - 11.5.3 next of kin - name, address and telephone number
 - 11.5.4 GP - name, address and telephone number
 - 11.5.5 date of referral
 - 11.6 ensure Staff files are maintained and include the following information:
 - 11.6.1 name, address and telephone number
 - 11.6.2 position held and hours worked. Including Job Description and Person Specification.
 - 11.6.3 next of kin - name, address and telephone number
 - 11.6.4 GP - name, address and telephone number
 - 11.6.5 Date of issue of identification and retrieval if appropriate
 - 11.6.6 Recruitment details including references, evidence of DBS disclosure and interview
 - 11.6.7 Induction and training records
 - 11.6.8 Copies of training certificates and qualifications
- 12 SERVICE USER REVIEWS
- 12.1 The provider shall review open cases frequently to assess continued eligibility and need.
 - 12.2 The IMHA intervention will end when the identified need has been met and the case will be closed subject to further referrals.
- 13 ADVOCACY
- 13.1 The Service Provider should make the Service User aware of advocacy services, either the Service Provider's own or other local/national organisations'. This should include the NHS Complaints Advocacy Service.
- 14 SERVICE REQUIREMENTS AND STANDARDS
- 14.1 GENERAL STAFFING
 - 14.1.1 All IMHAs must be skilled and competent for the employed post and to undertake further training and development; this is to include successfully completing the IMHA module of the national advocacy qualification as soon as possible and no later than one year of starting employment.
 - 14.1.2 IMHAs must:
 - 14.1.2.1 Be 18 years of age or over
 - 14.1.2.2 Have satisfactory Disclosure and Barring Service clearing
 - 14.1.2.3 Not be a family member, friend or Nearest Relative of the person receiving the service, or connected in any way with the circumstances of the referral
 - 14.1.2.4 Have specific experience (related to working with people who need support with making decisions, advocacy experience and experience of health and care systems).
 - 14.1.2.5 Understand the principles of the Mental Health Act and be able to analyse the powers of the Act.
 - 14.1.2.6 Be able to use the Mental Health Act to explain the process of compulsion (for individual Service Users who are detained or who are liable to be detained, individuals under guardianship or Supervised Community Treatment).
 - 14.1.3 IMHAs will have appropriate training in:
 - 14.1.3.1 .matters relating to mental health and the legal and social implications for

- someone with a mental health condition
 - 14.1.3.2 Data Protection
 - 14.1.3.3 The Mental Health Act
 - 14.1.3.4 The Mental Capacity Act
 - 14.1.3.5 Advocacy
 - 14.1.3.6 Boundaries
 - 14.1.3.7 Reflective Practice
 - 14.1.3.8 Safeguarding
- 14.14 The Service Provider will ensure that it maintains up to date understanding and knowledge of best practice and skills and competencies for mental health advocacy.
- 14.15 The Service Provider shall make contingency arrangements to ensure the continuity of and the availability of the Service for example during annual leave and staff sickness. The Service Provider to ensure that in the case of staff absences of over 7 days the client will be given access to an alternative advocate to ensure their issues are addressed.
- 14.16 The Service Provider to ensure all Staff receive monthly professional supervision and annual performance appraisals with a line manager. Records of supervision shall be maintained for each member of Staff.
- 14.17 It is acknowledged that the Service Provider may not be able to employ a sufficient number of advocates to meet the range of requests for IMHAs from specific ethnic, religious and other groups. It is therefore expected that the Provider to create working partnerships with other specialist advocacy services locally to increase the choice of support offered.
- 14.18 The Provider must evidence that:
 - 14.18.1 Staff appointed as IMHAs meet the Code Of Practice for Advocates and the Mental Health Act Code of Practice
 - 14.18.2 There is a clear induction programme
 - 14.18.3 Advocates have access to accredited generic training courses
 - 14.18.4 Advocates receive ongoing professional training and support
 - 14.18.5 Confidentiality and security training needs of staff must be assessed on an ongoing basis taking into account the role of each member of Staff used to provide the Service.
 - 14.18.6 Advocates receive regular recorded supervision.
- 14.19 Staff must be provided with:
 - 14.19.1 a contract of employment
 - 14.19.2 a comprehensive job description
 - 14.19.3 monthly supervision from a line manager employed by the Provider
 - 14.19.4 a comprehensive induction and personalised training programme
 - 14.19.5 access to specialist training
- 14.20 The Service Provider must co-operate with all complaints or Safeguarding investigations undertaken by the Council. Where necessary the manager or a suitable representative will, if requested, attend any meeting to discuss either a complaint or vulnerable adult issues.
- 14.21 The Service Provider will ensure that:
 - 14.21.1 There is a clear written job description and employee specification for all Staff.
 - 14.21.2 Job applications are in writing and describe previous experience, training, full employment history since leaving school and explain the reason for leaving and any gaps in employment.
 - 14.21.3 Candidates selected for possible appointment are interviewed and two satisfactory written references are obtained, one of which must be from their current or last employer and from a previous employer from the care sector where applicable. Provision must be made for references to be taken from all previous employers if required. References should ask reasons for leaving, whether the employers providing the reference would offer re-

- employment and whether any disciplinary investigations have been undertaken and why.
- 14.21.4 References are received and checked before employment commences, including the authenticity of the reference.
 - 14.21.5 Job applicants make a written declaration of previous convictions and disqualifying conditions and provide information of any other name by which they have been known.
 - 14.21.6 The identity of all Staff is verified prior to employment using an official document.
 - 14.21.7 The authenticity of qualifications is checked prior to employment.
 - 14.21.8 Staff are provided with information about their conditions of employment.
 - 14.21.9 All Staff make a written undertaking in respect of confidentiality.
 - 14.21.10 Where any concerns have been raised about a potential member of Staff by a referee or through the Disclosure and Barring Service check and the person is nevertheless deemed to be suitable for care work appropriate and sufficient monitoring is undertaken by the Service Provider in respect of the concerns raised. The Service Provider must be able to demonstrate that such monitoring has been carried out.
- 14.22 The Service Provider must inform Staff that the Council reserves the right to view their Staff records.
 - 14.23 The Service Provider shall provide a means of identification to all its Staff and shall require them to produce and display such identification at all times.
 - 14.24 All new Staff must be appointed on a probationary contract, renewal of which must be dependent upon satisfactory performance and completion of the Induction Programme. This provision must also apply to internal transfers.
 - 14.25 The Service Provider shall at all times during the period of this Agreement engage sufficient Staff of sufficient ability, skill, knowledge, training and experience for the proper performance of the Service and shall continuously supervise the performance of Staff and ensure that there is a sufficient reserve available to provide the Service at all times.
 - 14.26 The Service Provider shall be entirely responsible for the employment and conditions of service of its own employees and shall at all times be fully responsible for the payment of all salaries and wages income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any persons employed by the Service Provider and shall fully and promptly indemnify the Council in respect of any liability of the Council in respect thereof.
- 15 EQUALITY OF ACCESS AND TREATMENT
- 15.1 Service Users will be treated equally and will be afforded fair opportunity within the Service. This applies to all processes and procedures – referral, acceptance, general care and departure.
 - 15.2 The Service Provider will operate an Equal Opportunities Policy which will be approved by the Council.
 - 15.3 There will be a Policy of no toleration of interpersonal abuse of a racial, religious, sexual or disablist nature from Service Users, whether this is directed at other Service Users, Staff or visitors. This Policy will be produced by the Service Provider and approved by the Council.
- 16 POLICIES AND PRACTICES OF THE ORGANISATION
- 16.1 The Service Provider will ensure that the following policy and procedures are maintained and reviewed annually:
 - 16.1.1 Code of Practice for Advocates
 - 16.1.2 Health & Safety
 - 16.1.3 Anti-Oppressive Practice
 - 16.1.4 Equal Opportunities
 - 16.1.5 Complaints Procedure
 - 16.1.6 Confidentiality

- 16.1.7 Disciplinary & Grievance Procedure
- 16.1.8 Recording Accidents and Emergencies
- 16.1.9 Whistle blowing
- 16.1.10 Visiting Service Users on a ward or unit
- 16.1.11 Visiting Service Users in the community
- 16.1.12 Safeguarding
- 16.1.13 Mental Capacity Act
- 16.2 The Service Provider to ensure its staff sign against all the above critical policies and procedures to demonstrate that they have read and understood them. Records evidencing this shall be maintained within staff files.
- 17 STAFF ROOMS / OFFICES AND RECEPTION AREA
These rooms must include safe, storage facilities for confidential Service User files and information. Staff facilities should have space to store the Service Provider's policies and procedures so Staff are able to access them in private.
- 18 OUTCOMES AND SERVICE PERFORMANCE INDICATORS
- 18.1 Any outcomes that are relevant to the Service User in table below (A5.2) are to be included in the Service User Support Record.
- 18.2 The following are expected outcomes for Service Users from the Service provided:
 - 18.2.1 Understand Legal provision
 - 18.2.2 Obtaining information
 - 18.2.3 Supported to exercise rights
 - 18.2.4 Supported Rights of other people for example nearest relative
 - 18.2.5 Supported to seek advice from others for example Solicitors
- 18.3 The Service Provider will record outcomes for individual Service Users and report on these to the Council if requested.
- 18.4 Additional outcomes that are specific to a Service User and fall within the wider aim of the Service should also be detailed in the Service User's support records.
- 18.5 The Service Provider shall ensure that the Services contribute to the Co-operative Council vision and priorities:
 - 18.5.1 Protect and create jobs as a 'Business Supporting, Business Winning Council'
 - 18.5.2 Improve local people's prospects through education and skills training
 - 18.5.3 Protect and support our vulnerable children and adults
 - 18.5.4 Ensure that neighbourhoods are safe, clean and well maintained
 - 18.5.5 Improve the health and wellbeing of our communities and address health inequalities regenerate those neighbourhoods in need and work to ensure that local people have access to suitable housing
- 18.6 Compliance on performance will be used by the Council as a basis for determining performance within outcome areas. In addition to these, the indicators below may be monitored at the Service Provider's premises.

