

Contractor shall provide to the Council a perpetual, non-exclusive, non-transferable licence for the Council to utilise (or for its chosen alternative service supplier to utilise on its behalf) without charge the Contractor's software in connection with the Council's continuing performance of the Services contemplated hereunder, subject to the prior execution of a written licence agreement containing fair and reasonable terms and conditions including but not limited to, provisions for the protection of the Contractor's proprietary rights therein.

- (e) the Contractor may request the Authorised Officer to reimburse any additional costs, other than incurred under Condition 34.1 (c), necessarily and properly incurred by the Contractor in providing assistance and co-operation during the transition. Any such request shall be accompanied by such evidence of expenditure and the reasons for it as the Authorised Officer may require. No such requests shall be unreasonably refused.

35. NOTICES

- 35.1 No notice to be served upon the Council shall be valid or effective unless it is sent by pre-paid-Recorded Delivery post or delivered by hand to the Authorised Officer at the Town Hall, Wandsworth High Street, London SW18 2PU or to such other address as the Authorised Officer may notify the Contractor in writing.
- 35.2 Any notice to be served upon the Contractor shall be valid and effective if it is sent by pre-paid Recorded Delivery post or delivered by hand to the registered office, principal place of business, or last known address of the Contractor or an address occupied by the Contractor for the purposes of this Contract and notified in writing to the Authorised Officer, or is delivered by hand to a director, partner, proprietor or other responsible representative of the Contractor.

36. WAIVER

Failure by the Council at any time to enforce the provisions of this Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

37. SEVERANCE

If any provision of the Contract 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 not in any way impair or affect any other provision all of which shall remain in full force and effect.

38. DISPUTE RESOLUTION

Expert Determination

- 38.1 Any matter or dispute to be determined by the Expert under this Contract shall be referred for determination to a person suitably qualified to determine such matter or dispute and who shall be nominated jointly by the Council and the Contractor or, failing agreement as to such nomination within seven days, to such person as may be appointed, on the application of either the Council or the Contractor, by the President for the time being of the Law Society.

38.2 The Council and the Contractor shall, on request, promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination and both the Council and the Contractor shall use all reasonable endeavours to procure the prompt determination of such reference.

38.3 The Expert shall be deemed to act as an expert and not as an arbitrator and his determination shall be conclusive and binding upon the parties.

38.4 The costs of the Expert appointed hereunder shall be borne by the Contractor and/or the Council in such proportions as shall be directed by the Expert.

Mediation

38.5 In the event of any dispute or difference arising between the parties in connection with this Contract except anything falling for determination by the Expert, senior representative(s) of the parties shall, within 10 days of a written request from either party to the other meet in a good faith effort to resolve the dispute without recourse to legal proceedings.

38.6 If the dispute or difference is not resolved as a result of such meeting, either party may (at such meeting or within 14 days from its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a mediator or neutral advisor ("Mediator").

38.7 If the parties are unable to agree on a Mediator or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he or she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution, 70 Fleet Street, London, EC4Y 1EU ("CEDR") to appoint a Mediator.

38.8 The parties shall within 14 days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

38.9 Unless concluded with a written legally binding agreement all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

38.10 If the parties accept the Mediator's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and, once it is signed by their duly authorised representatives, shall be binding on the parties. Unless otherwise agreed between the parties, such agreement shall be implemented in full within 30 days of signature failing which it shall be rendered null and void (and may not be referred to in any subsequent legal proceedings) unless legal proceedings have been initiated to enforce it within a further 30 days.

38.11 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing, who need only comply with their request if he/she considers it would be helpful. Any such opinion shall not be an attempt to anticipate what a court might order but rather the Mediator's suggestions as to the settlement terms which are considered appropriate in all the circumstances. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings arising in connection with this Contract without the prior written consent of both parties.

- 38.12 If the parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed then any dispute or difference between them may be referred to the English Courts unless within a further period of 30 days the parties agree to refer the matter to arbitration before an arbitrator whose method of appointment is agreed between them.

39. AGENCY

- 39.1 Neither the Contractor nor its Employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by the Contract.
- 39.2 Neither the Contractor nor its Employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council or any other way to bind the Council to the performance, variation, release or discharge of any obligation.
- 39.3 Neither the Contractor nor its Employees shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

40. WORK IN PROGRESS AT THE COMMENCEMENT OF THE CONTRACT

- 40.1 It is envisaged that, as far as possible, work commissioned prior to the Commencement Date will be completed by the previous contractor (including the Council's Direct Service Organisation). However, where the Authorised Officer considers the need arises, he may instruct the Contractor to provide Services outstanding from, or arising out of the previous contract.
- 40.2 The Council's instructions under Condition 40.1 will constitute modifications under Condition 10 of this Contract (which includes provision for their valuation prior to payment).

41. WORK IN PROGRESS AT THE END OF THE CONTRACT PERIOD

- 41.1 Upon termination or expiry of the Contract the Council reserves the right to do either of the following in relation to such specific cases as the Authorised Officer sees fit:
- (a) require the Contractor to complete the outstanding case at the Detailed Rate prevailing at the date of instruction (in which case the terms of the Contract will continue to apply in relation to that case until it is complete) notwithstanding the expiry or termination of this Contract for other purposes; or
 - (b) subject to the Contractor's duties under Condition 8.9, require the Contractor to return the case to the Council together with the file and all relevant documentation in which case the Authorised Officer's instructions will constitute a modification under Condition 10 of this Contract (which includes provision for its valuation prior to payment).
- 41.2 In relation to cases covered by Condition 41.1 (a) above, all such outstanding Services shall be completed within the timescales agreed with the Authorised Officer and no additional payments will be made to the Contractor in respect of them, over and above the normal payments provided for in this Contract.
- 41.3 In relation to cases covered by Condition 41.1 (b) above, the Contractor shall include at the front of each file a summary of the current position with the case.

- 41.4 In the event that the Contractor fails or defaults in complying with this Condition 41, then any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the time spent by its officers as a result of the default or failure, may be deducted from any sums due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor by the Council as a debt.

42. ACQUIRED RIGHTS DIRECTIVE AND TUPE

- 42.1 For the purposes of this Condition, save where the context otherwise requires the following words shall have the meaning set out below: -

- (a) **"Employee Liability Information"** means the information as defined in Regulation 11(2) of the TUPE Regulations.
- (b) **"Final Pay Details"** means in respect of each Future Transferring Employee, their final month's copy pay slip data, cumulative pay for tax and pension purposes, cumulative tax paid and tax code.
- (c) **"Future Transfer Date"** means the date of termination or expiry of this Contract.
- (d) **"Future Transferring Employees"** means those employees of the Contractor who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to the TUPE Regulations or the Acquired Rights Directive 2001/23/EC or otherwise to any Successful Tenderer;
- (e) **"Relevant Legislation"** means any statute or regulations or the EC Treaty (or any directives or regulations made there under);
- (f) **"Required Information"** means the information set out in Conditions 42.2, 42.4, 42.5 and 42.7;
- (g) **"Staff Tender Information"** means the staff tender information set out at part I of Schedule 10;
- (h) **"Staff Transfer Information"** means the staff transfer information set out at part II of Schedule 10;
- (i) **"Successful Tenderer"** means the person nominated by the Council to undertake the services substantially the same as the whole or part of the Services at any time during or after the termination of this Contract;
- (j) **"TUPE Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced.

- 42.2 During the period of 12 months preceding the expiry of this Contract or at any time after notice has been given to terminate this Contract in accordance with Condition 33, the Contractor shall disclose to the Council and shall permit the Council to disclose to any prospective tenderer for services which are substantially the same as the whole or part of the Services, the Staff Tender Information.

42.3 The Contractor shall make reasonable endeavours to assist the Successful Tenderer to communicate with, meet and inform and consult with the Employees whom the Contractor reasonably believes will be a Future Transferring Employee and their trade union or other employee representatives for the purposes of complying with the TUPE Regulations.

42.4 Assuming the Successful Tenderer or the Council is of the view that the TUPE Regulations shall apply to the re-letting of this Contract, the Contractor shall not less than 14 days immediately prior to the Future Transfer Date provide to the Council or the Successful Tenderer all Employee Liability Information and the Staff Transfer Information set out in Part II of Schedule 10 to this Contract for all employees whom it reasonably believes will be Future Transferring Employees.

42.5 Within a period of 21 days following the Future Transfer Date, the Contractor shall provide to the Successful Tenderer in writing Final Pay Details of the Future Transferring Employees.

