

GB-Shrewsbury: Church Stretton Day Opportunities Service

Competitive Contract Notice

1. Title: GB-Shrewsbury: Church Stretton Day Opportunities Service
2. Awarding Authority:
Shropshire Council
Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom
Tel. +44 1743252992, Email: procurement@shropshire.gov.uk, URL: www.shropshire.gov.uk
Contact: [REDACTED] - Procurement Manager, Attn: procurement@shropshire.gov.uk
3. Contract Type: Services
Sub Type: Health and social services.
4. Description: Social services. Shropshire Council holds an existing contract for a day opportunities service for adults with learning disabilities operating out of Church Stretton which expires on 30.11.18.

Maximum funding for this service is £76,000 per annum.

The Council wishes to appoint a provider who has experience of providing learning disability services and who is able to deliver a quality day service from their own building based in the town of Church Stretton. An outreach service once a week is also delivered in Bishop's Castle for which a rented base has been sourced by the current provider to operate from.

Applicants should note that it is considered that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') may apply to this contract. Also, due to the fact that there are staff providing the service who are currently in the Local Government Pension Scheme, compliance with the provisions The Best Value Authorities Staff Transfers (Pensions) Direction 2007, in relation to the Local Government Pension Scheme (as administered by Shropshire County Pension Fund) will also be required. Applicants are advised to seek their own legal advice about the practicality of these regulations.

5. CPV Codes:
85320000 - Social services.
6. NUTS Codes :
UKG22 - Shropshire CC
7. Main Site or Location of Works, Main Place of Delivery or Main Place of Performance: Shropshire CC,
8. Reference Attributed by the Awarding Authority: AMCV 256
9. Estimated Value of Requirement: Category H: 100K to 500K
Currency: GBP
10. Deadline for Expression of Interest: 29/08/2018 12:00:00
11. Address to which they must be sent:
Shropshire Council
Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom
Tel. +44 1743252992, Email: procurement@shropshire.gov.uk, URL: www.shropshire.gov.uk
Contact: [REDACTED] - Procurement Manager, Attn: procurement@shropshire.gov.uk

12. Other Information:
Other Information: The contracting authority considers that this contract may be suitable for economic operators that are small or medium enterprises (SMEs). However, any selection of tenderers will be based solely on the criteria set out for the procurement.
For more information about this opportunity, please visit the Delta eSourcing portal at:
<https://www.delta-esourcing.com/tenders/UK-GB-Shrewsbury-Church-Stretton-Day-Opportunities-Service/EA5QAV5275>

To respond to this opportunity, please click here:
<https://www.delta-esourcing.com/respond/EA5QAV5275>
TKR-2018718-PRO-12829616
Suitable for VCO: Yes

Procedure Type:OPEN
Period of Work Start date: 01/12/2018
Period of Work End date: 30/11/2021

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18 July 2018

Tel: (01743) 252993

Fax: (01743) 255901

Please ask for: [REDACTED]

Email: procurement@shropshire.gov.uk

AMCV 256

Dear Bidder

AMCV 256 – CHURCH STRETTON DAY OPPORTUNITIES SERVICE

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

1. Instructions to Tenderers
2. Draft Form of Contract
3. Tender Response Document
4. TUPE Confidentiality letter

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

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

Returning of Tenders

- The deadline for returning tenders is **noon on, 29th August 2018** any tenders received after this time will not be accepted
- Tenders are to be submitted through Delta, our electronic tender portal
 - Please ensure that you allow yourself at least two hours when responding prior to the closing date and time, especially if you have been asked to upload documents. If you are uploading multiple documents you will have to individually load one document at a time or you can opt to zip all documents in an application like WinZip. Failure to submit by the time and date or by the method requested will not be accepted.
 - Once you upload documentation ensure you follow through to stage three and click the 'response submit' button. Failure to do so, will mean the documents won't be viewable by the Council.

Tenders **cannot** be accepted if:

- Tenders are received by post, facsimile or email
- Tenders are received after **12 noon on the given deadline**

personal info

Freedom of Information

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

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

Other Details

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

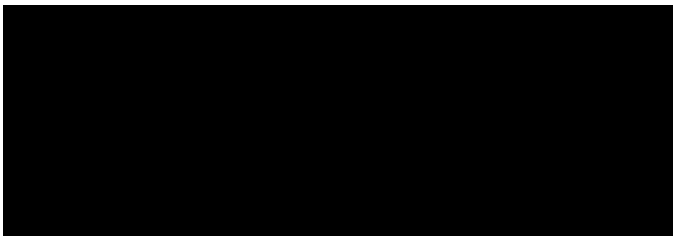
As part of its sustainability policy, Shropshire Council encourages tenderers to minimise packaging, particularly presentational or retail packaging.

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

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

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

Yours faithfully



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



INSTRUCTIONS FOR TENDERING

**AMCV 256 – CHURCH STRETTON
DAY OPPORTUNITIES SERVICE**

Shropshire Council Instructions for tendering

Contract Description:

Shropshire Council holds an existing contract for a day opportunities service for adults with learning disabilities operating out of Church Stretton which expires on 30.11.18.

The Council wishes to appoint a provider who has experience of providing learning disability services and who is able to deliver a quality day service from their own building based in the town of Church Stretton. An outreach service once a week is also delivered in Bishop's Castle for which a rented base has been sourced by the current provider to operate from. For a fuller description of the service tenderers are referred to the Form of Contract –Schedule 1 The Specification.

Maximum funding for this service is £76,000 per annum.

A current overview of the service provided is as follows:

Service users range in age from mid-20s to mid-60s and assessed needs include:

- Significant Hearing Impairment
- Little or no verbal communication
- Significant Visual Impairment
- Reduced Mobility
- Epilepsy
- Downs Syndrome
- A wide variety of Learning Disabilities
- A tendency to self harm
- Behavioural issues

Staffing ratios are entirely dependent on the needs of the individuals and the particular activity. Some individuals need 1 to 1 support when out of the building for physical or emotional support. 3 independent service users can travel to Shrewsbury or Ludlow by public transport with 1 member of staff.

The Bishop's Castle service has 1 staff with 2 service users. One of the current service users needs constant support and so it would not be possible to add a third service user without additional staffing. The service users currently travel to Shrewsbury from the base in Bishop's Castle using public transport approximately every two weeks.

Applicants are reminded that the number of service users/ support needs and requirements are subject to change and this information is provided as a guide only.

Contract

The contract will be a block contract for 28 day places per week for an initial 3 years from 01.12.18 to 30.11.21 with potential for a further 2 year extension to the contract.

In the event that day places are increased above 28 then per week then these places will be purchased on an individual spot basis to be arranged with the appointed provider.

The annual payment will not be subject to a payment review until April 2020.

Staffing – TUPE and LGPS staff

Applicants should note that it is considered that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') may apply to this contract. Also, due to the fact that there are staff providing the service who are currently in the Local Government Pension Scheme, compliance with the provisions The Best Value Authorities Staff Transfers (Pensions) Direction 2007, in relation to the Local Government Pension Scheme (as administered by Shropshire County Pension Fund) will also be required. Applicants are advised to seek their own legal advice about the practicality of these regulations.

Applicants should note that the staffing information spreadsheet being provided with this tender, upon request, only lists those staff currently identified as eligible for transfer under TUPE. In the event that further staff are employed by the current provider to cover the service prior to the start of the new contract then these further staff may also be eligible for transfer under TUPE.

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1.0 Invitation to Tender

- 1.1** You are invited to tender for the provision of day services in Church Stretton as detailed in the Tender Response Document. The contract will be for an initial period of 3 years commencing on the 1st December 2018 with the option to extend for a further period of up to 2 years.
- 1.2** Tenders are to be submitted in accordance with the Draft Form of Contract and the instructions outlined within this document.
- 1.3** Tenders must be submitted in accordance with the following instructions. Tenders not complying in any particular way may be rejected by Shropshire Council (the Council) whose decision in the matter shall be final. Persons proposing to submit a Tender are advised to read the Invitation to Tender documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their Tender is accepted.
- 1.4** The Invitation to Tender documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Invitation to tender document other than on an “in confidence” basis to those who have a legitimate need to know or who they need to consult for the purpose of preparing the tender as further detailed in these Instructions for Tendering.
- 1.5** Tenderers shall not at any time release information concerning the invitation to tender and/or the tender documents for publication in the press or on radio, television, screen or any other medium without the prior consent of the Council.
- 1.6** The fact that a Tenderer has been invited to submit a tender does not necessarily mean that it has satisfied the Council regarding any matters raised in the pre-tender questionnaire submitted. The Council makes no representations regarding the Tenderer’s financial stability, technical competence or ability in any way to carry out the required services. The right to return to any matter raised in any pre-tender questionnaire submitted as part of the formal tender evaluation is hereby reserved by the Council.
- 1.7** The Invitation to Tender is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a tenderer to submit a tender or enter into a Contract or any other contractual agreement.
- 1.8** Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council’s involvement.

2.0 Terms and Conditions

- 2.1** Every Tender received by the Council shall be deemed to have been made subject to the Draft Form of Contract and these Instructions for Tendering unless the Council shall previously have expressly agreed in writing to the contrary.
- 2.2** The Tenderer is advised that in the event of their Tender being accepted by the Council, they will be required to undertake the required services.

3.0 Preparation of Tenders

3.1 Completing the Tender Response Document

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

3.1.2 All documents requiring a signature must be signed;

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

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

3.2 Tender Preparation and Costs

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

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

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

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

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

3.2.6 It shall be the Tenderer's responsibility to ensure that all calculations and prices in the Tender documentation are correct at the time of submission.

3.2.7 The Tenderer is deemed to have made him/herself acquainted with the Council's

requirements and tender accordingly. Should the Tenderer be in any doubt regarding the true meaning and intent of any element of the specification he is invited to have these fully resolved before submitting his Tender. No extras will be allowed for any loss or expense involved through any misunderstanding arising from his/her failure to comply with this requirement.

3.2.8 Any Tender error or discrepancy identified by the Council shall be drawn to the attention of the Tenderer who will be given the opportunity to correct, confirm or withdraw the Tender.

3.2.9 The Tender Documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Tender document other than on an In Confidence basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing the Tender.

3.3 Parent Company Guarantee

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

3.4 Warranty

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

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

4.0 Tender Submission

4.1 Tenders must be submitted strictly in accordance with the letter of instruction accompanying this Invitation to Tender. Tenders must be submitted by the deadline of **noon, 29th August 2018**.

4.2 No unauthorised alteration or addition should be made to the Specification and Tender Response Document, or to any other component of the Tender document. If any such alteration is made, or if these instructions are not fully complied with, the Tender may be rejected.

4.3 Qualified tenders may be submitted, but the Council reserves the right not to accept any such tender. The Council's decision on whether or not a Tender is

acceptable will be final.

- 4.4 Tenderers should note that their Tender must remain open and valid and capable of acceptance for a period of at least 90 days.
- 4.5 Tenderers should note that Tenders and supporting documents must be written in English and that any subsequent contract, which may or may not be entered into, its formation, interpretation and performance, shall be subject to and in accordance with the laws of England and subject to the jurisdiction of the Courts of England and Wales.
- 4.6 Where Tender submissions are incomplete the Council reserves the right not to accept them.

5.0 Variant Bids

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

6.0 The Transfer of Undertakings (Protection of Employment) regulations 2006 (Delete if not applicable)

- 6.1 Tenderers should note that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') will apply to this contract. Also compliance with the provisions in relation to Local Authority Pensions will also be required. Tenderers are advised to seek their own legal advice about the practicality of these regulations and should reflect the financial implications of such a transfer in their tender submissions.
- 6.2 Details of employees of companies/and of the Council who are currently carrying out the work that is included in the Contract can be requested by signing the TUPE Confidentiality Letter and returning to the Delta Tender Box. Tenderers should note, however, that where the Council provides information to them for the purposes of TUPE, such information may originate from a third party. As the Council has no control over the compilation of such third party information, the Council gives no guarantee or assurance as to the accuracy or completeness of such information and cannot be held responsible for any errors or omissions in it.

7.0 Tender Evaluation

- 7.1** The Tenderers may be called for interview to seek clarification of their tender or additional or supplemental information in relation to their tender. The presentations will not carry any weighting to the final score achieved by Tenderers, but will be used to clarify and moderate issues raised in the Tenderer's submissions. Any areas of discrepancy between submissions and information gained from the presentations will be reviewed and scores previously awarded will be amended if necessary.
- 7.2** If the Council suspects that there has been an error in the pricing of a Tender, the Council reserves the right to seek such clarification, as it considers necessary from the Tenderer in question.

8.0 Clarifications

- 8.1** Tenderers are responsible for clarifying any aspects of the tendering process and/or the Invitation to Tender documents in the manner described below.
- 8.2** If you are unsure of any section and require further clarification, please contact via our Delta Tenderbox.
- 8.3** Where appropriate, the Authorised Officer named above may direct the Tenderer to other officers to deal with the matter.
- 8.4** All queries should be raised as soon as possible (in writing), in any event not later than **22nd August 2018**.
- 8.5** All information or responses that clarify or enhance the tendering process will be supplied to all Tenderers on a uniform basis (unless expressly stated otherwise). These responses shall have the full force of this Instruction and where appropriate the Conditions of Contract. If a Tenderer wishes the Council to treat a question as confidential this must be expressly stated. The Council will consider such requests and will seek to act fairly between the Tenderers, whilst meeting its public law and procurement duties in making its decision.
- 8.6** Except as directed in writing by the Authorised Officer, and confirmed in writing to a Tenderer, no agent or officer or elected Member (Councillor) of the Council has any express or implied authority to make any representation or give any explanation to Tenderers as to the meaning of any of the Tender Documents, or as to anything to be done or not to be done by a Tenderer or to give any warranties additional to those (if any) contained in the ITT or as to any other matter or thing so as to bind the Council in any way howsoever.

9.0 Continuation of the Procurement Process

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

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

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

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

10.0 Confidentiality

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

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

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

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

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

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

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

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

10.7 Transparency of Expenditure

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

11.0 Freedom of Information

- 11.1** Please note that from 1 January 2005 under the provisions of the Freedom of Information Act 2000, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. One of the consequences of those new statutory responsibilities is that information about your organisation, which Shropshire Council may receive from you during this tendering process may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.
- 11.2** In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the Act, Shropshire Council may consider it appropriate to ask you for your views as to the release of any information before we make a decision as to how to respond to a request. In dealing with requests for information under the Act, Shropshire Council has to comply with a strict timetable and it would therefore expect a timely response to any such consultation within five working days.
- 11.3** If, at any stage of this tendering process, you provide any information to Shropshire Council in the expectation that it will be held in confidence, then you must make it

clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as “commercial in confidence” will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be given.

- 11.4** Shropshire Council will not be able to accept that trivial information or information which by its very nature cannot be regarded as confidential should be subject to any obligation of confidence.
- 11.5** In certain circumstances where information has not been provided in confidence, Shropshire Council may still wish to consult with you as to the application of any other exemption such as that relating to disclosure that will prejudice the commercial interests of any party. However the decision as to what information will be disclosed will be reserved to Shropshire Council.

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

12.0 Disqualification

- 12.1** The Council reserves the right to reject or disqualify a Tenderer's Tender submission where:
 - 12.1.1** The tenderer fails to comply fully with the requirements of this Invitation to tender or is in breach of clause 15 of the Council's General Terms and Conditions relating to Bribery and Corruption or is guilty of a serious or intentional or reckless misrepresentation in supplying any information required; or
 - 12.1.2** The tenderer is guilty of serious or intentional or reckless misrepresentation in relation to its tender return and/or the procurement process.
 - 12.1.3** The tenderer directly or indirectly canvasses any member, official or agent of the Council concerning the award of the contract or who directly or indirectly obtains or attempts to obtain information from any such person concerning any other Tender or proposed Tender for the services. The Canvassing Certificate must be completed and returned as instructed.
 - 12.1.4** The Tenderer :
 - a) Fixes or adjusts the amount of his Tender by or in accordance with any agreement or arrangements with any other person; or
 - b) Communicates to any person other than the Council the amount or approximate amount of his proposed Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for preparation of the Tender for insurance purposes); or
 - c) Enters into an agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender to be submitted; or
 - d) Offers or agrees to pay or give or does pay or gives any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to

any Tender or proposed Tender for the services any act or omission.

12.2 Any disqualification will be without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a Tenderer may attract. The Non-Collusive Tendering Certificate must be completed and returned as instructed.

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

13.0 E-Procurement

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

14.0 Award of Contract

14.1 Award Criteria

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

14.2 Award Notice

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

14.3 Transparency of Expenditure

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

15.0 Value of Contract

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

16.0 Acceptance

- 16.1** Tenders must be submitted strictly in accordance with the terms of the Council's Invitation to Tender documentation and acceptance of the tender shall be conditional on compliance with this Tender Condition.
- 16.2** The Tender documentation including, the General and Special Terms and Conditions of Contract, the Tender Response document, these Instructions to Tender, together with the formal written acceptance by the Council will form a binding agreement between the Contractor and the Council.
- 16.3** The Tenderer shall be prepared to commence the provision of the supply and services on the start date of the contract being **1st December 2018**.

17.0 Payment Terms

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

18.0 Liability of Council

- 18.1** The Council does not bind himself to accept the lowest or any tender.
- 18.2** The Council does not accept any responsibility for any pre-tender representations made by or on its behalf or for any other assumptions that Tenderers may have drawn or will draw from any pre-tender discussions.
- 18.3** The Council shall not be liable to pay for any preparatory work or other work undertaken by the Tenderer for the purposes of, in connection with or incidental to this Invitation to Tender, or submission of its Tender response or any other communication between the Council and any other party as a consequence of the issue of this Invitation to Tender.
- 18.4** The Council shall not be liable for any costs or expenses incurred by any Tenderer in connection with the preparation of a Tender return for this procurement exercise, its participation in this procurement whether this procurement is completed, abandoned or suspended.
- 18.5** Whilst the Tender Documents have been prepared in good faith, they do not purport to be comprehensive nor to have been formally verified. Neither the Council nor any of its staff, agents, elected Members, or advisers accepts any

liability or responsibility for the adequacy, accuracy or completeness of any information given, nor do they make any representation or given any warranty, express or implied, with respect to the Tender Documents or any matter on which either of these is based (including, without limitation, any financial details contained within the Specification and Contract Documentation). Any liability is hereby expressly disclaimed save in the event of fraud, or in the event of specific warranties provided within the Contract Documentation.

