

UK-Shrewsbury: Social services.

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Section I: Contracting Authority

I.1) Name and addresses

Shropshire Council

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Tel. +44 1743252992, Email: procurement@shropshire.gov.uk

Contact: [REDACTED] - Procurement Manager

Main Address: www.shropshire.gov.uk

NUTS Code: UKG22

I.2) Joint procurement

The contract involves joint procurement: Yes.

In the case of joint procurement involving different countries, state applicable national procurement law: Not provided

The contract is awarded by a central purchasing body: No.

I.3) Communication

The procurement documents are available for unrestricted and full direct access, free of charge, at: <http://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Social-services./P84YWN6WA5>

Additional information can be obtained from: address as in Annex A.I:

Tenders or requests to participate must be sent electronically via <http://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Social-services./P84YWN6WA5> to the abovementioned address

Electronic communication requires the use of tools and devices that are not generally available. Unrestricted and full direct access to these tools and devices is possible, free of charge, at: Not provided

I.4) Type of the contracting authority

Regional or local authority

I.5) Main activity

General public services

Section II: Object

II.1) Scope of the procurement

II.1.1) Title: AMCV 261 - Health & Wellbeing Service for Shropshire

Reference Number: AMCV 261

II.1.2) Main CPV Code:

85320000 - Social services.

II.1.3) Type of contract: SERVICES

II.1.4) Short description: The Wellbeing and Independence service will help people to remain in their own home with access to opportunities to socialise and to stay healthy with the aim of reducing the likelihood of becoming unwell, using health services and/or needing to receive long term formal care and support

II.1.5) Estimated total value:

Value excluding VAT: 4,210,000

Currency: GBP

II.1.6) Information about lots:

This contract is divided into lots: No

II.2) Description

II.2.2) Additional CPV codes:

Not Provided

II.2.3) Place of performance:

UKG22 Shropshire CC

II.2.4) Description of procurement: The Wellbeing and Independence service will help people to remain in their own home with access to opportunities to socialise and to stay healthy with the aim of reducing the likelihood of becoming unwell, using health services and/or needing to receive long term formal care and support. The service will improve people's sense of wellbeing and help to improve

their confidence in dealing with everyday life. This may be achieved through interventions and/or support to address circumstances which people may find themselves in which may include (but not be limited to):

- Poor mental health
- Enabling social inclusion and aiding recovery
- Skills for independent living
- Risk of vulnerability
- Inability to cope
- Loneliness
- Isolation
- Risk of falls
- Poor or reduced mobility
- Lack of structure or purpose in their everyday life
- Bereavement

The Council wishes to procure a single contract which addresses the above and which delivers on all aspects of the Service Specification.

The successful tenderer may be required to administer a 'small grants' fund which complements the outcomes being delivered under this contract from year 2 of the contract onwards.

The budget available is fixed at £816,300 per annum for the duration of the contract which will be for an initial term of 3 years with an option to extend the contact by a further 2 years. From the second year of the contract onwards the available budget may be increased by a further £32,161 per annum to allow for the administration of a 'small grants' fund.

This is a notice for Social and other specific services in accordance with Directive 2014/24/EU Article 74 being Health, Social and related Services. Accordingly the Council will follow a process based on the principles of transparency. The Council will treat all economic operators equally and in a non-discriminatory way.

The council will be looking, in relation to the delivery of this contract, for proposals from contractors that could help provide social value benefits within Shropshire where practicable and to maximise the social and economic impact of the proposed contract.

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

II.2.5) Award criteria:

Criteria below

Quality criterion - Name: Quality / Weighting: 100

Cost criterion - Name: Price / Weighting: 0

II.2.6) Estimated value:

Value excluding VAT: 4,210,000

Currency: GBP

II.2.7) Duration of the contract, framework agreement or dynamic purchasing system:

Start: 01/04/2019 / End: 31/03/2022

This contract is subject to renewal: Yes

Description of renewals: This contract can be extended for a further period of up to 2 years from 1st April 2022.

II.2.10) Information about variants:

Variants will be accepted: No

II.2.11) Information about options:

Options: No

Description of options: Not provided

II.2.12) Information about electronic catalogues:

Tenders must be presented in the form of electronic catalogues or include an electronic

catalogue: No

II.2.13) Information about European Union funds:

The procurement is related to a project and/or programme financed by European Union funds:

No

Identification of the project: Not provided

II.2.14) Additional information: Not provided

Section III: Legal, Economic, Financial And Technical Information

III.1) Conditions for participation

III.1.1) Suitability to pursue the professional activity, including requirements relating to enrolment on professional or trade registers

List and brief description of conditions:

See tender documents

III.1.2) Economic and financial standing

List and brief description of selection criteria:

See tender documents

Minimum level(s) of standards possibly required (if applicable) :

See tender documents

III.1.3) Technical and professional ability

List and brief description of selection criteria:

See tender documents

Minimum level(s) of standards possibly required (if applicable) :

See tender documents

III.1.5) Information about reserved contracts (if applicable)

The contract is reserved to sheltered workshops and economic operators aiming at the social and professional integration of disabled or disadvantaged persons: No

The execution of the contract is restricted to the framework of sheltered employment programmes:

No

III.2) Conditions related to the contract

III.2.1) Information about a particular profession

Reference to the relevant law, regulation or administrative provision:

Not Provided

III.2.2) Contract performance conditions

See tender documents

III.2.3) Information about staff responsible for the performance of the contract

Obligation to indicate the names and professional qualifications of the staff assigned to performing the contract: No

Section IV: Procedure

IV.1) Description OPEN

IV.1.1) Type of procedure: Open

IV.1.3) Information about a framework agreement or a dynamic purchasing system

The procurement involves the establishment of a framework agreement - NO

In the case of framework agreements justification for any duration exceeding 4 years: Not Provided

IV.1.6) Information about electronic auction:

An electronic auction will be used: No

Additional information about electronic auction: Not provided

IV.1.8) Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: No

IV.2) Administrative information

IV.2.1) Previous publication concerning this procedure:

Notice number in the OJ S: Not provided

IV.2.2) Time limit for receipt of tenders or requests to participate

Date: 12/12/2018 Time: 12:00

IV.2.4) Languages in which tenders or requests to participate may be submitted: English,
IV.2.6) Minimum time frame during which the tenderer must maintain the tender: Not Provided
IV.2.7) Conditions for opening of tenders:

Date: 12/12/2018

Time: 12:00

Place:

Shirehall, Shrewsbury

Section VI: Complementary Information

VI.1) Information about recurrence

This is a recurrent procurement: Yes

Estimated timing for further notices to be published: 5 years

VI.2) Information about electronic workflows

Electronic ordering will be used No

Electronic invoicing will be accepted No

Electronic payment will be used No

VI.3) Additional 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-UK-Shrewsbury:-Social-services./P84YWN6WA5>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/P84YWN6WA5>

VI.4) Procedures for review

VI.4.1) Review body:

Shropshire Council

Shirehall, Shrewsbury, SY2 6ND, United Kingdom

Tel. +44 1743252992, Email: procurement@shropshire.gov.uk

Internet address: www.shropshire.gov.uk

VI.4.2) Body responsible for mediation procedures:

Shropshire Council

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Email: procurement@shropshire.gov.uk

Internet address: www.shropshire.gov.uk

VI.4.3) Review procedure

Precise information on deadline(s) for review procedures:

Not Provided

VI.4.4) Service from which information about the lodging of appeals may be obtained:

Shropshire Council

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Email: procurement@shropshire.gov.uk

Internet address: www.shropshire.gov.uk

VI.5) Date Of Dispatch Of This Notice: 12/11/2018

Annex A

I) Addresses and contact points from which further information can be obtained:

Shropshire Council

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Email: procurement@shropshire.gov.uk

Main Address: www.shropshire.gov.uk

NUTS Code: UKG22

IV) Address of the other contracting authority on behalf of which the contracting authority is purchasing

Purchased on behalf of other contracting authority details:

1: Contracting Authority

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.

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Email: procurement@shropshire.gov.uk

Main Address: www.shropshire.gov.uk

NUTS Code: UKG22

[REDACTED]

[REDACTED]

Dear Bidder

**AMCV 261 – WELLBEING & INDEPENDENCE SERVICE FOR SHROPSHIRE
SHROPSHIRE COUNCIL**

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

1. Instructions for Tendering
2. Draft Form of Agreement
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 12th December 2018**, any tenders received after this time will not be accepted
- Tenders are to be submitted through Delta, our electronic tender portal
 - Please ensure that you allow yourself at least two hours when responding prior to the closing date and time, especially if you have been asked to upload documents. If you are uploading multiple documents you will have to individually load one document at a time or you can opt to zip all documents in an application like WinZip. Failure to submit by the time and date or by the method requested will not be accepted.
 - Once you upload documentation ensure you follow through to stage three and click the 'response submit' button. Failure to do so, will mean the documents won't be viewable by the Council.

Tenders **cannot** be accepted if:

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

European Requirements

In accordance with the EU Procurement Directive, Shropshire Council will accept equivalent EC member or international standards in relation to safety, suitability and fitness for purpose. Where a particular brand of article or service has been referred to in the tender document, alternatives or equivalents which achieve the same result will be equally acceptable. In these cases Shropshire Council will take into account any evidence the tenderer wishes to propose in support of the claim that the product or service is equivalent to the named types.

All tender documents and any accompanying information must be submitted in English. A Contract Notice in respect of this requirement was dispatched on 12th November 2018 to appear in the Supplement to the Official Journal of the European Union.

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.

Please also note that Shropshire Council is committed to achieving Social Value outcomes through 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.

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.

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

Yours faithfully



Commissioning Development & Procurement Manager
Commissioning & Procurement
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INSTRUCTIONS FOR TENDERING

**AMCV 261 – WELLBEING &
INDEPENDENCE SERVICE FOR
SHROPSHIRE**

Shropshire Council Instructions for tendering

Contract Description:

The Wellbeing and Independence service will help people to remain in their own home with access to opportunities to socialise and to stay healthy with the aim of reducing the likelihood of becoming unwell, using health services and/or needing to receive long term formal care and support. The service will improve people's sense of wellbeing and help to improve their confidence in dealing with everyday life. This may be achieved through interventions and/or support to address circumstances which people may find themselves in which may include (but not be limited to):

- Poor mental health
- Enabling social inclusion and aiding recovery
- Skills for independent living
- Risk of vulnerability
- Inability to cope
- Loneliness
- Isolation
- Risk of falls
- Poor or reduced mobility
- Lack of structure or purpose in their everyday life
- Bereavement

Support will be practical and will have a primary focus on providing enough support for people to be able to live as independently as possible within their own home and to get out and about within their community. These services will include practical support aimed at helping people to develop or maintain daily living skills, reduce vulnerability and enabling people to develop the confidence to engage with their local community and social, physical activity and creative activities.