42.6 The Contractor warrants that it shall supply complete and accurate information pursuant to Conditions 42.2, 42.3, 42.4 and 42.5 in all material respects and the Contractor shall indemnify and keep the Council indemnified fully now and in the future in respect of all or any losses, costs, awards, liabilities and expenses whether arising in contract, tort (including negligence) or otherwise or under any Relevant Legislation suffered or incurred by the Council by reason of any proceeding, claim or demand arising from or in connection with the provision of information and/or the failure to provide complete and accurate information under Conditions 42.2, 42.4, and 42.5, and/or the provision of assistance and/or failure to provide assistance under Condition 42.3 of this Contract.

For the purposes of this Condition 42.6, losses, costs, awards, liabilities and expenses incurred by the Council shall include those incurred by reason of any contract term between the Council and any Successful Tenderer.

42.7 The Contractor shall not and shall procure that any authorised sub-contractors shall not, without the prior written consent of the Council (which shall not be unreasonably withheld) during the 6 months prior to the termination or expiration of the Contract or at any time between notice of termination given by the Council and termination:

42.7.1 vary, purport or promise to vary the terms and conditions (as amended from time to time) of employment of any employee whom the Contractor reasonably believes will be a Future Transferring Employee (including a promise to make any additional payment or provide any additional benefit);

42.7.2 give notice to terminate or terminate the employment of any employee whom the Contractor reasonably believes will be a Future Transferring Employee;

42.7.3 remove (permanently or temporarily), vary or reduce the involvement of any employee whom the Contractor reasonably believes will be a Future Transferring Employee in the provision of the Services; or

42.7.4 recruit or engage any employee to be employed in the performance of the Contractor's obligations under the Contract.

42.8 The Contractor warrants that it shall supply the Required Information completely and accurately in all respects at the time of supply and shall indemnify and keep indemnified the Council and/or any Successful Tenderer against all liabilities, obligations, claims, costs and demands suffered or incurred by the Council and/or

any Successful Tenderer as a result of any claim or demand made or brought against the Council and/or any Successful Tenderer by any member or former member of Staff or any claim submitted on their behalf by a trade union or employee representative or otherwise on the grounds that his employment and/or any liabilities in connection with such employment or the termination thereof have transferred or should have transferred from the Contractor to the Council and/or any Successful Tenderer during the continuance of the Contract or as a result of the termination or expiry of the Contract pursuant to the TUPE Regulations or otherwise.

42.9 For the purposes of Condition 42.8, in the event that the Council or the Successful Tenderer incurs costs, liabilities or expenditure in respect of Future Transferring Employees which is greater than would have been the case if the Required Information supplied by the Contractor had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by the Council or Successful Tenderer and included within the indemnity provided by the Contractor.

42.10 The Council and the Successful Tenderer shall be entitled to recover from the Contractor in full any legal, accountancy and other costs actually and reasonably incurred by the Council and the Successful Tenderer in connection with the costs and liabilities indemnified by the Contractor and this Condition 42 shall continue in effect for six months following the expiry or termination of this Contract.

42.11 Where the Contractor supplies the Required Information to the Council and/or the Successful Tenderer, then:

42.11.1 the Contractor shall at the same time notify (as applicable) the Council and/or the Successful Tenderer of any respects in which the facts and matters set out in the information supplied are expected to change between the date on which the information is supplied and the Future Transfer Date; and

42.11.2 thereafter, the Contractor shall notify (as applicable) the Council and/or the Successful Tenderer if there are any changes to the information supplied other than expected changes of which (as applicable) the Council and/or the Successful Tenderer was notified pursuant to Condition 42.11.1.

42.12 Notwithstanding any other provision of the Contract, in accordance with the Contracts (Rights of Third Parties) Act 1999, any Successful Tenderer shall be entitled to enforce the benefits conferred on it under this Condition 42. The consent of the Successful Tenderer shall not be required for the variation of this Condition, even if that variation affects the benefits conferred on any Successful Tenderer.

43. PRESS AND PUBLICITY

43.1 The Council's aim is for the highest standard of presentation of the image of its activities to the public, and to ensure a fair and favourable reputation for its services via effective communication to the media and the public. The Contractor shall at all times comply with the Council's Code of Practice for Publicity as notified to the Contractor from time to time. Without limitation the main provisions of the aforementioned Code are as set out in this Condition 43.

43.2 All information and publicity concerning the Council's activities, and those of the Contractor in connection with this Contract, shall be subject to prior approval by the Authorised Officer.

- 43.3 All enquiries received by the Contractor from press, radio, television or other media which may concern the Council shall immediately be referred to the Authorised Officer for attention by the Council's Press Office.
- 43.4 The Contractor shall not advertise the fact that it is providing professional services to the Council other than with the prior written consent of the Authorised Officer.
- 43.5 The Contractor shall notify the Authorised Officer well in advance of any activity under this Contract that is likely to achieve publicity, to enable the Council's Press Office to take a positive approach to such activities and deal with them appropriately.
- 43.6 The Contractor shall not use or adapt the Council's corporate logo or image without prior written approval of the Authorised Officer.
- 43.7 The Contractor shall not permit the placing or fixing of any advertising material whatsoever on or in the Council's premises without the prior approval of the Council.
- 43.8 The Contractor shall take all reasonable steps to ensure the observance of the provisions of this Condition 43 by its Employees and sub-contractors.

44. ASSISTANCE WITH LEGAL AND/OR OMBUDSMAN PROCEEDINGS

- 44.1 If requested to do so by the Authorised Officer and subject to Condition 8.9, the Contractor shall provide to the Authorised Officer all relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council arising out of the provision of the Services or the Contractor's presence on any Council premises and the Contractor shall give evidence or assistance as required in any such inquiries, arbitrations, proceedings, hearings or tribunals.
- 44.2 Where the Contractor or any of its Employees become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services or in any way connected with the Services, then the Contractor shall notify the Authorised Officer thereof immediately in writing. Such notification shall include all relevant information to enable the Authorised Officer to fully investigate the matter.
- 44.3 The Contractor shall fully co-operate with and provide assistance and all relevant information to the Council and the Commission for Local Administration in England ("the Ombudsman") in any inquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matter arising in connection with the provision of the Services under the Contract.
- 44.4 If, as a result of such inquiry or investigation, the Ombudsman makes a finding against the Council of maladministration or injustice or other finding and if the finding is found to be attributable wholly or in part to the actions or omissions of the Contractor then (without prejudice to any other rights or remedies available to the Council under the Contract or any other contract with the Contractor) the Council shall be entitled to recover from the Contractor (whether by deduction from any monies due to the Contractor or otherwise) such proportion of any award made against the Council to a complainant and related costs as are attributable to those actions or omissions of the Contractor.
- 44.5 In the event of a dispute as to the proportion of the award and costs payable by the Council and the Contractor pursuant to any finding of the Ombudsman as aforesaid

then the parties shall seek to resolve such dispute pursuant to the provisions of Condition 38.

- 44.6 Any information provided or assistance rendered by the Contractor pursuant to the obligations in this Condition 44, in whatever form, shall be provided at no cost to the Council.

45. RECOVERY OF SUMS DUE TO THE COUNCIL

- 45.1 Without prejudice to any other Condition herein, whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any other contract with the Council and notwithstanding anything herein contained where the Contractor is obliged to carry out any work, act or thing or to pay money for obtaining any thing, document or advantage (for example, but not exclusively, insurance or a bond) then in the event of the Contractor not carrying out any such work, act or thing or obtaining such thing, document or advantage the Council shall be entitled to carry out such work, act thing and/or obtain such thing, document or advantage by itself or others and shall be entitled to obtain reasonable reimbursement of the actual expenses thereof by deduction from the next or subsequent payments due to the Contractor or shall be entitled to recover such reasonable expense (with interest payable from 28 days next after a demand has been made therefore by the Council at four per cent over the rate current for Barclays Bank plc base rate and such interest shall run from day to day and shall accrue before and after any judgement and shall be compounded monthly on the amount overdue until payment of the original expense) by action against the Contractor as a debt and in reasonably carrying out any such work act or thing or obtaining such thing document or advantage the Council shall be under no obligation to employ the least expensive method of carrying out such work, act thing or obtaining such thing, document or advantage.

- 45.2 "Expense(s)", "cost(s)" or any similar word or expression where recoverable by the Council shall include the Council's reasonable establishment charges (including the making up of the account and the recovery of the expense(s), cost(s) or the like).