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

20.0 Declaration

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

Signed (1) Status.....

Signed (2) Status.....

(For and on behalf of)

Date

Dated.....20

BETWEEN

SHROPSHIRE COUNCIL

and

XXXXX

FOR

DAY OPPORTUNITIES SERVICES FOR ADULTS WITH A LEARNING DISABILITY

AMCV 256

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(together 'the Parties')

DEFINITIONS

Associated Person	in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest.
Best Value	the requirement under section 3 of the Local Government Act 1999 for local authorities to secure continuous improvement.
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
Care Manager	an Officer of the Council responsible for assessing the social care needs of the Service User.
Centre	The building from which the Service will be provided
Commencement Date	01.12.18
Commercially Sensitive Information	comprises the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business which the Service Provider has indicated to the Council in writing that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss;
Confidential Information	all information as defined by Clause 31.
Contract	means this agreement
Contract Documents	means all of the documents annexed to, contained and referred to within this Contract
Contracts Manager	the nominated officer of the Council authorised to oversee contractual arrangements in respect of the Service.
Council Data	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (a) supplied to the Service Provider by or on behalf of the Council; or which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Council is the Data Controller.
Council Software	software which is owned by or licensed to the Council, including software which is or will be used by the Service

Data Controller	Provider for the purposes of providing the Services but excluding the Service Provider Software shall have the meaning given to the term "controller" as set out in Article 4 of the GDPR
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
Data Processor	shall have the meaning given to the term "processor" as set out in Article 4 the GDPR
Data Protection Impact Assessment	an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation'	means: i) all applicable Law about the processing of personal data and privacy; and ii) The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 including if applicable legally binding guidance and codes of practice issued by the Information Commissioner; and iii) to the extent that it relates to processing of personal data and privacy, any Laws that come into force which amend, supersede or replace existing Laws including the GDPR, the (LED Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time including the DPA 2018 (subject to Royal Assent)
Data Protection Officer	Shall have the meaning given in the GDPR
Data Subject	shall have the same meaning as set out in the GDPR
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
Day Place	approximately 6 hours support for a Service User at the Centre or in the community supported by Staff within the opening hours in one day
Employment Checks	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, disclosure and barring checks and occupational health checks.
Exempt Information	any information or class of information (including but not limited to any document, report, Contract or other material containing information) relating to this Contract or otherwise relating to the Parties to this Contract which potentially falls within an exemption to FOIA (as set out therein)
Expiry date	30.11.21
Financial Year	the period of 12 months from and including 1st April in one year to the 31st March in the next.

First Point of Contact	the Council's office which the Council will ensure that the Service Provider has up to date telephone and email contact details for
FOIA	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause.
FOIA notice	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner.
GDPR	Means the General Data Protection Regulations brought into effect in the UK from 25th May 2018
Information	has the meaning given under section 84 of the Freedom of Information Act 2000
Intellectual Property Rights	means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply
LED	Law Enforcement Directive (Directive (EU) 2016/680)
Officer(s)	those officers of the Council who are authorised by the Council to perform functions in connection with this Contract
Payment Review	The review of Payment as detailed in Clause 5
Parties	the Service Provider and the Council and 'Party' shall mean either one of them
Payment	the amount payable by the Council to the Service Provider in accordance with this Contract as detailed in Clause 2
Performance Indicators	The performance indicators relating to this Contract issued by the Council from time to time
Personal Data	shall have the same meaning as set out in the GDPR
Personal Data Breach	means: anything which constitutes a "personal data breach" as set out in in Article 4 of the GDPR
Place	approximately 6 hours support for a Service User at the Centre or in the community supported by Staff within the opening hours in one day
Processor Personell	means all directors, officers, employees, agents, consultants and contractors of the Data Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement
Prohibited Act	the following constitute Prohibited Acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward

	for improper performance of a relevant function or activity in connection with this Agreement;
	(c) committing any offence;
	(i) under the Bribery Act;
	(ii) under legislation creating offences concerning fraudulent acts;
	(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
	(d) defrauding, attempting to defraud or conspiring to defraud the Council.
Protective Measures	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it
Public body	as defined in the FOIA 2000
Receiving Party	means a party to this Contract to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response
Regulatory Bodies	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;
Regulated Activity	in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Regulated Provider	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006
Request for Information	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
Review	means a formal review of the progress of the Services and the achievement of the Outcomes
Service	the Service as described in the Specification and Schedules of this Contract
Service Users	the persons or client group designated from time to time by the Council to receive the Service
Specification	the Specification contained in the Schedules to this Contract
SPIC	the representatives of the Service Providers in Shropshire being Shropshire Partners in Care
Staff	all employees, agents, consultants and contractors of the Service Provider and/or of any Sub-contractor paid or unpaid;
Sub-Contract	any contract or agreement, or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Goods, Works or Services or any part thereof, or facilities or services necessary for the provision of the Goods, Works or Services or any part of the Goods, Works or Services, or necessary for the management, direction or control of the Goods, Works or Services or any part of thereof

Sub-Contractor	the third parties that enter into a Sub-Contract with the Service Provider
Sub-processor	any third party appointed to process Personal Data on behalf of the Service Provider related to this Agreement.
Term	means the period commencing on the Commencement Date and expiring on the Expiry Date
Tender	means the tender dated [.....] submitted by the Service Provider and accepted by the Council annexed to this Agreement in Appendix 1
Third Party	a person (other than the Service User or the Council) who agrees to make a contribution to the cost of the Service
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) and the Acquired Rights Directive
Working Days	Monday to Friday inclusive (not including national bank holidays)
Writing	includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received EXCEPT with respect to Clause 9 (Notices) of this Contract where the term "Writing" does not include facsimile transmission or electronic mail with respect to the service or receipt of Notices.

INTERPRETATIONS

- 1 Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 2 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 4 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:
 - i references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
 - ii the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 5 Words in the singular shall include the plural and vice versa.
- 6 A reference to one gender shall include a reference to the other genders.
- 7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 8 Any obligation in these terms and conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 9 References to clauses are to the clauses of these terms and conditions.
- 10 Where any statement is qualified by the expression so far as the Service Provider is aware or to the Service Provider's knowledge or any similar expression, that statement

- shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 11 Where there is any conflict or inconsistency between the provisions of these terms and conditions or any other document forming part of the agreement with the Council, such conflict or inconsistency shall be resolved in a manner at the Council's sole discretion.

WHEREAS:

- A) The Council wishes to receive provision of day care services in Church Stretton and development of these in the surrounding areas.
- (B) The Service Provider has the skills, background and experience in providing the Services required by the Council The Council has prepared a detailed Specification in respect of the Service it wishes to receive from the Service Provider
- (C) The Service Provider is willing to provide the Services as defined below and the Council is willing to appoint the Service Provider to provide the Services in accordance with the provisions of this Contract.

1 CONTRACT AND TERM

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

2 PAYMENT

- 2(a) The Council shall pay the Service Provider £XX.XX (X Thousand Pounds) per annum to the Service Provider in respect of the provision of up to 28 Day Places per week.
- 2(b) Payment will be made by the Council within 30 days of receipt of an invoice for those charges properly incurred in accordance with the delivery of the Service and invoices are to be submitted to the Council monthly in arrears
- 2(c) The Service Provider shall not make a charge to the Service User or any third party for the Service provided.
- 2(d) The Council reserves the right to set off against the price of the goods or services any sums owed or becoming due to the Council from the Service Provider.
- 2(e) If either Party fails to make any Payment to the other Party under this Contract within 30 days of receipt of an undisputed invoice then the Party who should make payment shall pay interest on the overdue amount at the statutory rate above the Bank of England base rate from time to time further to the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after Judgment.

3 COMPLIANCE

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

- 3(b)(ii) ensure that no aspect of the Service funded by the Payment is or appears to be party political in intention use or presentation
- 3(b)(iii) acknowledge in all publicity wherever reasonably practicable the Council's funding of the Service
- 3(b)(iv) the Safeguarding adults: multi-agency policy and procedures for the West Midlands
- 3(b)(v) all equal opportunities legislation and anti-discriminatory practices including those identified in Clause 30 Equalities
- 3(b)(vi) ensure that Staff and Subcontractors are made aware of the Council's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request
- 3(b)(vii) the Data Protection Legislation
- 3(b)(viii) the standard required of a local authority under the Human Rights Act 1998. The Service Provider shall protect and shall not do anything in breach of Service Users' rights under the Act.
- 3(b)(ix) the principles of Best Value
- 3(b)(x) the Health and Safety at Work Act 1974 and any relevant health and safety regulations approved codes of practice and HSE guidance
- 3(b)(xi) declare to the Council at the end of each Financial Year any amount of underspend of the Payment and return the underspend to the Council if requested to do so by the Council.
- 3(b)(xii) The Services shall only be performed/delivered by the Service Provider unless otherwise agreed in writing between the Parties
- 3(b)(xiii) The Service Provider shall provide the Services in accordance with all current and relevant statutory provisions, regulations or other legislation from time to time in force relating to the provision of the Services
- 3(b)(xiv) The Service Provider shall during the Term ensure that every person employed by the Service Provider in the provision of the Services is properly trained and instructed with regard to his/her tasks in relation to the Services
- 3(b)(xv) before the Service Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Service Provider must without limitation, complete the Employment Checks [and any other checks required by the Disclosure and Barring Service]
- 3(b)(xvi) The Service Provider shall carry out its own risk assessments relevant to the Services
- 3(b)(xvii) The Service Provider shall have a written procedure for dealing with complaints about the Service in accordance with clause 38 hereof
- 3(b)(xviii) The Service Provider agrees that where requested in writing during the term of this Contract it will ensure that an appropriately authorised representative of the Service Provider shall attend a Committee meeting of the Council upon being invited to do so by the Council
- 3(b)(xix) To support the national agenda of Public Health England the Service Provider will engage with future public health initiatives on the promotion of physical activity for adults and older adults.
- 3(b)(xx) In performing his obligations under this Contract, the Service Provider shall and shall ensure that each of its sub-contractors shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015
- 3(c) Prior to the engagement by the Service Provider of any staff or sub-contractor engaged to provide any part of the Services where such individuals will have contact with children up to the age of eighteen years old or where the performance of the Services may involve contact with vulnerable adults (as defined in the Safeguarding Vulnerable Groups Act

- 2006) the Service Provider shall procure in respect of all staff or potential staff or other persons intended to perform any part of the Services:
- 3(c)(i) that each person being considered for engagement be questioned as to whether he/she has any convictions; and
 - 3(c)(ii) that the results of a Disclosure and Barring Service (DBS) check of the most extensive available kind is obtained in accordance with Part V of the Police Act 1997 (as amended) and that each DBS check should include a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Service may involve contact with children and/or Safeguarding Vulnerable Groups Act 2006 where the performance of the Service may involve contact with vulnerable adults.
 - 3(c)(iii) provide evidence to the Council that a DBS check has been carried out on appropriate Staff if requested
 - 3(d) The Parties agree that there shall be, on dates to be agreed, regular informal reviews of the progress of the development of the Services between the Service Provider and the Council to ensure that the Outcomes/Performance Indicators are being achieved.
 - 3(e) In the event that an informal review reveals that Outcomes/Performance Indicators are not being met, a formal Review meeting shall take place between the Parties upon 14 days written notice being given to the Service Provider by the Council.
 - 3(f) The Review meeting shall record in writing any amendments to the Outcomes/Performance Indicator agreed between the Council and the Service Provider.
 - 3(g) Where following a Review, the Council acting reasonably determines that the Service Provider has not met the Outcomes/Performance Indicators the Council may:
 - 3(g)(i) serve the Service Provider with a written notice ("Notice") within one month of the Review meeting specifying which of the Outcomes/Performance Indicators it considers that the Service Provider has not met or failed to achieve and giving the Service Provider one calendar month from the date of the Notice to remedy the failure
 - 3(g)(ii) if after one calendar month from the date of the Notice the Service Provider has failed to remedy the failure specified in the Notice then this will be considered to be a breach of the terms of this Contract and the Contract may be terminated in accordance with the provisions contained in clause 16 herein
 - 3(g)(iii) The Council shall take into account any verbal or written representations made by the Service Provider before proceeding to take any action to terminate this Contract pursuant to this clause.
 - 3(h) Should the Service Provider provide the Service to Service Users who lack the mental capacity to make particular decisions it must familiarise itself with and adhere to the Council's Mental Capacity Act Deprivation of Liberty Safeguards Multi-Agency Guidance and Procedure.
 - 3(i) If for any reason the Service Provider is unable to comply with any of its obligations under this Contract it shall notify the Council's Contracts Manager forthwith in Writing of its failure and the reasons. Compliance with this clause shall not prejudice the Council's rights under clauses 10 (Breach) and 16 (Extension and Termination).
 - 3(j) The Service Provider warrants that the signing [execution] of this Contract on its behalf has been validly authorised and the obligations expressed as being assumed by the Service Provider under this Contract constitute valid legal and binding obligations of the Service Provider enforceable against the Service Provider in accordance with their terms.
 - 3(k) The Service Provider warrants that:
 - 3(k)(i) it has full capacity and authority to enter into this Contract
 - 3(k)(ii) it has obtained all necessary and required licences, consents and permits to provide the Services
 - 3(k)(iii) it shall be responsible for all costs, fees, expenses and charges for training necessary or required for the Staff to perform the Services

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

4 VARIATION

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

5 PAYMENT REVIEW

- 5(a) Payment reviews will be held annually from April 2020 and any inflationary increase agreed will be applied to the Payment from the 1st Monday in April each year and will be the rate agreed with SPIC for day care services in Shropshire.
- 5(b) Should any payment review not be concluded with SPIC by the 1st Monday of April then the Payment for the preceding Financial Year shall remain in full force until such time as any revised Payment is agreed.
- 5(c) The Council's decision after the completion of the payment review shall be final.
- 5(d) The Service Provider shall not be entitled to vary the Payment during the existence of this Contract unless with the prior written consent of the Council.
- 5(e) The Service Provider shall not charge, and the Council shall not be liable, for any expenses, charges, costs, fees except the Payments as set out in this Contract.

- 5(f) Unless otherwise agreed in writing by the Council, the Service Provider will pay any of its appointed sub-contractors within the time period specified in the Sub-Contract but in any event no later than 30 days from receipt of an undisputed invoice.

6 VAT

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

7 AGENCY

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

8 ACCOUNTING

- 8(a) The Service Provider shall ensure that all necessary accounting arrangements exist to distinguish between the Payment and any funds held on behalf of the Service User or any other funds held by the Service Provider.
- 8(b) All bank building society post office or other account statements together with all other supporting documentation pertaining to Service Users monies held by the Service Provider shall be retained by the Service Provider and made available for inspection by the Council.
- 8(c) The Service Provider will (upon the Council's request) produce records of any funding held on behalf of Service Users which shall clearly identify the balance held and the date funds are paid in and withdrawn.
- 8(d) The Service Provider will facilitate the inspection of all financial records held in connection with the Service and shall produce a copy of its annual audited accounts as soon as is reasonably practicable if requested to do so by the Council.
- 8(e) The Service Provider shall provide such financial information as the Council may reasonably require from time to time to assess the financial viability and monitor the performance of the Service Provider.
- 8(f) The Service Provider shall compile maintain and keep the information and records as required in the Specification and such information as the Council may from time to time reasonably require to enable the Council to submit any information or data required for the purposes of the Performance Indicators.
- 8(g) The Council may by Notice in Writing to the Service Provider authorise the statutory auditors of the Council or any regulatory body to which the Council is subject including but without limitation the Commissioner for Local Administration to exercise any of the rights exercisable under this clause by the Council. For these purposes the "statutory auditors of the Council" shall include any body appointed by the Council.

9 NOTICES

- 9(a) The Service Provider shall comply with and give any Notices required under the Contract or required by any Act of Parliament any instrument rule or order made under any Act of Parliament or any regulation or by-law of any local authority which may have jurisdiction in respect of the Service Provider.
- 9(b) Any Notice under this Contract must be in Writing and can only be sent by:
- 9(b)(i) recorded delivery post or
- 9(b)(ii) personal delivery
- 9(c) The Service Provider's address for the purpose of delivery of a Notice is as set out above and all Notices sent to the Service Provider under this Contract must be sent to the Service Provider's **[add in Job Title]**.

- 9(d) The Council's address for the purpose of delivery of a Notice is Service Manager (Commissioning and Governance) and a separate copy must also be sent to the Council's Contracts Manager both at Shirehall Abbey Foregate Shrewsbury SY2 6ND.
- 9(e) All such Notices if delivered by hand shall be deemed to be served immediately and if posted shall be deemed to have been served two days after the date when posted unless the party upon whom the Notice was purported to be served has informed the serving party within 24 hours of partial receipt that the Notice was not received in full.