The Service will be inclusive and will be available to adults aged 18 and above across the Shropshire Council area.

The Council currently commissions such support from a range of voluntary, community and social enterprise (VCSE) organisations which operate in Shropshire.

The Council wishes to procure a single contract which addresses the above and which delivers on all aspects of the Service Specification. In doing so, the Council recognises the importance of a diverse and sustainable VCSE sector in delivering the contract outcomes and in providing choice to people who use services. The Council will therefore expect any proposals to incorporate strong formal or informal structures (such as consortium, partnership or other alliance) which will maximise the effectiveness of the Service and which retains diversity of provision.

Subject to agreement the successful tenderer may be required to administer a 'small grants' fund which complements the outcomes being delivered under this contract from year 2 of the contract onwards.

The budget available is fixed at £816,300 per annum for the duration of the contract which will be for an initial term of 3 years with an option to extend the contact by a further 2 years subject to contract performance and budget availability. From the second year of the contract onwards the available budget may be increased by a further £32,161 per annum to allow for the administration of a 'small grants' fund.

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1.0 Invitation to Tender

- 1.1 You are invited to tender for the provision of a Wellbeing and Independence Service for Shropshire as detailed in the Tender Response Document. The contract will be for an initial period of 3 years commencing on the 1st April 2019 with the option to extend for a further period of up to 2 years.
- 1.2 Tenders are to be submitted in accordance with the Draft Form of Agreement of Shropshire Council 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 Agreement 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, 12th December 2018**.
- 4.2** No unauthorised alteration or addition should be made to the Specification and Tender Response Document, or to any other component of the Tender document. If any such alteration is made, or if these instructions are not fully complied with, the Tender may be rejected.

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

5.0 Variant Bids

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

6.0 The Transfer of Undertakings (Protection of Employment) regulations 2006 (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 emailing procurement@shropshire.gov.uk Tenderers should note, however, that where the Council provides information to them for the purposes of TUPE, such information may originate from a third party. As the Council has no control over the compilation of such third party information, the Council gives no guarantee or

assurance as to the accuracy or completeness of such information and cannot be held responsible for any errors or omissions in it.

7.0 Tender Evaluation

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

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

8.0 Clarifications

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

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

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

8.4 All queries should be raised as soon as possible (in writing), in any event not later than **5th December 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/framework arrangement being 1st April 2019

17.0 Payment Terms

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

18.0 Liability of Council

18.1 The Council does not bind himself to accept the lowest or any tender.

18.2 The Council does not accept any responsibility for any pre-tender representations made by or on its behalf or for any other assumptions that Tenderers may have drawn or will draw from any pre-tender discussions.

18.3 The Council shall not be liable to pay for any preparatory work or other work undertaken by the Tenderer for the purposes of, in connection with or incidental to this Invitation to Tender, or submission of its Tender response or any other communication between the Council and any other party as a consequence of the issue of this Invitation to Tender.

18.4 The Council shall not be liable for any costs or expenses incurred by any Tenderer in connection with the preparation of a Tender return for this procurement exercise, its participation in this procurement whether this procurement is completed, abandoned or suspended.

18.5 Whilst the Tender Documents have been prepared in good faith, they do not

purport to be comprehensive nor to have been formally verified. Neither the Council nor any of its staff, agents, elected Members, or advisers accepts any liability or responsibility for the adequacy, accuracy or completeness of any information given, nor do they make any representation or given any warranty, express or implied, with respect to the Tender Documents or any matter on which either of these is based (including, without limitation, any financial details contained within the Specification and Contract Documentation). Any liability is hereby expressly disclaimed save in the event of fraud, or in the event of specific warranties provided within the Contract Documentation.

19.0

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

20.0 Declaration

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

Signed (1) Status.....

Signed (2) Status.....

(For and on behalf of)

Date

SHROPSHIRE COUNCIL (1)

AS AUTHORITY

AND

XXXXXXXXXXXXXX (2)

AS PROVIDER

Contract Reference: AMCV 261

**CONTRACT FOR THE
PROVISION OF WELLBEING AND
INDEPENDENCE SERVICES**

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SECTION A
THE PARTICULARS

This Contract is made on2019
PARTIES

- (1) Shropshire Council of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND (the **Authority**); and
- (2) XXXXXXXXXXXXX whose registered office is at XXXXXXXXXXXXX whose registered company number is XXXXXXXXXXXXXXX [and registered charity number is XXXXXXXXXXXXX] (the **Provider**).

BACKGROUND

- (A) Further to statutory guidance to the Care Act 2014 the Authority wishes to put in place arrangements to identify and target individuals who may benefit from particular types of preventative support. The Authority's view is that in helping people to access such types of support when they need it is likely to have a significant impact on their longer-term health and wellbeing, as well as potentially reducing or delaying the need for ongoing care and support from the Authority.
- (B) The Authority, across its administrative area, wishes to receive the delivery of a range of preventative services designed to enable individuals to continue to live independently and within their own homes and community for as long as possible ("the Services") as more particularly described in the Specification to this Contract.
- (C) The Provider has the skills, background and experience in providing the Services required by the Authority
- (D) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.

IT IS AGREED

A1. CONTRACT

- A1.1. This Contract comprises of:
 - a) these Particulars (Section A);
 - b) the General Terms and Conditions (the **General Conditions**) (Section B); and
 - c) the Special Terms and Conditions (the **Special Conditions**) (Section C), where any such terms have been agreed,

as completed and agreed by the Parties and as varied from time to time in accordance with clause B22 (*Variations*) of the General Conditions (this **Contract**).

A2. INTERPRETATION

- A2.1. This Contract shall be interpreted in accordance with Appendix O (*Definitions and Interpretation*) and Section C7 (*Staff Transfer - Definitions*) unless the context requires otherwise.
- A2.2. If there is any conflict or inconsistency between the provisions of this Contract, such conflict or inconsistency must be resolved according to the following order of priority:

- a) Section B;
- b) Section C; and
- c) Section A.

A3. COMMENCEMENT AND DURATION

- A3.1. This Contract shall, subject to clause A3.2 take effect from the **Commencement Date**.
- A3.2. The Provider shall, subject to having satisfied the Conditions Precedent where applicable, provide the Services from **1 April 2019** the **Commencement Date**.
- A3.3. This Contract shall expire automatically on **31 March 2022** (the **Initial Expiry Date**), unless it is extended in accordance with the remaining provisions of this clause A3 or terminated earlier in accordance with the provisions of this Contract.
- A3.4. It is agreed between the Parties that the Authority may extend this Contract at the expiry of the Initial Term for further periods of **12** months up to a maximum of **2** extensions from the Initial Expiry Date (Extension Periods).
- A3.5. If the Authority decides that it wishes to extend this Contract after the expiry of the Initial Term it shall notify the Provider in writing at least 3 months in advance of the expiry date of the Initial Term and shall advise the Provider of the intended duration of the Extension Period.
- A3.6. If the Authority decides that it does not wish to extend this Contract after the Initial Term or (where this Contract has been continued by an Extension Period) at the end of the relevant Extension Period then this Contract shall terminate on the Initial Expiry Date or the last date of the said Extension Period (whichever is the later) and the provisions of B33 (Consequences of Expiry or Termination) shall apply.
- A3.7. Where the Authority has exercised its option to extend this Contract by an Extension Period it shall notify the Provider in writing at least 3 months in advance of the expiry date of each Extension Period as to whether it intends to extend this Contract for a further Extension Period (subject to the maximum number of Extension Periods permitted) or terminate this Contract in accordance with its terms
- A3.8. For the avoidance of doubt:
 - a) the terms of this Contract shall continue in full force and effect to any Extension Period and any reference to “contract period” shall include an Extension Period; and
 - b) the total duration of this Contract (including all permitted Extension Periods) shall not exceed **5** years from the Service Commencement Date

A4. REPRESENTATIVES

A4.1. The person in the post set out below is authorised from the Commencement Date to act on behalf of the Authority on all matters relating to this Contract (the **Authority Representative**).

Title: Service Manager Community Led Support, Adult Social Care
Contact Details: XXXXXXXXXXXX

A4.2. The person set out below is authorised from the Commencement Date to act on behalf of the Provider on all matters relating to this Contract (the **Provider Representative**).

Name: XXXXXXXX
Title: XXXXXXXXXXXXXXXX
Contact Details: XXXXXXXXXXXXXXXX

A4.3. The Provider may replace the Provider Representative and the Authority may replace the Authority Representative at any time by giving written notice to the other Party.

A5. NOTICES

A5.1. Any notices given under this Contract shall be in writing and shall be served by hand or post by sending the same to the address for the relevant Party set out in clause A5.3.

A5.2. Notices:

- a) by post and correctly addressed shall be effective upon the earlier of actual receipt, or 5 Business Days after mailing; or
- b) by hand shall be effective upon delivery.

A5.3. For the purposes of clause A5.2, the address for service of notices on each Party shall be as follows:

a) For the Authority:
Address: Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND
For the attention of: Director Adult Services and Housing
Tel: 01743 258911

b) For the Provider:
Address: XXXXXXXXXXXXXXXXXXXX
For the attention of: XXXXXXXXXXXXXXXXXXXX
Tel: XXXXXXXXXXXXXXXXXXXX

A5.4. Either Party may change its address for service by serving a notice in accordance with this clause A5.

A6. ENTIRE CONTRACT

This Contract constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Contract, except for any contract entered into between the Authority and the Provider which relates to the same or similar services to the Services and is designed to remain effective until the Services are provided under this Contract.

A7. COUNTERPARTS

This Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

IN WITNESS WHEREOF the Parties have signed this Contract on the date shown below

**SIGNED by Claire Porter
for and on behalf of
the AUTHORITY**

.....
Signature

Head of Legal, Strategy and Democratic Services

.....
Date

**SIGNED by Tim Collard/Helen Powell
for and on behalf of
the AUTHORITY**

.....
Signature

Legal Services Manager

.....
Date

**SIGNED by XXXXXXXX
for and on behalf of
the PROVIDER**

.....
Signature

.....
Title

.....
Date

SECTION B

GENERAL TERMS AND CONDITIONS

B1. SERVICES

- B1.1. The Provider shall provide the Services in accordance with the Specification in Appendix A (*Specification*), including any service limitations set out in it, and in accordance with the provisions of this Contract.
- B1.2. The Provider shall satisfy any Conditions Precedent set out in Appendix B (*Conditions Precedent*) prior to commencing provision of the Services.