19 INDICATORS AND MONITORING

Outcomes Sought	Indicators	Monitoring
IMHA O1: Service User understanding of IMHA	Information leaflet Availability of service	Case Records Service User Feedback Contract Review
IMHA O2: Improved access to IMHA Service	Shared information and data Partnership working across all agencies and professionals	Contract Review Quarterly Reports
IMHA O3: Service Users should have	Service Users know how to make a complaint, and are supported in doing	Complaints procedure Documented outcomes for each

their complaints listened to and acted on properly	so.	complaint Use of Advocacy / representation Contract Review Meetings Quarterly Reports
IMHA O4: Service User's personal records, should be accurate and kept safe and confidential.	Service User files should be properly maintained and utilised by all staff who are involved in their support. Policies and procedures regarding handling information and the safe disposal of confidential information should be in place and utilised.	Data Protection policy and procedure Confidentiality Policy & Procedure Staff Handbook and appropriate Disciplinary Procedure for dealing with breaches Secure systems for storing information Contract Review Meetings Quarterly Reports
IMHA O5: Current Activity	Total number of eligible Service Users. Total number of referrals Source of referrals Referrals broken down by Age, Gender, Ethnicity and location Qualifying factors Recurring Service Users	Support Records Annual Report Contract Review Meetings Quarterly Reports
IMHA O6: Identified Need	Individual issues Collective issue Outcomes achieved	Case studies Service User Feedback Contract Review Meetings Quarterly Reports
IMHA O7: Service Capacity	Time taken on individual cases	Support Record Contract Review Meetings Quarterly Reports
IMHA O8: Reflective practice	Complaints. Safeguarding Lessons learnt Service improvement	Support Record Service User Feedback Feedback from partner agencies Risk Assessments Contract Review Meetings Quarterly Reports
IMHA O9: Sustainability	Annual financial accounts Management accounts and strategies Future challenges Risk log	Contract Review Meetings Quarterly Reports
IMHA O10: Sign posting to other services	Wherever possible Service Users must be encouraged and supported to access other relevant services	Support records Case studies Service User feedback Contract Review Meetings Quarterly Reports

20 SERVICE PERFORMANCE TARGETS

- 20.1 The Service performance will be measured against the following criteria. Targets set are specific to the individual Service and reflect the needs groups and Service limitations.
- 20.2 Failure to meet the targets set may lead to default and/or renegotiation of the Contract at annual review

		Target	Measured through
IMHA T1: Service Utilisation	The full service available will be fully utilised at all times during the term of the contract.	100% of Service	Report at Contract Review
IMHA T2: Staffing	<p>Service Users should be cared for by staff who are properly qualified and able to do their job.</p> <p>There should be enough members of staff to keep people safe and meet their health and welfare needs.</p> <p>Staff should be properly trained and supervised, and have chance to improve their skills.</p>	100% compliance	Evidence of DBS checks Induction Programme Staff Files Staffing mix, and staff rota. Training and Development programme Supervision schedule and policy
IMHA T3: Delivery of a personalised service which demonstrates Service User engagement	<p>The Service should demonstrate how it ensure a personalised approach to care planning and service delivery.</p> <p>Service Users should be actively engaged in their care, and the delivery of the overall service.</p>	Evidence compliance.	Support Record Service Users Meetings Service User Feedback Advocacy Services Contract Review Meetings Quarterly Reports Case Studies

21 CONTINUAL SERVICE IMPROVEMENT PLAN

- 21.1 The Service Provider is expected to evidence continuous improvements to ensure the best possible outcomes for the Service Users. Evidence should be made available to the Council.
- 21.2 The views of Service Users should be regularly sought with regards to feedback of the existing service and as part of a programme of continuous improvement.

SIGNED by _____)
 authorised signatory on behalf of _____)
 SHROPSHIRE COUNCIL _____)

SIGNED by _____)
 authorised signatory on behalf of _____)
 SHROPSHIRE COUNCIL _____)

SIGNED by _____)

authorised signatory on behalf of)
the SERVICE PROVIDER)

Name.....

Position in Organisation.....



Tender Response Document

AMCV 263 – INDEPENDENT MENTAL HEALTH ADVOCACY

Name of TENDERING
ORGANISATION
(please insert)

VoiceAbility

Please also add your company name to the footer of each page of the returned document

Shropshire Council Tender Response Document

Contract Description/Specification:

Shropshire Council and Telford and Wrekin Council currently hold separate contracts with the same provider for an Independent Mental Health Advocacy (IMHA) service. These contracts expire on 31.03.19 and the Councils are letting a joint tender again and seek to appoint one single provider to work across both Council areas from 1.04.19.

Contracts will be for an initial 3 years with an option for both Councils to extend for a further two.

Each Council will need to demonstrate that the service is providing value for money. The successful provider will therefore need to ensure that records are kept and supplied regularly to the Councils, in accordance with the Service Specification, on the work being undertaken under each contract and volumes are expected to reflect the funding split across the Councils as detailed under Price below.

The IMHA service is offered to individuals who are:

- Detained under the Mental Health Act 1983 (even if they are currently on leave of absence from hospital) apart from those Service Users detained under sections 4, 5(2), 5(4), 135 or 136
- Conditionally discharged restricted Service Users
- Subject to guardianship under the Mental Health Act
- On supervised community treatment
- Those being considered for a treatment to which section 57 of the Act applies
- Those under 18 and being considered for electro-convulsive therapy or any other treatment to which section 58A of the Act applies.

The Service will include assisting individuals receiving the service to: understand the legal provisions to which they are subject under the Legislation and the rights and safeguards to which they are entitled; obtain information about the conditions or restrictions they are subject to; obtain information on medical treatment being given, proposed or being discussed and understand the reasons for the treatment; understand and exercise their rights.

Contracts

Both Councils will again hold separate contracts with the successful provider.

Telford and Wrekin's Terms and Conditions Contract and Shropshire Council's Form of Contract are included with the tender documentation and the Service Specification is also included which has been drafted jointly by the Councils. The Service Specification will be included in each contract when completing contracts with the provider.

Price

Both Councils have a budget for this service and price bids will not be accepted above the following amounts:

Shropshire Council	£45,650 per annum
Telford and Wrekin Council	£26,669 per annum

Tender & Contract

Tenders are invited from providers for the initial period up to 31.03.22.

The Council is looking to appoint a provider:

- who is able to deliver a service starting on 01.04.19
 - that can demonstrate their understanding of IMHA and their ability to deliver this Service

TUPE

Applicants should note that it is considered that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') may apply to this contract. Applicants are advised to seek their own legal advice in this regard.

Instructions for the completion of this document

1. This document must be completed in its entirety with responses being given to all questions. If you are unsure of any section/question and require further clarification, please contact us via our Delta Tenderbox. You are recommended to keep a copy of all tender documents and supporting documents for your own records.
2. Tenderers must also complete and sign the four certificates in Sections A1 to A4. These must be signed;
 - a) Where the tenderer is an individual, by that individual;
 - b) Where the tenderer is a partnership, by two duly authorised partners;
 - c) Where the tenderer is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose.
3. All questions require specific responses from you relating to the organisation named in Section B Question 1.1 (a). All information supplied must be accurate and up to date. The Council reserves the right to refuse to consider your application if the Tender Response Document is not fully completed or is found to be inaccurate.
4. Where copies of certificates and other details are requested **a copy must** accompany the electronic copy of your Tender Response Document.

Contents

Section	Description	Page
A1	Form of Tender	8
A2	Non-Canvassing Certificate	9
A3	Non-Collusive Tendering Certificate	10
A4	Declaration of Connection with Officers or Elected Members of the Council	11
You must sign all 4 certificates in sections A1 to A4		
B Part 1	Supplier Information– For information only	14
B Part 2 Section 2	Grounds for <u>Mandatory</u> Exclusion	18
B Part 2 Section 3	Grounds for Discretionary Exclusion	21

Evaluation Criteria

Tenders will be evaluated on the answers provided in this 'Tender Response Document' in the Standard Selection Questionnaire part. The following criteria is made up of 'pass/fail' (selection) questions and 'weighted marked' (award) questions and shows how each section is to be marked.