10 BREACH

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

11 PREVENTION OF BRIBERY

- 11(a) The Service Provider:
 - 11(a)(i) shall not, and shall procure that all Service Provider Staff shall not, in connection with this Contract commit a Prohibited Act;
 - 11(a)(ii) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.
- 11(b) The Service Provider shall:
 - 11(b)(i) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - 11(b)(ii) the Service Provider shall, within 10 Working Days of a request from the Council, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) the Service Provider's compliance with this clause 11 and provide such supporting evidence of compliance with this clause 11 by the Service Provider as the Council may reasonably request.
- 11(c) If any breach of clause 11 is suspected or known, the Service Provider must notify the Council immediately.
- 11(d) If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 11(a), the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Contract.
- 11(e) The Council may terminate this Contract by written notice with immediate effect, and recover from the Service Provider the amount of any loss directly resulting from the cancellation, if the Service Provider or Service Provider Staff (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 11(a). At the Council's absolute discretion, in determining whether to exercise the right of termination under this

clause 11(e), the Council shall give consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

- 11(e)(i) with the authority; or,
 - 11(e)(ii) with the actual knowledge of any one or more of the directors of the Service Provider or the Sub- Service Provider (as the case may be); or
 - 11(e)(iii) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.
- 11(f) Any notice of termination under clause 11(e) must specify:
- 11(f)(i) the nature of the Prohibited Act;
 - 11(f)(ii) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - 11(f)(iii) the date on which this Contract will terminate.
- 11(g) Despite clause 18 (Disputes), any dispute relating to:
- 11(g)(i) the interpretation of clause 11; or
 - 11(g)(ii) the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.
- 11(h) Any termination under clause 11(e) will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

12 INSURANCE

- 12(a) The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all legal liability which may be incurred by the Service Provider, arising out of the Service Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS).
- 12(b) The Service Provider warrants that it has complied with this clause 12 and warrants that any insurance policy or policies effected and maintained in accordance with this clause do not contain any endorsements or exclusions which have the effect of voiding, reducing or limiting the cover required in respect of the Services.
- 12(c) The Service Provider shall prior to commencement of this Contract provide the Council and thereafter upon request, or at least annually during the Term, with:
- (a) copies of the relevant insurance policy documents (including details of any warranties or exclusions); and
 - (b) receipts or other evidence of payment of the latest premiums due under those policies; and
 - (c) any other evidence reasonably requested by the Council to confirm that the required insurances are in force and effect and meet in full the requirements of this Clause 12.
- Receipt of such evidence by the Council shall not in itself constitute acceptance by the Council or relieve the Service Provider of any of its liabilities and obligations under this Contract.
- 12(d) The Service Provider shall:
- (a) ensure nothing is done to invalidate any insurance policy or cause the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part, including ensuring that any warranties under the policy are complied with;
 - (b) notify the Council as soon as reasonably practicable when it becomes aware of any relevant fact, circumstance or matter which , or is reasonably likely to provide

- grounds to, the relevant insurer to give notice to cancel, rescind suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
- 12(e) For the avoidance of doubt, the terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Contract.
- 12(f) Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":
- 12(f)(i) if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Service Provider shall immediately submit to the Council:
 - (a) details of the policy concerned; and
 - (b) its proposed solution for maintaining the minimum limit of indemnity specified; and
 - 12(f)(ii) if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Service Provider shall:
 - (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
 - (b) if the Service Provider is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Council full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

13 INDEMNITY

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

14 AUTHORISED OFFICER AND SERVICE PROVIDER REPRESENTATIVE (NOT USED)

15 INTELLECTUAL PROPERTY

- 15(a) In the absence of prior written agreement by the Council to the contrary, all Intellectual

Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

15(a)(i) in the course of performing the Services; or

15(a)(ii) exclusively for the purpose of performing the Services, shall vest in the Council on creation.

15(b) Unless stated expressly in writing in this Contract, neither Party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Contract.

15(c) The Service Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

15(d) This provision shall survive the expiration or termination of the Contract.

16 EXTENSION AND TERMINATION.

16(a) Unless terminated in accordance with this Clause or Clause 10 or 11 this Contract will remain in force during the Term. The Council may in its absolute discretion extend the duration of this Contract by a further period of up to **two years** commencing from the day after the Expiry Date and must inform the Service Provider in Writing of its intention to extend the Contract at least 3 months before the Expiry Date and any extension must comply with the requirements of Clause 16. In the event that the Council exercises its right to extend the duration of this contract, the terms of this Contract shall apply to the extended period. For the avoidance of doubt the maximum period that this Contract shall be extended is two years from the Expiry Date.

16(b) This Contract may be terminated prior to the Expiry Date in the following circumstances:-

16(b)(i) by either the Council or the Service Provider by giving **6 months'** Notice in Writing to the other party

16(b)(ii) by the Council if in the reasonable opinion of the Council it is no longer practicable to maintain a satisfactory or viable relationship with the Service Provider because the Service Provider or its Staff have acted unlawfully or fraudulently or there has been a serious breakdown of mutual trust between the Parties

16(b)(iii) by the Council if the Service Provider becomes the subject of a voluntary arrangement under section 1 Insolvency Act 1986 or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; has a receiver manager administrator or administrative receiver appointed over all or any parts of its undertaking assets or income; has passed a resolution for its winding up; has a petition presented to any court for its winding up or for an administration order; or if any distraint execution or other process is levied or enforced on any property of the other and is not paid out withdrawn or discharged within 14 days.

16(b)(iv) by either Party if the other Party commits a material breach of this Contract and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Contract.

16(b)(v) by either Party where the other Party commits a series of minor breaches which, when taken together, amount to a material breach;

16(b)(vi) by either Party where the other Party commits a material breach of this Contract which cannot be remedied under any circumstances;

16(b)(vii) by the Council forthwith by notice where the Service Provider commits a material breach as a result of a failure to comply with a Notice issued in accordance with clause 10 (Breach)

- 16(b)(viii) by either Party where the other Party ceases to carry on its business or substantially the whole of its business;
- 16(c) in the event of this Contract being terminated at any time prior to the Expiry Date for any reason then the Council's obligations under Clause 2 (Payment) will cease no further Payment will be made and the Service Provider shall repay to the Council all (if any) of the Payment already received (after the liabilities of the Service Provider in the provision of the Service in accordance with this Contract have been met).
- 16(d) Without prejudice to the generality of the foregoing the Council reserves the right to suspend referrals to the Service where in the reasonable opinion of the Council there is any improper conduct on the part of the Service Provider its Staff and Subcontractors and this will be considered a breach of this Contract which may result in the suspension of referrals and or reduction / clawback of part of the Payment consistent with the reduction in Service. Improper conduct includes any action which the Council may reasonably consider to be to the detriment of the welfare of Service Users either by action or neglect including but not limited to:
 - 16(d)(i) Fraud or theft from Service Users
 - 16(d)(ii) Neglect of Service Users
 - 16(d)(iii) Cruelty and assault to or upon Service Users including verbal and any other forms of psychological abuse
 - 16(d)(iv) Financial malpractice
 - 16(d)(v) Sexual relationships between Staff and Service Users
 - 16(d)(vi) Racial harassment
 - 16(d)(vii) Under investigation by the Council.
- 16(e) If the Contract is terminated as provided by Clause 10 (Breach) or 11 (Prevention of Bribery) or 16 (Extension and Termination) above the Council shall:
 - 16(e)(i) cease to be under any obligation to make further Payment until the cost loss and/or damage resulting from or arising out of the termination of the Contract shall have been calculated and provided such calculation shows a sum or sums due to the Service Provider;
 - 16(e)(ii) be entitled to make other arrangements and if necessary pay other persons to provide the Services
 - 16(e)(iii) be entitled to deduct from any sum or sums which would have been due from the Council to the Service Provider under this Contract or be entitled to recover the same from the Service Provider as a debt any loss or damage to the Council resulting from or arising out of the termination of this Contract and further such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating this Contract and in making alternative arrangements for the provision of the Services provided that the Council will be under a duty to take all reasonable action to mitigate the loss or damage pursuant to this clause.
- 16(f) Whilst this Contract affords the Council and the Service Provider reciprocal rights to terminate as per the terms of Clause 16(b)(i) the Parties acknowledge that the expectation of most Service Users is that the Parties will not act unreasonably or to the prejudice of the Service Users so far as is reasonably practicable.
- 16(g) Where notice to terminate is given pursuant to this clause 16, this Contract shall terminate with effect on the date specified in the notice.
- 17 CONSEQUENCES OF TERMINATION**
- 17(a) Other than as set out in this Contract, neither Party shall have any further obligations to the other under this Contract after its termination.
- 17(b) Any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect.
- 17(c) Termination of this Contract, for any reason, shall not affect the accrued rights, remedies obligations or liabilities of the Parties existing at termination.

- 17(d) Notwithstanding its obligations in this clause 17, if a Party is required by law, regulation, or government or regulatory body to retain any documents or materials containing the other Party's Confidential Information, it shall notify the other Party in writing of such retention, giving details of the documents and/or materials it must retain.
- 17(e) upon termination of this Contract for any reason, the Service Provider shall, at its own cost, deliver, and require that its employees, agents and sub-contractors deliver, to the Council all information and any other property of the Council which are in the possession or control of the Service Provider or the Service Provider's employees, agents or Sub-Contractors at the date of termination.

18 DISPUTES

- 18(a) If any dispute or difference shall arise between the Parties as to the construction of this Contract or any matter or thing of whatever nature arising under this Contract or in connection with it then the same shall be dealt with as follows:-
- 18(a)(i) In the first instance a special meeting of both the Parties shall be arranged on 14 days' written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute.
- 18(b) If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve the Council's Chief Executive or the Service Provider's senior officer or such other authorised officer of either party whose details have been notified to the other party, with notice of the dispute and those officers shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice.

19 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING

- 19(a) Neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other Party PROVIDED that the Council may,
- (a)(i) assign any of its rights under this Contract; or
- (a)(ii) transfer all of its rights or obligations by novation to another person without the Service Provider's consent where such assignment, transfer or novation is to an Associated Person of the Council;
- 19(b) Any consent required under Clause 19(a) must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.
- 19(c) The Service Provider will not, without the written consent of the Council, sub-contract its right or obligations under this Contract nor allow Services to be provided other than through the Service Provider's Staff and using its own equipment.
- 19(d) In the event that consent is given by either Party to the other Party to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the sub-contracting Party to the consenting Party immediately it is issued
- 19(e) Subject to clause 19(a), in the event that either Party wishes to assign its rights and obligations under this Contract, the assignor must obtain a written undertaking from the assignee to the consenting Party that it will be bound by the obligations of the assignor under this Contract.
- 19(f) Notwithstanding the Service Provider's right to sub-contract pursuant to this clause 19, the Service Provider shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own and shall be responsible for the work of the Sub-Contractor whose work shall be undertaken to the same standard as stated in the Specification.
- 19(g) Where 20% or more of the Service Provider's overall workforce is made up of people from agencies (or not employed directly by the Service Provider) this may be considered assignment or subcontracting of the Service Provider's obligations under this Contract and require written consent of the Council which it shall be absolutely entitled to withhold.

20 FORCE MAJEURE

- 20(a) Subject to the provisions of clause 20(b) neither the Service Provider nor the Council shall be liable for any delay or failure in performing its obligations hereunder for any circumstances beyond its reasonable control such as (but not restricted to) flood fire and civil unrest but the Council shall in such circumstances be entitled to take such action as is reasonable and necessary to protect the interest of the Service Users.
- 20(b) Save where such delay or failure is caused by the act or omission of the other party (in which event the rights remedies and liabilities of the Parties shall be those conferred and imposed by the other terms of this Contract and by Law):-
- 20(b)(i) any charges arising from such delay or failure shall be borne by the party incurring the same
- 20(b)(ii) either party may if such delay or failure continues for more than 90 (ninety) days terminate this Contract forthwith on giving Notice (as determined by Clause 9) to the other party in which event neither party shall be liable to the other by reason of such termination.
- 20(c) For the avoidance of doubt "force majeure" shall not include any labour dispute between the Service Provider and its Staff or the failure to provide the Service by any of the Service Provider's Subcontractors.

21 WAIVER

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

22 SEVERANCE

If any of the provisions of this 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 in no way impair or affect any other provision all of which shall remain in full force and effect.

23 LAW

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

24 THIRD PARTY RIGHTS

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

25 REMEDIES CUMULATIVE

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

26 CONCLUSION OF CONTRACT

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

26(b) Clause 26(a) is subject to the provisions of Paragraph 3 of Schedule 2.

27 SUSTAINABILITY

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

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

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

29 TUPE

Where a Relevant Transfer applies Schedule 3 of this Contract will apply.

30 EQUALITIES

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

31 CONFIDENTIAL INFORMATION

- 31(a) The Service Provider will keep confidential any information it becomes aware of by reason of the operation of this Contract and any other information which the Council may from time to time determine as relevant to this Contract and shall not use divulge or communicate the same to any third party without the consent in writing of the Council.
- 31(b) The Service Provider shall at all times keep confidential all information held or known in respect of its past or present Service Users.
- 31(c) NOT USED
- 31(d) Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
 - 31(d)(i) treat the other Party's Confidential Information as confidential; and
 - 31(d)(ii) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent
- 31(e) Clause 31(d) shall not apply to the extent that:
 - 31(e)(i) such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information
 - 31(e)(ii) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner
 - 31(e)(iii) such information was obtained from a third party without obligation of confidentiality
 - 31(e)(iv) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract
 - 31(e)(v) it is independently developed without access to the other party's Confidential Information.
- 31(f) The Service Provider may only disclose the Council's Confidential Information to the Service Provider's Staff who are directly involved in the provision of the Service and who

- need to know the information, and shall ensure that such Service Provider's Staff are aware of and shall comply with these obligations as to confidentiality.
- 31(g) The Service Provider shall not, and shall procure that the Service Provider's Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Contract.
 - 31(h) The Service Provider shall ensure that its employees and agents are aware of and comply with Clause 31 and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by the Service Provider, its employees or agents.
 - 31(i) The Service Provider shall ensure that its employees and agents are aware of and comply with paragraph 3 Schedule 2 Service Standards and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by such persons mentioned above.
 - 31(j) The Service Provider its Staff and any person employed or engaged by the Service Provider in connection with this Contract shall:
 - 31(j)(i) only use the Confidential Information for the purposes of this Contract
 - 31(j)(ii) not disclose any of the Confidential Information to any third party without the prior written consent of the Council which consent the Council shall be absolutely entitled to refuse
 - 31(j)(iii) not use the Confidential Information for the solicitation of business from the Council
 - 31(k) Nothing in this Contract shall prevent the Council from disclosing the Service Provider's Confidential Information:
 - 31(k)(i) to any consultant, contractor or other person engaged by the Council
 - 31(k)(ii) for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council.
 - 31(l) The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to this Contract is made aware of the Council's obligations of confidentiality.
 - 31(m) The provisions of this Clause shall survive the expiration or termination of this Contract
- 32 COUNCIL DATA
- 32(a) The Service Provider shall not delete or remove any copyright or proprietary notices contained within or relating to the Council Data.
 - 32(b) The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Council and in particular the Service Provider shall not store any Council Data, which the Council has notified the Service Provider requires storage in an encrypted format, on any portable device or media unless that device is encrypted.
 - 32(c) To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council as requested by the Council in any format specified reasonably requested by the Council.
 - 32(d) The Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data and shall take such back up copies of the Council Data at regular intervals appropriate to the frequency of the revision of the Council Data.
 - 32(e) The Service Provider shall ensure that any system on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council's security policy to include, but not limited to, the following requirements:
 - 32(e)(i) Access to the system is restricted to Service Provider Staff with a legitimate need to access the Council Data

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

33 PROTECTION OF PERSONAL DATA

- 33(a) The Service Provider shall:
 - 33(a)(i) Process the Personal Data only in accordance with the Data Protection Legislation and in particular GDPR
 - 33(a)(ii) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body
 - 33(a)(iii) Implement appropriate technical and organisational measures, including but not limited to ensuring that Personal Data is not stored on any portable equipment or storage device or media unless encrypted, to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected
 - 33(a)(iv) Take reasonable steps to ensure the reliability of any Service Provider Staff who have access to the Personal Data
 - 33(a)(v) Obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors or agents for the provision of the Services.
 - 33(a)(vi) Ensure that all Service Provider Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Protection of Personal Data clause.
 - 33(a)(vii) The sharing of individual identifiable information between organisations for the provision of coordinated and seamless care must comply with the

- necessary statutory legal requirement and satisfy the Caldicott principles of safeguarding confidential information.
- 33(a)(viii) Notify the Council (within five Working Days) if it receives:
 - a) a request from a Data Subject to have access to that person's Personal Data; or
 - b) a complaint or request relating to the Council's obligations under the Data Protection Legislation.
 - 33(a)(ix) Provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:
 - a) providing the Council with full details of the complaint or request
 - b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions
 - c) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council)
 - d) providing the Council with any information requested by the Council
 - 33(a)(x) Permit the Council (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Service Provider's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Service Provider is in full compliance with its obligations under this Contract.
 - 33(a)(xi) Provide a written description of the technical and organisational methods employed by the Service Provider for processing Personal Data (within the timescales required by the Council).
 - 33(a)(xii) Not process Personal Data outside the United Kingdom without the prior written consent of the Council and, where the Council consents to a transfer, to comply with:
 - a) the obligations of a Data Controller under the GDPR by providing an adequate level of protection to any Personal Data that is transferred; and
 - b) any reasonable instructions notified to it by the Council
 - 33(b) The Service Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
 - 33(c) The Service Provider shall ensure that its Staff, employees and agents are aware of and comply with this clause and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of this clause.
 - 34 DATA PROTECTION
 - 34(a) Both parties will comply with all applicable requirements of the Data Protection Legislation and agree to take account of any guidance issued by the Information Commissioner's Office. This clause 34 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
 - 34(b) Where there is any conflict, ambiguity or inconsistency between this clause (including any associated definitions) and the remainder of this Agreement this clause 34 shall take precedence.
 - 34(c) The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is as set out in this agreement which includes Schedule 4 which sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
 - 34(d) The Service Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

- 34(e) The Service Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 34(f) The Data Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule 4 unless the Processor is required to do otherwise by Law. If it is so required the Data Processor shall promptly notify the Data Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the
 - (i) the nature of the data to be protected;
 - (ii) the harm that might result from a Data Loss Event;
 - (iii) the state of technological development; and
 - (iv) the cost of implementing any measures;
 - (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 4);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Data Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Data Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (E) are obliged to keep the Personal Data confidential; and
 - (F) shall not store any Personal Data on any portable device or media unless that device is encrypted and
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
 - (i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and
 - (iv) the Data Processor complies with any reasonable instructions notified to

- it in advance by the Data Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Agreement unless the Data Processor is required by Law to retain the Personal Data.
 - 34(g) Subject to clause 34(h), the Data Processor shall notify the Data Controller immediately if it:
 - (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
 - 34(h) The Data Processor's obligation to notify under clause 34(g) shall include the provision of further information to the Data Controller in phases, as details become available.
 - 34(i) Taking into account the nature of the processing, the Data Processor shall provide the Data Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 34(g) (and insofar as possible within the timescales reasonably required by the Data Controller) including by promptly providing:
 - (a) the Data Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Data Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Data Controller following any Data Loss Event;
 - (e) assistance as requested by the Data Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Data Controller with the Information Commissioner's Office.
 - 34(j) The Data Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - (a) the Data Controller determines that the processing is not occasional;
 - (b) the Data Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Data Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
 - 34(k) The Data Processor shall allow for audits of its Data Processing activity by the Data Controller or the Data Controller's designated auditor.
 - 34(l) Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
 - 34(m) Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Data Processor must:
 - (a) notify the Data Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Data Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the

- terms set out in this clause 34(l) such that they apply to the Sub-processor; and
- (d) provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.
- 34(n) The Data Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 34(o) The Data Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 34(p) The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Data Controller may on not less than 30 Working Days' notice to the Data Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 35 COUNCIL DATA AND PERSONAL INFORMATION AUDITS**
- 35(a) Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit for the following purposes:
- 35(a)(i) to review the integrity, confidentiality and security of the Council Data
- 35(a)(ii) to review the Service Provider's compliance with the Data Protection Legislation, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services
- 35(b) The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 35(c) Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 35(c)(i) all information requested by the Council within the permitted scope of the audit
- 35(c)(ii) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services
- 35(c)(iii) access to Service Provider's Staff
- 35(d) The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Service.
- 35(e) The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days' notice of its intention to conduct an audit.
- 35(f) The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 35(g) This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Contract which may be conducted as specified in this Contract.
- 36 AGREEMENT STATUS AND TRANSPARENCY**
- 36(a) Further to the Local Government Transparency Code 2014 the Council is obliged to publish details of expenditure exceeding £500. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract and any associated tender documentation provided by the Service Provider (the Tender Submission) is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA.
- 36(b) Notwithstanding any other term of this Contract, the Service Provider hereby gives his consent for the Council to publish this Contract and the Tender Submission in its entirety, including from time to time agreed changes to the Contract, to the general public.