B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

- B2.1. Except where required by the Law, the Provider shall not be required to provide or to continue to provide Services to any Service User:
- a) who in the reasonable professional opinion of the Provider is unsuitable to receive the relevant Service, for as long as such unsuitability remains;
 - b) who displays abusive, violent or threatening behaviour unacceptable to the Provider acting reasonably and taking into account the mental health of that Service User);
 - c) in the Service User's domiciliary care setting or in circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the relevant Service that the Provider reasonably considers to be unacceptable; or
 - d) where expressly instructed not to do so by an emergency service provider who the Provider reasonably considers has authority to give such instruction, for so long as that instruction applies.
- B2.2. If the Provider proposes not to provide or to stop providing a Service to any Service User under clause B2.1:
- a) where reasonably possible, the Provider must explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within 2 Business Days);
 - b) the Provider must tell the Service User of the right to challenge the Provider's decision through the Provider's complaints procedure and how to do so;
 - c) the Provider must inform the Authority in writing without undue delay and acting reasonably and wherever possible in advance of taking such action;

provided that nothing in this clause B2.2 entitles the Provider not to provide or to stop providing the Services where to do so would be contrary to the Law.

B3. SERVICE AND QUALITY OUTCOMES INDICATORS

- B3.1. The Provider must carry out the Services in accordance with the Law and Good Practice and must, unless otherwise agreed (subject to the Law) with the Authority in writing:
- a) comply, with any applicable Regulatory Body;
 - b) respond, where applicable, to all requirements and enforcement actions issued from time to time by any applicable Regulatory Body;
 - c) consider and respond to the recommendations arising from any audit, death or Serious Incident report;
 - d) comply with the recommendations issued from time to time by a Competent Body; and

- e) comply with the Quality Outcomes Indicators set out in Appendix C (*Quality Outcomes Indicators*).

B4. SERVICE USER INVOLVEMENT

- B4.1. The Provider shall engage, liaise and communicate with Service Users and their Carers in an open and clear manner in accordance with the Law, Good Practice and their human rights.
- B4.2. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide evidence to the Authority of the involvement of Service Users and Staff in the development of Services.
- B4.3. The Provider must seek regular Feedback from Service Users and, if applicable, their Carers and shall carry out any other engagement reasonably required by the Authority in relation to the Services. The form, if any, frequency and method of reporting Feedback must comply with the requirements of the Authority as set out in Appendix D (Service User and Carer Feedback) and clause B4.4 below or otherwise agreed between the Parties in writing from time to time.
- B4.4. The Provider must review and provide a written report to the Authority on the results of Service User Feedback carried out under clause B4.3 and identify any actions reasonably required to be taken by the Provider in response to the Feedback. The Provider must implement such actions as soon as practicable.

B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

- B5.1. The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- B5.2. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).
- B5.3. In performing this Contract the Provider must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
 - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

and for the avoidance of doubt this obligation shall apply whether or not the Provider is a public authority for the purposes of section 149 of the Equality Act 2010.

- B5.4. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide the Authority with a plan detailing how it will comply with its obligations under clause B5.3.
- B5.5. The Provider and any Sub-Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by Equality and Human Rights Commission, which give practical guidance to Local Authorities on the elimination of discrimination

- B5.6 In the event of any finding of unlawful discrimination being made against the Provider and any Sub-Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equality and Human Rights Commission over the same period, the Provider and any Sub-Contractor shall inform the Authority of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- B5.7 The Provider and any Sub-Contractor employed by the Provider will provide a copy of its policies to the Authority at any time upon request. In addition, the Authority may reasonably request other information from time to time for the purpose of assessing the Provider's compliance with the above conditions.
- B5.8. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments) whether by provision of a translation service or referral to an appropriate service provider.
- B5.9. The Provider must provide to the Authority as soon as reasonably practicable, any information that the Authority reasonably requires to:
- a) monitor the equity of access to the Services; and
 - b) fulfil their obligations under the Law.
- B5.10. In performing its obligations under this Contract, the 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
- B6. MANAGING ACTIVITY**
- B6.1. The Provider must manage Activity in accordance with the Specification and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services.
- B7. STAFF and SERVICE LOCATION:**
- B7.1. At all times, the Provider must ensure that:
- a) each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - b) there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the Specification;
 - c) where applicable, Staff are registered with the appropriate professional regulatory body;
 - d) Staff are aware of and respect equality and human rights of colleagues and Service Users; and
 - e) It can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Provider's discretion) for each of the Staff engaged in the Services.
- B7.2. If requested by the Authority, the Provider shall as soon as practicable and by no later than 20 Business Days following receipt of that request, provide the Authority with evidence of the Provider's compliance with clause B7.1.

- B7.3. The Provider must have policies and procedures which acknowledge and provide for ongoing monitoring of the Staff, including undertaking further DBS disclosures every three years.
- B7.4. The Provider must keep and procure that the Authority is kept advised at all times of any Staff who, subsequent to their commencement of employment, the Provider becomes aware, receives a conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands, or warnings become known to the Provider (or any employee of a Sub-Contractor involved in the provision of the Services).
- B7.5. The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:
- a) proper and sufficient continuous professional and personal development, training and instruction; and
 - b) full and detailed appraisal (in terms of performance and on-going education and training),
- each in accordance with Good Practice and the standards of any applicable relevant professional body.
- B7.6. NOT USED.
- B7.7. NOT USED
- B7.8. Subject to clause B7.9, before the 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 Provider must without limitation, complete:
- a) the Employment Checks; and
 - b) such other checks as required by the DBS.
- B7.9. Subject to clause B7.10, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.
- B7.10. Where clause B7.9 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
- a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
 - d) any other reasonable requirement of the Authority.
- B7.11. Where the Authority has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Authority and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the Authority with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to the Employment Regulations, and such information may include the information referred to in paragraph 6 of Section C7.

B7.12. The Provider must comply and must ensure that any Sub-Contractor will comply with their respective obligations under the Employment Regulations in relation to any persons who transfer to the employment of the Provider or that Sub-Contractor by operation of the Employment Regulations as a result of this Contract or any Sub-Contract, and that the Provider or the relevant Sub-Contractor (as appropriate) will ensure a smooth transfer of those persons to its employment.

B7.13. The Provider shall indemnify and keep indemnified the Authority and any Replacement Provider against any Losses incurred by the Authority and/or the Replacement Provider in connection with any claim or demand by any transferring employee under the Employment Regulations including but not limited to:

B7.13.1 any failure by the Provider and/or any Sub-Contractor to comply with its obligations under Employment Regulations in connection with any relevant transfer under the Employment Regulations ;

B7.13.2 any claim by any person that any proposed or actual substantial change by the Provider and/or any Sub-Contractor to that person's working conditions or any proposed measures on the part of the Provider and/or any Sub-Contractor are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under the Employment Regulations to the Provider and/or Sub-Contractor; and/or

B7.13.3 any claim by any person in relation to any breach of contract arising from any proposed measures on the part of the Provider and/or any Sub-Contractor, whether that claim arises before or after the date of any relevant transfer under the Employment Regulations to the Provider and/or Sub-Contractor.

save to the extent that such Losses arise in consequence of any Authority or Replacement Provider act or omission.

B7.14. The Parties agree that:

(a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, paragraph 3 and 4 Section C7 shall apply; and

(b) Paragraphs 6 and 7 Section C7 shall apply on the expiry or termination of the Services or any part of the Services.

SERVICE LOCATION:

B7.15 the Parties agree and acknowledge that the Provider may have to make alternative arrangements for the provision of the Services in certain locations during the Term of this Contract provided that at all times:

B7.15.3 any proposed change in location of delivery of all or part of the Services by the Provider is subject to agreement by the Authority; and

B7.15.4 the Provider adheres to any consultation process that the Authority requires to be carried out with Service Users and other stakeholders prior to re-location of such Services

B8. CHARGES AND PAYMENT

B8.1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Authority shall pay the Provider the Charges.

- B8.2. As at the Commencement Date, the Charges payable under this Contract shall be as set out in Appendix E (Charges);
- B8.3. The Provider shall invoice the Authority for payment of the Charges at the end of each calendar month (or such other frequency agreed between the Parties in writing) which the Authority shall pay within 30 days of the invoice date in accordance with the amounts in Appendix E (*Charges*). In the event of late payment, interest thereon shall be charged at the Default Interest Rate 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 judgement.
- B8.4. The Charges unless otherwise stated are exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this Contract.
- B8.5. In its performance of this Contract the Provider may provide or offer a Service User elements of the Services for which charges may be payable by the Service User. Such charges must be in accordance with this Contract, the Law and/or Guidance.
- B8.6. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:
- a) the contesting Party shall within 5 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
 - b) any uncontested amount shall be paid in accordance with this Contract.
- B8.7. If a Party contests a payment under clause B8.6 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.6, the contesting Party may refer the matter to dispute resolution under clause B30 (*Dispute Resolution*) and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.3.
- B8.8. Subject to any express provision of this Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B8.9. Each Party may retain or set off any sums owed to the other Party which have fallen due and payable and for the avoidance of doubt this includes any sums demanded from the Authority as a result of the Provider's failure to comply with its obligations under the Admission Agreement) against any sum due to the other Party under this Contract or any other agreement between the Parties.
- B8.10. This Contract is contingent upon the Authority receiving adequate funding from central government to enable it to commission the Services and the Authority can in no way warrant represent or guarantee the continuation of such funding throughout the duration of the term of this Contract. In the event that central government withdraws or reduces funding to the Authority, the Authority may at any time either terminate or modify (as is appropriate and reasonable subject to any funding constraints placed upon it) the Services commissioned by this Contract by serving reasonable written notice on the Provider. Where notice to terminate this Contract is given pursuant to this clause B8.10, this Contract will terminate on the date specified in the notice.