Selection Criteria Pass/Fail Questions (Sections B Part 1 – Part 3)

This information will be provided for proof of compliance and will be judged on a pass or fail basis. Applicants must comply with these issues to demonstrate their proven competency, financial stability, resources and other arrangements. Questions marked 'For information only' will not be assessed; however they must still be answered in full.

Section / Question No.	Selection Criteria
Section B Part 1	Supplier Information– For information only
Section B Part 2 Section 2	Grounds for <u>Mandatory</u> Exclusion
Section B Part 3 Section 3	Grounds for Discretionary Exclusion

In relation to discretionary exclusion grounds (section B part 3):-

Financial viability: Responses will be analysed and evaluated by the Authority's Audit sections and will include checks via an independent agency (currently Equifax).

If the financial analysis of the Applicant (please note financial information provided by consortium members will be evaluated to assess the Applicant consortium as a whole) gives cause for concern as to its ability to deliver the Contract, the Applicant will fail this section.

If the financial analysis of the Applicant does not give any cause for concern as to its ability to deliver the Contract – it shall be deemed to have passed the section.

Please note the Contracting Authority reserves the right to further check the Financial Stability and Capacity of an applicant prior to any award of contract in the manner set out above in order to ensure that they still pass that requirement.

For other Discretionary exclusion grounds: If in the opinion of the Contracting Authority the responses provided casts serious doubt on the Tenderer's ability to perform this contract, they may be excluded.

Award Criteria – Weighted Marked Questions

Tenders will be evaluated on the answers provided in this Tender Response Document and judged against the criteria shown in the table below. The following award criteria is made up of 'Quality' and 'Price' and shows how each criteria is to be weighted against each other.

Section / Question No.	Award Criteria	Weighting / Max Marks Available
Price 30% (43 marks)		

Section C / Q 2.1	Price	43 max marks
Total for price		43 max marks
Quality 70% (100 marks)		
Section C / Q 1.1	Organisational Ability	2 / 20 max marks
Section C / Q 1.2	Service delivery	2 / 20 max marks
Section C / Q 1.3	Recruitment & retention of staff	1 / 10 max marks
Section C / Q 1.4	Staff Supervision	1 / 10 max marks
Section C / Q 1.5	Social Value	1 / 10 max marks
Section C / Q 1.6	Challenges of delivering service	1 / 10 max marks
Section C / Q 1.7	Case Scenario	1 / 10 max marks
Section C / Q 1.8	Data Protection	0.5 / 5 max marks
Section C / Q 1.9	Implementation Plan	0.5 / 5 max marks
Total for quality		10 / 100 max marks

Quality Questions/ Scoring Scheme

Questions within the quality sections shown above will be scored using the following scoring scheme. Each answer from the questions identified below will be given a mark between 0 and 10 with the following meanings:

Assessment	Mark	Interpretation
Excellent	10	<i>Exceeds the requirement. Exceptional demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	9	
Good	8	<i>Satisfies the requirement with minor additional benefits Above average demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	7	
Acceptable	6	<i>Satisfies the requirement. Demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures, with evidence to support the response.</i>
	5	
Minor Reservations	4	<i>Satisfies the requirement with minor reservations Some minor reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with limited evidence to support the response.</i>
	3	
Serious Reservations	2	<i>Satisfies the requirement with major reservations. Considerable reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no</i>

		<i>evidence to support the response.</i>
	1	
Unacceptable	0	<i>Does not meet the requirement Does not comply and/or insufficient information provided to demonstrate how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>

The use of odd numbers indicates an answer's allocated mark lies between definitions.

The tender receiving the highest initial mark for Quality Criteria overall will receive the full 100 marks available for Quality. Other tenders will receive a final mark that reflects the % difference in the initial marks between those tenders and the tender receiving the highest initial mark for Quality overall.

Price Evaluation and scoring

The most competitively priced tender will receive the maximum mark for price being **43**. **Less competitive tenders** will receive a % of the maximum mark that represents the difference in cost between that tender and the most competitively priced tender.

Price will be evaluated using the total cost per annum tendered in Section C Question 2.1.

Section A: **1. Form of Tender**

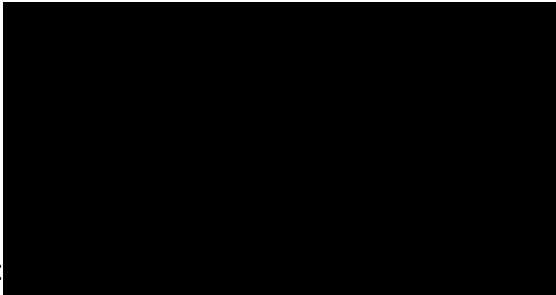
Form of Tender

Shropshire Council

Tender for **AMCV 263 – Independent Mental Health Advocacy**

We confirm that this, our tender, represents an offer to Shropshire Council that if accepted in whole, or in part, will create a binding contract for the provision of an Independent Mental Health Advocacy Service at the prices and terms agreed and subject to the terms of the invitation to tender documentation and the General Terms and Conditions, copies of which we have received.

Signature:
Name:



Date: 26/11/2018

Designation: Director of Business Development

Company: VoiceAbility

Address: Unit 1, The Old Granary, Oakington, Cambridgeshire,
Post Code CB24 3AR

Tel No: 07770014102

E-mail address: fundraising@voiceability.org.uk

Web address: www.voiceability.org

Section A:
2. Non – Canvassing Certificate

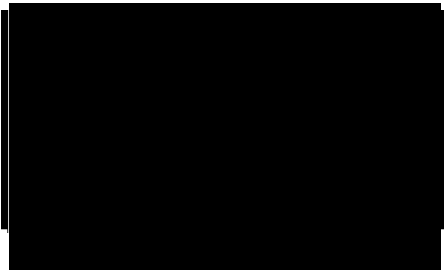
Non-Canvassing Certificate

To: Shropshire Council (hereinafter called “the Council”)

I/We hereby certify that I/We have not canvassed or solicited any member officer or employee of the Council in connection with the award of this Tender or any other Tender or proposed Tender for the Services and that no person employed by me/us or acting on my/our behalf has done any such act.

I/We further hereby undertake that I/We will not in the future canvass or solicit any member officer or employee of the Council in connection with the award of this Tender or any other Tender or proposed Tender for the Services and that no person employed by me/us or acting on my/our behalf will do any such act.

Signed (1)



Status Director of Business Development

Signed (2)

Status.....

(For and on behalf of VoiceAbility)

Date 26/11/2018

Non-collusive Tendering Certificate

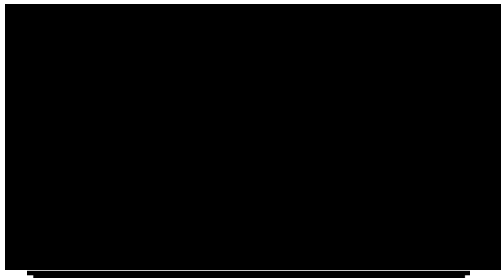
To: Shropshire Council (hereinafter called “the Council”)

The essence of selective tendering is that the Council shall receive bona fide competitive Tenders from all persons tendering. In recognition of this principle:

I/We certify that this is a bona fide Tender, intended to be competitive and that I/We have not fixed or adjusted the amount of the Tender or the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other person.

I/We also certify that I/We have not done and undertake that I/We will not do at any time any of the following acts:-

- (a) communicating to a person other than the Council the amount or approximate amount of my/our proposed Tender (other than in confidence in order to obtain quotations necessary for the preparation of the Tender for insurance); or
- (b) entering into any agreement or arrangement with any other person that he shall refrain from Tendering or as to the amount of any Tender to be submitted; or
- (c) offering or agreeing to pay or give or paying any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender for the Services any act or omission.



Signed (1) Status: Director of Business Development

Signed (2) Status.....

(For and on behalf of VoiceAbility)

Date 26/11/2018

4. Declaration of Connection with Officers or Elected Members of the Council

Are you or any of your staff who will be affected by this invitation to tender related or connected in any way with any Shropshire Council Elected Councillor or Employee?

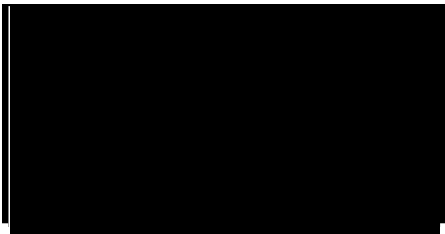
No

If yes, please give details:

Name	Relationship

Please note:

This information is collected to enable the Council to ensure that tenders are assessed without favouritism. Whether or not you have a connection with elected members or employees will have no bearing on the success of your tender, but your tender will not be considered unless this declaration has been completed.