- 36(c) The Council may consult with the Service Provider to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.
- 36(d) The Service Provider shall assist and cooperate with the Council to enable the Council to publish this Contract and the Tender Submission.

39 DEPRIVATION OF LIBERTIES SAFEGUARDS

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

38 COMPLAINTS PROCEDURE

- 38(a) The Service Provider shall:
- 38(a)(i) inform complainants that they may refer their complaint in respect of the services provided under this Agreement direct to the Council;
 - 38(a)(ii) promptly (and in any event within two Working Days of receipt) refer all Formal Complaints received in respect of the services provided on behalf of the Council under this Agreement to the Council for resolution and
 - 38(a)(iii) co-operate fully in any Council investigation into a complaint referred to the Council and provide any documents or information reasonably requested by the Council in relation to the complaint within the timescales specified by the Council.
- 38 (b) The Service Provider shall operate a complaints procedure in respect of any services provided under this Agreement, to the entire satisfaction of the Council, and comply with the requirements of any regulatory body to which the Service Provider is subject (including any change in such requirements) and ensure that its complaints procedure meets the following minimum standards:
- 38(b)(i) is easy to access and understand;
 - 38(b)(ii) informs complainants that they may refer their complaint in respect of services provided under this Agreement direct to the Council;
 - 38(b)(iii) clearly sets out time limits for the Service Provider to respond to complaints referred to it and for keeping the complainant and the Council informed of progress with such complaints;
 - 38(b)(iv) provides confidential record keeping to protect employees under this contract and the complainant
 - 38(b)(v) provides information to management so that services can be improved
 - 38(b)(vi) provides effective and suitable remedies
 - 38(b)(vii) is regularly monitored and audited and which takes account of complainant and Council feedback.
- 38(c) The Service Provider shall make its complaints procedure available upon request.
- 38(d) The Service Provider shall ensure that all its employees and persons employed in the performance of this Agreement are made aware of its complaints procedure.
- 38(e) Where the Service Provider is undertaking an investigation into a complaint, the Service Provider shall ensure that, under no circumstances, is the complaint investigated by a member of its staff who may be part of the complaint and that the investigation is carried out by someone who is independent of the matter complained of.
- 38(f) The Service Provider shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the Council on request or at 12 monthly intervals in any event.
- 38(g) The Service Provider should note that if a complaint is made to the Council by a third party relating to the goods, services or works provided on behalf of the Council under this Agreement, the Local Government Ombudsman has the power to investigate such a complaint and the Council requires the Service Provider to fully to co-operate in any such investigation. If the Council is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Service Provider the Service Provider shall indemnify the Council in respect of the costs arising from such maladministration or injustice.

39 NOTIFICATION

- 39(a) The Service Provider will inform the Council's First Point of Contact immediately (normally the first working day) and confirm by email within 3 working days if any of the following occur:
- 39(a)(i) hospital admission of a Service User
 - 39(a)(ii) the death of a Service User receiving the Service
 - 39(a)(iii) a Formal Complaint received from the Service User
 - 39(a)(iv) allegation of or actual abuse to a Service User
 - 39(a)(v) disappearance of a Service User
 - 39(a)(vi) any circumstances where a Service User has refused provision of the Service
 - 39(a)(vii) significant change to the physical or mental condition of the Service User
 - 39(a)(viii) major injury to a Service User as defined in the "Reporting of Injuries Diseases and Dangerous Occurrences" Regulations 1995
 - 39(a)(ix) allegation of or actual racial harassment or discrimination
 - 39(a)(x) any other serious issues causing concern about the well being of a Service User.

40 SAFEGUARDING

- 40(a) Where the Service or activity being undertaken in this Contract is a Regulated Activity the Service Provider shall:
- 40(a)(i) ensure that all individuals engaged in the provision of the Service or activity, and prior to commencing the provision of the service or activity, are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - 40(a)(ii) monitor the level and validity of the checks under this clause 40(a) for each member of the Service Provider's Staff.
- 40(b) The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of a Service or activity that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 40(c) The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 40 have been met.
- 40(d) The Service Provider shall refer information about any person carrying out the Services or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, children or vulnerable adults.
- 40(e) The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 40(f) Where the service requirement or specification specifies that the Service or activity to be provided under this Contract involves a Regulated Activity, or the Council otherwise notifies the Service Provider, acting reasonably, that the Service Provider's Staff are required to be subject to a Disclosure and Barring Service check, the Service Provider shall comply with clause 40(a) above.

41 COUNTERPARTS

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

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

42 ENTIRE AGREEMENT

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

43 CONFLICT OF TERMS

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

44 EMERGENCY PLANNING

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

SCHEDULE 1 THE SPECIFICATION

1 INTRODUCTION

The Council aims to provide good quality daytime opportunities services which enhance the quality of life of Service Users with a learning disability who may also have a physical disability and maximise their ability to live independently, whilst offering relief to carers.

2 FINANCE

- 2.1 Appropriate and accurate records must be kept on all finances relating to the Service by the Service Provider including procedures for handling Service User's money if requested to do so.
- 2.2 Service Users should be involved in deciding how funds raised by them are spent.

3 OBJECTIVES OF THE SERVICE

The purpose of day care is to provide support and assistance for adults with a learning disability and/or a physical disability in order to:

- 3.1 Enable people to take full and active part in the local community.
- 3.2 Maximise the employment opportunities and independence of Service Users.
- 3.3 Give respite to their carers.
- 3.4 Alleviate loneliness and isolation.
- 3.5 Provide opportunities to enable Service Users to exercise choice.
- 3.6 Enhance the Service User's quality of life and wellbeing

4 COMPONENTS OF THE SERVICE

The Service will include the following components:-

- 4.1 Support to Service Users increase independence including steps to and support with employment and travel training. Social and recreational activities which are interesting and stimulating and which assist in maintaining or improving social, psychological or physical functions including co-ordination, mobility and exercise.
- 4.3 Assistance with personal care, provided in a dignified manner to ensure self-respect is maintained.
- 4.4 Information and practical support relevant to the needs of Service Users
- 4.5 Transport in the local area when planned as a day opportunity activity.
- 4.6 An outreach service at least one day per week in the Bishop's Castle area to meet the needs of Service Users local to that area. The ultimate aim is to increase the number of days the Service is provided in the Bishop's Castle area for Service Users who live in that area to prevent the need for those Service Users travelling to Church Stretton.
- 4.7 Access to groups and activities run from the Centre.

5 RIGHTS OF SERVICE USERS

The Service Provider will ensure that Service Users attending the Service have the right to:-

- 5.1 Maintain their chosen lifestyle.
- 5.2 Be treated as an individual with unique needs.
- 5.3 Be encouraged to have personal independence and choice.
- 5.4 Have their personal dignity respected.
- 5.5 Have their cultural, social, religious and emotional needs respected.
- 5.6 Have access to all personal information on them held by the Service Provider.
- 5.7 Participate in formulating their own support plan and in deciding how their needs will be met.
- 5.8 Participate in any reviews or re-assessment of their needs.
- 5.9 Receive a non-discriminatory Service.
- 5.10 Receive a confidential Service.
- 5.11 Receive assistance to maintain personal skills.
- 5.12 Have access to representation or advocacy as appropriate.
- 5.13 Have access to a formal complaints procedure.

6 ADMISSIONS TO THE SERVICE

- 6.1 The Service Provider will ensure that systems exist to welcome and introduce new Service Users and include:-
 - 6.1.1 the opportunity for Service Users, their family or carers to visit the Centre before starting with or without an appointment during hours which the Service is open.
 - 6.1.2 decisions about admission or rejection for a place based on stated policies and criteria. Reasons for exclusion or rejection (or information about waiting lists) given honestly and sensitively and recorded in agreement with the Council. No rejection can be made without agreement from the council.
 - 6.1.3 a trial visit.
 - 6.1.4 agreed procedures to follow in the event of withdrawal or cancellation of Service at short notice in the event of any emergency.
 - 6.1.5 liaison with Care Managers, family, carer or advocate to ensure that the Service User's requirements identified in their assessment of needs are met.
- 6.2 In the event that present Service Users' needs change significantly to the extent that they can no longer be supported within the current structure of the Service or in the event that the Council nominates a new Service User into the Service who would not be able to be supported within the current structure of the Service the Council will take consideration of the level of support required and increase the funding for the Service to reflect any increased Staffing levels agreed between the Parties.

7 INFORMATION AND ADVICE

The Service Provider must ensure that:

- 7.1 Information is available to Service Users in an appropriate format which details the aims of the Service, the activities, the complaints procedure and equal opportunities policy and the same Information is also to be provided to family carers or advocates if required.

8 THE CENTRE

- 8.1 The Service Provider will ensure that any buildings that are used to provide the Service:-
 - 8.1.1 have current, completed fire risk assessment.
 - 8.1.2 have Environmental Health Authority approval
 - 8.1.3 have any other necessary licences for activities to be provided as an integral part of the Services being offered
 - 8.1.4 comply with relevant legislation for the delivery of personal care and activities
- 8.2 The Service Provider will ensure that buildings used to provide the Service are fit for their purpose and maintained to an adequate standard and provide a welcoming environment.
- 8.3 The Service Provider should ensure that:
 - 8.3.1 the surrounding environment is suited to the stated aims of the Service
 - 8.3.2 the building is accessible

- 8.3.3 there is wheelchair access
- 8.3.4 chairs and other furniture are comfortable and safe, and appropriate for Service Users
- 8.3.5 there is sufficient amount of floor space per person for accessibility and mobility
- 8.3.6 rails, ramps and other aids and adaptations are available
- 8.3.7 the premises has appropriate heating, lighting and ventilation for the Service offered
- 8.3.8 toilets are easily accessible by Service Users
- 9 OPERATION OF THE ORGANISATION
- 9.1 The Service Provider will operate the Service at the Centre 5 days per week for a minimum of six hours per day between the hours of 08.30 to 17.00 Monday to Friday or as otherwise agreed in Writing with the Council with the exception of bank holidays.
- 9.2 This may be extended in individual circumstances through discussions and agreement with the Service Provider and Council.
- 10 STANDARDS OF SERVICE COMPONENTS
- 10.1 General
- 10.1.1 Information from the support plan including medical background, preferences and abilities will be gathered with the consent of Service Users so that the Service can be tailored to meet individuals' needs.
- 10.1.2 The minimum ratio of Staff to Service Users at the Centre will be based on a risk assessment based on the level of need. There must be access to additional Staff in the event of an emergency.
- 10.2 Activities and Opportunities
- 10.2.1 Should be designed to meet both individual and group needs.
- 10.2.2 Service Users should be encouraged and assisted to compile and review their weekly plan.
- 10.2.3 Service Users should be encouraged to use their skills and be given opportunities to develop new ones, wherever possible.
- 10.2.4 Individuals have the right not to participate in activities if they so wish.
- 10.2.5 A range of activities and opportunities should be offered which aim to promote independence, wellbeing, physical health, mental stimulation and social interaction.
- 10.3 Personal Care
- 10.3.1 Personal care needs which arise during a Service User's time at the Centre will be attended to in such a way that the individual's dignity is preserved.
- 10.3.2 Personal care needs will be identified from the Service User's assessment of needs and recorded in the support plan. The Service Provider will liaise with the Care Manager to ensure that all personal care needs are met.
- 10.3.3 The manner in which personal care needs are met will be discussed and agreed with each individual Service User, their family or carer.
- 10.3.4 In order to maximise their independence, Service Users will be encouraged and supported in doing as much as possible for themselves.
- 10.3.5 Staff will be provided with written guidelines and policy on the handling of medication. Medicines given into the keeping of Staff must be securely stored.
- 11 TRANSPORT
- 11.1 Where the Service Provider arranges transport for pick-ups, trips and excursions as part of the Service they must:
 - 11.1.1 Ensure that the driver has a valid licence relating to the type of transport being provided for example: minibus permit or hackney carriage licence.
 - 11.1.2 Ensure that minibuses are regularly serviced and a procedure is established for drivers to regularly check fuel water brake and oil levels and tyre pressures etc.
 - 11.1.3 Ensure that there is current motor vehicle insurance which is adequate for the type of use being made as part of the services being provided. The number of passengers carried must never exceed the insured or licensed maximum.
 - 11.1.4 Ensure that the vehicle(s) are maintained and serviced in accordance with the

manufacturer's servicing instructions, with full records being kept to verify this. This will also apply to any additional equipment on the vehicle (e.g. passenger lifts, wheelchair securing systems).

- 11.1.5 Ensure that the vehicle(s) is/are suitable for the type and condition of the Service Users to be carried as part of the service provided. This will include having personal seat belts or other appropriate restraints for all passengers which conform to the relevant British and / or European Union Standard. Such seat belts must be used in all instances. Mini buses should be fitted with seat belts and wheelchairs must be secured with appropriate wheelchair restraints.
- 11.1.6 Ensure that the transport is always driven safely and with consideration to the passengers' needs including making allowances for any breaks in journey. This will also include conforming to all road traffic legislation and never driving whilst under the influence of any alcohol or drugs / medication which may affect the driver's ability. The Service Provider should ensure that there is a no smoking policy on vehicles.
- 11.1.7 Ensure that the Service User transfers safely from premises to vehicle. It is the responsibility of the transport operator to ensure that Service Users are safely restrained and that wheelchairs and other equipment is securely and safely restrained. The Service Provider should report any concerns about transport to the Care Manager.
- 11.2 The Service Provider must ensure that all vehicles used to transport Service Users:
 - 11.2.1 have a current MOT certificate in line with current legislation.
 - 11.2.2 have adequate third party and passenger liability insurance cover.
- 11.3 The Service Provider must ensure that drivers:
 - 11.3.1 are authorised to drive the vehicle.
 - 11.3.2 hold a current driving licence suitable for the type of vehicle being driven and that drivers have completed a declaration of any driving offences.
 - 11.3.3 are trained to an acceptable standard.
 - 11.4.34 are trained or the escort is trained in basic First Aid.
- 11.4 Minibuses must be fitted with a First Aid Box and fire extinguisher.

12 POLICIES, PROCEDURES AND GUIDANCE

- 12.1 The Service Provider should have the following policies, procedures and/or guidance in place
 - 12.1.1 Disciplinary and grievance procedure
 - 12.1.2 Recruitment and selection policy
 - 12.1.3 Equal Opportunities
 - 12.1.4 Complaints
 - 12.1.5 Confidentiality - including a statement on the disclosure of third party information
 - 12.1.6 Data Protection
 - 12.1.7 Administration of medication
 - 12.1.8 Health and Safety
 - 12.1.9 Fire Safety
 - 12.1.10 Moving and handling
 - 12.1.11 Safeguarding (in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands)
 - 12.1.12 Speaking up about wrongdoing
 - 12.1.13 Dealing with Violence, Aggression and Disruptive Behaviour in line with the Council's Management of Actual and Potential Aggression Policy
 - 12.1.14 Handling money
 - 12.1.15 Risk assessment
 - 12.1.16 Whistleblowing Policy
 - 12.1.17 Record keeping
 - 12.1.18 Infection control

- 12.1.19 Food handling
- 12.1.20 Code of conduct
- 12.1.21 Missing person
- 12.1.22 Gifts and inducements
- 12.1.23 Service User access to records
- 12.1.24 Mental Capacity Act: Deprivation of Liberties Safeguard Policy and procedure
- 12.1.25 Keyworking
- 12.1.26 Lone/out of hours working policy.
- 12.1.27 Risk Management policy and procedure.
- 12.1.28 Service User Rights and Responsibility Statement
- 12.2 The Service Provider will ensure that all Staff have access to copies of all the policies and procedures listed above and sign a form (which will be held on the staff file) which indicates that they have received read and understood them.

SCHEDULE 2 SERVICE STANDARDS

1 GUIDING PRINCIPLES

- 1.1 The Service Provider will seek to provide a Service that:
 - 1.1.1 encourages the rights of Service Users to make decisions about their own lives.
 - 1.1.2 acknowledges and seeks to address and avoid the ways in which Service Users are marginalised and subjected to discrimination.
 - 1.1.3 ensures that members of Staff are committed to anti-discriminatory and anti – oppressive practice and seek to examine their own attitudes.
 - 1.1.4 ensures that the privacy and individuality of all Service Users is respected.
 - 1.1.5 respects the confidentiality of any information gained about Service Users whilst ensuring that Staff are clear that they have a duty to share any concerns about Service Users’ mental and physical welfare with their managers and other professionals involved in the Service Users support.
 - 1.1.6 fostering independence and enabling Service Users to reach their full potential
 - 1.1.7 protecting Service Users when they are vulnerable.
- 1.2 The Service Provider must provide the Service in accordance with the terms of this Contract and with all the skill, care and diligence to be expected of a competent provider of services of a similar kind to the Service.
- 1.3 In providing the Service the Service Provider must also comply with any of the practices performance ratings and quality standards that are set out or referred to in this Contract and all statutory provisions and guidance which apply to the Service and are issued from time to time by the Registration Body.
- 1.4 Staff should develop a professional relationship with the family or carers of Service Users. It is expected that nominated Staff develop and maintain designated links with the family / carer of the Service User.
- 1.5 Systems are in place to monitor the wellbeing of Service Users and that any concerns about the Service User’s wellbeing are passed on to the appropriate professional who should be kept informed about any incidents, accidents or significant changes in behaviour.