46. EQUAL OPPORTUNITIES AND EMPLOYMENT AND HUMAN RIGHTS

- 46.1 The Contractor shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of sex, disability, colour, race, nationality, marital status, gender reassignment, religion, belief, sexual orientation, age or ethnic or national origins contrary to the Race Relations Act 1976, Race Relations (Amendment) Act 2000 ("the Race Relations Act") or contrary to the Sex Discrimination Act 1975, Equal Pay Act 1970, Disability Discrimination Act 1995, Disability Discrimination Act 2005, Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, Equality Act 2006 or Public Interest Disclosure Act 1998 or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services.

- 46.2 The Contractor shall, for purposes of ensuring compliance with Conditions 46.1 above, in relation to Employees employed in the performance of the Contract, observe as far as possible the provisions of the Commission for Racial Equality's Code of Practice in Employment, and any other comparable statutory code, including but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.

- 46.3 The Contractor shall in performing the Contract comply with the provisions of Section 71(1) of the Race Relations Act as if the Contractor were a body within the meaning of Schedule 1A to the Race Relations Act (or any European equivalent) which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups.
- 46.4 The Contractor shall monitor the representation among Employees of persons (i) of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics or successor body), (ii) of different gender, and (iii) with a disability having regard to the Council's procedures for monitoring representation among its own employees.
- 46.5 The Contractor shall 12 months from the Commencement Date and annually thereafter submit a report to the Council demonstrating its compliance with Conditions 46.1, 46.2, 46.3, and 46.4.
- 46.6 In addition to the report referred to in Condition 46.5, the Contractor shall provide such additional information as the Council may reasonably require for the purpose of assessing the Contractor's compliance with Conditions 46.1, 46.2, 46.3, and 46.4.
- 46.7 The Contractor shall notify the Authorised Officer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under any Act set out at Condition 46.1.
- 46.8 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of this Contract being in contravention of the Race Relations Act or any of the other Acts set out at Condition 46.1, the Contractor shall, free of charge:
- (a) provide any information required in the timescale allotted;
 - (b) attend any meetings as required and permit Employees to attend;
 - (c) promptly allow access to and investigation of any documents or data deemed to be relevant;
 - (d) allow itself and any Employees to appear as witnesses in any ensuing proceedings; and
 - (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 46.9 Where any investigation is conducted or proceedings are brought under the Race Relations Act or any other Act set out at condition 46.1 which arise directly or indirectly out of any act or omission of the Contractor, its agents, sub-contractors, or Employees, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- 46.10 The Council is committed to recognising the needs of people with disabilities in the delivery of services. As part of this commitment the Council has endorsed the "Agenda

on Customers" produced by the Employer's Forum on Disability and commends the principles covered by the Agenda to contractors providing a service on the Council's behalf. The Agenda is reproduced at Schedule 4.

46.11 The Contractor shall act as if the Contractor was a public authority for the purposes of the Human Rights Act 1998 and shall comply with all obligations under the Human Rights Act 1998 and any subsequent statute, order or regulations insofar as performance of the Services gives rise to obligations thereunder.

46.12 In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its sub-contractors in terms substantially similar to those imposed on it pursuant to this Condition 46.

47. COUNCIL POLICIES AND CUSTOMER CARE

47.1 The Council has a number of policies that are relevant to this Contract, some of which are embodied in the Conditions or Schedules including without limitation at Schedule 4, 5, 6 and 7. The Council reserves the right to issue details of its policies or initiatives from time to time during the Contract Period. The Contractor (and its personnel) shall act consistently with such policies or initiatives at all times during the Contract Period. Some of the most prominent Council policies and initiatives with which the Contractor shall comply are summarised below.

47.2 The Council's commitment to provide customers with high quality value for money services is set out in its own quality initiatives. The Contractor's main responsibilities are to:

- (a) familiarise itself with the contents of any customer care standards of which it is notified by the Authorised Officer and act accordingly;
- (b) ensure that it satisfies the aims and standards of the initiatives;
- (c) demonstrate highest standards of customer care including being polite, helpful and courteous at all times;
- (d) express all written communications clearly and concisely, keeping technical jargon to a minimum;
- (e) identify the names of its key staff contacts;
- (f) adopt a professional telephone manner – calls should be answered promptly and courteously, messages should be clear and responded to;
- (g) be aware of the different needs of the client and others affected by the Contract and take account of particular requirements for reasons of age, gender, race or disability; and
- (h) set up and operate a complete complaints procedure in accordance with the Condition 48.

48. COMPLAINTS IN RESPECT OF SERVICE PROVISION

48.1 At the Commencement Date, the Contractor shall set up a clearly defined complaints procedure (subject to approval by the Authorised Officer) with agreed performance measures and recording systems, including a Complaints Register, to enable the number and types of complaints to be checked and monitored. For each complaint

the records should identify the complainant, the nature and category of the complaint, the action taken in response to the complaint, preventative action taken to stop similar occurrence and the relevant dates.

48.2 The Contractor shall deal with all complaints received from whatever source in a prompt courteous and efficient manner and within the requirements and timescales specified by the Council from time to time.

48.3 The Contractor shall notify the Authorised Officer forthwith in writing of all complaints received and the steps taken in response thereto and shall provide an anonymised summary of each written complaint (or Register entry for verbal complaints) and the response thereto. Notwithstanding the foregoing, the Contractor shall provide the Council with the name of the complainant and any further details if the Council reasonable requires such information in order to fully investigate any complaint. An anonymised copy of the Complaints Register and statistics shall be incorporated within the Contractor's monitoring reports submitted to the Authorised Officer in accordance with the Specification.

49. INFORMATION ON RE-TENDERING

49.1 If requested to do so by the Authorised Officer, the Contractor shall provide to the Council any and all relevant information to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise. For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Council to comply with its duties under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, and set out in detail in Condition 42. Such information provided pursuant to this Condition 49 shall be at no cost to the Council.

50. ENVIRONMENTAL REQUIREMENTS

50.1 The Council is committed to minimising its impact on the environment and continually improving its environmental performance. As part of this commitment the Council has adopted an Environmental Policy, which can be downloaded from www.wandsworth.gov.uk/envpolicy/ and commends its Principles of Action to the Contractor in connection with its provision of the Services. These Principles of Action include without limitation the following: -

- (a) pursuing value for money by considering whole life costs;
- (b) resource efficiency by minimising use of natural resources; avoiding waste; re-use, recycling and composting;
- (c) reducing carbon emissions and adopting low carbon technologies to mitigate the effects of climate change;
- (d) limiting habitat destruction, for example by giving preference to accredited products from sustainable sources; and
- (e) minimising all forms of pollution and associated environmental risks.

50.2 The Contractor shall keep the Authorised Officer fully informed of all of its activities that enable the Council to improve its implementation of its Environmental Policy.

51. RIGHTS OF THIRD PARTIES

Subject to Condition 42.12, the parties do not intend any provision of this Contract to be enforceable by a third party by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.

52. LAW

This Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with English Law. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute, claim or matter that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

53. ACTS OF PARLIAMENT ETC.

Reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument, or the like shall be deemed to include a reference to any amendment or re-enactment of the same and shall include all Codes of Guidance and any other supplemental circulars or guidance made or issued pursuant thereto.

54. INTERPRETATION ACT

Section 6 of the Interpretation Act 1978 shall apply to the Contract and words importing individuals shall be treated as importing Corporations and vice versa. Masculine includes the feminine and the singular includes the plural and vice versa.

55. HEADINGS

Headings in the Contract Documents are for ease of reference only and shall not affect the construction of the Contract.

56. RESTRICTION ON TRADE

Upon the expiry or sooner termination of this Contract for whatever reason the Contractor, and any associated company or person, shall not:

- (a) for a period of one year solicit the services of any employee of the Council or any employee to be transferred upon termination of this Contract;
- (b) use or disclose any information of a confidential or commercial nature acquired by it during the performance of the Services under this Contract; or
- (c) adopt any livery, style or name likely to cause any person to confuse the Services of the Contractor with the services of the Council or any of its contractors.