Signed (1)		Status Director of Business Development
Signed (2)	Status.....
(For and on behalf of VoiceAbility) Date 26/11/2018		

SECTION B

Standard Selection Questionnaire

Potential Supplier Information and Exclusion Grounds: Part 1 and Part 2.

The standard Selection Questionnaire is a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion. If there are grounds for exclusion (there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning). For the list of exclusion please see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf

A completed declaration of Part 1 and Part 2 provides a formal statement that the organisation making the declaration has not breached any of the exclusions grounds. Consequently we require all the organisations that you will rely on to meet the selection criteria to provide a completed Part 1 and Part 2. For example these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This means that where you are joining in a group of organisations, including joint ventures and partnerships, each organisation in that group must complete one of these self-declarations. Sub-contractors that you rely on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the self-declaration).

When completed, this form is to be sent back to the contact point given in the procurement documents along with the selection information requested in the procurement documentation.

Supplier Selection Questions: Part 3

This document provides instructions on the selection questions you need to respond to and how to submit those responses. If you are bidding on behalf of a group (consortium) or you intend to use sub-contractors, you should complete all of the selection questions on behalf of the consortium and/or any sub-contractors.

If the relevant documentary evidence referred to in the Selection Questionnaire is not provided upon request and without delay we reserve the right to amend the contract award decision and award to the next compliant bidder.

Consequences of misrepresentation

If you seriously misrepresent any factual information in filling in the Selection Questionnaire, and so induce an authority to enter into a contract, there may be significant consequences. You may be excluded from the procurement procedure, and from bidding for other contracts for three years. If a contract has been entered into you may be sued for damages and the contract may be rescinded. If fraud, or fraudulent intent, can be proved, you or your responsible officers may be prosecuted and convicted of the offence of fraud by false representation, and you must be excluded from further procurements for five years.

Notes for completion

1. The “authority” means the contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite suitable candidates to participate in this procurement process.
2. “You” / “Your” refers to the potential supplier completing this standard Selection Questionnaire i.e. the legal entity responsible for the information provided. The term “potential supplier” is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 (referred to as

the “regulations”) and could be a registered company; the lead contact for a group of economic operators; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.

3. Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state ‘N/A’. Should you need to provide additional information in response to the questions, please submit a clearly identified annex.
4. The authority recognises that arrangements set out in section 1.2 of the standard Selection Questionnaire, in relation to a group of economic operators (for example, a consortium) and/or use of sub-contractors, may be subject to change and will, therefore, not be finalised until a later date. The lead contact should notify the authority immediately of any change in the proposed arrangements and ensure a completed Part 1 and Part 2 is submitted for any new organisation relied on to meet the selection criteria. The authority will make a revised assessment of the submission based on the updated information.
5. For Part 1 and Part 2 every organisation that is being relied on to meet the selection must complete and submit the self-declaration.
6. **Note for Contracting Authorities: The following paragraph is optional for inclusion if a decision has been made to request a self-declaration of the exclusion grounds from sub-contractors. All sub-contractors are required to complete Part 1 and Part 2¹.**
7. For answers to Part 3 - If you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration.

The authority confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the regulations, or pursuant to an order of the court or demand made by any competent authority or body where the authority is under a legal or regulatory obligation to make such a disclosure.

¹ See PCR 2015 regulations 71 (8)-(9)

Part 1: Potential supplier Information

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

Section 1	Potential supplier information	
Question number	Question	Response
1.1(a)	Full name of the potential supplier submitting the information	VoiceAbility Advocacy
1.1(b) – (i)	Registered office address (if applicable)	The Old Granary, Westwck Terrace, Oakington, CB24 3AR
1.1(b) – (ii)	Registered website address (if applicable)	https://www.voiceability.org/

1.1(c)	Trading status a) public limited company b) limited company c) limited liability partnership d) other partnership e) sole trader f) third sector g) other (please specify your trading status)	Limited company Company limited by guarantee with charitable status
1.1(d)	Date of registration in country of origin	30/09/1999
1.1(e)	Company registration number (if applicable)	3798884
1.1(f)	Charity registration number (if applicable)	1076630
1.1(g)	Head office DUNS number (if applicable)	238064005
1.1(h)	Registered VAT number	GB834575703
1.1(i) - (i)	If applicable, is your organisation registered with the appropriate professional or trade register(s) in the member state where it is established?	Yes <input type="checkbox"/> No <input type="checkbox"/> ✓ N/A <input type="checkbox"/>
1.1(i) - (ii)	If you responded yes to 1.1(i) - (i), please provide the relevant details, including the registration number(s).	
1.1(j) - (i)	Is it a legal requirement in the state where you are established for you to possess a particular authorisation, or be a member of a particular organisation in order to provide the services specified in this procurement?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/>
1.1(j) - (ii)	If you responded yes to 1.1(j) - (i), please provide additional details of what is required and confirmation that you have complied with this.	
1.1(k)	Trading name(s) that will be used if successful in this procurement.	VoiceAbility
1.1(l)	Relevant classifications (state whether you fall within one of these, and if so which one) a) Voluntary Community Social Enterprise (VCSE) b) Sheltered Workshop c) Public Service Mutual	VCSE
1.1(m)	Are you a Small, Medium or Micro Enterprise (SME) ² ?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/>
1.1(n)	Details of Persons of Significant Control (PSC), where appropriate: ³ - Name; - Date of birth; - Nationality; - Country, state or part of the UK where the PSC usually lives;	N/A

	<ul style="list-style-type: none"> - Service address; - The date he or she became a PSC in relation to the company (for existing companies the 6 April 2016 should be used); - Which conditions for being a PSC are met; - Over 25% up to (and including) 50%; - More than 50% and less than 75%; - 75% or more. (Please enter N/A if not applicable)	
1.1(o)	Details of immediate parent company: <ul style="list-style-type: none"> - Full name of the immediate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable) - Head office VAT number (if applicable) (Please enter N/A if not applicable)	N/A
1.1(p)	Details of ultimate parent company: <ul style="list-style-type: none"> - Full name of the ultimate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable) - Head office VAT number (if applicable) (Please enter N/A if not applicable)	N/A

Please note: A criminal record check for relevant convictions may be undertaken for the preferred suppliers and the persons of significant in control of them.

² See EU definition of SME - https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en

³ UK companies, Societates European (SEs) and limited liability partnerships (LLPs) will be required to identify and record the people who own or control their company. Companies, SEs and LLPs will need to keep a PSC register, and must file the PSC information with the central public register at Companies House. See PSC guidance.

Please provide the following information about your approach to this procurement:

Section 1	Bidding Model	
Question number	Question	Response
1.2(a) - (i)	Are you bidding as the lead contact for a group of economic operators?	Yes <input type="checkbox"/> ✓ No If yes, please provide details listed in questions 1.2(a) (ii), (a) (iii) and to 1.2(b) (i), (b) (ii), 1.3, Section 2 and 3. If no, and you are a supporting bidder please provide the name of your group at 1.2(a) (ii) for reference purposes, and complete 1.3, Section 2 and 3.
1.2(a) - (ii)	Name of group of economic operators (if applicable)	Not Applicable
1.2(a) - (iii)	Proposed legal structure if the group of economic operators intends to form a named single legal entity prior to signing a contract, if awarded. If you do not propose to form a single legal entity, please explain the legal structure.	Not Applicable

1.2(b) - (i)	Are you or, if applicable, the group of economic operators proposing to use sub-contractors?	Yes <input type="checkbox"/> ✓ No X			
1.2(b) - (ii)	If you responded yes to 1.2(b)-(i) please provide additional details for each sub-contractor in the following table: we may ask them to complete this form as well. N/A				
	Name				
	Registered address				
	Trading status				
	Company registration number				
	Head Office DUNS number (if applicable)				
	Registered VAT number				
	Type of organisation				
	SME (Yes/No)				
	The role each sub-contractor will take in providing the works and /or supplies e.g. key deliverables				
	The approximate % of contractual obligations assigned to each sub-contractor				

Contact details and declaration

I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.

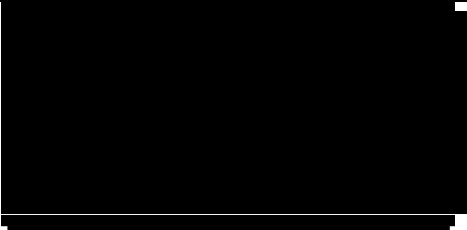
I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document.

I understand that the information will be used in the selection process to assess my organisation's suitability to be invited to participate further in this procurement.

I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.

I am aware of the consequences of serious misrepresentation.