B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY

- B9.1. The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.
- B9.2. In addition to the Provider's obligations under clause B9.1, where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.
- B9.3. During the term of this Contract the Provider shall have an ongoing obligation to identify new or potential improvements to the provision of the Services in accordance with this clause B9.3 with a view to improving the quality and efficiency of the Services and its delivery of the Services to the Service Users. As part of this obligation the Provider shall identify and report to the Authority once every twelve (12) months as follows:
- a) The Provider shall identify suggestions for further service improvements which shall include:
 - i) a brief overview of the Service improvement(s) identified;
 - ii) the anticipated operational impact (including, without limitation, an assessment of quality, reliability and other relevant factors) of the Service improvements on the delivery of the Services by the Provider in accordance with this Contract;
 - iii) the financial benefits of the Service improvements to the Authority (including, without limitation, details of the associated cost savings and projected reduction to the Service charges); and
 - iv) advice to the Authority of any risks associated with the Service improvements;
 - b) The Provider shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Provider shall provide any further information that the Authority reasonably requests
 - c) where implementation of Service improvements is agreed by the Authority, the Provider shall agree a plan with the Authority to re-invest identified savings resulting from the Service improvements into the Service provision
 - d) If the Authority, in its absolute discretion, having considered the Service improvement proposal shall conclude that the implementation of the relevant Service improvement(s) is desirable, then the Provider shall put in place at its own cost, all necessary arrangements to facilitate the delivery of such Service improvements; and
 - e) The Authority will retain the right to not consider proposals put forward by the Provider as Service improvements in accordance with clause B9.3 a) where:
 - i) the Authority identifies the improvement;
 - ii) the improvement requires minimal effort from the Provider to implement;
 - iii) the saving results from a predicted change in the Authority's business process which the Provider was required to plan for;
 - iv) the savings result from an improvement made to realign the Provider's performance to the desired performance of the Contract;
- B9.4. If requested by the Authority, the Provider must identify the improvements that have taken place in accordance with clause B9.3, by reference to any reasonable measurable criteria notified to the Provider by the Authority.

B10. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- B10.1. The Provider shall adopt Safeguarding Policies and such policies shall comply with the Authority's safeguarding policy as amended from time to time.

- B10.2. At the reasonable written request of the Authority and by no later than 10 Business Days following receipt of such request, the Provider must provide evidence to the Authority that it is addressing any safeguarding concerns.
- B10.3. If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.
- B10.4. Not Used
- B10.5. The Provider must fulfil its commitment to safeguard and promote the welfare of vulnerable adults and children and shall have the following in place:
- a) clear priorities for safeguarding and protecting vulnerable adults and children explicitly stated in strategic policy documents and Safeguarding Policies;
 - b) a clear commitment by the Provider's senior management to the importance of safeguarding and protecting vulnerable adults and children
 - c) a clear line of accountability within the Provider's organisation for overseeing safeguarding and protecting vulnerable adults and children and that roles and accountability for taking action and reporting internally and in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands are properly defined and understood by those involved
 - d) recruitment and human resources management procedures to take account of the need to safeguard and protect vulnerable adults including safe recruitment policies and practices and enhanced DBS checks for all Staff including agency staff students and volunteers working with vulnerable adults and children.
 - e) procedures for instigating the Safeguarding adults: multi-agency policy and procedures for the West Midlands and for dealing with allegations of abuse against members of Staff and volunteers.
 - f) arrangements to ensure that all Staff receive supervision and undertake training in respect of safeguarding in order to equip them to carry out their safeguarding responsibilities effectively. Refresher training must be provided at regular intervals and all Staff including temporary Staff and volunteers who work with vulnerable adults and children must be made aware of the organisations arrangements for protecting vulnerable adults and children.
 - g) policies to safeguard and protect vulnerable adults and children and procedures that are in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands.
 - h) arrangements to work effectively with other organisations involved in the delivery of services to vulnerable adults and children in order to protect vulnerable adults and children including arrangements for sharing information.
 - i) a culture of listening to and engaging in dialogue with vulnerable adults and children in ways appropriate to their understanding and seeking their views and taking account of those views both in individual decisions and the establishment or development of services.
 - j) ensuring appropriate whistle blowing procedures are in place and there is a culture that enables issues about safeguarding and protecting vulnerable adults and children to be raised. A copy of the Authority's Speaking Up About Wrongdoing "Whistleblowing" Policy can be found on the Authority's website at www.shropshire.gov.uk.
- B10.6. The Provider shall ensure that all policies required by the Authority are implemented in respect of the Services.
- B10.7. Where the Service or activity being undertaken in this Contract is a Regulated Activity the Provider shall:

- a) comply with the requirements of clause B7.8; and
- b) monitor the level and validity of the checks under this clause B10.7 for each member of the Provider's Staff.

B10.8. The 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 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.

B10.9. The Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause have been met.

B10.10. The Provider shall refer information about any person carrying out the Services or the activity to the DBS 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.

B10.11. The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

B11. INCIDENTS REQUIRING REPORTING

B11.1. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Service User Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix G (*Incidents Requiring Reporting Procedure*).

B11.2. Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause B11 and Appendix G (*Incidents Requiring Reporting Procedure*).

B12. CONSENT

B12.1. The Provider must publish, maintain and operate a Service User consent policy which complies with Good Practice the Law and Data Protection Legislation.

B13. SERVICE USER RECORDS

B13.1. The Provider may create, maintain, store and retain Service User records for all Service Users. The Provider must retain Service User records for the periods of time required by Law and Data Protection Legislation and securely destroy them thereafter in accordance with any applicable Guidance.

B13.2. The Provider must:

- a) use Service User records solely for the execution of the Provider's obligations under this Contract; and
- b) give each Service User full and accurate information regarding the Services received; and
- c) ensure the secure storage, retention and use of Service User records in accordance with the requirements of this Contract.

- B13.3. The Provider may, with the express written consent of each Service User affected, use Service User records for the purposes of identifying and evaluating long term preventative services outcomes and to assist toward the continuing improvement of its services and practices PROVIDED that such records will only be used by the Provider for the specific purpose for which express written consent has been given by the Service User and PROVIDED FURTHER, that where a Service User subsequently withdraws consent to the use of its records the Provider shall immediately discontinue the use of such records for any purpose other than as permitted by clause B13.2
- B13.4. The Provider must at all times during the term of this Contract have a Caldicott Guardian and shall notify the Authority of their identity and contact details prior to the Commencement Date. If the Provider replaces its Caldicott Guardian at any time during the term of this Contract, it shall promptly notify the Authority of the identity and contact details of such replacements.
- B13.5 Where relevant and subject to compliance with the Law and Data Protection Legislation, the Provider shall:
- a) at the reasonable request of the Authority promptly transfer or deliver a copy of the Service User record held by the Provider for any Service User for which the Authority is responsible to a third party provider of healthcare or social care services designated by the Authority;
 - b) may, subject to clause B13.3 and with the prior written consent of the Authority, where necessary for the delivery of health or social care services, release Service User records to health or social care professionals employed by the Provider who are not directly responsible for the delivery of the Services under this Contract;
 - c) and, where reasonably required and subject to clause B13.3 and with the prior written consent of the Authority the Provider may pass on Service User records onto third party healthcare partners

B14. INFORMATION (NOT USED)

B15. COMPLAINTS

- B15.1. The Provider must at all times comply with the relevant Law and Guidance for complaints relating to the provision of the Services.
- B15.2. In addition to the requirements of clause B15.1 the Provider shall operate a complaints procedure in respect of the Services to deal with any complaint received about the standard of services or the manner in which any Services have been supplied or work has been performed or any other matter connected with the performance of the Provider's obligations under this Contract ("the Complaints Procedure"). For the avoidance of doubt any complaint or issue that the Authority has in respect of the Provider's performance of this Contract shall be dealt with in accordance with the remainder of this Contract.
- B15.3. The Provider's Complaints Procedure shall comply with applicable Law and the requirements of any regulatory body to which the Provider is subject or which are applicable to the Service being provided (including any change in such requirements) and shall meet the following minimum standards:
- a) is easy for complainants to access and understand
 - b) clearly sets out time limits for responding to complaints and keeping the complainant and the Authority informed of progress;
 - c) provides confidential record keeping to protect employees under this Contract and the complainant
 - d) provides information to the Provider's management so that services can be improved
 - e) provides effective and suitable remedies
 - f) is regularly monitored and audited and which takes account of complainant and Authority feedback

- B15.4. The Provider shall inform any users of the Services provided under this Contract of the existence of the complaints procedure and how to access it and will make its Complaints Procedure available on request.
- B15.5. The Provider shall investigate and deal with any complaints it receives about the Services, whether direct from the public or Services Users, or referred to it by the Authority, in accordance with its published Complaints Procedure. The Provider shall ensure that:
- a) it promptly, and within a maximum of 10 days of receiving the complaint, notifies the complainant that it is dealing with the complaint
 - b) under no circumstances is a complaint investigated by a member of its staff employed under this Contract who may be part of the complaint.
 - c) someone who is independent of the matter complained of carries out the investigation
 - d) it deals with the complaint fully, expeditiously and fairly and shall use its reasonable endeavours to resolve the complaint within 30 Working Days of receiving the complaint
 - e) where a complaint is received by the Provider relating to the policy or decisions of the Authority rather than the Provider's delivery of its obligations under this Contract, the Provider shall promptly, and within two Working Days, refer the complaint to the Authority for investigation.
- B15.6. The Provider shall ensure that all its employees and persons employed under this Contract are made aware of its Complaints Procedure and shall designate one employee (who shall be identified to the Authority) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint
- B15.7. The 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 Authority within 5 Working Days of being requested or at quarterly intervals in any event.
- B15.8.
- B16. SERVICE REVIEW**
- B16.1. The Provider must each quarter of this Contract deliver to the Authority a Service Quality Performance Report (*Service Quality Performance Report*).
- B16.2. The Provider must submit each Service Quality Performance Report in the form and manner to be agreed between the Authority and the Provider
- B17. REVIEW MEETINGS**
- B17.1. The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix K (*Details of Review Meetings*).
- B17.2. Notwithstanding clause B17.1, if either the Authority or the Provider:
- a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
 - b) considers that a Service Quality Performance Report requires consideration sooner than the next scheduled Review Meeting,
- that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Business Days following that notice.
- B17.3. In the event that a Review Meeting reveals that the Provider is not, in the reasonable opinion of the Authority, satisfactorily performing or meeting its obligations under this Contract the Authority may take such action as it considers appropriate further to the provisions of clause B.26 (*Defaults and Failure to Supply*)
- B17.4. If after one calendar month following the issue by the Authority of a Review Notice to the Provider, the Provider has failed to remedy the failures specified in the Review Notice and has not contacted the Authority with a satisfactory explanation as to the reasons for such failure, then this will be considered a breach of the terms of this Contract and the Authority reserves the right to terminate this Contract in accordance with its terms

B18. CO-OPERATION

B18.1. The Parties must at all times act in good faith towards each other.

B18.2. The Provider must co-operate fully and liaise appropriately with:

- a) the Authority;
- b) any third party provider who the Service User may be transferred to or from the Provider;
- c) any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and
- d) primary, secondary and social care services,

in order to:

- e) ensure that a consistently high standard of care for the Service User is at all times maintained;
- f) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
- g) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Authority's or members of the public.