2 ADMINISTRATION

- 2.1 The Service Provider will supply information which the Council may request from time to time in order to comply with Department of Health or the Department for Communities and Local Government requirements.
- 2.2 Staff working in the community or visiting Service Users’ homes should carry personal identification at all times.

3 RECORD KEEPING AND CONFIDENTIALITY

- 3.1 The Service Provider’s facilities for storing records such as filing cabinets must be lockable and in a secure environment. Evidence must be available that any statutory

- requirements relating to the premises have been complied with.
- 3.2 The Service Provider will ensure that the following information is recorded in respect of each Service User and the language used on the records must be both appropriate and professional:
 - 3.2.1 name, address, date of birth
 - 3.2.2 gender, ethnic origin and significant, relevant items of personal/medical history and critical incidents
 - 3.2.3 next of kin - name, address and telephone number
 - 3.2.4 GP - name, address and telephone number
 - 3.2.5 date of referral, Service commencement and termination
 - 3.2.6 current support plan details
 - 3.2.7 current risk assessment
 - 3.2.8 personal accounts
 - 3.3 A register of Staff must be maintained which should include the following information
 - 3.3.1 name, address and telephone number
 - 3.3.2 position held and hours worked
 - 3.3.3 next of kin - name, address and telephone number
 - 3.3.4 GP - name, address and telephone number
 - 3.3.5 Date of issue of identification and retrieval if appropriate
 - 3.3.6 Recruitment details including references, evidence of Disclosure and Barring Service check and interview
 - 3.3.7 Induction and training records
 - 3.3.8 Copies of training certificates and qualifications
 - 3.4 The Service Provider will ensure that each member of Staff is made aware that their files may be inspected by officers of the Council or purchasing healthcare professionals for the purpose of monitoring.
 - 3.5 In accordance with Caldicott recommendations and confidentiality requirements the Service Provider will ensure that:
 - 3.5.1 Service Users are able to find out how the Service Provider deals with confidential and sensitive information about them and should be given a leaflet (or other communication relevant to their level of understanding) that clearly explains what information is kept on them and how they can access this.
 - 3.5.2 Service Users and Staff have access to their personal records in private and as quickly as possible if requested and no later than 21 days whilst considering the interest of any third party information which can only be given with the third party's permission.
 - 3.5.3 when the Service User has examined the records they are signed and dated by a member of Staff to show they have been examined and by the Service User when possible.
 - 3.5.4 Staff are required to sign and date an acknowledgement that they have examined records pertaining to them upon the fulfilment of their request.
 - 3.5.5 it has a policy document that details Staff Code of Conduct in relation to confidentiality. This document must be shared with and understood by Staff used to provide the Service and regularly updated.
 - 3.5.6 Staff induction contains training on confidentiality procedures. Staff files should evidence the date and nature of the induction on confidentiality that was given to new Staff.
 - 3.5.7 confidential and security training needs are assessed on an ongoing basis taking into account the role of each member of Staff used to provide the Service and this should be done annually.
 - 3.5.8 Staff contracts explicitly mention confidentiality and disclosure issues
 - 3.5.9 flows of Service User information are reviewed.
 - 3.5.10 information collections have a named owner (member of Staff) who is responsible for protecting access.

- 3.5.11 confidential information on Service Users is safeguarded so that unauthorised people do not gain access to it.
- 3.5.12 protocols governing the sharing of Service User information with other organisations is agreed and understood.
- 3.5.13 a named individual is appointed who will have responsibility for data security.
- 3.5.14 it has a programme to review typical risks regarding Service Users identifiable information.
- 3.5.15 incidents involving security breaches are anticipated and dealt with appropriately.
- 3.5.16 security issues are monitored and reported.
- 3.5.17 passwords are used to safeguard information held on computer regarding the Service.
- 3.5.18 only authorised persons have access to information and only if they need it to carry out their roles.
- 3.5.19 if it is uncertain about the application of the above to the provision of the Service it will immediately contact the Council for clarification.

4 RECRUITMENT AND SELECTION

- 4.1 The Service Provider shall at all times during the period of this Contract engage sufficient Staff of sufficient ability skill knowledge training and experience for the proper performance of the Service and shall continuously supervise the performance of Staff and ensure that there is a sufficient reserve available to provide the Service at all times.
- 4.2 The Service Provider shall be entirely responsible for the employment and conditions of service of its own employees and shall at all times be fully responsible for the payment of all salaries and wages income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any persons employed by the Service Provider and shall fully and promptly indemnify the Council in respect of any liability of the Council in respect thereof.
- 4.3 The Service Provider will ensure that:
 - 4.3.1 There is a clear written job description and employee specification for all Staff.
 - 4.3.2 Job applications are in Writing and describe previous experience, training, full employment history since leaving school and explain the reason for leaving and any gaps in employment.
 - 4.3.3 Candidates selected for possible appointment are interviewed and two satisfactory written references are obtained, one of which must be from their current or last employer and from a previous employer from the care sector where applicable. Provision must be made for references to be taken from all previous employers if required. References should ask reasons for leaving, whether the employers providing the reference would offer re-employment and whether any disciplinary investigations have been undertaken and why.
 - 4.3.4 References are received and checked before employment commences, including the authenticity of the reference.
 - 4.3.5 Job applicants make a written declaration of previous convictions and disqualifying conditions and provide information of any other name by which they have been known.
 - 4.3.6 Recruitment procedures are in accordance with clause 28 of this Contract (Safeguarding)
 - 4.3.7 The identity of all Staff is verified prior to employment using an official document.
 - 4.3.8 The authenticity of qualifications is checked prior to employment.
 - 4.3.9 Staff are provided with information about their conditions of employment.
 - 4.3.10 All Staff make a written undertaking in respect of confidentiality.
 - 4.3.11 All new Staff are appointed on a probationary contract, renewal of which must be dependent upon satisfactory performance and completion of the Induction Programme. This provision must also apply to internal transfers.
 - 4.3.12 Where any concerns have been raised about a potential member of Staff by a

referee or through the Disclosure and Barring Service check and the person is nevertheless deemed to be suitable for care work appropriate and sufficient monitoring is undertaken by the Service Provider in respect of the concerns raised. The Service Provider must be able to demonstrate that such monitoring has been carried out.

5 TRAINING

5.1 The Service Provider shall ensure that Staff are adequately trained to perform their duties to the required standard and that the training received by Staff is recorded.

5.2 All newly appointed Staff must be provided with relevant induction training covering:

- Health and Safety
- Moving and Handling
- Personal Care Skills
- First Aid
- Promoting independence
- Safeguarding
- Dealing with aggression and challenging behaviour
- Mental Capacity Act: Deprivation of Liberties Safeguard Policy and procedure
- Service Users' rights and needs

5.2.1 the policies procedures and codes of conduct of the day service which they will be expected to follow.

5.2.2 the principles and objectives of the Service.

5.3 The manager must be satisfied that the subjects covered in induction training have been understood, signed off and dated by both Manager and Staff.

5.4 Systematic identification of training needs and objectives must be undertaken.

5.5 Staff should be given proper and adequate briefing on the individual Service User's needs and the way they are to be met before the Service User receives the Service.

6 SUPERVISION

6.1 Care practice will be monitored through direct regular supervision which includes daily observation and documented meetings with individual Staff. Support on a one to one basis must be available to Staff to enable them to discuss concerns and developments concerning any of the Service Users with whom they are working.

6.2 Supervision will take place between all Staff and their line manager and this will be no less than six times per year at intervals of every two months. Written records will be kept on the content and outcome of each meeting and the Council has the right to view these on request.

7 QUALITY ASSURANCE

7.1 The Service Provider must be able to demonstrate to the Council that it has a commitment to quality services and must allow Officers of the Council access to all records for the purpose of monitoring and complaint investigation at all times.

7.2 The Service Provider must have systems which enable it to:

- check whether it is delivering the promised service
- check whether it is doing this efficiently and effectively
- check whether Staff are provided with a safe system of work
- check whether the Service is being delivered in a way which takes account of the Service User's needs and preferences and the "Principles of Care"
- check to ensure that all records are up to date
- provide information to the Council on the above

7.3 The Service Provider will be required to seek Service Users' views on the Service not less than every twelve months. However the initial views of Service Users should be sought by the Service Provider within the first four weeks from commencement of the Service to them. All contact made must be recorded in writing on record sheets or pro-formas and be made available in both a full and analysed format to the Council when

- monitoring the Service.
- 8.0 MONITORING
- 8.1 The Service Provider shall co-operate with the Council and shall comply with all reasonable requests from the Council to allow monitoring and evaluation of the effective provision of the Service by the Service Provider which shall include the recruitment and selection of Staff adherence to policies and procedures statutory legislation and the Safeguarding adults: multi-agency policy and procedures for the West Midlands.
- 8.2 Without prejudice to the generality of the foregoing the Service Provider shall permit an Officer at all reasonable times to inspect or witness the Service Provider's provision of the Service for the purpose of monitoring the Service Provider's performance of its obligations under this Contract. The Council will have careful regard to the nature of the Service provided and shall when on premises controlled by the Service Provider respect Service Provider's rules as to security health and safety.
- 8.3 The Service may be monitored by the following:
- 8.3.1 An inspection of the Service if required by the Council from time to time. This will be carried out by a nominated Officer from the Council who will undertake a review on the operation of the Service and compliance with this Contract. A report will be prepared on this and shared with the Service Provider.
- 8.3.2 The Service Provider and the Council ensuring that the Parties meet at regularly agreed intervals and set an agenda to discuss:
- Finance
 - Staff (recruitment / leavers / sickness and agency)
 - The Service (existing and developments)
 - Feedback from Service Users on the Service
 - Summary details of any concerns raised about the Service and actions taken to address these
 - Liaison with Health Care professionals
 - Results of the Service Provider's own quality assurance mechanisms
 - (The above is not an exhaustive list of agenda items)
- 9.0 PROTECTION OF VULNERABLE ADULTS
- The Service Provider will ensure that:
- 9.1 in cases of actual or suspected abuse to a Service User there must be strict adherence to the Safeguarding adults: multi-agency policy and procedures for the West Midlands in order to protect the Service User and comply with any investigation carried out by the Council
- 9.2 it and its Staff are aware that abuse includes financial; material; physical; psychological; neglect; omissions; sexual and discriminatory abuse. It may be perpetrated by other Service Users; Staff or people visiting the Service Users, family members or friends.
- 9.3. it has a written statement communicating to Staff about the Safeguarding adults: multi-agency policy and procedures for the West Midlands, how abuse may be recognized and Staff responsibilities where they suspect it has taken or might take place. This statement will be made available to the Council on request.
- 9.4 it co-operates with the Council's policy on the reporting and investigating procedures of suspected or actual incidents of abuse.
- 9.5 any allegation of abuse should be reported immediately to the Council's First Point of Contact team on 0345 6789 044 immediately in accordance with policy and procedure.
- 10.0 RISK MANAGEMENT AND HEALTH & SAFETY
- 10.1 The Service Provider will have a Risk Management policy in respect of Service Users. Steps taken to minimise risk will be discussed with the Service User family or Care Manager. The policy will recognise the Service User's right to take risks as an expression of independence but will take into account the effect on other Service Users and Staff. This policy should be communicated to all Staff Service Users and their family and Care Manager

- 10.2 The Service Provider shall ensure that:
- 10.2.1 the Service is provided with proper regard to Health and Safety legislation which shall comprise all statutes codes of practice, regulations, British Standards and Guidance Notes relevant to Health and Safety and the performance of this Contract. Further guidance is obtainable from the Registration Body the Health and Safety Executive and the local authority Environmental Health Inspectors
 - 10.2.2 a Health and Safety Policy Statement meeting the requirements of the Health and Safety at Work Act 1974
- 10.3 The Service Provider will have a written methodology on how they have made the assessment of how many of any type of Staff are needed to deliver the Service. This methodology will take into account the needs of all the Service Users; the layout of the building; the nature of work carried out in the community, the abilities and experience of the Staff and current Best practice and guidance. This methodology will be updated frequently and whenever there are changes which would affect the Service to the Service Users.
- 10.4 A full written risk assessment should be completed under the requirements of the Health and Safety at Work regulations 1992 on the Service and if required in respect of each Service User when he/she is first admitted and when any changes to his/her care needs arise including a risk assessment of choking for each individual.
- 10.5 Records of all Health & Safety training, including refresher training must be kept and held locally.
- 10.6 Staff should be required to follow good practice in moving and handling and be provided with appropriate training and refresher training. Certificates of training undertaken should be held on their Staff files
- 10.7 All accidents, incidents and violent 'near misses' involving Staff and Service Users must be recorded. This record should include any steps taken to prevent a recurrence. Accidents must also be recorded in an accident book.

SCHEDULE 3 EMPLOYMENT PROVISIONS

Unless otherwise stated, the following definitions shall apply:

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

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

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

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

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

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

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

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

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

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

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

Service Provider Personnel: all directors, officers, employees, agents, consultants and

contractors of the Service Provider and/or any Sub-contractor engaged in the performance of the Service Provider's obligations under this Contract;

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

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

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

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

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

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

Retendering Information: as defined in paragraph 6.10;

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

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

Staffing Information: in relation to all persons identified on the Service Provider's Provisional Personnel List or Service Provider's Final Personnel List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the Data Protection Legislation, but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other Employee Liability Information

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

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

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

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

2. INTERPRETATION

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

3. TRANSFER OF EMPLOYEES TO THE PROVIDER ON THE EFFECTIVE DATE

3.1 The Council and the Service Provider agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Council Employees [and Transferring Former Provider Employees] shall transfer to the Service Provider or Sub-Contractor. The Service Provider shall comply and shall procure that each Sub-Contractor shall comply with their obligations under the Employment Regulations. The Relevant Transfer shall occur on the Effective Date

3.2 Not used

3.3 Subject to paragraph 3.4, the Council shall indemnify and keep indemnified the Service Provider against any losses, except indirect losses incurred by the Service Provider or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Council Employee arising out of the employment of any Transferring Council Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Council in relation to any

Transferring Council Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Service Provider or any relevant Sub-Contractor's failure to comply with regulation 13 of the Employment Regulations) and any such claim is not in connection with the transfer of the Services by virtue of the Employment Regulations on the Effective Date.

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

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

3.5 The Service Provider shall be liable for and indemnify and keep indemnified the Council and any Former Provider against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Council Employees, the Transferring Former Provider Employees, and any other person who is or will be employed or engaged by the Service Provider or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.

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

4. NOT USED

5. PROCUREMENT OBLIGATIONS

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

6. RETENDERING AND PRE-SERVICE TRANSFER OBLIGATIONS

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

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

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

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

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

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

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

6.4 The Service Provider:

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

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

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

6.6 During the Term, the Service Provider shall provide, and shall procure that each Sub-

contractor shall provide, to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

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

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

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

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

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

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

7. EMPLOYMENT REGULATIONS EXIT PROVISIONS

7.1 The Council and the Service Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or

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

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

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

- (a) any act or omission of the Service Provider or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Service Provider or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the Service Provider or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Service Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Service Provider to the Council and/or Replacement Provider and/or any Replacement Sub-

contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

(e) a failure of the Service Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period up to (and including) the Service Transfer Date);

(f) any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-contractor other than a Transferring Service Provider Employee for whom it is alleged the Council and/or the Replacement Provider and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

(g) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Council and/or Replacement Provider to comply with regulation 13(4) of the Employment Regulations.

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

(a) arising out of the resignation of any Transferring Service Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

(b) arising from the Replacement Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

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

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

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

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

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

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved

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

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

7.9 The indemnity in clause 7.8:

(a) shall not apply to:

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

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

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

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

7.11 Not Used.

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

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

(a) any act or omission of the Replacement Provider and/or Replacement Sub-contractor;

(b) the breach or non-observance by the Replacement Provider and/or Replacement Sub-

contractor on or after the Service Transfer Date of:

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

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

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

Replacement Provider will be fulfilled.

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

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

Section.2 Pensions

Section 2 (A) - Local Authority Pension Scheme

1. Definitions and Interpretation:

The definitions and rules of interpretation in this Schedule apply in this Contract:

Admission Agreement: the agreement to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, as amended, by the Administering Authority, the Council and the Service Provider or Sub-Contractor, as appropriate in the Administering Authority's standard form

Administering Authority: means Shropshire Council

Appropriate Pension Provision: in respect of Eligible Employees, either:

- (a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or
- (b) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of their Legacy Scheme.

Cessation Date: any date on which the Service Provider or the relevant Sub-Contractor ceases to be an Admission Body other than as a result of the termination or expiry of this Contract or because it ceases to employ any Eligible Employees;

Eligible Employees:

- (a) the Transferring Council Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or
- (b) the Transferring Former Provider Employees who are former employees of the Council and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services.

Legacy Scheme: the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer.

LGPS: Local Government Pension Scheme

LGPS Regulations: the Local Government Pension Scheme Regulations 2013 (SI 2013/2356)

2. PENSIONS

2.1 The Service Provider shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision from the Effective Date.

2.2 The provisions of clauses 2, 3, 4 and clause 5 shall be directly enforceable by an affected employee against the Service Provider or any relevant Sub-Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Service Provider or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

3. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

3.1 Where the Service Provider or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Service Provider shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Service Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate and Bond value] in respect of any Eligible Employee who elects to join the LGPS [on or after] the Effective Date.

3.2 For the purposes of calculating the employer's contribution rate, any termination payment, and any other sums due to the Administering Authority under the Admission Agreement, the Council shall ensure that the Eligible Employees' past service benefits accrued prior to the Effective Date are fully funded as at the Effective Date by crediting the Service Provider at the Relevant transfer Date with a notional fund within the Legacy Scheme of such amount to meet the cost of those past service benefits as determined by the Fund's actuary. For the avoidance of doubt, the notional fund referred to in this Clause 3.2 shall only apply to the value attributed to the notional fund as at the Relevant Transfer Date and any future changes to the funding within the Legacy Scheme in respect of providing the benefits accrued prior to the Relevant Transfer Date shall be for the account of the Service Provider or any Sub-Contractor as an Admission Body.