Section 1	Contact details and declaration	
Question Number	Question	Response
1.3(a)	Contact name	[REDACTED]
1.3(b)	Name of organisation	VoiceAbility
1.3(c)	Role in organisation	Director of Business Development
1.3(d)	Phone number	07770 014102
1.3(e)	E-mail address	fundraising@voiceability.org
1.3(f)	Postal address	The Old Granary Westwick Terrace Oakington CB24 3AR

1.3(g)	Signature (electronic is acceptable)	
1.3(h)	Date	28/11/2018

Part 2: Exclusion Grounds

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

Section 2	Grounds for mandatory exclusion	
Question number	Question	Response
2.1(a)	<p>Regulations 57(1) and (2) The detailed grounds for mandatory exclusion of an organisation are set out on the webpage (see link on page 11), which should be referred to before completing these questions. Please indicate if, within the past five years you, your organisation or any other person who has powers of representation, decision or control in the organisation been convicted anywhere in the world of any of the offences within the summary below and listed on the webpage.</p>	
	Participation in a criminal organisation.	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Corruption.	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Fraud.	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Terrorist offences or offences linked to terrorist activities	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Money laundering or terrorist financing	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Child labour and other forms of trafficking in human beings	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If Yes please provide details at 2.1(b)
2.1(b)	If you have answered yes to question 2.1(a), please provide further details. Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction, Identity of who has been convicted If the relevant documentation is available electronically please provide the web address, issuing authority, precise reference	N/A

	of the documents.	
2.2	If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning)	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2.3(a)	Regulation 57(3) Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/>
2.3(b)	If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines.	N/A
2.4	Please confirm that you have in place, or that you will have in place by contract award, the human and technical resources to perform the contract to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects	✓ Yes <input type="checkbox"/> No <input type="checkbox"/>
2.4(a)	Please provide details of the technical facilities and measures (including systems and processes) you have in place, or will have in place by contract award, to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects. Your response should include, but should not be limited to facilities and measures: <ul style="list-style-type: none"> ○ to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services; ○ to comply with the rights of data subjects in respect of receiving privacy information, and access, rectification, deletion and portability of personal data; ○ to ensure that any consent based processing meets standards of active, informed consent, and that such consents are recorded and auditable; 	<div style="background-color: black; width: 100%; height: 100%; min-height: 300px;"></div>

	<ul style="list-style-type: none">○ to ensure legal safeguards are in place to legitimise transfers of personal data outside the EU (if such transfers will take place);○ to maintain records of personal data processing activities; and○ to regularly test, assess and evaluate the effectiveness of the above measures.	<p>[Redacted content]</p>
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		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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Please Note: The authority reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

Section 3		Grounds for discretionary exclusion
Question number	Question	Response
	<p>Regulation 57 (8) The detailed grounds for discretionary exclusion of an organisation are set out on this webpage (see link on page 11), which should be referred to before completing these questions.</p> <p>Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation.</p>	
3.1(a)	Breach of environmental obligations?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(b)	Breach of social obligations?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(c)	Breach of labour law obligations?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(d)	Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(e)	Guilty of grave professional misconduct?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(f)	Entered into agreements with other	Yes <input type="checkbox"/>

	economic operators aimed at distorting competition?	✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(g)	Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(h)	Been involved in the preparation of the procurement procedure?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(i)	Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions?	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2

3.1(j)	Please answer the following statements	
3.1(j) - (i)	The organisation is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(j) - (ii)	The organisation has withheld such information.	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(j) –(iii)	The organisation is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2
3.1(j)-(iv)	The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.	Yes <input type="checkbox"/> ✓ No <input type="checkbox"/> If yes please provide details at 3.2

3.2	If you have answered Yes to any of the above, explain what measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant	N/A
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Part 3: Selection Questions

Section 4	Economic and Financial Standing
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Question number	Question	Response
4.1	Are you able to provide a copy of your audited accounts for the last two years, if requested? If no, can you provide one of the following: answer with Y/N in the relevant box.	✓ Yes <input type="checkbox"/> No <input type="checkbox"/>
	(a) A statement of the turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of Financial Position and Statement of Cash Flow for the most recent year of trading for this organisation.	Yes <input type="checkbox"/> No <input type="checkbox"/>
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	Yes <input type="checkbox"/> No <input type="checkbox"/>
	(c) Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	Yes <input type="checkbox"/> No <input type="checkbox"/>
4.2	Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering 'Yes' or 'No' that you meet the requirements set out.	Yes <input type="checkbox"/> No <input type="checkbox"/>

Section 5	If you have indicated in the Selection Questionnaire question 1.2 that you are part of a wider group, please provide further details below:	
Name of organisation	N/A	
Relationship to the Supplier completing these questions	N/A	

5.1	Are you able to provide parent company accounts if requested to at a later stage?	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.2	If yes, would the parent company be willing to provide a guarantee if necessary?	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.3	If no, would you be able to obtain a guarantee elsewhere (e.g. from a bank)?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Section 6	Technical and Professional Ability	
6.1	Relevant experience and contract examples Please provide details of up to three contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs may include samples of grant-funded work. Contracts for supplies or	

services should have been performed during the past three years. Works contracts may be from the past five years.

The named contact provided should be able to provide written evidence to confirm the accuracy of the information provided below.

Consortia bids should provide relevant examples of where the consortium has delivered similar requirements. If this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle is to be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member).

Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the main intended provider(s) or sub-contractor(s) who will deliver the contract.

If you cannot provide examples see question 6.3

	Contact 1	Contact 2	Contact 3
Name of customer organisation			
Point of contact in the organisation			
Position in the organisation			
E-mail address			
Description of contract			

Contract Start date	
Contract completion date	
Estimated contract value	

6.2	<p>Where you intend to sub-contract a proportion of the contract, please demonstrate how you have previously maintained healthy supply chains with your sub-contractor(s)</p> <p>Evidence should include, but is not limited to, details of your supply chain management tracking systems to ensure performance of the contract and including prompt payment or membership of the UK Prompt Payment Code (or equivalent schemes in other countries)</p>

6.3	<p>If you cannot provide at least one example for questions 6.1, in no more than 500 words please provide an explanation for this e.g. your organisation is a new start-up or you have provided services in the past but not under a contract.</p>
	Not Applicable

Section 7	Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015	
	<p>Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?</p>	<p>Yes <input type="checkbox"/></p> <p style="margin-left: 20px;">✓ N/A</p>
	<p>If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?</p>	<p>Yes <input type="checkbox"/></p> <p>Please provide the relevant url to view the statement ...</p> <p>No <input type="checkbox"/></p>

		Please provide an explanation
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8. Additional Questions

Suppliers who self-certify that they meet the requirements to these additional questions will be required to provide evidence of this if they are successful at contract award stage.

Section 8	Additional Questions
8.1	Insurance
	<p>Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below: Yes</p> <p>Employer's (Compulsory) Liability Insurance = £5,Million</p> <p>Public Liability Insurance = £5Million</p> <p>Professional Indemnity Insurance = £2 million</p> <p>*It is a legal requirement that all companies hold Employer's (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders.</p>

8.2	Skills and Apprentices 4 –	
a.	Do you have a process in place to ensure that your supply chain supports skills, development and apprenticeships in line with PPN 14/15 (see guidance) and can provide evidence if requested?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

⁴ Procurement Policy Note 14/15– Supporting Apprenticeships and Skills Through Public Procurement
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/456805/27_08_15_Skills_Apprenticeships_PPN_vfinal.pdf

8.3 – Compliance with equality legislation

For organisations working outside of the UK please refer to equivalent legislation in the country that you are located.		
1.	In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in any jurisdiction other than the UK)?	<input checked="" type="checkbox"/> No
2.	<p>In the last three years, has your organisation had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds or alleged unlawful discrimination?</p> <p>If you have answered “yes” to one or both of the questions in this module, please provide, as a separate Appendix, a summary of the nature of the investigation and an explanation of the outcome of the investigation to date.</p>	<input checked="" type="checkbox"/> No

	<p>If the investigation upheld the complaint against your organisation, please use the Appendix to explain what action (if any) you have taken to prevent unlawful discrimination from reoccurring.</p> <p>You may be excluded if you are unable to demonstrate to the Authority's satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring.</p>	
3.	If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?	✓ Yes

8.4 – Environmental Management

1.	<p>Has your organisation been convicted of breaching environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator or authority (including local authority)?</p> <p>If your answer to the this question is “Yes”, please provide details in a separate Appendix of the conviction or notice and details of any remedial action or changes you have made as a result of conviction or notices served.</p> <p>The Authority will not select bidder(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the Authority is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> <input type="checkbox"/> No
2.	If you use sub-contractors, do you have processes in place to check whether any of these organisations have been convicted or had a notice served upon them for infringement of environmental legislation?	✓ Yes

8.5 – Health & Safety

1.	Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2.	<p>Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years?</p> <p>If your answer to this question was “Yes”, please provide details in a separate Appendix of any enforcement/remedial orders served and give details of any remedial action or changes to procedures you have made as a result.</p> <p>The Authority will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the Authority's satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> <input type="checkbox"/> No
3.	If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?	✓ Yes