SCHEDULE 1 **Specification**

PART 1: SPECIFICATION FOR INDEPENDENT PROFESSIONAL ADVOCACY SERVICES FOR OLDER PEOPLE, AND FOR ADULTS WITH LEARNING DISABILITIES, MENTAL HEALTH PROBLEMS (NOT IN CARE OF MENTAL HEALTH SERVICE), PHYSICAL AND SENSORY NEEDS AND SUBSTANCE MISUSE PROBLEMS (CONTRACTS 1 TO 5 INCLUSIVE)

1. Introduction

- 1.1 The Government has made a commitment to a universal advocacy service for people needing health or social care.
- 1.2 There is a statutory requirement to provide advocacy in the Mental Capacity Act 2005, including requirements under the deprivation of liberty safeguards.
- 1.3 The Contractor shall provide an independent professional advocacy Service for all adults defined as eligible by the Council (see paragraph 4.1 below), for whom no alternative service has been commissioned, including informal carers. It is anticipated that a separate service will be commissioned for adults with HIV/AIDS and for people who have severe and enduring mental health needs who are in the care of the Mental Health Service managed by the South West London and St. Georges Mental Health Trust, including an independent mental health advocacy ("IMHA") service. The Service shall include both instructed and when required due to lack of capacity, non-instructed advocacy.
- 1.4 The independent mental capacity advocacy ("IMCA") Contractor shall provide non-instructed IMCA advocacy to all care groups where this is needed due to the lack of capacity of the service user.
- 1.5 The Council would like to explore a model for supporting people with substance misuse needs that incorporates the use of volunteers trained to provide advocacy supported by a professional independent advocate. The Contractor shall provide in its Method Statement solutions for this within their overall model of provision, including arrangements for supervision and support.

2. Purpose of the Service

The Contractor shall ensure that this Service is operational and able to take referrals from 1st April 2010. The Contractor shall provide the following Services: -

- 2.1 Short term, issue based and 'crisis' advocacy to ensure that a professional advocate speaks up in the best interests of the referred person about a particular issue they have, including when significant decisions are needed urgently.
- 2.2 Set up and deliver an independent, confidential, high quality professional advocacy Service to residents of the London Borough of Wandsworth aged over 18 years, their families and carers (aged over 16 years for IMCA).
- 2.3 Provide professional advocacy that is independent of those commissioning or providing health or care services.
- 2.4 Raise awareness to the families and carers of the service users and the Council about particular issues faced by users of the independent professional advocacy service,

including the concerns of specific sub-groups of service users who might be finding it difficult to engage with services.

- 2.5 Support people to identify and represent their own concerns directly to the statutory bodies.

- 2.7 Support people to voice their concerns about their care, the services they use and any other issues relating to their conditions and their access to services within the community where appropriate.

- 2.8 Establish links and work co-operatively with other agencies, both statutory and voluntary providing services, including other contractors of advocacy services in the London Borough of Wandsworth.

- 2.9 Provide advocacy service users with information on local services and information on service user and care rights, e.g. welfare rights, signposting them to other services when these are more appropriate.

3. The Service Principles

- 3.1 The Contractor shall employ professional advocates (see paragraph 8.1 below) and shall offer one to one consultations at the Contractor's premises in the London Borough of Wandsworth or at a location better suited to the service user, including their own home, hospital or care home.

- 3.2 The Contractor shall ensure that the Service is accessible to service users from all areas of the London Borough of Wandsworth and shall take full account of the needs of people with disabilities who may be unable to use public transport.

- 3.3 The Contractor must be able to demonstrate a depth of experience in working with service users in the care areas for which it is tendering.

- 3.4 The Contractor must demonstrate that it has the ability to work successfully with people from black and minority ethnic communities, and also when English is not the first language.

4. Accessing the Service

- 4.1 The Council shall set out an eligibility and prioritisation policy, which may be amended over time to take account of demand on the service. Priority issues shall include safeguarding/deprivation of liberty; serious health issues, accommodation/moving home, complaints in relation to the Council (support with complaints related to the NHS is separately funded by the NHS) and shall also embrace issues related to organising and managing self-directed support where there are issues of conflict and risk.

- 4.2 All referrals require the agreement of the service user, or where a service user lacks capacity to make this decision, the Contractor, in consultation with others in any support network, must make the decision as to whether it is in the best interest of the individual to receive this service. The Contractor will endeavour to signpost and/or refer users with specific needs outside the professional advocacy remit to more appropriate agencies when necessary.

- 4.3 Referrals shall be taken by telephone, in writing by fax or in person. If using e-mail the Contractor must ensure that confidentiality is maintained.

- 4.4 The Contractor shall ensure that the Service is also accessible through routine visits to nominated outlets where advocates will be available to service users with general queries and issues and where more formal consultations can be arranged.
- 4.5 On initial contact, the Contractor shall record brief relevant detail and shall register the individual's name. The Contractor shall consider each applicant and shall establish priority. The Contractor shall operate a waiting list, if required. The Contractor will deal with all urgent cases as promptly as possible.
- 4.6 If an individual fulfils the eligibility criteria the Contractor shall give them an appointment at a mutually convenient time and location.
- 4.7 The Contractor is not expected to provide 24-hour cover or react to emergency calls, be an "expert witness" or function as "appropriate adults" in accordance with the Police and Criminal Evidence Act 1984.
- 4.8 The Contractor shall provide flexible Services to take into account of the weekly routines of service users. Times should be negotiated with the service users and staff.
- 4.9 The Contractor shall work in creative ways to enable service users to engage and also develop self-advocating skills, liaising as appropriate with the self-advocacy service for people with learning disabilities. The professional advocates must be clear with service users that it is not a befriending service and act accordingly.
- 5. Independence and Impartiality**
 - 5.1 The Contractor and its staff and volunteers shall act completely impartially on behalf of its service users, representing the interests of the service users themselves. The Contractor shall have in place a code of conduct and work consistently within Action for Advocacy's Code of Practice for Advocates set out at Schedule 9.
 - 5.2 The Contractor shall have in place adequate procedures in order to ensure that professional advocates are not influenced by their own personal view, or the campaign positions of the Contractor or any other voluntary group.
 - 5.3 The Contractor shall ensure that the service users have a right of confidentiality, except when the advocate believes the service user or others may be at risk, when appropriate information should be shared in good time with the appropriate agencies. The Contractor shall act in accordance with the Wandsworth Inter-Agency Guidelines for the safeguarding of vulnerable adults and those for safeguarding children, set out at Schedule 6 of the Contract, and any subsequent updates.
- 6. Operational Times**
 - 6.1 Core time for the Contractor's provision of this Service will be from 9.00 am to 5.00 pm Monday to Friday, except public holidays.
 - 6.2 Regular surgeries shall be held by the Contractor at a variety of appropriate locations in Wandsworth as decided by the Contractor with the agreement of the Council.
 - 6.3 All surgeries, including evening and weekend surgeries, shall be held by the Contractor in an appropriate, safe environment for service users and advocates.

7. Joint Working and Training of Health and Social Care Staff

- 7.1 The Contractor shall develop written protocols to ensure clarity and consensus regarding how advocacy issues will be taken up with other agencies. In particular, the protocols shall address without limitation how advocates may access agencies and facilities to hold surgeries or meet individual service users, the level at which concerns shall be taken up, what the action monitoring systems shall be and how progress shall be reported back to other agencies and the Council.
- 7.2 The Contractor shall ensure that service users, carers and referral agencies are aware of what rights they have in relation to:
- Confidentiality (in line with the Contractor's confidentiality policy)
 - Access to records (in line with the Contractor's own written policy)
 - Complaint and comment on the Service (in line with the Contractor's complaints policy)
 - Be kept informed about actions.
- 7.3 The Contractor shall work in partnership with all other contractors providing advocacy services to Wandsworth residents and patients of the Wandsworth Teaching Primary Care Trust.
- 7.4 The Contractor shall maintain active dialogue and networking with statutory and voluntary agencies in Wandsworth.
- 7.5 At the start of the Contract the Contractor shall ensure that there is a publicity programme to health and social care staff in the statutory and voluntary sectors to advise them of the service, referral mechanisms and expectations of service, including the IMCA service.
- 7.6 In addition to paragraph 7.5, in the first Year of the Contract Period and each Year thereafter the Contractor shall offer at least two x 2 hour formal information or training sessions a Year for statutory and voluntary sector staff regarding the role of advocacy and referral mechanisms and expectations of service, including IMCA service, for at least 30 staff per session.