3.3 The Service Provider shall indemnify and keep indemnified the Council and/or any Replacement Provider and, in each case, their providers, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Service Provider or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.

3.4 The Service Provider shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or bond in the Administering authority's standard form as required in accordance with the Admission Agreement. The Service Provider or Sub-Contractor will bear the cost of any actuarial assessment required in order to assess the value of the Bond or guarantee.

3.5 The Service Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council and where such benefits are of a discretionary nature they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Effective Date. The Service Provider shall be responsible for meeting all costs associated with the award of such benefits.

3.6 The Council shall have a right to set off against any payments due to the Service Provider under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Provider or from any relevant sub-contractor (as applicable) under the Admission Agreement.

4 SERVICE PROVIDER CEASES TO BE AN ADMISSION BODY

4.1 If the Service Provider or any Sub-Contractor employs any Eligible Employees from the Effective Date and:

4.1.1 the Service Provider or any relevant Sub-Contractor does not wish to offer all or some of those Eligible Employees membership of the Legacy Scheme;

4.1.2 the Council, the Service Provider or any relevant Sub-Contractor are all of the opinion that it is not possible to operate the provisions of Clause 3 (Admitted Body Status to the Local Government Pension Scheme); or

4.1.3 if for any reason after the Effective Date the Provider or any relevant Sub-Contractor ceases to be an Admission Body other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible Employees,

then the provisions of Clause 3 Admitted Body Status to the Local Government Pension Scheme) shall not apply (without prejudice to any rights of the Council under those clauses) and the provisions of Clause 5 (Provider Pension Scheme) shall apply.

5. SERVICE PROVIDER PENSION SCHEME

5.1 Where this clause applies the Service Provider shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

- (a) established no later than three months prior to the date of the Relevant Transfer; and
- (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and
- (c) certified by the GAD or any actuary nominated by the Council in accordance with relevant guidance produced by the GAD as providing benefits that are broadly comparable to those provided by the Legacy Scheme,

and the Service Provider shall produce evidence of compliance with this clause 5 to the Council prior to the date of the Relevant Transfer.

5.2 The Council's actuary shall determine the terms for bulk transfers from the LGPS to the Service Provider's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this Contract.

5.3 The Service Provider undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall and shall procure that any relevant Sub-Contractor shall procure that:

- (a) if the Service Provider Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Service Provider or relevant Sub-Contractor. The replacement scheme must comply with this Clause 5 (Service Provider Pension Scheme); and
- (b) where the Service Provider Pension Scheme has not been established at the Effective Date or Cessation Date (as the case may be), the Eligible Employees shall be provided with

benefits in respect of death-in-service which are no less favourable than the death-in-service benefits provided by the Legacy Scheme immediately before the Effective Date or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Service Provider Pension Scheme; and

(c) all information which the Council or the Administering Authority or their respective professional advisers may reasonably request from the Service Provider or any relevant Sub-Contractor for the administration of the Legacy Scheme or concerning any other matters raised in this Clause 5 or in relation to calculating the bulk transfer terms shall be supplied to them as expeditiously as possible.

5.4 The Service Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council and where such benefits are of a discretionary nature they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Effective Date. The Service Provider shall be responsible for meeting all costs associated with the award of such benefits.

6. TRANSFER TO ANOTHER EMPLOYER

6.1 Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Service Provider shall and shall procure that any relevant Sub-Contractor shall:

- (a) consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- (b) procure that the employer to which the Eligible Employees are transferred (the New Employer) complies with the provisions of this Clauses 2 to 7 inclusive provided that references to the "sub-contractor" will become references to the New Employer, references to "Effective Date" will become references to the date of the transfer to the New Employer and references to "Eligible Employees" will become references to the Eligible Employees so transferred to the New Employer.

7. CLAIMS FROM ELIGIBLE EMPLOYEES OR TRADE UNIONS

7.1 The Service Provider hereby indemnifies the Council and/or any Replacement Provider and, in each case, their Sub-Contractors from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Service Provider and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- (a) relate to pension rights in respect of periods of employment on and after the Effective Date until the date of termination or expiry of this Contract; or
- (b) arise out of the failure of the Service Provider and/or any relevant Sub-Contractor to comply with the provisions of this Clause 7 before the date of termination or expiry of this Contract.

8. PENSIONS EXIT PROVISIONS

8.1 The Service Provider shall and shall procure that each relevant Sub-Contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed

- by the Service Provider or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the Council such documents and information mentioned in paragraph 8.1(a) which the Council may reasonably request in advance of the expiry or termination of this Contract; and
 - (c) fully cooperate (and procure that the trustees of the Service Provider's scheme shall fully cooperate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Service Provider or any Sub-Contractor in the provision of the Services on expiry or termination of the Contract;
 - (d) not adversely affect pension rights accrued by the Eligible Employees in the period ending on expiry or termination of the Contract.

Annex A. Admission Agreement

Annex B. Transferring Council Employees

There are no Transferring Council Employees

Annex C. Transferring Former Provider Employees

SCHEDULE 4

Processing, Personal Data and Data Subjects

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

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Data Controller and Data Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Contractor is the Data Processor in accordance with Clause 34(a)
Subject matter of the processing	Personal information about Service Users to ensure that the Service Provider is able to safely meet their Assessed Needs.
Duration of the processing	For the period of Service delivery to a Service User plus 6 years after the last date on which the Service is delivered.
Nature and purposes of the processing	<p>The Service Provider is to provide a Service as ordered by the Council to meet its obligations under the Care Act 2014. The nature of the processing of the data may include, but not be limited to, the following, in order to deliver a statutory service to Service Users:</p> <ul style="list-style-type: none"> Collecting, maintaining and storing Service User records in all formats

	<ul style="list-style-type: none"> • Sharing Service User information across the Service Provider's organisation and with other appropriate external agencies to include: appropriate Regulatory Bodies; the Police; health services. • Completion of returns relating to multi-agency safeguarding and complaints processes. <p>The purpose of processing the data is to enable the Service Provider to provide a quality service to Service Users in accordance with Schedules 1 and 2 of this Contract and to safeguard individual Service Users where there are concerns about their wellbeing.</p>
Type of Personal Data	<p>Personal data: Service User details as follows: Name; address; date of birth; next of kin; personal accounts;</p> <p>Special category data: Gender and ethnic origin; GP; medical and health/care related details relevant to their support plan; current risk assessment; mental capacity; mental impairment; relevant offence details where appropriate.</p>
Categories of Data Subject	Service Users
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Information where no longer required should be destroyed securely, unless specifically instructed by the Council that it must be returned to the Council. Personal data relating to Service Users must be retained for 6 years from the date the Service to the individual Service User ceased.

IN THE WITNESS of which the Parties hereto have executed this document on the above date by their duly authorised officers

Signed by and on behalf of
Shropshire Council

.....

Head of Legal & Democratic Services

.....

Legal Services Manager People/Places

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

Name.....

Position in Organisation.....

AMCV 256 – CHURCH STRETTON DAY OPPORTUNITIES SERVICE

Confidentiality Undertaking Regarding TUPE

[Date] 2018

[NAME]

Your ref: *

Our ref: * AMCV 256

Dear Bidder

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

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

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

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

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

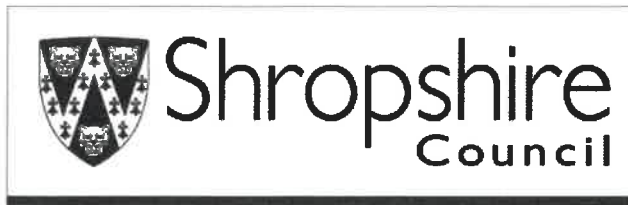
We acknowledge that we shall fully indemnify the current provider against all losses claims damages fines costs and other liabilities as a consequence of or arising from our failure to comply with our obligations to keep such information confidential.

DATED THIS DAY OF

Signature (as in Form of Tender)

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

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



Tender Response Document

AMCV 256 - CHURCH STRETTON DAY OPPORTUNITIES – MAYFAIR

Name of TENDERING
ORGANISATION
(please insert)

The Strettons Mayfair Trust

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

Shropshire Council Tender Response Document

Contract Description/Specification:

Shropshire Council holds an existing contract for a day opportunities service for adults with learning disabilities operating out of Church Stretton which expires on 30.11.18.

The Council wishes to appoint a provider who has experience of providing learning disability services and who is able to deliver a quality day service from their own building based in the town of Church Stretton. An outreach service once a week is also delivered in Bishop's Castle for which a rented base has been sourced by the current provider to operate from. For a fuller description of the service tenderers are referred to the Form of Contract –Schedule 1 The Specification.

Maximum funding for this service is £76,000 per annum

A current overview of the service provided is as follows:

Service users range in age from mid-20s to mid-60s and assessed needs include:

- Significant Hearing Impairment
- Little or no verbal communication
- Significant Visual Impairment
- Reduced Mobility
- Epilepsy
- Downs Syndrome
- A wide variety of Learning Disabilities
- A tendency to self harm
- Behavioural issues

Staffing ratios are entirely dependent on the needs of the individuals and the particular activity. Some individuals need 1 to 1 support when out of the building for physical or emotional support. 3 independent service users can travel to Shrewsbury or Ludlow by public transport with 1 member of staff.

The Bishop's Castle service has 1 staff with 2 service users. One of the current service users needs constant support and so it would not be possible to add a third service user without additional staffing. The service users currently travel to Shrewsbury from the base in Bishop's Castle using public transport approximately every two weeks.

Applicants are reminded that the number of service users/ support needs and requirements are subject to change and this information is provided as a guide only.

Contract

The contract will be a block contract for 28 day places per week for an initial 3 years from 01.12.18 to 30.11.21 with potential for a further 2 year extension to the contract.

In the event that day places are increased above 28 then per week then these places will be purchased on an individual spot basis to be arranged with the appointed provider.

The annual payment will not be subject to a payment review until April 2020.

Staffing – TUPE and LGPS staff

Applicants should note that it is considered that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') will apply to this contract. Also, due to the fact that there are staff providing the service who are currently in the Local Government Pension Scheme, compliance with the provisions The Best Value Authorities Staff Transfers (Pensions) Direction 2007, in relation to the Local Government Pension Scheme (as administered by Shropshire County Pension Fund) will also be required. Applicants are advised to seek their own legal advice about the practicality of these regulations.

Applicants should note that the staffing information spreadsheet being provided with this tender, upon request, only lists those staff currently identified as eligible for transfer under TUPE. In the event that further staff are employed by the current provider to cover the service prior to the start of the new contract then these further staff may also be eligible for transfer under TUPE.

Instructions for the completion of this document

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

Contents

Section	Description	Page
A1	Form of Tender	7
A2	Non-Canvassing Certificate	8
A3	Non-Collusive Tendering Certificate	9
A4	Declaration of Connection with Officers or Elected Members of the Council	10
You must sign all 4 certificates in sections A1 to A4		
B Part 1.1	Supplier Information– For information only	11
B Part 1.2	Grounds for Discretionary Exclusion	13
Section C	Tender and Pricing Schedule	19

Evaluation

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

Selection Criteria - General Requirements

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

Selection Questionnaire (Section B)

Section / Question No.	Selection Criteria
Section B Part 1.1	Supplier Information– For information only
Section B Part 1.2	Grounds for Discretionary Exclusion

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

Tender Schedule Section C

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

Assessment	Mark	Interpretation
Excellent	10	<i>Exceeds the requirement. Exceptional demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	9	
Good	8	<i>Satisfies the requirement with minor additional benefits Above average demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	7	
Acceptable	6	<i>Satisfies the requirement. Demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures, with evidence to support the response.</i>
	5	

Minor Reservations	4	<i>Satisfies the requirement with minor reservations Some minor reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with limited evidence to support the response.</i>
	3	
Serious Reservations	2	<i>Satisfies the requirement with major reservations. Considerable reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>
	1	
Unacceptable	0	<i>Does not meet the requirement Does not comply and/or insufficient information provided to demonstrate how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>

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

Quality		
Section C / Q 2.1	Sufficient Experience	A score of 6 or above must be achieved to pass this criterion
Section C / Q 2.2	Quality of Service Delivery (views of families, carers and advocates)	A score of 6 or above must be achieved to pass this criterion
Section C / Q 2.3	Robust measure of success in meeting outcomes	A score of 6 or above must be achieved to pass this criterion
Section C / Q 2.4	Suitability of building for provision of service	A score of 6 or above must be achieved to pass this criterion
Section C / Q 2.5	Social Value proposals	A score of 6 or above must be achieved to pass this criterion

Price Evaluation and scoring

The most competitively priced tender will be awarded the tender provided that the tenderer has scored 6 or above for each quality question above.

Section A:

1. Form of Tender

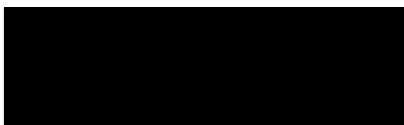
Form of Tender

Shropshire Council

Tender for AMCV 256 - Church Stretton Day Opportunities – Mayfair

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

Signed



Name..



Date22/8/18.....

Designation ...Trustee and Treasurer.....

Company.....The Strettons Mayfair Trust.....

Address ...Mayfair Community Centre, Easthope Road, Church Stretton

.....

..... Post Code SY6 6BL

Tel No01694 722077...

Fax No

E-mail address

.....
.....

Web address ...www.mayfaircentre.org.uk.....

Section A:
2. Non – Canvassing Certificate

Non-Canvassing Certificate

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

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

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

Signed (1) 

Status.....Treasurer.....

Signed (2) 

Status...Chief Officer.....

(For and on behalf of ...The Strettons Mayfair Trust.....)

Date ...22/8/18.....

Non-collusive Tendering Certificate

To: Shropshire Council (hereinafter called "the Council")

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

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

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

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

Signed (1)

Status.....Treasurer.....

Signed (2)

- Status.....Chief Officer.....

(For and on behalf ofThe Strettons Mayfair Trust.....)

Date22/8/18.....

Section A:

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

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

~~Yes~~ / **No** ✓

If yes, please give details:

Name	Relationship

Please note:

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

Signed (1)

Status.....Treasurer.....

Signed (2)

Status...Chief Officer.....

(For and on behalf of ...The Strettons Mayfair Trust.....)

Date ...22/8/18.....

Section 1.1 Supplier Information

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

Section 1.1	Potential supplier information	
Question number	Question	Response
1.1(a)	Full name of the potential supplier submitting the information	The Strettons Mayfair Trust
1.1(b) – (i)	Registered office address (if applicable)	Mayfair Community Centre, Easthope Road, Church Stretton SY6 6BL
1.1(b) – (ii)	Registered website address (if applicable)	www.mayfaircentre.org.uk
1.1(c)	Trading status a) public limited company b) limited company c) limited liability partnership d) other partnership e) sole trader f) third sector g) other (please specify your trading status)	Registered Charity Company Limited by Guarantee: Third Sector
1.1(d)	Date of registration in country of origin	3/3/1997 Registered with Charity Commission
1.1(e)	Company registration number (if applicable)	3307951
1.1(f)	Charity registration number (if applicable)	1061049
1.1(h)	Registered VAT number	247570391
1.1(k)	Trading name(s) that will be used if successful in this procurement.	Mayfair Community Centre
1.1(l)	Relevant classifications (state whether you fall within one of these, and if so which one) a) Voluntary Community Social Enterprise (VCSE) b) Sheltered Workshop c) Public Service Mutual	N/A
1.1(m)	Are you a Small, Medium or Micro Enterprise (SME)?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Contact details and declaration

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

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

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

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

I am aware of the consequences of serious misrepresentation.