8.6 Safeguarding of adults and children

(for services where staff come into regular contact with children and adults)

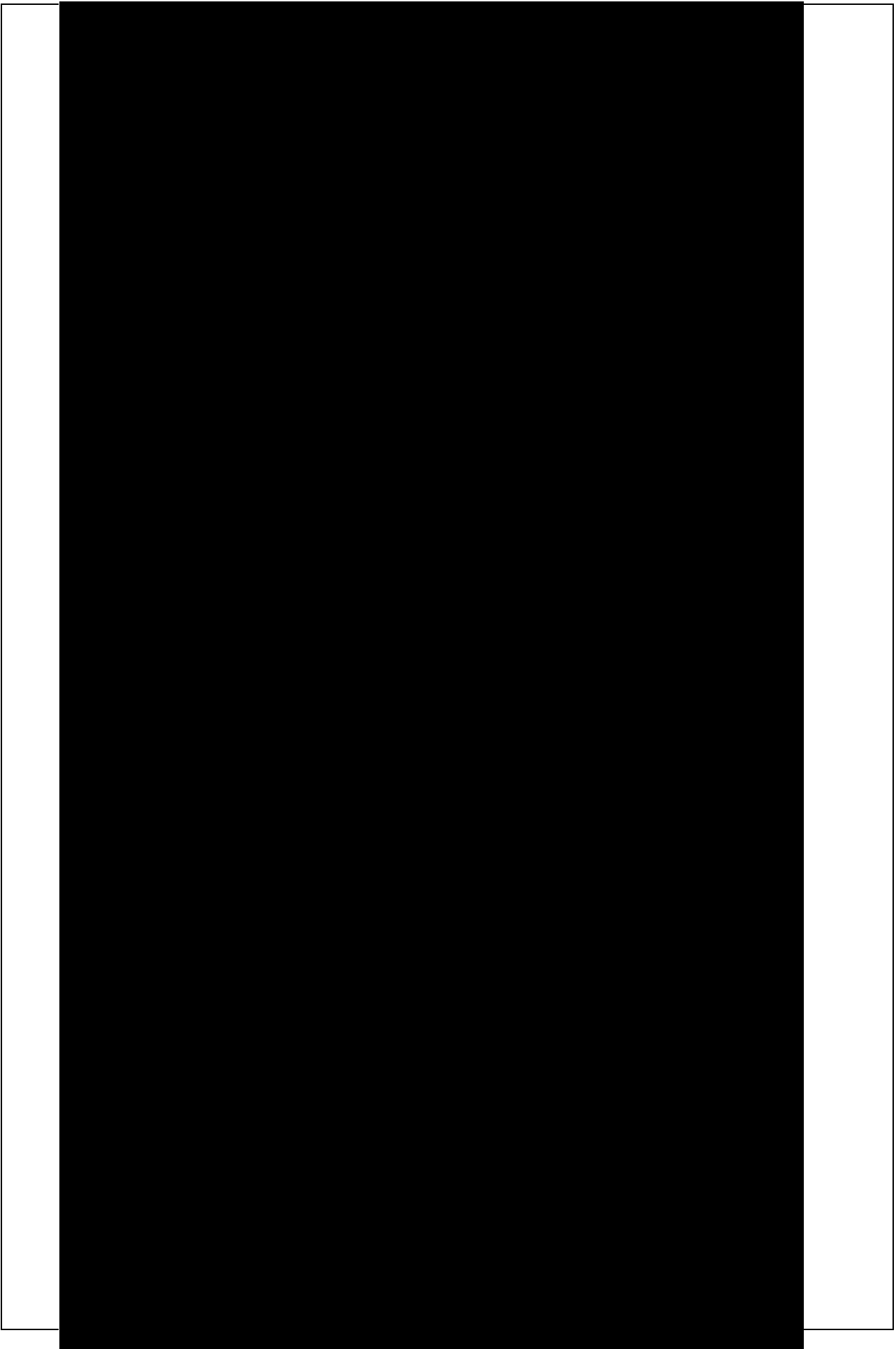
<p>*</p>	<p><i>Why do we need to know this?</i> <i>The safeguarding duties placed on public authorities require the Council and its partners to work to the following guidance:</i> <i>“Working together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children (March 2015)”</i></p> <p>Safeguarding children http://westmidlands.procedures.org.uk/#</p> <p>Safeguarding adults http://keepingadultssafeinshropshire.co.uk/multi-agency-procedures/</p> <p><i>We need to ensure all companies that work with Shropshire Council are clear about our safeguarding expectations and are committed to meet our expectations. The Council also needs to ensure that your organisation has a good record for safeguarding children and adults</i></p>	
<p>1</p>	<p>Do you have a Safeguarding Policy or statement for safeguarding children? Do you have a Safeguarding Policy or statement for safeguarding adults?</p>	<p>YES (A. 8.6.1) YES (A. 8.6.2)</p>
<p>2</p>	<p>For information: our requests for references will include a question relating to your organisation’s record for safeguarding.</p>	
<p>3</p>	<p>As a contractor providing a public service on behalf of a Shropshire Council, we expect that you will be familiar and committed to the local safeguarding procedures as prescribed by Shropshire’s Safeguarding Children Board (SSCB) and http://www.safeguardingshropshireschildren.org.uk/scb/index.html Shropshire Council’s approach to adult protection http://www.shropshire.gov.uk/adultcarer.nsf/open/F54E8A80CF1343BC80257AAF0058F760</p> <p>I/We certify that I/We are familiar with and committed to deliver our service in compliance with local safeguarding processes.</p> <div data-bbox="327 1462 938 1686" style="background-color: black; width: 383px; height: 100px; margin: 10px 0;"></div> <p>Signed _____ Status Director of Business Development (For and on behalf of VoiceAbility)</p> <p>Date 29/09/2018</p>	

8.7 It is a requirement within the terms and conditions for this Contract that where requested in writing during the term of the Agreement that the Contractor will ensure that an appropriately authorised

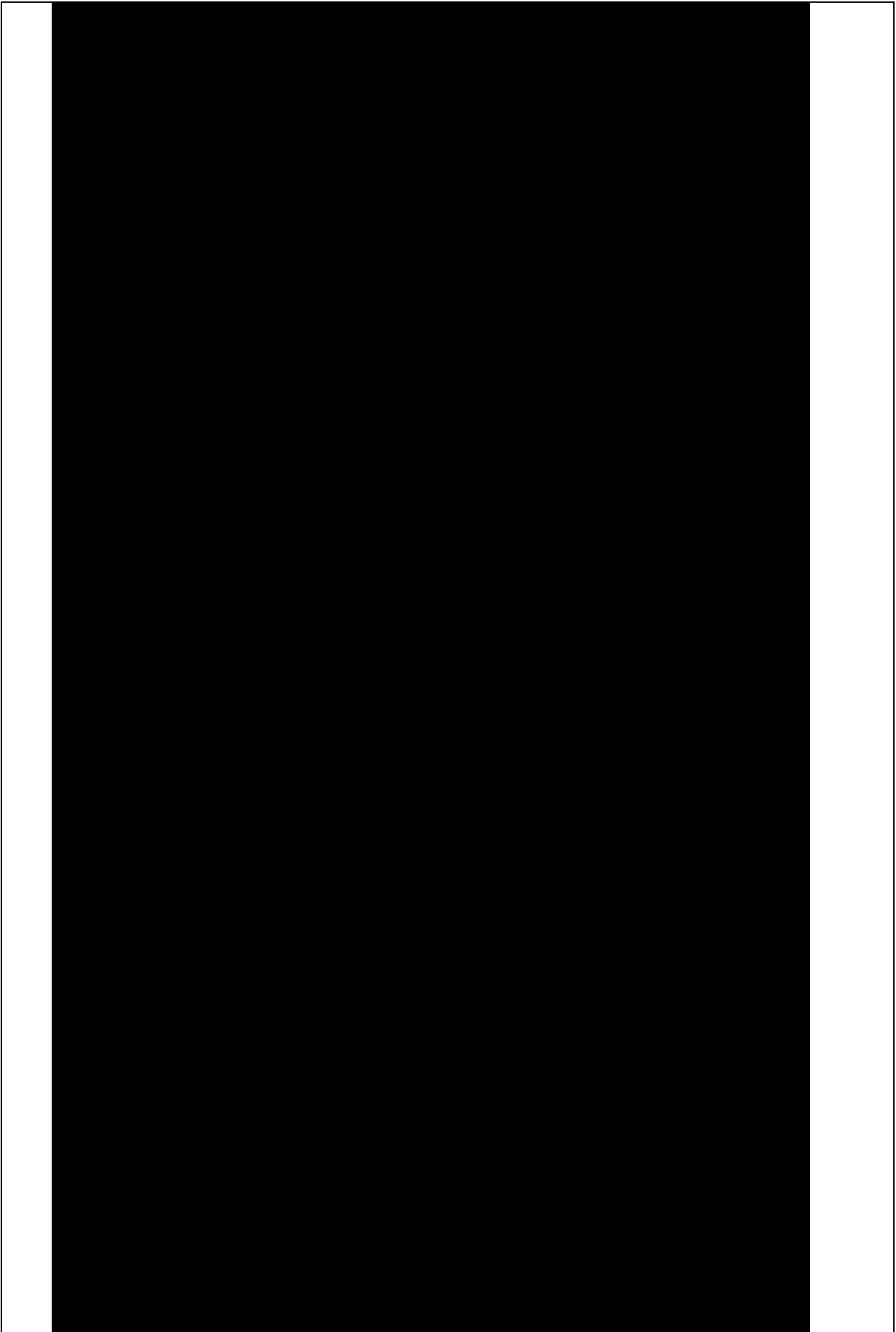
representative of the Contractor shall attend a Committee meeting of the Council upon being invited to do so by the Council. Please confirm your acceptance of this term by ticking the box below