B19. WARRANTIES AND REPRESENTATIONS

B19.1. The Provider warrants and represents that:

- a)
 - (i) it has full capacity and authority to enter into this Contract and the obligations expressed as being assumed by the Provider under this Contract constitute valid legal and binding obligations of the Provider enforceable against the Provider in accordance with their terms; and
 - (ii) all necessary Consents have been obtained and are in full force and effect and shall be maintained for the duration of this Contract;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- c) in entering this Contract it has not committed any Fraud;
- d) all reasonably material information supplied by it to the Authority during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Authority which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract;
- e) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract;
- f) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract;
- g) in the 3 years prior to the Commencement Date:

- (i) It has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) It has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) It has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on- going business concern or its ability to fulfil its obligations under this Contract; and
- h) No proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.
- i) The Provider acknowledges and confirms that:
- (i) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority 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;
 - (ii) it has received all information requested by it from the Authority pursuant to sub-clause B.19.1i(i) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
 - (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 Authority pursuant to sub-clause B.19.1.i(ii);
 - (iv) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
 - (v) it has entered into this Contract in reliance on its own diligence
 - (vi) as at the Commencement Date, the 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 Authority prior to execution of the Contract AND shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services
 - (vii) The Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Provider in accordance with sub-clause B.19.1.i.(vi) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Provider could not reasonably have known that the information incorrect or misleading at the time such information was provided.
- j) If required or reasonably requested by the Authority to do so, the Provider must throughout the period of this Contract and for a period of six (6) years after the expiry of this Contract give all reasonable assistance to the Authority's Scrutiny Board and/or Executive Board and to any other board with a similar status, including attending the Authority's Scrutiny and/or Executive Board in order to answer questions pertaining to this Contract.

B19.2. The Authority warrants and represents that:

- a) it has full power and authority to enter into this Contract and all necessary approvals and consents have been obtained and are in full force and effect and shall be maintained for the duration of the Contract;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it;

- c) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract; and
- d) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract.

B19.3. The warranties set out in this clause B19 are given on the Commencement Date and shall (where relevant) be repeated on each anniversary of the Commencement Date and continue to subsist during the term of this Contract.

B20. VARIATIONS

B20.1. This Contract may not be amended or varied other than in accordance with this clause B20.

B20.2. Either Party may from time to time during the term of this Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

B20.3. If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract.

B20.4. No Variation to this Contract will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or his nominee) in accordance with clause A5 (*Notices*). All agreed Variations shall form an addendum to this Contract and shall be recorded in Appendix L (*Agreed Variations*).

B21. ASSIGNMENT AND SUB-CONTRACTING

B21.1. The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the Authority in writing:

- a) consenting to the appointment of the Sub-contractor (such consent not to be unreasonably withheld or delayed) ; and
- b) approving the Sub-contract arrangements (such approval not to be unreasonably withheld or delayed) which shall include the addition of any of the clauses in this Contract to the Sub-contract as the Authority may reasonably require,

B21.2. The Authority's consent to sub-contracting under clause B21.1 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.

B21.3. Any sub-contract submitted by the Provider to the Authority for approval of its terms, must:

- a) impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable; and
- b) ensure that the proposed sub-contract does not permit the proposed sub-contractor to further sub-contract its obligations without the prior approval of the Authority (such approval not to be unreasonably withheld or delayed).

B21.4. The Provider must not:

- a) terminate a Sub-contract; or

- b) make any material changes to the terms of a Sub-contract; or
- c) replace a Sub-contractor under a Sub-contract (and must ensure that a replacement does not otherwise occur);

without the prior written approval of the Authority,

- B21.5. The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Provider.
- B21.6. In the event that the Provider is permitted by the Authority to sub-contract the delivery of all or part of the Services to third party providers and where, under such sub-contracting arrangements, the equivalent of 40% or more of the Services contracted to be delivered by the Provider under this Contract fall to be delivered by a third party provider, the Parties shall agree a duty of care deed which shall permit the Authority to 'step in' to any agreed sub-contract agreement(s) under the specific circumstances contemplated by that duty of care deed to directly contract with the third party provider(s) concerned to commission the applicable parts of the Services as are being delivered by that third party provider(s) from the third party provider(s). The Provider shall and shall ensure that the third party provider(s) shall, act reasonably and in good faith with the Authority to execute such a duty of care deed contemporaneously with any sub-contract agreement(s) entered into between the Provider and the third party provider(s) for the delivery of that part of the Services contemplated by this sub-clause B21.6

B22. AUDIT AND INSPECTION

- B22.1. The Provider must comply with all reasonable written requests made by, the National Audit Office or any Authorised Person for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.
- B22.2. Subject to Law and notwithstanding clause B22.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.
- B22.3. Within 10 Business Days of the Authority's reasonable request, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- B22.4. During the Term and for a period of 6 years after the expiry or termination of this Contract, the Authority may conduct or be subject to an audit for the following purposes:
 - a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
 - b) to review the integrity, confidentiality and security of any data relating to the Authority or any Service Users;
 - c) to review the Provider's compliance with the DPA and the FOIA in accordance with this Contract and any other Law applicable to the Services;
 - d) to review any records created during the provision of the Services;
 - e) to review any books of account kept by the Provider in connection with the provision of the Services;
 - f) to carry out the audit and certification of the Authority's accounts;
 - g) for the purposes of the Local Government Finance Act 1982 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts)

- h) to carry out an examination pursuant to Local Government Act 1999 of the economy, efficiency and effectiveness with which the Authority has performed its functions and used its resources;
 - i) to verify the accuracy and completeness of any reports delivered or required by this Contract.
- B22.5. Except where an audit is imposed on the Authority by a regulatory body or further audits are required as a result of any non-compliance by the Provider with their obligations under this Contract, the Authority may not conduct an audit under clause B22.4 more than twice in any calendar year.
- B22.6. The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- B22.7. Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- a) all information reasonably requested by the above persons within the permitted scope of the audit, to include (without limitation) examining such documents as reasonably required which are owned, held or otherwise within the control of the Provider and any Sub-Contractor and may require the Provider and any Sub-Contractor to produce such oral or written explanations as the Authority or relevant regulatory body considers necessary;
 - b) reasonable access to:
 - (i) any sites controlled by the Provider and/or the Sub-Contractor and used for the provision of the Services; and
 - (ii) any equipment (including, but not limited to, any software, IT systems, materials, data or information stored on, accessed by or used to operate the equipment) used (whether exclusively or non-exclusively) in the performance of the Services by the Provider and/or the Sub-Contractor; and
 - c) access to the Staff.
- B22.8. The Authority shall use best endeavours to provide at least 5 Business Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- B22.9. For the purposes of this clause B22 any reference to the Authority carrying out an audit shall include the ability for that audit to be carried out by the District Auditor, the Authority's internal auditor or any external auditor appointed by the Authority.
- B22.10. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- B22.11. If an audit identifies that:
- a) the Provider has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - b) the Authority has overpaid any Charges, the Provider shall pay to the Authority the amount overpaid within 30 days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
 - c) the Authority has underpaid any Charges, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if the reason for the Authority undertaking the audit was due to a default by the Provider in relation to the requirements relating to invoicing under this Contract within any required period.

B23. INDEMNITIES

- B23.1. The Provider shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation, breach of its statutory duties or breach of an obligation under the Data Protection Legislation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:
- a) The performance, defective performance or otherwise of this Contract by the Provider or its Staff
 - b) Any claim made against the Authority 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 Authority 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 Provider or the Staff; and
 - d) Any claim made against the Authority 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 Provider or the Staff
- B23.2. The Authority shall indemnify the Provider against all reasonable claims, costs and expenses which the Provider may incur and which arise, directly from the Authority's breach of any of its obligations under this Contract or breach of statutory duty or breach of an obligation under the Data Protection Legislation.

B24. LIMITATION OF LIABILITY

- B24.1. Neither Party shall be liable to the other Party (as far as permitted by Law) for Indirect Losses in connection with this Contract.
- B24.2. Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against or recover from the other Party pursuant to this Contract.
- B24.3. Nothing in this Contract will exclude or limit the liability of either Party for:
- a) death or personal injury caused by its negligence; or
 - b) fraud or fraudulent misrepresentation.

B25. INSURANCE

- B25.1. The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- B25.2. the Provider shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain equivalent policy cover which indemnifies the Provider and the Authority for negligent acts arising out of the performance of this Contract.
- B25.3. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.
- B25.4 The Provider shall hold and maintain the insurances required under this Contract for a minimum of 6 years following the expiration or earlier termination of this Contract
- B25.5 The Provider warrants that it has complied with this clause B25 and shall provide the Authority with **or** certified copies of the relevant policy documents (including any warranties or exclusions) together with receipts or other evidence of payment of the latest premiums due under those policies prior to the commencement of this Contract and annually thereafter throughout the duration of this Contract.
- B25.6 The Provider shall:

- (a) do nothing to invalidate any insurance policy
 - (b) notify the Authority if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change
- B25.7 Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":
- B25.8 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 Provider shall immediately submit to the Authority:
- (i) details of the policy concerned; and
 - (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and
- B25.9 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 Provider shall:
- (i) 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
 - (ii) if the 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 Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.
- B25.10 The Provider warrants that it has complied with this clause B25 and shall provide the Authority with certified copies of the relevant policies upon request together with receipts or other evidence of payment of the latest premiums due under those policies.
- B25.11 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

B26. DEFAULTS AND FAILURE TO SUPPLY

- B26.1. In the event of a Default which is a material breach of this Contract by the Provider, the Authority may, without prejudice to any other rights or remedies it may have under this Contract including under clause B27 (*Contract Management*), consult with the Provider and attempt to resolve the issue. Where the Parties are unable to agree a resolution plan during the consultation, and/or such resolution plan does not remedy the default within 30 days, the Authority may, at its discretion, then do any of the following:
- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 10 Business Days or such other period of time as the Authority may direct;
 - b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B29 (*Suspension and Consequences of Suspension*);
 - c) without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause B30 (*Termination*) (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.
- B26.2 If the Authority exercises any of its rights under clause B26.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party during the period in which the Provider is unable to provide the affected part of the Services to the extent that such costs exceed the payment which would otherwise have been

payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

B27. CONTRACT MANAGEMENT

B27.1. If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in Appendix C (*Quality Outcomes Indicators*) and the Provider fails to meet the Quality Outcomes Indicator, the Authority may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Authority may have under this clause B27.

B27.2 The provisions of this clause B27 do not affect any other rights and obligations the Parties may have under this Contract.

B28. DISPUTE RESOLUTION

B28.1. If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix M (Dispute Resolution) unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.