Section 1	Contact details and declaration	
Question Number	Question	Response
1.3(a)	Contact name	
1.3(b)	Name of organisation	The Strettons Mayfair Trust
1.3(c)	Role in organisation	Chief Officer
1.3(d)	Phone number	01694 722077
1.3(e)	E-mail address	
1.3(f)	Postal address	Mayfair Community Centre, Easthope Road, Church Stretton SY6 6BL.
1.3(g)	Signature (electronic is acceptable)	
1.3(h)	Date	22/8/18

SECTION 1.2: GENERAL REQUIREMENTS

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

Please Note: The authority reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

Section 1.2	Economic and Financial Standing	
Question number	Question	Response
2.1	Are you able to provide a copy of your audited accounts for the last two years, if requested? If no, can you provide one of the following: answer with Y/N in the relevant box.	Yes <input checked="" type="checkbox"/> <input type="checkbox"/> No <input type="checkbox"/>
	(a) A statement of the turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of Financial Position and Statement of Cash Flow for the most recent year of trading for this organisation.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
	(c) Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
2.2	Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering 'Yes' or 'No' that you meet the requirements set out.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

2.3	If you have indicated in the Selection Questionnaire question 2.2 that you are part of a wider group, please provide further details below:	
Name of organisation		
Relationship to the Supplier completing these questions		

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

	Technical and Professional Ability
2.7	<p>Relevant experience and contract examples</p> <p>Please provide details of up to two contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs may include samples of grant-funded work. Contracts for supplies or services should have been performed during the past three years. Works contracts may be from the past five years.</p> <p>The named contact provided should be able to provide written evidence to confirm the accuracy of the information provided below.</p> <p>Consortia bids should provide relevant examples of where the consortium has delivered similar requirements. If this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle is to be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member).</p> <p>Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the main intended provider(s) or sub-contractor(s) who will deliver the contract.</p> <p>If you cannot provide examples see question 6.3</p>

	Contact 1	Contact 2
Name of customer organisation		
Point of contact in the organisation		
Position in the organisation		
E-mail address		
Description of contract		
Contract Start date		
Contract completion date		
Estimated contract value		

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

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

2.10	Please confirm that you have in place, or that you will have in place by contract award, the human and technical resources to perform the contract to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
2.10(a)	Please provide details of the technical facilities and measures (including systems and processes) you have in place, or will have in place by contract award, to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects. Your response should include, but should not be limited to facilities and measures: <ul style="list-style-type: none"> ○ to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services; ○ to comply with the rights of data 	

	<p>subjects in respect of receiving privacy information, and access, rectification, deletion and portability of personal data;</p> <ul style="list-style-type: none"> ○ to ensure that any consent based processing meets standards of active, informed consent, and that such consents are recorded and auditable; ○ to ensure legal safeguards are in place to legitimise transfers of personal data outside the EU (if such transfers will take place); ○ to maintain records of personal data processing activities; and ○ to regularly test, assess and evaluate the effectiveness of the above measures. 	
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3.0	Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015	
	Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
	If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?	Yes <input type="checkbox"/> Please provide the relevant url to view the statement ... No <input type="checkbox"/> Please provide an explanation

Additional Questions

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

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

4.2 – Compliance with equality legislation

For organisations working outside of the UK please refer to equivalent legislation in the country that you are located.		
1.	In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in any jurisdiction other than the UK)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2.	<p>In the last three years, has your organisation had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds or alleged unlawful discrimination?</p> <p>If you have answered "yes" to one or both of the questions in this module, please provide, as a separate Appendix, a summary of the nature of the investigation and an explanation of the outcome of the investigation to date.</p> <p>If the investigation upheld the complaint against your organisation, please use the Appendix to explain what action (if any) you have taken to prevent unlawful discrimination from reoccurring.</p> <p>You may be excluded if you are unable to demonstrate to the Authority's satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3.	If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

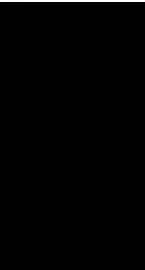

4.3 – Health & Safety

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

4.4 Safeguarding of adults and children

(for services where staff come into regular contact with children and adults)

*	<p><i>Why do we need to know this?</i></p> <p><i>The safeguarding duties placed on public authorities require the Council and its partners to work to the following guidance:</i></p> <p><i>"Working together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children (March 2015)"</i> http://www.safeguardingshropshireschildren.org.uk/scb/</p> <p><i>"West Midlands Adult Safeguarding Policy & Procedures"</i> https://www.shropshire.gov.uk/media/1462593/wm-adult-safeguarding-policy-and-procedures-working-draft.pdf</p> <p><i>We need to ensure all companies that work with Shropshire Council are clear about our safeguarding expectations and are committed to meet our expectations.</i></p> <p><i>The Council also needs to ensure that your organisation has a good record for safeguarding children and adults</i></p>
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1	Do you have a Safeguarding Policy or statement for safeguarding children? Do you have a Safeguarding Policy or statement for safeguarding adults?	Enclosed YES/NO Enclosed YES/NO 
2	For information: our requests for references will include a question relating to your organisation's record for safeguarding.	
3	<p>As a contractor providing a public service on behalf of a Shropshire Council, we expect that you will be familiar and committed to the local safeguarding procedures as prescribed by Shropshire's Safeguarding Children Board (SSCB) and http://www.safeguardingshropshireschildren.org.uk/scb/index.html Shropshire Council's approach to adult protection http://www.shropshire.gov.uk/adultcarer.nsf/open/F54E8A80CF1343BC80257AAF0058F760</p> <p>I/We certify that I/We are familiar with and committed to deliver our service in compliance with local safeguarding processes.</p> <p>Signed  Status...Chief Officer..... (For and on behalf of ...The Strettons Mayfair Trust)</p> <p>Date22/8/18.....</p>	

SECTION C – TENDER SCHEDULE

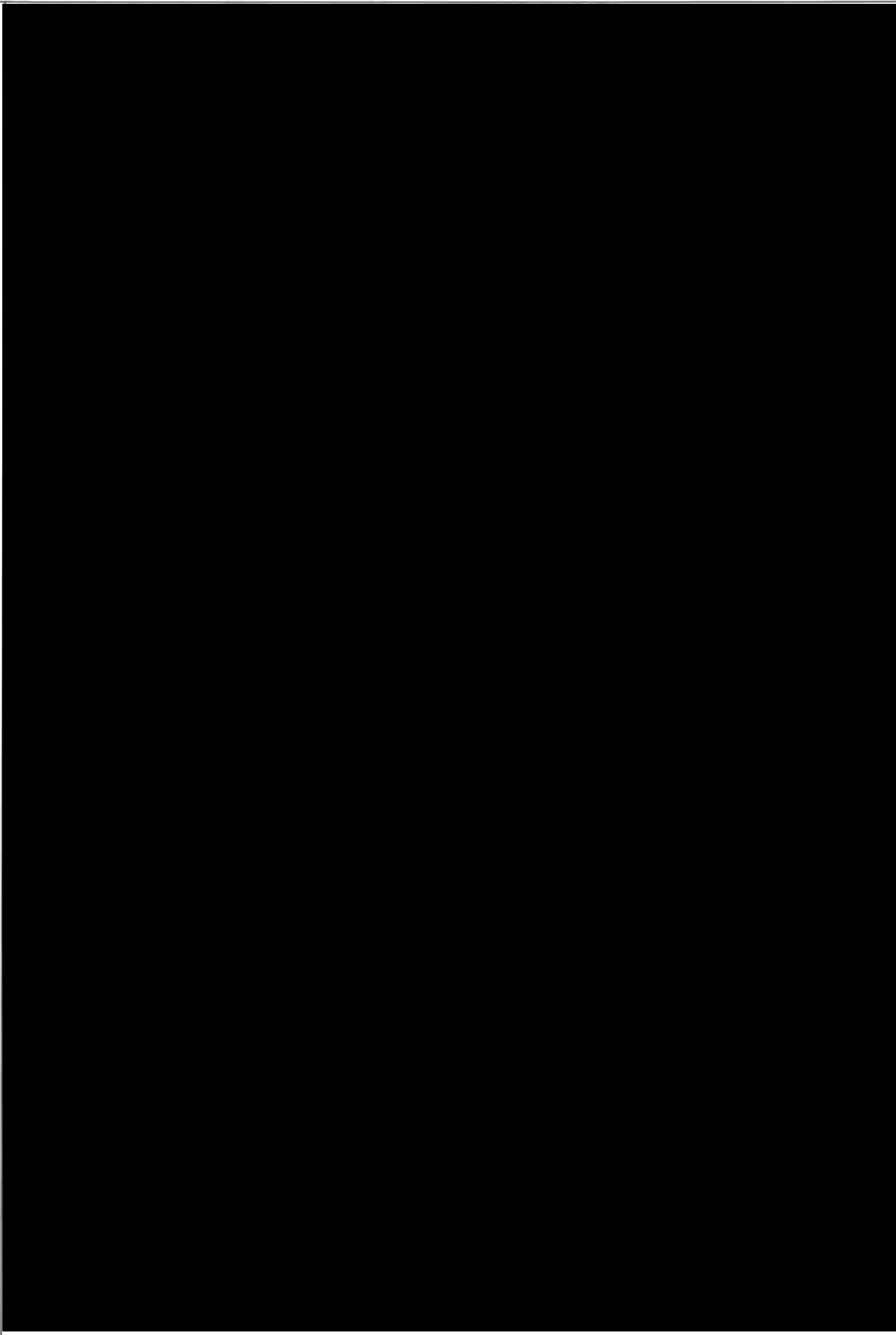

1 Pricing Schedule

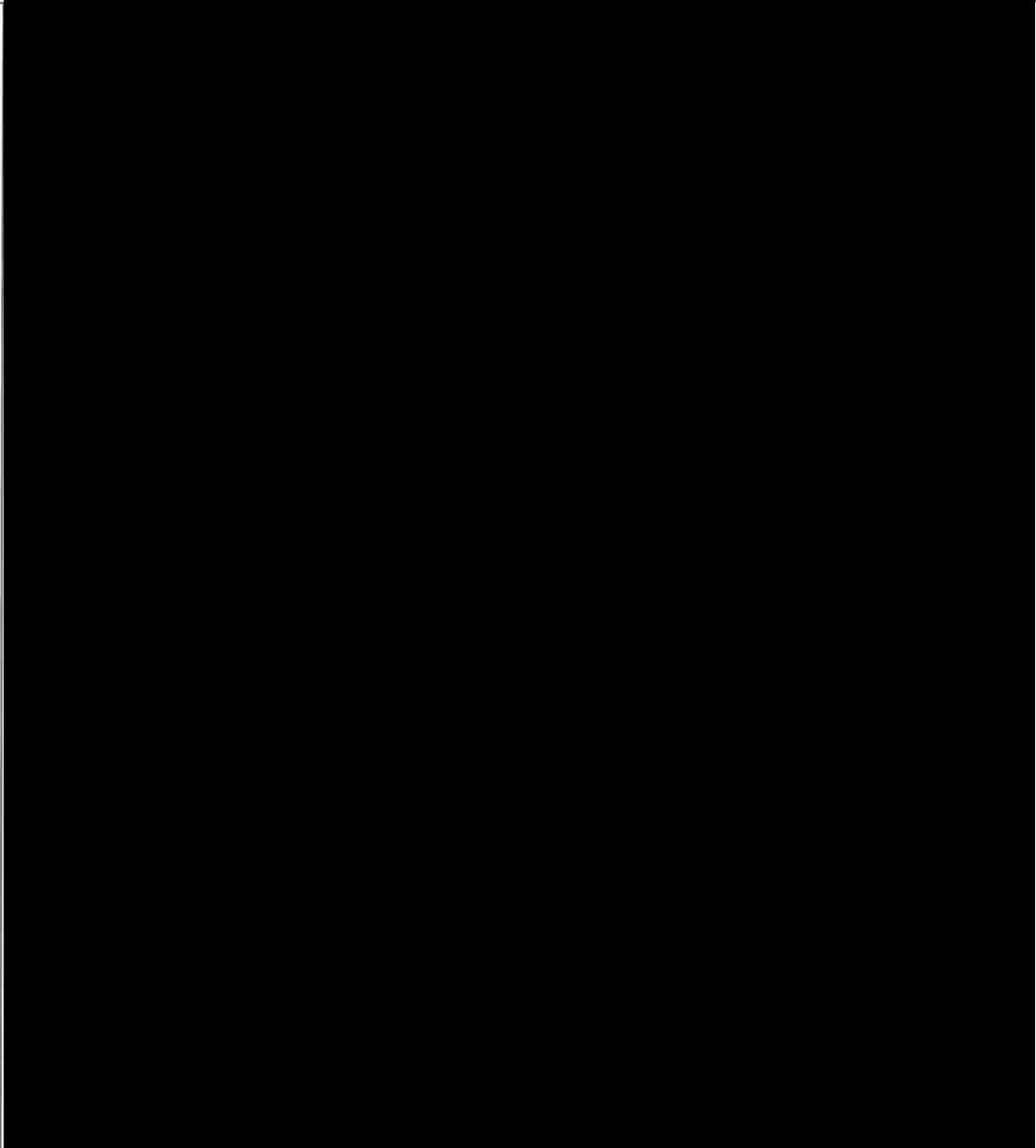
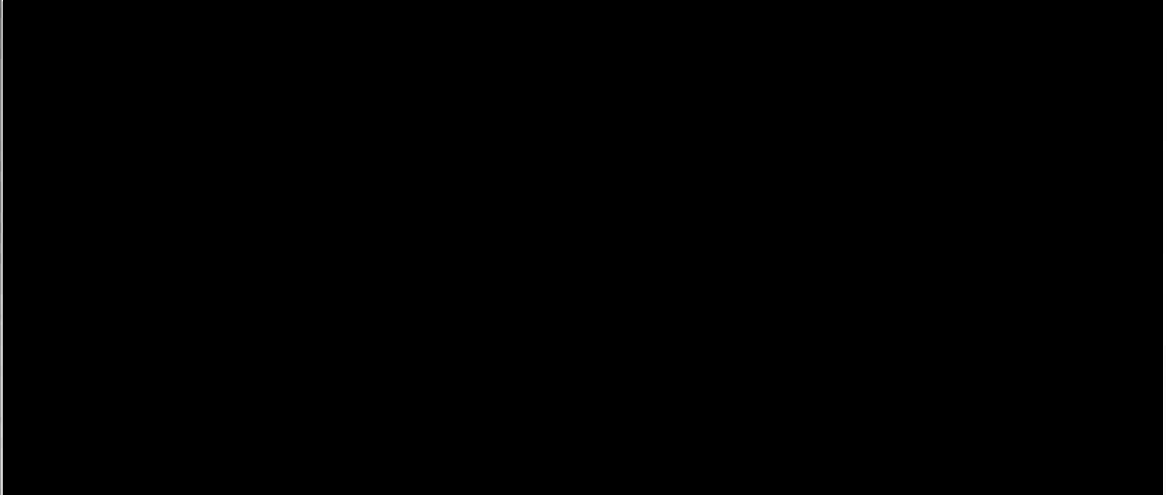
Please insert the annual cost of the service below. This cost will be subject to annual inflationary increases **from April 2020** in accordance with Clause 5 Payment Review of the Form of Contract.