8. Staff and Training

- 8.1 The Contractor shall have a policy and plan for ensuring the professional qualification of advocates.
- 8.2 The Contractor shall staff the Service to ensure continuity of service through holidays and sickness periods.
- 8.3 The Contractor shall staff the Service to ensure that gender preference for an advocate can be met.
- 8.4 The Contractor shall be responsible for the overall management of the Service including providing support and supervision to paid staff.
- 8.5 The Contractor's staff team shall have knowledge of relevant legislation and the issues facing users of health and social care services, including issues linked to possible exclusion, such as ethnicity and communication difficulties.
- 8.6 The Contractor shall take adequate measures to ensure the protection of the public when recruiting staff and volunteers. All permanent staff and volunteers shall require

references to be taken. In accordance with Condition 15.5, all staff shall undergo enhanced CRB checks prior to employment and shall be expected to make a declaration under the Rehabilitation of Offenders Act 1974. The Contractor shall judge the suitability of any applicant based on the nature of such declarations.

- 8.7 The Contractor shall ensure all employees receive monthly one to one supervision. Group supervision may also be provided.
- 8.8 The Contractor shall ensure that monitoring and evaluating the performance of staff and volunteers takes place on a regular basis, and at least on an annual basis.
- 8.9 The Contractor shall ensure that each staff member has a personal development plan, agreed, implemented and reviewed annually.
- 8.10 The use of volunteers in appropriate roles may complement the work of paid staff and provide opportunities for service user involvement.
- 8.11 If there is cause for concern in relation to the advocacy Service or individual advocates, the Contractor and the Council will agree an appropriate way forward. The Contractor shall have appropriate disciplinary and grievance procedures in place. These will be shared and agreed with the Council prior to the service commencing.

9. Service User Involvement

The Contractor shall ensure that:

- 9.1 Two or more service users are given the opportunity to participate on the interview panel for the Contractor's worker(s) of the Service.
- 9.2 Service user involvement in the management and delivery of the Service shall be encouraged and developed as much as is possible and appropriate.
- 9.3 The Contractor shall respond to feedback from service users to ensure continuous improvement.

10. Health and Safety

- 10.1 The Contractor shall at all times comply with the Health and Safety at Work Act 1974 and any other legislation regulations or guidance pertaining to health and safety at work. The Contractor's Health and Safety Policy will include without limitation procedures for:-
 - Reporting, recording and investigating accidents.
 - Fire precautions and evacuation procedures.
 - First Aid Training.
 - Training for Staff and Volunteers in health and safety matters.

11. Publicising the Independent Professional Advocacy Service

- 11.1 The Contractor shall publicise the availability of the Service on the Health and Social Care Information Service (currently known as CareLine), through the Wandsworth Carers' Centre, through the Council's Access Services, in Wandsworth's community facilities, and through health and social care service providers including without limitation GPs, community clinics and hospitals. The Contractor shall have a contact phone number, postal address, email address and preferably a web page that people can use to gain more information about the Service.

11.2 The Contractor shall be responsible for publicising the Service, including all of the cost of publicity literature, adverts, etc.

11.3 The Contractor shall advise the Council annually in advance of its publicity programme for the Wandsworth Independent Professional Advocacy Service.

12. Complaints Procedures

12.1 The Contractor shall have a formal complaints procedure which has been agreed with the Council.

12.2 The Contractor shall give service users information in accessible formats about how to make complaints. The complaints procedure shall be explained to each service user from time to time, as appropriate.

12.3 An anonymised report on complaints and action taken will form part of the quarterly contract monitoring reports that the Contractor shall provide to the Council in accordance with the terms of this Contract.

12.4 Anonymised copies of complaints shall be forwarded to the Council's Authorised Officer as soon as practical after receipt, detailing action to be taken. Any serious incidents should be communicated urgently and within 24 hours.

13. Charging Policy

13.1 The Contractor shall not charge service users or their carers for any part of the Service. However, the Contractor shall not be expected to meet the transport costs of service users it is working with e.g. for attending the office for interviews or going to meetings with the Contractor.

14. Record Keeping

14.1 The Contractor shall keep:

- financial information for audit purposes;
- records of all meetings including attendance; and
- information about service users required for monitoring purposes.

14.2 All information shall be kept in accordance with the Data Protection Act 1998.

15. Confidentiality

15.1 The Contractor shall have a confidentiality policy that is also accessible to service users. If the Contractor's advocacy workers identify service users who need individual support from another service they must seek the individual's permission before referring them on to another service wherever possible, unless specific exceptions are met as described in paragraph 15.2 below.

15.2 Service users shall also be informed that the subject of their discussions remain confidential within advocacy services except where the person has permitted disclosure of information or when there is a serious risk of harm to themselves or others, as detailed within the Contractor's confidentiality policy. Where the person may lack capacity to give or withhold consent for the disclosure of confidential information, such disclosure may be justified taking into account the person's best interest or it may be a legal requirement, such as during a criminal investigation or by order of the court, that confidential information is made available to investigating

authorities. These requirements shall be included in the Contractor's confidentiality policy.

- 15.3 The Contractor shall inform its service users that where arrangements are made for handover to another contractor on termination of this Contract, the Contractor will support service users in deciding what information must be kept confidential to the specific provider and what will be passed on. When work is completed, the Contractor shall handle detailed service user records under the policy for storage and destruction of confidential information of the agency and the Contractor will not pass such records to a new contractor.

16. Equity of Access

- 16.1 The Contractor shall provide a service that is appropriate to people's needs, including their disability, race, culture, religion, sexuality, age and gender. The Contractor shall also recognise that individuals' needs can change over time and respond accordingly.
- 16.2 The Contractor shall ensure that it provides its service equitably, ensuring that service users who may find it difficult to participate in the formal advocacy process are enabled to do so, for example through support with communication difficulties and flexible approaches. Choice of gender of advocate shall be available as far as practicable within resource constraints. The cultural background of people needing services shall be taken into account when allocating advocates.
- 16.3 The Contractor shall be monitored on its achievements and targets will be set for improvement based on the first Year's activity.

17. Quality Standards

- 17.1 The Contractor shall have a recognised quality control system in place, for example the Action for Advocacy "Advocacy Quality Performance Mark".
- 17.2 The Contractor shall work within Action for Advocacy's Quality Standards for Advocacy Schemes or a nationally recognised equivalent agreed by the Council.
- 17.3 The Contractor shall provide the following levels of Service:
- Contact made with service user within three Working Days of referral being accepted (except when a DOL referral, see IMCA Specification).
 - Endeavour to provide an initial screening/assessment session within ten Working Days of the referral being accepted (except when a DOL referral).
 - Contact service users whose cases are active by telephone or email at least monthly to maintain contact/ give information on progress.
 - Individual records shall comply with data protection and accessibility requirements.
 - Focus on outcomes. Records shall include personal details, advocacy requirements and the outcomes sought by the person and whether achieved. Advocates shall record whether or not the outcome appeared satisfactory to the advocate and their reasons for this. It will be important that records show the process used to arrive at any views expressed on behalf of the service user.

- A programme of publicity to potential referrers at the start of the Contract.
- Two training sessions a Year for staff in the statutory and voluntary sector for at least 30 on each occasion.
- Communication Standards: use large type, standard English and simple pictures and photos of workers on documents to enable easy reading by service users. Make it clear that language interpretation can be made available to those who need it and that access to BSL or Makaton signing can be made available if required.
- Service user satisfaction feedback shall be obtained regularly and evidence of its impact on the Service provided in continuous improvement will be sought.
- The Contractor shall follow the Wandsworth Delivering Excellence quality improvement initiative at Schedule 5.

18. Volume of Service

- 18.1 Wandsworth has commissioned a service for people with learning disabilities since April 2007. This service has operated with advocates managing an average caseload of 20 cases at any one time, with a mix of cases in likely length and complexity. Experience indicates that this specific service needs to operate with a minimum of 1.5 w.t.e. advocates carrying, in total, 30 cases at any one time, excluding IMCA/DOL casework.
- 18.2 It is expected that service users in different care groups will provide differing case profiles. The Council will therefore work with the Contractor to establish a baseline for the Service for each care group. It is expected that caseloads per advocate for other care groups would be higher than for learning disability, circa 30 cases at any one time per advocate; however, the Contractor has not relied upon the foregoing figures when pricing its tender. The Contractor should set out a plan and a costing model that allows the work to increase steadily over the first Year as awareness builds about the Service. An interim service is being established during 2009/10 which may yield some further information prior to tendering. The Contractor will not therefore be starting from a zero base as there will already be a workload of cases to take over from the current contractor.
- 18.3 The indicative estimate of relative workload across care groups including IMCA work is as follows (*this estimate is subject to amendment through further consultation*):

Target Group	Percentage*
Learning Disability including acquired brain injury	26%
Older People	36%
Physically Disabled including sensory needs	9%
Substance Misuse (drug and alcohol)	20%
Mental Health (not severe and enduring)	9%
TOTAL	100%

* the Contractor has not relied upon these figures when pricing its tender.