B29. SUSPENSION AND CONSEQUENCES OF SUSPENSION

B29.1. A suspension event shall have occurred if:

- a) the Authority reasonably considers that a material breach by the Provider of any obligation under this Contract:
 - (i) may create an immediate and serious threat to the health or safety of any Service User; or
 - (ii) may result in a material interruption in the provision of any one or more of the Services; or
- b) clause B29.1 does not apply, but the Authority, acting reasonably, considers that the circumstances constitute an emergency, (which shall not include an event of Force Majeure) affecting provision of a Service or Services; or
- c) the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each a **Suspension Event**) save where the forgoing events arise as a result of any Authority request, instruction, default, inaction or negligent action). For the avoidance of doubt, an event for Force Majeure cannot constitute a Suspension Event.

B29.2. Where a Suspension Event occurs the Authority:

- a) may by written notice to the Provider and with immediate effect suspend any affected Service, or the provision of any affected Service, until the Provider demonstrates to the reasonable satisfaction of the Authority that it is able to and will perform the suspended Service, to the required standard in accordance with relevant Law, Guidance and Good ; and
- b) must where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

B29.3. During the suspension of any Service under clause B29.2, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to clause B29.2 has been referred to dispute resolution under clause B28 (*Dispute Resolution*)

- B29.4. During the suspension of any Service under clause B29.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:
- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B29.2; and/or
 - b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B29.5.
- B29.5. The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- B29.6. The Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service for the period during the term of the Contract in which the Provider is unable to provide the applicable Service).
- B29.7. Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:
- a) co-operate reasonably with the Authority and any interim or successor provider of the suspended Service in order to endeavour to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
 - b) at the cost of the Provider:
 - (i) promptly provide all reasonable assistance and all information in the Provider's possession necessary to effect an orderly assumption of the suspended Service by an alternative interim or successor provider; and
 - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B29.8. As part of its compliance with clause B29.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative interim or successor provider, which only relates to the period during which the Provider cannot provide the applicable Service and responsibility for the provision of that Service transfers back to the Provider.
- B29.9. If it is determined, pursuant to clause B28 (*Dispute Resolution*), that the Authority acted unreasonably or in breach of this Contract in suspending a Service, the Authority shall indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B29.10. During any suspension of a Service the Provider where applicable will implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability to the relevant Service.

B30. TERMINATION

- B30.1. Either Party may voluntarily terminate this Contract or any part of the Services by giving the other Party not less than 6 months' written notice at any time after the Commencement Date.
- B30.2. The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:
- a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators on two or more occasions in a 6 month period;
 - b) the Provider is in persistent breach of its obligations under this Contract;
 - c) the Provider:
 - (i) fails to obtain any Consent;
 - (ii) loses any Consent; or
 - (iii) has any Consent varied or restricted,
the effect of which prevents the Provider from providing the Services or a material part thereof;
 - d) the Provider has breached the terms of clause B37 (*Prohibited Acts*);
 - e) any of the Provider's necessary registrations are cancelled by any Regulatory Body as applicable;
 - f) the Provider materially breaches its obligations in clause B35 (*Data Protection*);
 - g) the Provider breaches the terms of clause B21 (*Assignment and Sub-contracting*);
 - h) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
 - i) the Provider ceases or threatens to cease to carry on business in the United Kingdom;
 - j) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 30 Business Days following receipt of notice from the Authority identifying the breach;
 - k) the Provider committing a material breach in respect of any requirements set out in Sections C. 7 (*Staff Transfer*);
 - l) the Provider is in breach of its obligations in clause B33 (*Counter Fraud and Security Management*).
- B30.3. Either Party may terminate this Contract or any part of the Services by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than 30 Business Days without the Parties agreeing alternative arrangements.
- B30.4. The Provider may terminate this Contract or any Service with immediate effect by written notice to the Authority where:

- a) the Authority is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B30.4 (a) if the Authority has failed to remedy such breach within 30 Business Days of receipt of notice from the Provider to do so.
- b) the Authority fails to pay any amount due under this Contract on the due date for payment and remains in default within 30 Business Days of receipt of notice from the Provider to remedy the default in such payment;
- c) the Authority has breached the terms of clause B37 (Prohibited Acts);
- d) the Authority materially breaches its obligations its obligations in clause B35 (*Data Protection*); and
- e) the Authority materially breaches its obligations under clause B34 (Confidential Information).

B31. CONSEQUENCE OF EXPIRY OR TERMINATION

- B31.1. Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.
- B31.2. On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.
- B31.3. On the expiry or termination of this Contract or termination of any Service, the Provider must cooperate fully with the Authority to migrate the Services in an orderly manner to the successor provider for a period of 3 months from such expiry or termination (or such other reasonable time period agreed between the Parties).
- B31.4. In the event of termination or expiry of this Contract,
- a) the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority; and
 - b) the Authority shall provide the Provider with reasonable access on reasonable written notice to the information referred to in B31.4 (a) if the Provider has demonstrated to the reasonable satisfaction of the Authority that it requires such access. The Parties shall in such circumstances comply with their respective obligations under the Data Protection Legislation.
- B31.5. On termination of this Contract and on satisfactory completion of the Succession Plan (or where reasonably so required by the Authority before such completion) the Provider shall at its own cost deliver, and procure that its Staff, agents and sub-contractors deliver all data (including Authority Data) and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), to the Authority forthwith (in an accessible and legible format) and the Provider's Representative shall certify full compliance with this clause.
- B31.6. If, as a result of termination of this Contract or partial termination insofar as it relates to the termination of a specific service area of the Services in accordance with this Contract (except any termination under clauses B30.3, B21.4 or if the Authority terminates under clause B30.1 (*Termination*)), the Authority procures any terminated part of the Services from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same part of the Services, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination or any shorter period specified by the Authority (acting in its reasonable discretion) for the remainder of the term of this Contract had it not been terminated

B31.7. The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B21 (*Assignment and Sub-contracting*), B22 (*Audit and Inspection*), B31 (*Consequence of Expiry or Termination*), B34 (*Confidentiality*) and B36 (*Freedom of Information and Transparency*) Section C7 (*Staff Transfer*) will survive termination or expiry of this Contract.

B32. BUSINESS CONTINUITY

B32.1. The Provider must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans.

B32.2. The Provider must, unless otherwise agreed by the Parties in writing, maintain a Business Continuity Plan and must notify the Authority as soon as reasonably practicable of its activation and in any event no later than 5 Business Days from the date of such activation.

B32.3. The Provider shall comply at all times with the relevant provisions of the Business Continuity Plan.

B32.4. Following the activation of the Business Continuity Plan in respect of any of the Services, the Provider shall:

- a) implement the Business Continuity Plan;
- b) continue to provide the affected Services to the Authority in accordance with the Business Continuity Plan; and
- c) restore the affected Services to normal within the period laid out in the Business Continuity Plan.

B32.5. To the extent that the Provider complies fully with the provisions of this clause B32 (and the reason for the activation of the Business Continuity Plan was not in breach of any of the other terms of this Contract on the part of the Provider), the Quality Outcomes Indicators to which the affected Services are to be provided during the continuation of the situation shall be as set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

B33. COUNTER-FRAUD AND SECURITY MANAGEMENT

B33.1. The Provider must put in place and maintain appropriate counter fraud and security management arrangements.

B33.2. The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Authority.

B33.3. The Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

B33.4. If the Provider or its Staff commits Fraud in relation to this or any other contract with the Authority, the Authority may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

B34. CONFIDENTIALITY

B34.1. Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the "**Disclosing Party**") and the Party that receives it (the "**Receiving Party**") has no right to use it.

B34.2. Subject to Clauses B34.3 and B34.4, the Receiving Party agrees:

- a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
- b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

B34.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:

- a) in connection with any dispute resolution under clause B28 (*Dispute Resolution*);
- b) in connection with any litigation between the Parties;
- c) to comply with the Law;
- d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B34.2;
- e) to comply with a regulatory bodies request.

B34.4. The obligations in clause B34.1 and clause B34.2 will not apply to any Confidential Information which:

- a) is in or comes into the public domain other than by breach of this Contract;
- b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
- c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

B34.5. The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B34.

B34.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B34 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B34.

B34.7. This clause B34 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

B34.8. The obligations in clause B34.1 and clause B34.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

B35. DATA PROTECTION

- B35.1 The Parties to this Contract shall 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.
- B35.2 Subject to the information and reporting requirements agreed between the Parties in writing, certain data collected with respect to Service Users accessing the Services may be shared by the Provider with the Authority. Subject to compliance with the Data Protection Legislation and the Provider obtaining and maintaining all necessary appropriate consents and notices to enable lawful transfer of Personal Data to the Authority for the duration and purposes of this Contract the Provider agrees, subject to clause B35.3 below, to share openly with the Authority, all relevant information and contacts regarding the delivery of the Services
- B35.3 Without prejudice to the generality of clause B35.1, the Authority, (which for the purposes of this clause B35.3 – B35.6 only shall be referred to as “the Information Recipient”) shall be considered a Data Processor and the Provider, the Data Controller. In relation to any Personal Data processed in connection with the obligations of the Information Recipient under this Contract the Information Recipient shall:
- a) process that Personal Data only on the written instructions of the Provider unless the Information Recipient is required by Law and/or specifically Data Protection Legislation to process Personal Data. Where the Information Recipient relies on the Law and/or Data Protection Legislation as the basis for processing Personal Data, the Information Recipient shall promptly notify the Provider of this before performing the processing required by the Law and/or Data Protection Legislation unless the Law and/or Data Protection Legislation prohibits the Information Recipient from notifying the Provider;
 - b) ensure that it has in place appropriate technical and organisational measures reviewed and approved by the Provider, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, 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 technical and organisational measures adopted by it);
 - c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Provider has been obtained and the following conditions fulfilled:
 - i) the Information Recipient has provided appropriate safeguards in relation to the transfer;
 - ii) the Data Subject has enforceable rights and effective legal remedies;
 - iii) the Information Recipient complies with its obligations under the Data Protection Legislation by providing adequate levels of protection to any Personal Data that is transferred; and
 - iv) the Information Recipient complies with the reasonable instructions notified in advance by the Provider with respect to the processing of the Personal Data;
 - e) assist the Provider, at the Provider's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - f) notify the Provider without undue delay on becoming aware of a Personal Data breach;
 - g) at the written direction of the Provider delete or return Personal Data and copies thereof to the Provider upon termination of this Contract unless required by Law and/or the Data Protection Legislation to store or retain the Personal Data; and
 - h) maintain complete and accurate records and information to demonstrate its compliance with this clause B35 and allow for audits by the Provider or its designated auditor
- B35.4 The Information Recipient agrees to indemnify and keep indemnified the Provider against all costs, claims, damages, fines or expenses incurred by the Provider for which the Provider may become liable due to any failure by the Information Recipient or its employees or agents to comply with any of its obligations under clause B35.3

B35.5 Either party to this Contract may, at any time on not less than 30 days' notice, revise clause B35.3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply by attachment to this Contract)

B35.6 Not Used

B35.7 The Provider (who for the remainder of this clause B35 shall be referred to as the "Data Processor") shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with the consents it obtains from Service Users to use that Personal Data and in accordance with the Data Protection Legislation;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;

- (c) ensure that :
 - (i) its Staff do not process Personal Data except in accordance with this Contract and the consents which it has obtained from Service Users;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Data Processor's duties under the Data Protection Legislation;
 - (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 a Service User (hereinafter referred to in this clause as "Data Subject") or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Data Subject has been obtained and the following conditions are fulfilled:
 - (i) the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37);
 - (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 and
 - (iv) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Subject or other party considered to be a Data Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Data Subject, delete or return Personal Data (and any copies of it) to the Data Subject on termination of the Contract unless the Data Processor is required by Law to retain the Personal Data.