SECTION C – TENDER SCHEDULE

	Tender Schedule	
1.1	<p data-bbox="260 300 1294 562">Please set out below why you feel your organisation is well placed to undertake this contract. You should include in your answer a brief history of your organisation, the staffing structure you intend to have in place to deliver the Service, (including competencies, skills, roles, operational and management and their lines of responsibility/accountability), and details of any previous similar contracts and experience in order to illustrate proven competency to provide an IMHA service in Shropshire including Telford & Wrekin.</p> <p data-bbox="260 568 552 600">Maximum 800 words</p> <p data-bbox="260 640 1273 801">[Redacted text]</p> <p data-bbox="260 842 1235 936">[Redacted text]</p> <ul data-bbox="308 947 1262 1111" style="list-style-type: none">[Redacted bullet point][Redacted bullet point][Redacted bullet point][Redacted bullet point] <p data-bbox="260 1151 1241 1314">[Redacted text]</p> <p data-bbox="260 1355 1254 1518">[Redacted text]</p> <ul data-bbox="308 1529 1273 1928" style="list-style-type: none">[Redacted bullet point][Redacted bullet point][Redacted bullet point][Redacted bullet point] <p data-bbox="260 1968 1214 2022">[Redacted text]</p>	20 max marks



	<p>[REDACTED]</p>	
<p>1.2</p>	<p>Please state how you would ensure a robust, high quality service for people receiving IMHA support? Your answer should cover model of service delivery, training and the organisation’s audit systems. Weighting 20% – Maximum 800 words</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>20 max marks</p>



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1.3	<p>Please tell us what is it about your organisation that will enable you to recruit and retain sufficient staff of appropriate quality to deliver this contract? Maximum 400 words</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	10 max marks

<p>[Redacted]</p> <ul style="list-style-type: none">[Redacted][Redacted][Redacted][Redacted][Redacted][Redacted] <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <ul style="list-style-type: none">[Redacted][Redacted] <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <ul style="list-style-type: none">[Redacted][Redacted][Redacted][Redacted] <p>[Redacted]</p> <p>[Redacted]</p> <ul style="list-style-type: none">[Redacted][Redacted][Redacted][Redacted] <p>[Redacted]</p> <ul style="list-style-type: none">[Redacted][Redacted][Redacted][Redacted] <p>[Redacted]</p> <ul style="list-style-type: none">[Redacted][Redacted][Redacted][Redacted]	
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	<ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] 	
<p>1.4</p>	<p>What is your organisation's approach to staff supervision and how would this inform the development and practise of the IMHA service? Please also describe how you will manage caseload sizes. Maximum 400 words</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>10 max marks</p>

	<p>[Redacted text]</p>	
1.5	<p>Describe your approach to delivering social value. You should identify at least one social value measure and set out how you plan to achieve it, including any delivery targets. Maximum 400 words</p> <p>[Redacted text]</p>	10 max marks

	<p>[Redacted text]</p>	
1.6	<p>What challenges do you envisage there will be in delivering the service and how would you address those challenges? Maximum 400 words</p> <p>[Redacted text]</p>	10 max marks

	<p>[Redacted text]</p>	
1.7	<p>Thinking about the skills and knowledge required of the role of an IMHA, can you provide a case scenario where your service has worked within a complex situation to deliver person centred support with an emphasis on recovery and self determination to empower and enable.</p> <p>Maximum 400 words</p> <p>[Redacted text]</p>	10 max marks

	<p>[REDACTED]</p>	
1.8	<p>Please tell us how you ensure that you have appropriate data protection controls in place. Your response should include: arrangements in place in your organisation to ensure personal information is kept securely; how you ensure all new and existing staff (including permanent, temporary, agency and sub-contractors) are inducted in information security and data protection; arrangements in place to ensure the security of personal information in transit and other non-work locations, e.g. someone's home; reporting arrangements in place in your organisation where staff suspect that there has been a data breach, e.g. personal data is lost, stolen or accessed by unauthorised individuals.</p> <p>Maximum 400 words</p> <p>[REDACTED]</p>	5 max marks

	<p>[Redacted text]</p>	
1.9	<p>Please demonstrate how your organisation would be ready to deliver the service, by the contract commencement date, by submitting your Implementation Plan together with narrative including major milestones and tasks. Please include any risks and mitigation actions that you would carry out to ensure that this requirement will be met.</p> <p>Maximum 400 words</p> <p>[Redacted text]</p>	5 max marks

Pricing Schedule										
2.1	<p>Both Councils have a budget for this service and price bids will not be accepted above the following amounts:</p> <p>Shropshire Council £45,650 per annum Telford and Wrekin Council £26,669 per annum</p> <p>Please insert your cost per annum below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: left;">Local Authority</th> <th style="width: 50%; text-align: left;">Price per annum</th> </tr> </thead> <tbody> <tr> <td>Shropshire Council</td> <td style="text-align: center;">████████</td> </tr> <tr> <td>Telford & Wrekin Council</td> <td style="text-align: center;">████████</td> </tr> <tr> <td>TOTAL COST PER ANNUM</td> <td style="text-align: center;">████████</td> </tr> </tbody> </table>	Local Authority	Price per annum	Shropshire Council	████████	Telford & Wrekin Council	████████	TOTAL COST PER ANNUM	████████	43 max marks
Local Authority	Price per annum									
Shropshire Council	████████									
Telford & Wrekin Council	████████									
TOTAL COST PER ANNUM	████████									



VoiceAbility
The Old Granary
Westwick Terrace
Oakington
CB24 3AR
FAO [REDACTED], Director of Business
Development

Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
Shropshire SY2 6ND

Date: 10th January 2019

Emailed to: fundraising@voiceability.org

Dear Bidder

AMCV 263 – INDEPENDENT MENTAL HEALTH ADVOCACY

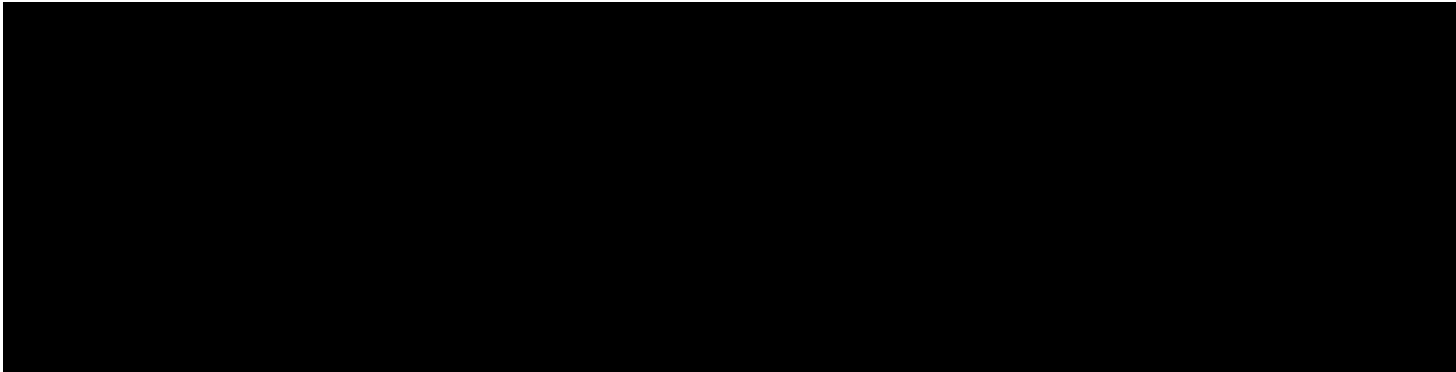
SUBJECT TO CONTRACT

This is an Award Decision Notice pursuant to The Public Contracts Regulations 2015 (the "Regulations").

We are pleased to inform you that, following the evaluation process, Shropshire Council proposes to accept your offer to form part of the above proposed contract as set out in your recent tender.

However, this letter is not, at this stage, a communication of Shropshire Council's formal acceptance of your offer. A mandatory "standstill" period is now in force pursuant to the Regulations; this period will end at midnight on 21st January 2019.