19. Performance Measures

- 19.1 The Contractor shall provide statistical returns to the Council's Authorised Officer every quarter concerning use of the Service, to include without limitation:

- Total numbers and sources of referrals.
 - Equity of access: Number and sources of referrals accepted, broken down by care area, case type, age, gender and ethnicity of service user.
 - Number and sources of referrals refused, with reasons broken down by care area, case type, age, gender and ethnicity of service user, and with information about other services that have been signposted to more appropriate providers.
 - Response time.
 - Number of 'live' cases at the end of the quarter, broken down by care area, case type and age, gender and ethnicity of service users.
 - Number of cases closed, broken down by care area, case type, showing average number of hours spent, with summary of outcomes.
 - Percentage of existing and new users.
 - Emerging patterns of referrals (e.g. by type of intervention, types of issue(s) involved, or place referral made from).
 - Summary of work in relation to safeguarding vulnerable adults.
 - Record of time taken on individual cases.
 - Record of activity, interviews, time spent examining records.
 - Nature of work undertaken, e.g. information provision, service, referral, co-ordination, and representation.
 - Number of individual meetings provided.
 - Agencies involved.
 - Outcomes (descriptions and measures to be agreed).
 - Records of any serious incidents or complaints or compliments the service receives.
 - Staff turnover and records of training and frequency of supervision for staff (aggregated).
 - Profile of age, gender, ethnicity, and disability status of any staff employed.
 - Relevant financial data on cost and expenditure.
 - Summary of results of internal quality assurance systems.
- 19.2 The exact format for this information and details of categories to be used will be advised by the Council and be regularly reviewed with the Contractor.
- 19.3 The Contractor shall ensure that the Council receive this information, collated into a quarterly and annual report that summarises activity and financial information, trends and feedback and include how the local Contractor services interact with the advocacy Service. The Contractor shall submit this information to the Council quarterly, at least two weeks prior to the contract monitoring meetings.
- 19.4 The Contractor or staff working with the service users shall meet representatives of the Council to discuss how the Service is progressing as arranged, but at least twice in each financial year and normally quarterly.
- 19.5 The quarterly meetings will also discuss the awareness-raising sessions as set out in paragraphs 7.5 and 7.6 of this Specification, any problems encountered and the progress of the Service.
- 19.6 The above standards and measures shall be reviewed annually to ensure that they give accurate information relating to the performance of the Service. Performance targets will be set annually by the Council, in consultation with the Contractor, to ensure continuous improvement and possible performance indicators are set out in the Appendix to this Specification.

20. Protection of Vulnerable Adults and Children

- 20.1 The Contractor shall comply with the Wandsworth Inter-Agency Guidelines for the Safeguarding of Vulnerable Adults detailed at Schedule 6 that were issued in December 2008 and any subsequent amendments. The guidelines are set out at Schedule X of the contract.
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- 20.2 The Contractor shall also comply with Policies and Guidelines issued by The Wandsworth Safeguarding Children Board.

PART 2: INDEPENDENT MENTAL CAPACITY ADVOCACY SERVICE (IMCA) IN THE BOROUGH OF WANDSWORTH (CONTRACT 6)

A separate specification is provided for this service as it has specific requirements but it is expected to be provided as an integral part of the Independent Professional Advocacy Service.

1. Introduction

- 1.1 The Mental Capacity Act 2005 makes it a legal requirement for people lacking mental capacity to have independent advocacy when there are no known relatives or close friends to speak for them. Advocacy must be provided when decisions are being made by an NHS body or local authority regarding serious medical treatment, or when a review of accommodation arrangements is proposed or in progress, or may be provided or where protective measures are being proposed or have been taken in relation to the protection of a vulnerable adult, including where a deprivation of liberty authorisation has been applied for, or is being monitored, in specified circumstances set out in the relevant legislation and statutory instruments. The Council shall review and modify this Specification in the light of experience, working closely with the Contractor.

2. Purpose of the service

- 2.1 The purpose of the IMCA service is to provide a specialist independent advocacy (IMCA) service to people and situations covered by the Mental Capacity Act 2005, in accordance with such regulations and guidelines issued by the Department of Health as are current at the time, including the Deprivation of Liberty Safeguards Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice.
- 2.2 The Contractor's IMCA Service shall be a generic service, for a wide variety of service users including, but not restricted to, people with learning disabilities, dementia, mental health needs, acquired brain injury and informal carers requiring support in line with the Deprivation of Liberty Safeguards Code of Practice.
- 2.3 Referrals will come from a number of staff, in both the local authority and in its local health partners. These will include without limitation doctors, dentists, therapists and nurses providing serious medical treatment for people who lack mental capacity for the specific decision. Additionally referrals will be made by social workers arranging hospital discharges as well as social workers and care managers planning long-term moves for people with learning disabilities, people with dementia and others and from supervisory bodies making assessments and authorisations under the deprivation of liberty safeguards.
- 2.4 The Contractor shall ensure that this Service is operational and able to take referrals from the Commencement Date.

3. The Service Principles

- 3.1 The Contractor shall provide high quality non-instructed advocacy for people with a variety of communication needs. A commitment to, and experience in, this form of advocacy must be demonstrated. Instructed advocacy shall be provided to support "relevant person's representatives".
- 3.2 The Contractor must understand that mental capacity is broad and relates to many diverse groups of people. The Contractor shall have skills in communicating in non-standard ways, for example, with people who have no spoken language. The

Contractor shall have a holistic approach to working with people, not relying on their 'instructions' but on an assessment of their rights and needs.

- 3.3 The Contractor shall provide a service that is appropriate to people's needs, including without limitation their disability, race, culture, religion, sexuality, age and gender. ~~The Contractor shall also recognise that individuals' needs can change over time and respond accordingly.~~
- 3.4 The Contractor shall work in partnership with other agencies: statutory, independent and voluntary. This will include without limitation hospital discharge staff, doctors, nurses, therapists, social workers, care managers, managers of care homes, approved mental health professional ("AMHPs") under the Mental Health Act 2007 and best interest assessors under the Mental Capacity Act 2005. The Contractor shall assist staff and service managers who are likely to refer their patients and service users, to understand the role of the Independent Mental Capacity Advocate and know how and when to access the Service.
- 3.5 The Contractor shall employ professional advocates and shall offer one to one consultations at the Contractor's premises in the London Borough of Wandsworth or at a location better suited to the service user, including without limitation their own home, care home and in hospital.
- 3.6 The Contractor shall ensure that the Service is accessible to service users from all areas of the London Borough of Wandsworth and shall take full account of the needs of people with disabilities who may be unable to use public transport.
- 3.7 The Contractor shall demonstrate that it has the ability to work successfully with people from black and minority ethnic communities, especially when English is not the first language.

4. Accessing the service

- 4.1 Access to the Contractor's IMCA Service shall be through referral from a health or social care professional only.
- 4.2 The Contractor shall ensure that written referral guidelines are in place and publicised to inform referrers of the process to follow for referral.
- 4.3 The Contractor shall ensure that information on the operation of the Service is made available to referrers including without limitation:
- quality standards and principles of service operation;
 - timescales for response;
 - procedures for responding and reporting on findings; and
 - policy for feedback and formal complaints.
- 4.4 The Contractor shall take referrals by telephone, in writing or by fax. If using email, the Contractor must ensure that confidentiality is maintained.
- 4.5 On initial contact, the Contractor shall take brief relevant detail and shall register the individual's name. The Contractor shall consider each applicant and the Contractor shall establish priority. The Service will operate a waiting list, if required. The Contractor shall deal with all urgent cases as promptly as possible and in a timely way to ensure statutory timescales, as set out in the Deprivation of Liberty Safeguards Code of Practice, can be met by the supervisory body.

5. Independence and Impartiality

- 5.1 The Contractor and its staff and volunteers shall act completely impartially on behalf of its service users. The Contractor shall have in place a code of conduct in line with the widely adopted Action for Advocacy Code of Practice for Advocates set out at Schedule 9.