B35.8 Subject to clause B35.9 the Data Processor shall notify the Authority immediately if it:

- (a) receives any request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (b) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (c) 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
- (d) becomes aware of a Data Loss Event.

B35.9 The Data Processor's obligation to notify under clause B37.8 shall include the provision of further information to the Authority in phases, as details become available

B35.10 The Data Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

B35.11 The Data Processor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.

B35.12 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

B35.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Data Processor must:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause B35 such that they apply to the Sub-processor; and
- (c) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

B35.14 The Data Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

B35.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Data Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office

Data Security

B35.16 Subject to clauses B35.17. to B35.18, the Provider shall be liable to the Authority for loss or corruption of any Authority Data, if and to the extent that such loss or corruption results from an act or omission of the Provider or from any default of the Provider.

B35.17 In the event of loss or corruption of Authority Data resulting from an act or omission of the Provider or a default of the Provider, the Provider shall return such data and software to a fully operational state as soon as is reasonably practicable thereafter. The Provider shall promptly notify the Authority (via the Authority's ICT Helpdesk) within one (1) Business Day if at any time the Provider becomes aware, suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, and inform the Authority of the remedial action the Provider proposes to take.

B35.18 If the Provider fails to comply with clause B35.17, and within any reasonable period notified to the Provider, the Provider fails to take any remedial action in respect of its breach of clause B35.17 as required by the Authority, the Authority may itself restore or procure the restoration of Authority Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so including the restoration of the Authority Data

DATA AND INFORMATION

B35.19 The Provider acknowledges that the Authority's Data is the property of the Authority and the Authority reserves all IPRs which may, at any time, subsist in the Authority's Data. To the extent that any IPRs in any of the Authority's Data vest in the Provider by operation of law, such IPRs shall be assigned by the Provider to the Authority by operation of this clause B35.19 immediately upon the creation of such Authority's Data.

B35.20 The Provider shall:

- (a) not delete or remove any proprietary notices or other notices contained within or relating to the Authority's Data;
- (b) not alter, store, copy, disclose or use the Authority's Data, except as necessary for the performance by the Provider of its obligations under this Contract, or as otherwise expressly authorised by this Contract in compliance with the provisions of this Contract;
- (c) preserve, so far as possible, the integrity of the Authority's Data and prevent any loss, disclosure, theft, manipulation or interception of the Authority's Data, to include ensuring that where the Authority has notified the Provider that Authority's Data is required to be stored in an encrypted format, such Authority Data is not stored on any portable device or media, unless the device or media is encrypted;
- (d) make secure back-up copies of the Authority's Data on such regular basis as is reasonable for the particular data concerned as required by the Disaster Recovery Plan, or as otherwise instructed by the Authority, and in any event at such regular intervals appropriate to the frequency of the revision of the data; and
- (e) immediately notify the Authority if any of the Authority's Data is lost, becomes corrupted, is damaged or is deleted accidentally.

B35.21 The Authority hereby grants to the Provider, for the Term, a non-exclusive, non-transferable, royalty-free licence to use the Authority's Data solely for the purpose of meeting, and to the extent necessary to meet, its obligations under this Contract. The Provider shall not:

- (a) modify, amend, alter, remove, delete or enhance the Authority's Data without the prior written consent of the Authority;
- (b) use any form of cloud computing or similar data storage measures without the prior written consent of the Authority or as specifically permitted within the Security Policy; or
- (c) make any copies of the Authority's Data without the prior written permission of the Authority.

B35.22 To the extent that any Authority Data is held or processed by the Provider, the Provider shall supply such Authority Data to the Authority as may be requested by the Authority from time to time in the format specified by the Authority.

- B35.23 On receipt or creation by the Provider of any Authority Data and during any collection, processing, storage and transmission by the Provider of any Authority Data, the Provider shall take, and shall procure that each of the Provider's Personnel shall take, all precautions necessary to preserve the security and integrity of the Authority's Data and to prevent any corruption or loss of the Authority's Data.
- B35.24 The Provider acknowledges that the Authority is under transparency obligations stemming from the DCLG Code of Practice on Data transparency and the Provider shall assist the Authority in complying with its obligations in respect of data transparency.

B36. FREEDOM OF INFORMATION AND TRANSPARENCY

- B36.1. Where the parties are Public Authorities, they each acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B36.2. If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:
- a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
 - b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
 - c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within 2 Business Days) transfer the request to the Authority;
 - d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract following consultation with the Provider and having taken its views into account, provided always that the Authority shall be responsible (acting reasonably) for determining whether information is to be disclosed; and
 - e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within 5 Business Days of such request and without charge.
- B36.3. 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 is not Confidential Information.
- B36.4. Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information including all confidential and commercially sensitive information that is exempt from disclosure in accordance with the provisions of the FOIA.
- B36.5. In preparing a copy of this Contract for publication pursuant to clause B38.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.

- B36.6. The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.
- B36.7. In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.
- B36.8. The Authority 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.
- B36.9. The 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 Authority to inspect such records as requested from time to time.
- B36.10 The Provider shall notify the Authority of any Commercially Sensitive Information provided to the Authority together with details of the reasons for its sensitivity and the Provider acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Authority may be obliged to disclose such information.
- B36.11 Provide, at the Provider's expense, all necessary assistance as reasonably requested by the Authority to enable the Authority 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 Environmental Information Regulations.
- B36.12 The Provider acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Authority may, acting in accordance with the Department of Constitutional Affairs' 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 Environmental Information Regulations to disclose information concerning the Provider or the Services:
- B36.12.1 in certain circumstances without consulting the Provider; or
- B36.12.2 following consultation with the Provider and having taken their views into account;
- provided always that where sub-clause B36.12.1 above applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- B36.13 The 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 Authority to inspect such records as requested from time to time.
- B36.14 The Authority 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.

B37. PROHIBITED ACTS

- B37.1. Neither Party shall do any of the following:

- a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and
- b) in connection with this Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,

(together "**Prohibited Acts**").

B37.2 The Provider:

- a) shall not, and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act
- b) 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 Authority, 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 Authority before execution of this Contract
- c) shall notify the Authority immediately if any breach of this clause B37 is suspected or known. Where such notification has been given to the Authority, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Contract.

B37.3 If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:

- a) to exercise its right to terminate under clause B30.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
- b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
- c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

B37.4 Any notice of termination under clause B30.2 (*Termination*) must specify:

- a) the nature of the Prohibited Act;
- b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- c) the date on which this Contract will terminate.

B37.5 Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.

B37.6 The Provider shall, within 10 Business Days of a request from the Authority, certify to the Authority in writing (such certification to be signed by an officer of the Provider) the Provider's compliance with this clause and provide such supporting evidence of compliance with this clause by the Provider as the Authority may reasonably request.

- B37.7 The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within 5 Business Days of the Authority requesting it and enforced by the Provider where applicable.
- B37.8 Should either Party become aware of or suspect any breach of this clause B37, it will notify the other Party immediately. Following such notification, the notified Party must respond promptly and fully to any enquiries of the requesting Party, co-operate with any investigation undertaken by the requesting Party and allow the requesting Party to audit any books, records and other relevant documentation.
- B37.9 Despite clause B28 (Dispute Resolution), any dispute relating to:
- a) the interpretation of this clause B37; or
 - b) the amount or value of any gift, consideration or commission
- Shall be determined by the Authority and its decision shall be final and conclusive
- B37.10 Any termination under Clause B30.2 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

B38. FORCE MAJEURE

- B38.1 Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.
- B38.2 Subject to the remaining provisions of this clause B38, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.
- B38.3 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:
- a) promptly give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract;
 - c) use reasonable endeavours to carry out its obligations under this Contract in any way that is reasonably practicable; and
 - d) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- B38.4 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- B38.5 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- B38.6 As soon as practicable following the affected party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Provider is the affected party, it shall take and/or procure the taking of all reasonable steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Clinical Practice.
- B38.7 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- B38.8 The Authority may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 25 Business Days.

B39. THIRD PARTY RIGHTS

B39.1. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

B40. CAPACITY

B40.1. Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Contract, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon the Authority or in any way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability on the part of the Authority under this Contract (howsoever arising) in any capacity other than as contracting counterparty.

B41. SEVERABILITY

B41.1. If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Contract.

B42. WAIVER

B42.1. Any relaxation or delay by either Party in exercising any right under this Contract will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

B43. PUBLICITY

B43.1. Without prejudice to clause B36 (*Freedom of Information and Transparency*), except with the written consent of the other Party, (such consent not to be unreasonably withheld or delayed), neither Party must not make any press announcements in relation to this Contract in any way.

B43.2. Each Party must take all reasonable steps to ensure the observance of the provisions of clause B43.1 by all its staff, servants, agents, consultants and sub-contractors.

B44. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

B44.1. Nothing in this Contract creates a partnership or joint venture or relationship of employer and employee or principal and agent between the Authority and the Provider.

B44.2. For the avoidance of doubt, neither Party must hold itself out as being authorised to enter into any agreement on behalf of the other Party or in any way bind the other party to the performance, variation, release or discharge of any obligation to a third party. Neither Party's staff shall hold themselves out to be and shall not be held out by that Party as being servants or agents of the other Party.

B.45 INTELLECTUAL PROPERTY

B45.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Provider or any employee, agent or sub-contractor of the Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,
- (c) shall vest in the Authority on creation.

B45.2 The provisions of clause B45.1 shall not override any pre-existing binding contractual terms with agents or Sub-Contractors in respect of Intellectual Property which reserve rights of ownership to the agent or Sub-Contractor which the Provider entered into prior to the Commencement Date and which were within the knowledge of the Authority at the Commencement Date.

B45.3 The Provider shall indemnify the Authority 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 Authority's acts or omissions.