Subject to Shropshire Council receiving no notice during the standstill period of any intention to legally challenge the award process, the Council aims to conclude the award of the contract after the expiry of the standstill period.



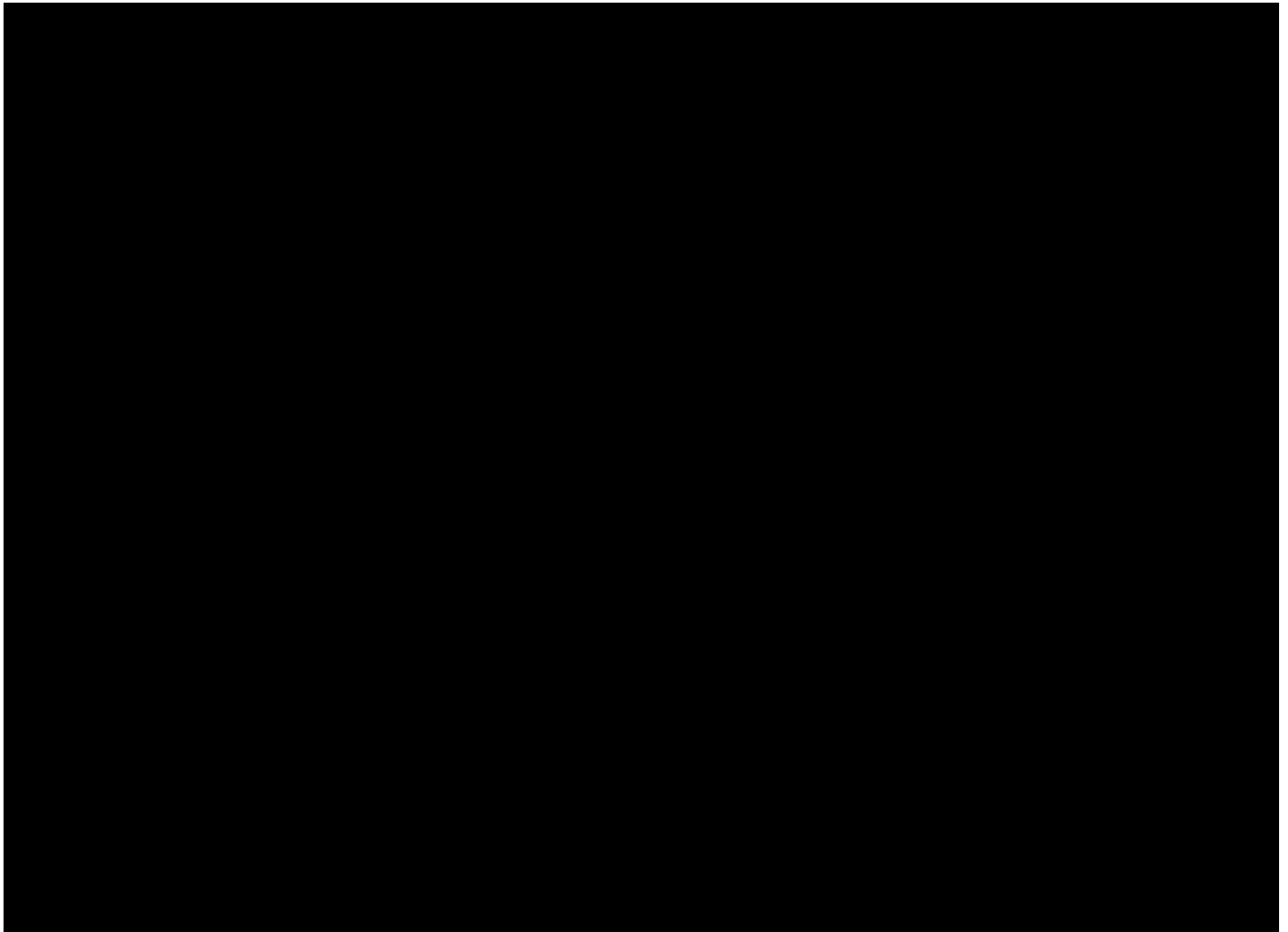
The award criteria for this contract was set out in full in Invitation to Tender with quality accounting for 70% and price for 30% of the total marks.

commercial info

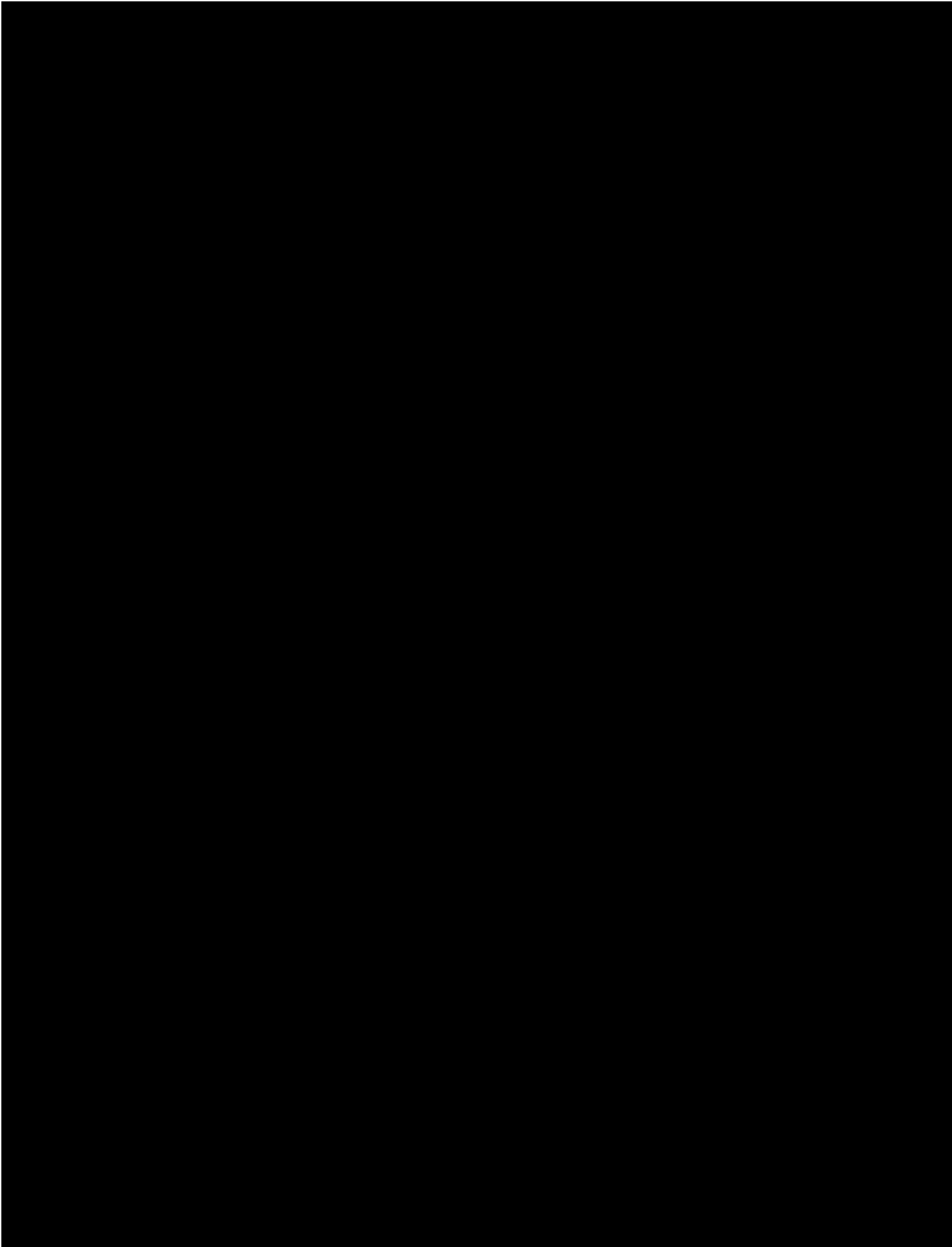
We can confirm that your tender received the following scores and ranking:-

Criteria	Your Weighted Score	Your Rank (out of all 6 tenders received)
Price (out of 43 marks)	■	■
Quality (out of 100 marks)	■	■
Overall	■	■

Please find details of the marks allocated to you for Quality and reasoning behind the Quality marks as follows: -



commercial info



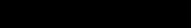
commercial & personal info



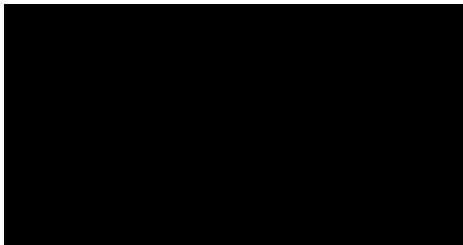
We will be in touch with you again at the end of the standstill period.

Yours faithfully




Service Manager, Provider Service


Contracts Manager




Commissioning Specialist, Mental Health
Telford & Wrekin Council