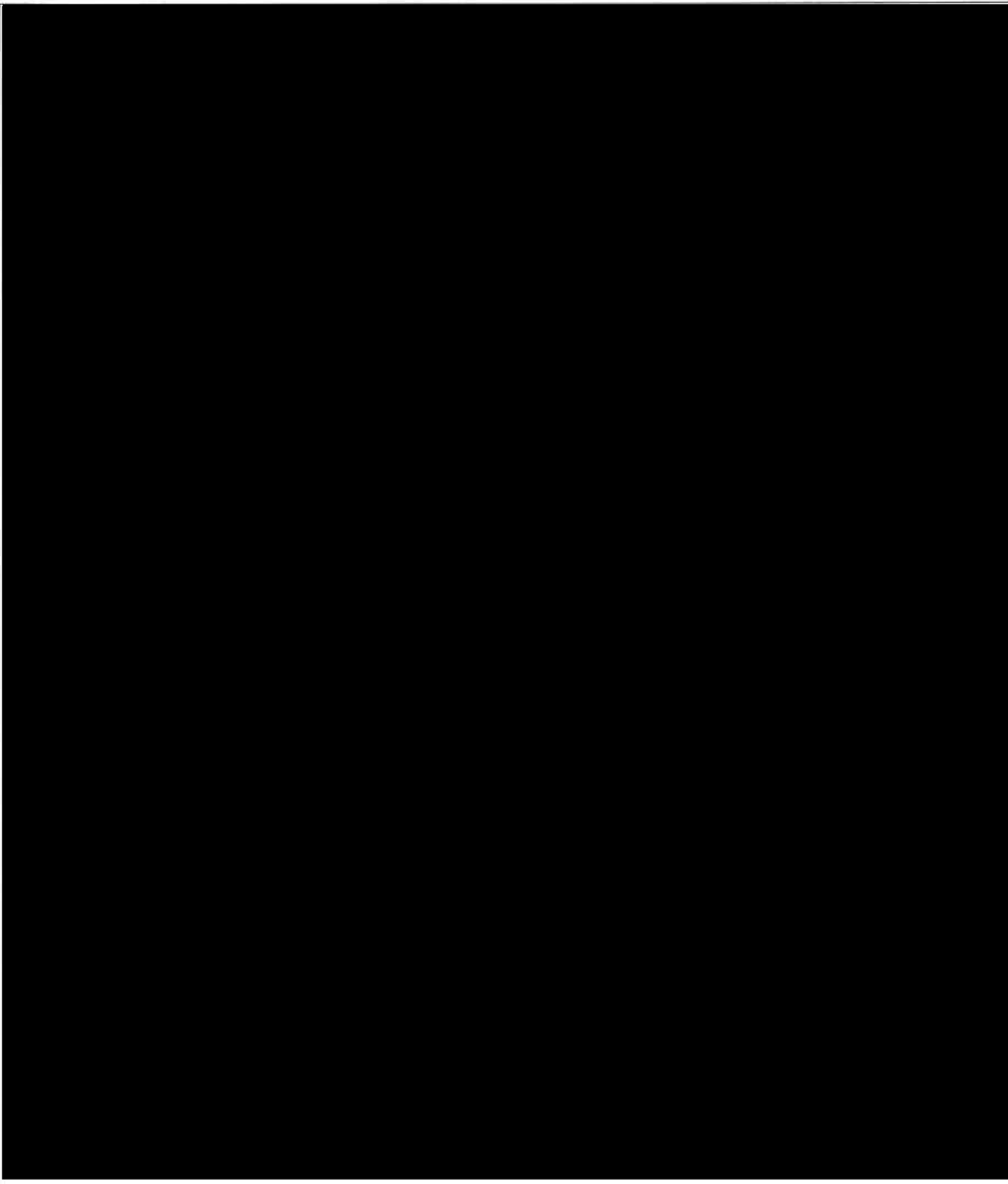



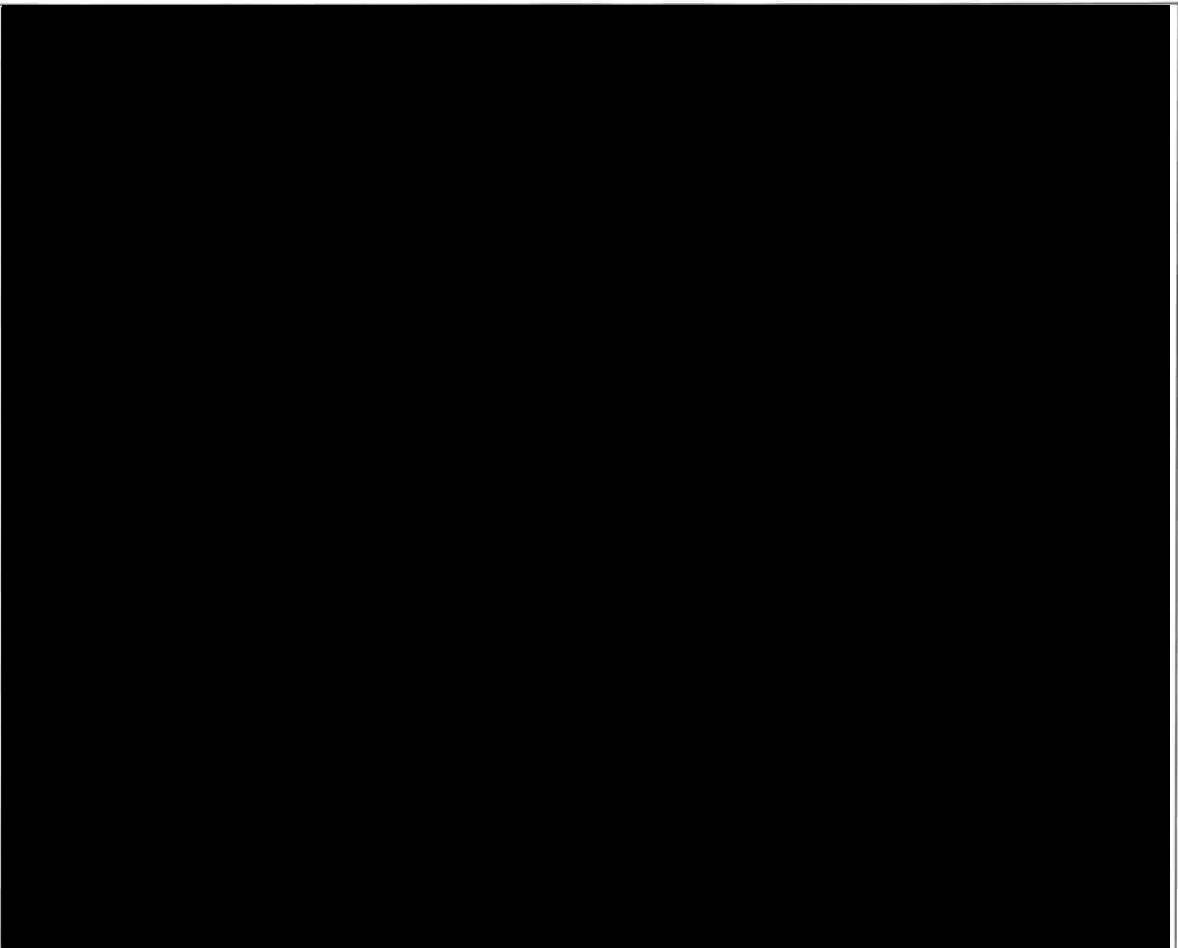
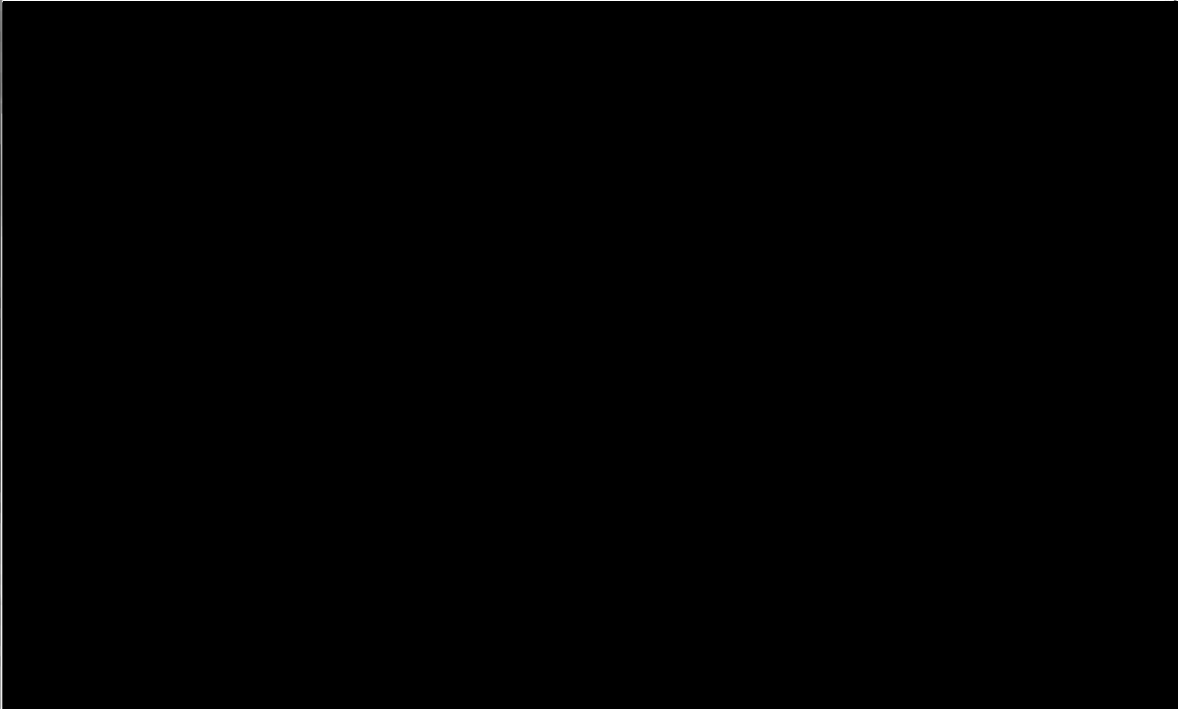
Please observe the maximum word limits given against each question

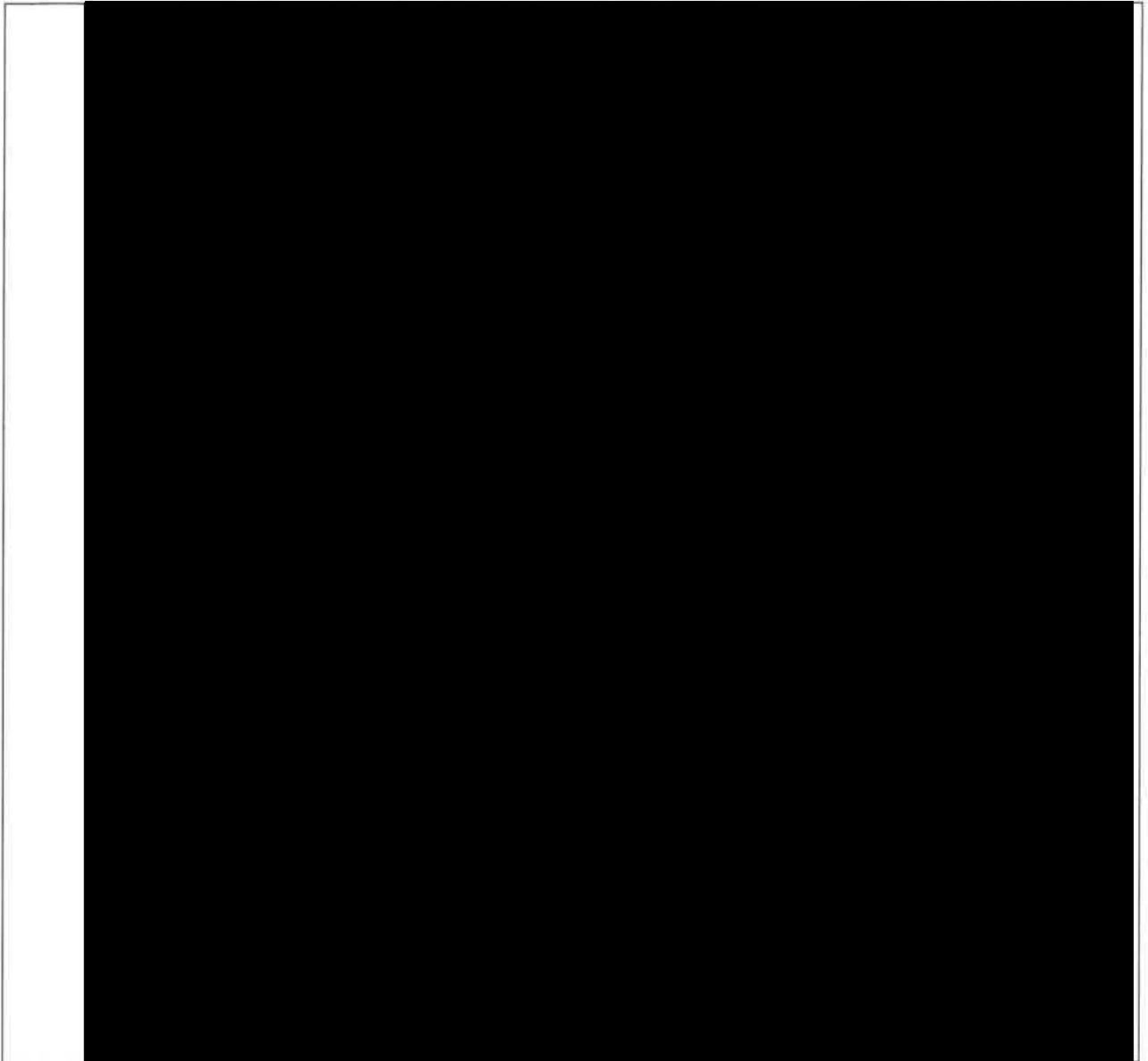
2	Tender Schedule - Quality Response Questions
2.1	<p data-bbox="276 230 1433 398">Please set out below why you feel your organisation is well placed to undertake this contract. You should include in your answer a brief history of your organisation, details of any previous similar contracts and experience in order to illustrate proven competency for the required provision of a day service for adults with learning disabilities. (Maximum 1000 words)</p> <div data-bbox="263 409 1445 2076"></div>

	
2.2	<p>Please state how you will deliver a service which takes into account the views of families, carers and advocates. (Maximum 500 words)</p> 

	
2.3	<p>Please state how you would measure “success” in meeting outcomes for service users. (Maximum 500 words)</p> 

	
2.4	<p>Please include details of the building you will use for the project and why it is appropriate for the service. (Maximum 500 words)</p> 

	
2.5	<p>The service at Church Stretton is well established as part of the local community. Describe how your proposal would maintain and build on this and how it would support disabled and/or vulnerable people to build stronger community networks? (Maximum of 500 words)</p> 





[REDACTED]
The Stretton's Mayfair Trust
Mayfair Community Centre
Easthope Road
Church Stretton
SY6 6BL

Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
Shropshire SY2 6ND

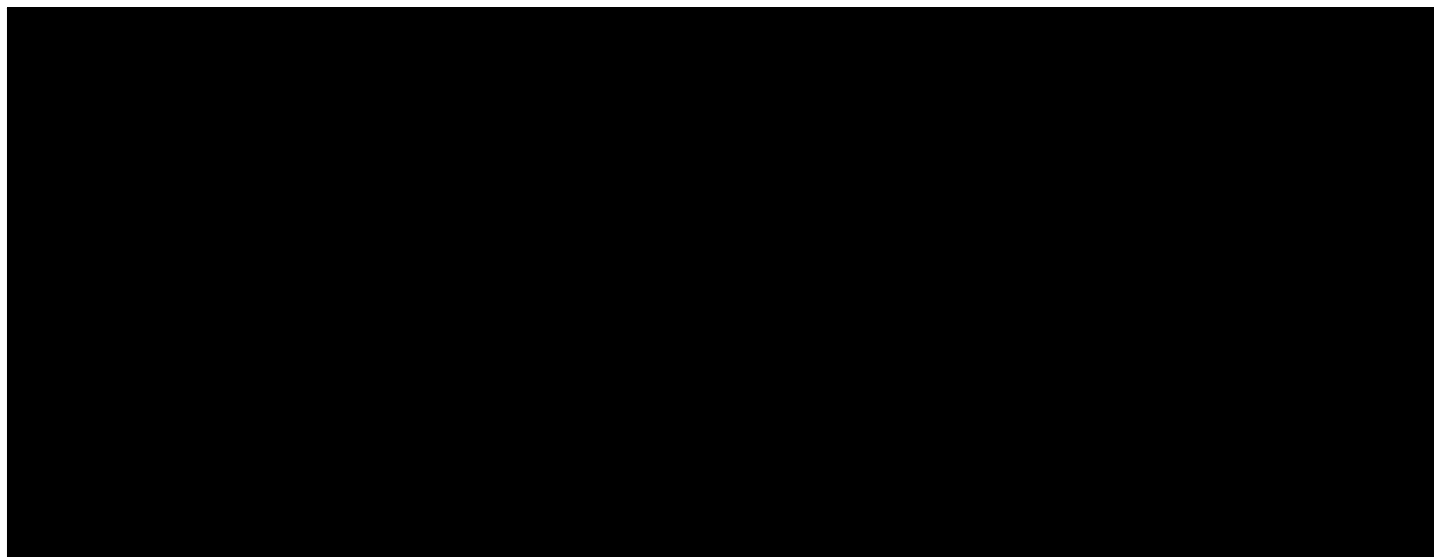
Date: 30th August 2018

Dear Bidder

AMCV 256 – CHURCH STRETTON DAY OPPORTUNITIES – MAYFAIR

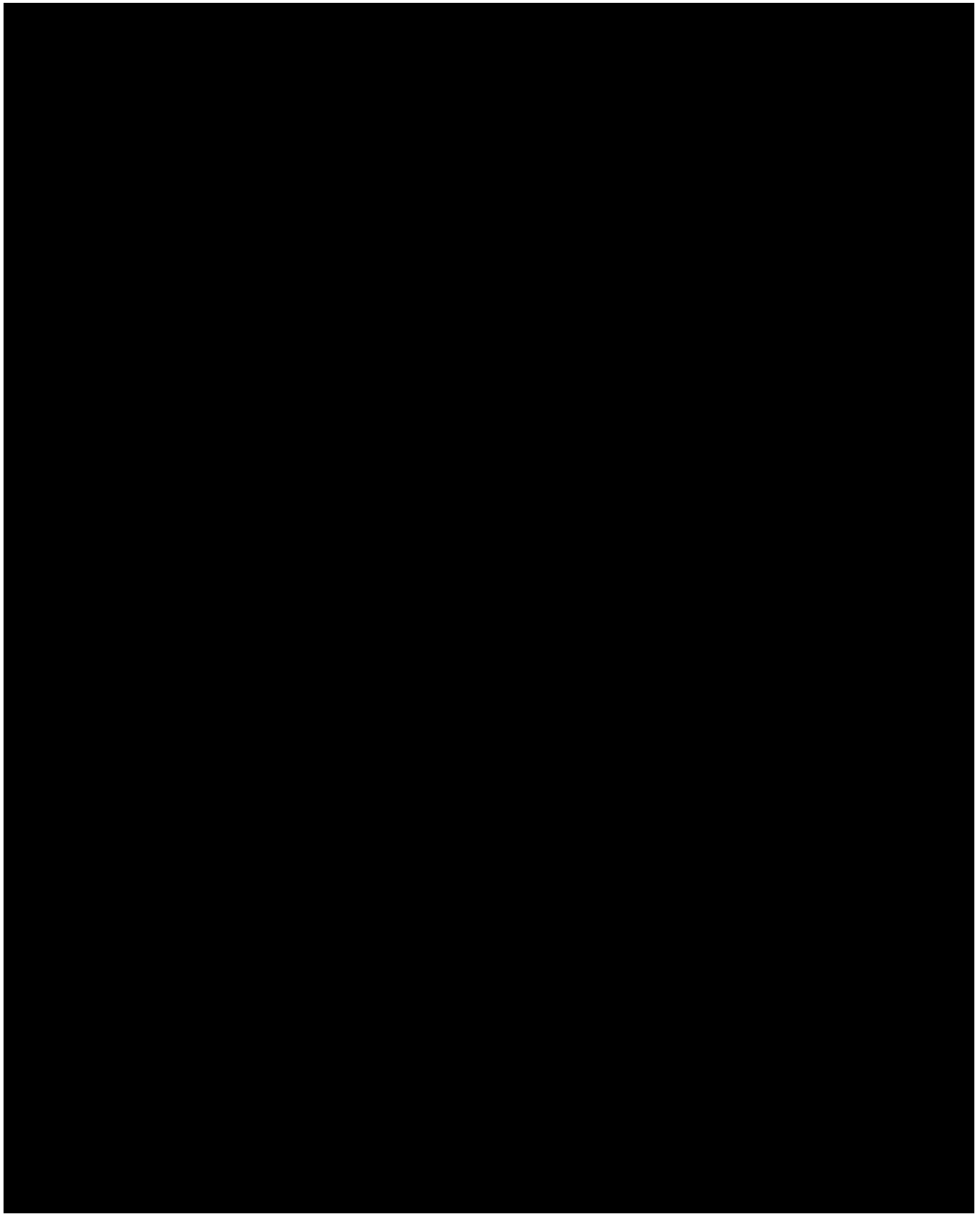
SUBJECT TO CONTRACT

We are pleased to inform you that, following the evaluation process, Shropshire Council proposes to accept your offer to form part of the above proposed contract as set out in your recent tender.

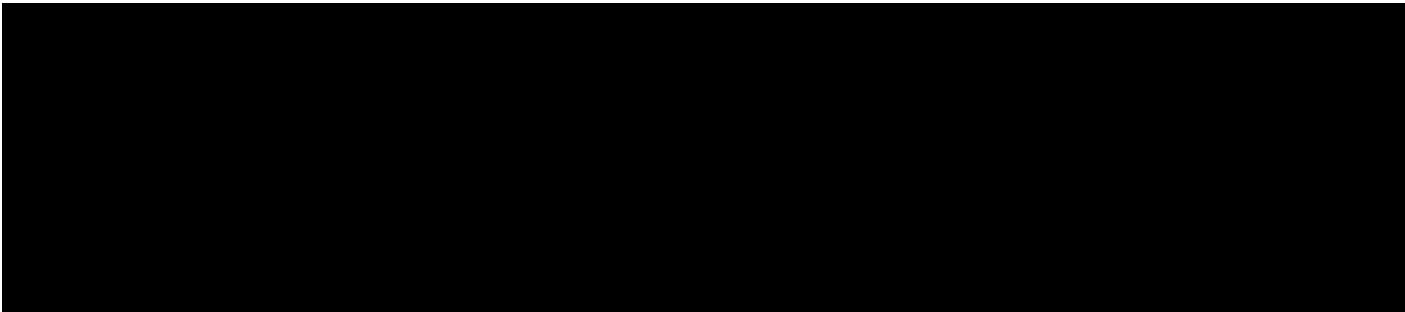


We can confirm that your tender received the following quality scores and ranking:-

commercial info

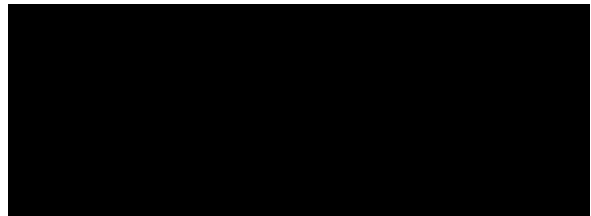
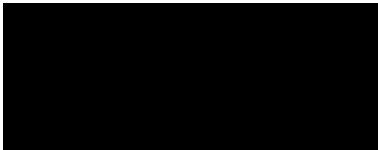


commercial & personal info



We will now prepare a form of agreement for both parties to sign and this will be forwarded to you in due course to execute.

Yours faithfully



Service Manager – Commissioning
& Governance



Contracts Manager