- 5.2 The Contractor's staff or volunteers shall be made aware that even in their private capacities, service users and statutory staff will perceive them as advocates, and hence to be mindful of advocacy good practice. If it is necessary to express a personal view, outside of their role as an advocate, to those who also know them in an advocacy role, staff and volunteers must make it clear in which capacity they are expressing their view.

6. Operational Times

- 6.1 The Contractor shall ensure that the IMCA Service shall be available during office hours, every weekday, except public holidays. Core time for the service will be from 9.00 am to 5.00 pm on working days.
- 6.2 The Contractor may arrange evening and weekend appointments with particular service users, their family members and other interested parties, as appropriate, to ensure fair access to the Service and to meet statutory timescales.

7. Joint Working

- 7.1 The Contractor shall develop written protocols to ensure clarity and consensus regarding respective responsibilities and expectations and how and at what level advocacy issues will be taken up with other agencies that they may need to contact in relation to a case.
- 7.2 The Contractor shall ensure that service users, carers and referral agencies are aware of their rights to:
- Confidentiality (in line with the Contractor's Confidentiality Policy).
 - Access to records (in line with the Contractor's Access to Records Policy).
 - Complain and comment on the Service (in line with the Contractor's Complaints Policy).
 - Be kept informed about actions at all times.
- 7.3 The Council expect the Contractor to work in partnership with other Wandsworth advocacy services as appropriate.
- 7.4 The Contractor shall link with the National Advocacy Network (NAN), www.Advocacynetwork.org.uk, and any other relevant bodies to further develop the standard of the advocacy Service.

8. IMCA Staff Management and Training

- 8.1 A number of part-time IMCA advocates (who may combine the specialist IMCA role with other forms of advocacy) would provide a more flexible service than one full time advocate. The Contractor shall ensure that arrangements are in place to ensure continuity of Service provision, for example during annual leave and staff sickness.
- 8.2 The Contractor shall be responsible for the overall management of the Service, including providing support and supervision to paid staff.

- 8.3 The Contractor shall ensure that its team shall have in-depth knowledge of relevant legislation and the issues facing service users, including people from black and ethnic minority backgrounds.
- 8.4 The Contractor shall recruit and employ appropriate and experienced workers who are careful, skilled, honest and fully capable of carrying out the work to meet this Specification. The Contractor shall ensure that IMCA advocates are qualified to carry out their role as an IMCA, including without limitation undertaking regulation deprivation of liberty training.
- 8.5 The Contractor shall draw up a job description and person specification.
- 8.6 The Contractor shall take adequate measures to ensure the protection of the public when recruiting staff and volunteers. All permanent staff and volunteers shall require references taken. In accordance with Condition 15.5, all staff shall undergo CRB checks prior to employment and shall be expected to make a declaration under the Rehabilitation of Offenders Act 1974. The Contractor shall judge the suitability of any applicant based on the nature of such declarations.
- 8.7 The Contractor shall ensure all employees receive regular one to one supervision. Group supervision may also be provided.
- 8.8 The Contractor shall ensure that monitoring and evaluating the performance of staff takes place on a regular basis.
- 8.9 The Contractor shall ensure that each staff member shall have a personal development plan that is agreed, implemented and reviewed annually.
- 8.10 If there is any cause for concern in relation to the advocacy service or individual advocates, the Contractor and the Council shall agree an appropriate way forward. The Contractor shall have appropriate disciplinary and grievance procedures in place. These shall be shared and agreed with the Council prior to the Service commencing.

9. Training Health and Social Care Staff

- 9.1 Under the terms of the Independent Professional Advocacy Service contracts 1 to 5, the Contractor shall provide 2 x 2 hour training sessions a Year on advocacy for staff in the statutory and voluntary sector for at least 30 staff each time, plus a programme of awareness training at the start of the Contract. This training shall included IMCA as part of the sessions on advocacy in general.
- 9.2 The Contractor shall support the planning or delivery of training programmes in relation to safeguarding adults to ensure that its staff understand the IMCA requirements.
- 9.3 The Contractor shall provide ad hoc training as necessary to referrers to deal with poor take up of the IMCA Service or other concerns in relation to the referral practice.

10. User and Referrer Involvement

- 10.1 The Contractor shall give two or more health/care service users who are Wandsworth residents the opportunity to participate on the interview panel for its worker(s) together with a representative of the referring agencies approved by the Council.
- 10.2 The Contractor shall encourage and develop as much as possible, and as appropriate, service user participation in the management and delivery of the Service.

- 10.3 The Contractor shall put in place mechanisms to seek feedback from referrers.
- 10.4 The Contractor shall respond to feedback from stakeholders to ensure continuous improvement.
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11. Health and Safety

- 11.1 The Contractor shall at all times comply with the Health and Safety at Work Act 1974 and any other legislation regulations or guidance pertaining to health and safety at work. The Contractor's Health and Safety Policy shall include, without limitation, procedures for:
- a. Reporting, recording and investigating accidents.
 - b. Fire precautions and evacuation procedures.
 - c. First Aid Training.
 - d. Training for Staff and Volunteers in health and safety matters.
- 11.2 The Contractor shall be responsible for risk assessment, hazard control and other health and safety matters affecting its staff in the delivery of the Services. The Contractor shall do all that is reasonably practicable to prevent personal injury and damage to property and to protect staff, service users and others from hazards.

12. Publicising the IMCA Service

- 12.1 The Contractor shall publicise the availability of the Service on the Health and Social Care Information Service (currently known as CareLine), through the Wandsworth Carers Centre, Age Concern and Mencap services, through the Council's Access Services, in Wandsworth's community facilities, and through health and social care service providers including without limitation GPs, community clinics and hospitals. The Contractor shall have a contact phone number, postal address, email address and preferably a web page that people can use to gain more information about the Service.
- 12.2 The Contractor shall be responsible for publicising the Service including all of the cost of publicity literature, adverts, etc.
- 12.3 The Contractor shall advise the Council annually in advance of its publicity programme for the Wandsworth IMCA Service.

13. Complaints Procedures

- 13.1 The Contractor shall have a formal complaints procedure, which has been agreed with the Council.
- 13.2 The Contractor shall give service users information in accessible formats about how to make complaints. The way to make complaints shall be explained to each service user from time to time, as appropriate.
- 13.3 An anonymised report on complaints and action taken will form part of the quarterly contract monitoring reports that the Contractor shall provide to the Council in accordance with the terms of this Contract.
- 13.4 Copies of complaints shall be forwarded to the Council's Authorised Officer as soon as practical after receipt, detailing action to be taken. Any serious incidents should be communicated urgently and within 24 hours.

14. Charging policy

- 14.1 The Contractor shall not charge for any part of the IMCA Service. However, the Contractor shall not be expected to meet the transport costs of service users it is working with e.g. for attending the office for interviews or going to meetings with the Contractor.

15. Record Keeping

- 15.1 The Contractor shall provide data and information to the Department of Health to complete the national IMCA database in the format and when required.
- 15.2 The Contractor shall keep:
- financial information for audit purposes;
 - records of all meetings including attendance;
 - information about service users required for monitoring purposes.
- 15.3 All information must be kept in accordance with the Data Protection Act 1998.
- 15.4 The Contractor shall ensure that individual records will include the outcome of the work including whether or not the outcome appeared satisfactory to the advocate and the reasons for this.

16. Confidentiality

- 16.1 The Contractor shall have a confidentiality policy that is also accessible to service users. Service users have a right of confidentiality except where there is a serious risk of harm to themselves or others or where such disclosure may be justified taking into account the person's best interest or it may be a legal requirement, such as during a criminal investigation or by order of the court, that confidential information is made available to investigating authorities. These requirements shall be included in the Contractor's confidentiality policy.
- 16.2 When appropriate, the Contractor shall share information in good time with the appropriate agencies. The Contractor shall act in accordance with the "Wandsworth Interagency Policy and Procedures for Safeguarding Vulnerable Adults" and those for safeguarding children set out at Schedule 6. All staff must have training in application of these local guidelines.
- 16.3 The Contractor shall ensure that if the advocacy workers identify service users who need individual support from another service they must seek the individual's permission before referring them on to another service wherever possible, but the Contractor shall not hold back from referrals for individuals who cannot give permission and do not have relatives who can make referrals for them.
- 16.4 Where arrangements are made for handover to another contractor on termination of this Contract, the Contractor will co-operate in the arrangements for handover as described in Condition 34 of the Contract. When work is completed, the Contractor shall handle detailed service user records under the policy for storage and destruction of confidential information, in accordance with the Contractor's data protection and storage procedures. The Contractor will not pass such records to a new contractor.

17. Quality Standards

17.1 The Contractor shall have a recognised quality control system in place, for example the Action for Advocacy "Advocacy Quality Performance Mark".

17.2 The Contractor shall provide the levels of service detailed below. Requirements for DOL are still being assessed and the Council shall keep the same under review during the Contract Period and accordingly the Contractor shall consider the following response standards in this Specification as a guideline only: -

- e. Acknowledgment of referral within 2 Working Days of receipt, and within 24 working hours for deprivation of liberty ("DOL") referral;
- f. Expert representation according to the level of urgency, but within 14 calendar days of referral in general and for DOL in liaison with the best interest assessor in order to meet statutory timescales, normally within 5 Working Days;
- g. Timely management of the case, taking account of the timescales required for decision making by all those involved and statutory timescales.
- h. A timely written report to be made available to the referrer and appropriate others at the conclusion of the case, or at appropriate points for decision making. Other formats for the report may be required.
- i. Communication Standards: Communication formats should be fit for purpose. Language interpretation shall be made available to those who need it as shall British Sign Language or Makaton signing.
- j. Service User Satisfaction (referrers and other stakeholders) feedback shall be obtained regularly and the Contractor shall provide evidence of its impact on the Service.
- k. The Contractor shall follow the Wandsworth Delivering Excellence quality improvement initiative at Schedule 5.

18. Volume of Service

18.1 This Service is expected to grow significantly with the introduction of the DOL Safeguards requiring a minimum of one full-time IMCA advocacy caseload. Early indications are that this should be adequate, but the Council shall keep the same under review as the DOL safeguards become better known and potentially create additional demand.

- 2007/08: 42 IMCA cases managed plus 18 ineligible referrals (Total 60 referrals).
- 2008/09: estimated 76 eligible IMCA cases managed plus estimated 21 ineligible referrals not proceeding to advocacy (based on first 9 months) (Total 97 referrals).

However, the Contractor has not relied on the foregoing figures when pricing its tender.

19. Performance and Monitoring

19.1 During the Contract Period the Council shall require from the Contractor, on a quarterly basis, at least and without limitation the following information for contract monitoring purposes:

- Total numbers and sources of referrals.
- Number and sources of referrals accepted, broken down by age, gender and ethnicity of service user.

- Number and sources of referrals refused with reasons, broken down by age, gender and ethnicity of service user.
 - Response time to acknowledge referral.
 - Number of 'live' cases at the end of the quarter, broken down by case type and age, gender and ethnicity of service users.
 - Number of cases closed, broken down by case type, showing average number of hours spent, with summary of outcomes.
 - Percentage of existing and new users.
 - Emerging patterns of referrals (e.g. by type of intervention, types of issue(s) involved, or place referral made from).
 - Record of time taken on individual cases.
 - Record of activity, interviews, and time spent examining records.
 - Nature of work undertaken, e.g. information provision, service, referral, coordination, and representation.
 - Number of individual meetings provided.
 - Agencies involved.
 - Outcomes (descriptions and measures to be agreed).
 - Records of any serious incidents or complaints or compliments the service receives.
 - Staff turnover and records of training and frequency of supervision for staff (aggregated).
 - Profile of age, gender, ethnicity, and disability status of any staff employed.
 - Relevant financial data on cost and expenditure.
 - Summary of results of internal quality assurance systems.
- 19.2 In addition to these regular reports the Contractor shall, on request, produce any of the information in the appendix, possible performance indicators, to this Specification to substantiate its adherence to this Specification.
- 19.3 The Contractor shall be accountable for the IMCA Service to the Council. Quarterly meetings will be organised to review this information and to amend and improve this Specification and the Contractor shall be a full partner in this process. The Contractor shall undertake regular reviews or audits of its Service and shall link these to its development plans.
- 19.4 The Contractor shall provide advocacy awareness training sessions to the NHS and social care staff that will be providing the referrals. The quarterly meetings will discuss the awareness raising sessions, any problems encountered and the progress of the service.

PART 3: A SELF ADVOCACY SERVICE FOR ADULTS WITH LEARNING DISABILITIES (CONTRACT 7)

1. Introduction

- 1.1 ~~People with learning disabilities currently have little control over their own lives, though almost all, including the most severely disabled, are capable of making choices and expressing their views'. Government White Paper 'Valuing People' (2001)~~
- 1.2 As part of the development of advocacy services for Wandsworth residents with learning disabilities, the Contractor shall support and facilitate self-advocacy.
- 1.3 The Contractor shall ensure that the Wandsworth self-advocacy Service supports adults with learning disability and acquired brain injury to speak for themselves on a range of issues and that the service helps people to develop self confidence as well as providing support to small groups and individuals.
- 1.4 The term learning disability includes acquired brain injury throughout this Specification.

2. Description of the service

- 2.1 This description has been developed in conjunction with members of the two Speak Out Groups in Wandsworth and is based on some of what had been agreed and practised with the previous workers. The Contractor shall ensure that this Service includes, without limitation, the following: -
- A minimum of three self-advocacy groups meeting per month during the Contract Period in the London Borough of Wandsworth in accessible venues. The purpose and shape of the group meetings will be determined by service users, in consultation with the Contractor and the Council, and will develop over time. Groups formed with a specific brief may be time limited and designed to support significant changes in services such as day care or residential accommodation. Currently there is a requirement for one general self advocacy group and two specific groups, one on keeping safe and one supporting the Better Days change programmes for day services.
 - The groups will normally have up to 15 people attending meetings, on average.
 - Twice a year there shall be an opportunity for all those supported by self-advocacy to meet together. Once in the summer months for an AGM and once in the winter. The Contractor shall ensure that there is an opportunity for both of these meetings to include a social element e.g. a disco and food. They could also be extended to include training.
 - Every service user who attends the AGM shall be given the opportunity to vote on the chair and deputy for speak out. Other positions can be created and elected as appropriate.
 - If appropriate a committee of chosen representatives can be formed to meet occasionally to plan and develop the work of the groups.
 - One or more group members shall be given support to take part as a volunteer in administrative work, preparation and follow up for the groups between meetings.
 - Support shall be given to some representatives to attend local, regional and national meetings e.g. Wandsworth Disability Community Safety Steering Group, Hate Crime Group, Valuing People Forums, People First Conferences, etc.

- As groups regularly attract more than the normal attendance limit of 15, the Contractor shall consider starting a further group, potentially enabling more experienced group members to operate more independently.

3. Users of the self-advocacy service

- 3.1 The main purpose of this Service is to support adults who are identified as having a learning disability and who live in the London Borough of Wandsworth (whether or not they are eligible for community care services). Young people in transition to adult services will also be eligible to join a group.
- 3.2 The Contractor shall ensure that the groups are inclusive. People from all ethnic backgrounds will be welcome and included. Thought should be given to including adults with limited verbal skills (the local speech therapy service is keen to assist in this area). The groups should be welcoming and a safe environment for women and men. The Contractor shall ensure that an equal opportunities policy is in place and that the groups are encouraged to discuss the issues and develop their own ground rules to ensure that all members are treated fairly.

4. Service User Participation

The Contractor shall ensure the following service user participation:

- 4.1 The self-advocacy groups must be made up of adults with learning disabilities. Only people with learning disabilities will be eligible to vote in any elections.
- 4.2 Where possible one or several members shall be supported and trained to provide administration support for their own groups.
- 4.3 Two or more of the self advocates shall be given the opportunity to participate on the interview panel for the group worker(s) for the three groups.
- 4.4 Any people without learning disabilities at the group meetings will be there to support the people with learning disabilities to run the meetings, or provide information or training. One of the main roles of the support worker(s) will be to encourage members to take leadership in the group, to plan the activities and group projects, etc.
- 4.5 Many of the speak out members have taken part in training in the past and could help with decisions about future training for the new group members, etc.

5. Publicising the Self Advocacy Service

- 5.1 The Contractor shall publicise the groups on CareLine and in Wandsworth community facilities (in particular those used by people with learning disabilities); and shall have a contact phone number, postal address, email address and preferably a web page that people can use to gain more information about the groups.
- 5.2 The Contractor shall be responsible for publicising the self advocacy groups including without limitation the cost of publicity literature, adverts, etc.
- 5.3 The Contractor shall advise the Council annually of its publicity programme for the Wandsworth Self Advocacy Groups.