B45.4 This provision shall survive the expiration or termination of the Contract

B46. GOVERNING LAW AND JURISDICTION

B46.1. This Contract will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.

B46.2. Subject to the provisions of clause B28 (*Dispute Resolution*), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.

APPENDIX A
SPECIFICATION

Service Specification No.	AMCV 261
Service	Wellbeing and Independence Service
Authority Lead	Director Adult Services and Housing
Provider Lead	
Period	1 April 2019 – 31 March 2022 with options to extend by up to 12 month periods x2

1. Aims / Objectives	
1.1	<p>The four key priorities set out in the Authority's Vision and Strategy for Adult Social Care 2018/19 – 2020/21 are:</p> <ul style="list-style-type: none"> • <u>Creating resilient communities and helping individuals to continue to live independently. This will be achieved through ensuring that everyone has access to information and advice that supports their wellbeing, either through the Authority's First Point of Contact team, Shropshire Choices portal or through the Voluntary and Community and Social Enterprise sector (VCSE).</u> • <u>Helping individuals to prevent or reduce needs. Working with partners, including the VCSE, to identify, target and intervene with individuals who are at risk of developing needs.</u> • <u>Delaying the impact of an individual's needs. Services will be aimed at enabling individuals to gain or regain skills to help them live as independently as possible. The aim is to support individuals in the short-term whilst expecting that, wherever possible, they support themselves in the long-term.</u> • <u>Meeting individual's needs through a creative approach to care that is value for money. Support will be easy to access and services will be flexible and open to change.</u>
1.2	<u>This Specification is to be read in conjunction with the Authority's 'Preventative Services in Shropshire – Commissioning Intentions 2019 – 2024' document which will be made available to the Service Provider</u>
1.3	<u>Through focussing on a preventative approach, the Wellbeing and Independence Service will help the Authority to achieve the above aims, providing a range of practical solutions for individuals to help stay healthy and well at home and in their communities and to be able to access other activities, maintaining as much independence as possible.</u>
2. Purpose / Functions / Role	
2.1	<p>The Provider and any other organisations involved in the delivery of the Services are expected to deliver services which prevent escalation of needs, are of a consistent quality, 'joined-up', easy to access and easy to find out about. Good, accurate information will be available to individuals, regardless of their entry point, whether that is to an Authority information point or to a local provider organisation and all points in between. Additionally, the Provider will aim to support individuals to make connections and links within their communities so that they are self-reliant as far as possible.</p>
2.2	<p>The Services will help individuals to remain in their own home with access to opportunities to socialise and to stay healthy with the aim of reducing the likelihood of becoming unwell, using health services and/or needing to receive long term formal care and support. The Service will improve individuals' sense of wellbeing and help to improve their confidence in dealing with everyday life. This may be achieved through interventions and/or support to address circumstances which individuals may find themselves in which may include (but not be limited to):</p> <ul style="list-style-type: none"> • Poor mental health • Enabling social inclusion and aiding recovery • Skills for independent living • Risk of vulnerability • Inability to cope • Loneliness • Isolation • Risk of falls • Poor or reduced mobility • Lack of structure or purpose in their everyday life • Bereavement

- 2.3 Support will be practical and will have a primary focus on providing enough support for individuals to be able to live as independently as possible within their own home and to get out and about within their community. The Services will include practical support aimed at helping individuals to develop or maintain daily living skills, reduce vulnerability and enabling individuals to develop the confidence to engage with their local community and social, physical activity and creative activities.
- 2.4 By its nature a portion of this support will be on a one-to-one basis but it will also incorporate organised group activities and the development of self-reliant peer networks. Support is not envisaged to be long-term in nature but is about enabling individuals to do things for themselves. However, feedback from Service Users indicates that they value the ability to be able to contact a trusted individual or organisation from time to time so the Services will need to be flexible to cater for this.
- 2.5 For clarity the Services will deliver preventative services which:
- 2.5.1 Are targeted at adults with an increased risk of developing issues which impact their ability to live independently and at adults who may have already developed issues but require support to prevent or reduce the risk of further deterioration
 - 2.5.2 Help individuals to keep well, live well and to feel enabled to do things for themselves
 - 2.5.3 Feel joined-up, with multiple access points, and all providing good quality information about how the 'system' works
 - 2.5.4 Are enabling and help individuals to take control of their lives
 - 2.5.5 Support complementary programmes such as Social Prescribing and 'out of hospital' initiatives, for example Shropshire Care Closer to Home
 - 2.5.6 Recognise that Shropshire is a large and rural county with a dispersed population. Approaches that work in one part of the county may not necessarily work as well in others. The Provider and other organisations involved in the delivery of the Service must understand the importance of 'Place' and the Shropshire 'landscape' as it relates to support and care in communities and can apply a locally tailored approach to the work they do with vulnerable individuals.
 - 2.5.7 Target support at those areas which make the biggest difference. The Provider and other organisations involved in the delivery of the Service will therefore work very closely with the Authority to ensure that resources and support are allocated according to priority.
 - 2.5.8 Aim to maximise income from alternative funding streams and income generation to complement Authority funding in order to deliver the Outcomes.
 - 2.5.9 Maximise the value of all available resources in the communities in which the Provider operates. This will include its own staff, buildings, technology, expertise, volunteer capability and other infrastructure as well as those owned or operated by other partners and stakeholders. The aim is to make best use of resources without unnecessary duplication of effort.
 - 2.5.10 Facilitate the increased use of assistive technology to support individuals to maintain or increase their independence at home and in their local community
 - 2.5.11 Develop and sustain meaningful and productive partnerships between commissioned services and non-commissioned activity as well as the public and private sectors.
 - 2.5.12 Adopt the principles of 'Making Every Contact Count' which is an approach to behaviour change that utilises the millions of day to day interactions that organisations and individuals have with other individuals to encourage changes in behaviour that have a positive effect on the health and wellbeing of individuals, communities and populations.
 - 2.5.13 Are responsive, flexible and able to adapt to changing priorities.
 - 2.5.14 Operate in such a way as to prevent or reduce the risk of abuse and neglect of individuals who use services.
 - 2.5.15 Where appropriate, operate in such a way as to contribute towards initiatives aimed at crime prevention, tackling anti-social behaviour and reducing harm to others.

3. Specific Requirements

- 3.1 Support must be available to adults with a range of issues and support needs and regardless of tenure.
- 3.2 The Provider may be required to be responsible for the administration of an annual small grants programme. The grants programme will support VCSEs to pursue activities and deliver outcomes which contribute to the overall success of the Service.

<p>4.</p> <p>4.1</p> <p>4.2</p> <p>4.3</p> <p>4.4</p>	<p><u>Referrals / Signposting</u></p> <p>It is anticipated that the majority of individuals will self-refer or be signposted from another agency or organisation. The Provider will develop strong relationships with organisations involved in signposting to the Service. Signposting may be from (but not limited to):</p> <ul style="list-style-type: none"> • The Authority's First Point of Contact team • Let's Talk Local teams • Social Work teams (including Mental Health and Safeguarding) • Housing Services including the Handyperson service • Social Prescribing • Other Authority departments including libraries and customer access points • General Practice, including Care & Community Coordinators • Other community health teams • Shropshire Fire and Rescue Service • Police and other emergency services • Other providers of preventative services including housing support providers and advocacy & advice providers • Other VCSE organisations • Faith communities • Private business <p>Service Users will have a range of ways in which they can access information about the Service which may include presenting at premises used for the Service or supported drop-ins or surgeries at other premises, telephone, email, websites, social media, etc. The Provider must ensure that information about the Services are accurate, kept up to date and current, regardless of the medium in which it is available.</p> <p>Where appropriate, and in agreement with the Provider, the Authority may specify ongoing or time-limited direct referral arrangements. It is recognised that often direct referrals can limit 'ad-hoc' accessibility for people so it is important that all parties understand that existing resource may need to be reallocated in order to accommodate direct referrals.</p> <p>In addition, the Provider will ensure that people are able to be signposted or referred to appropriate alternative provision or sources of information or support.</p>
<p>5.</p> <p>5.1</p> <p>5.2</p> <p>5.3</p> <p>5.4</p>	<p><u>Access to Services and Location of Delivery</u></p> <p>Service Users tell us that the most important factor in terms of deciding whether or not to approach a preventative service is based on whether it is easy to access. Service Users advise us that recommendation from a professional or a trusted individual is also of high importance. The Provider must take these findings into account when designing access routes into the Services.</p> <p>The Services will be available across the whole of the administrative area of the Authority.</p> <p>The Provider will ensure that it delivers the Services in locations that are most appropriate to the needs of the Service Users. The Services may be delivered in individuals' homes, in the venues used for the Service, by telephone, using social media or other electronic means of communication such as Skype. The Provider will ensure that venues (other than in individuals' own homes) are fully accessible and are available to meet needs over a geographically dispersed area.</p> <p>The Services shall be available Monday to Friday 9.00am – 5.00pm excluding Bank Holidays, but may be provided outside of these times where need can be demonstrated and resource can be made safely available.</p>
<p>6.</p> <p>6.1</p> <p>6.2</p>	<p><u>Partnership Working / Collaboration</u></p> <p>The Provider will collaborate with other preventative service providers, businesses, public sector organisations, programmes and the wider voluntary and community sector in order to maximise the effectiveness of the Services. In addition, the Provider will, where applicable, form effective formal and/or informal partnerships where this will be of mutual benefit and in pursuance of the Outcomes required in this Contract.</p> <p>Such collaboration, partnerships or other alliances may be through signposting protocols, referral mechanisms, awareness raising or other ways of engaging the right support for people and proactively identifying those at risk and may be with (but not limited to):</p> <ul style="list-style-type: none"> • Social Prescribing • Strengthening Families programme • Let's Talk Local • Compassionate Communities • Health and related services • Shropshire Care Closer to Home • Transport service providers

- Fire Service Safe & Well visits
- Information advice and advocacy
- Housing support
- Micro-commissioning

7. Strategic Working

7.1 The Provider will work closely with the Authority, other providers of preventative services including housing support providers and advocacy & advice providers and other stakeholders in order to develop and enhance approaches to prevention across the administrative area of the Authority including capacity building, infrastructure, training, workforce and volunteer development.

8. Staffing and Volunteers

8.1 The Provider will ensure that sufficient paid staff and volunteers are available to deliver the Services adequately and safely.

8.2 The Provider's staff will undertake their duties in a manner that has regard to the circumstances of Service Users

8.3 The Services will promote volunteering, apprenticeship and work placement opportunities within the Services to the local community and should work closely with existing voluntary sector support services to increase the recruitment of volunteers, for example Shropshire Voluntary & Community Sector Assembly and Shropshire Infrastructure Partnership.

8.4 The Provider must instruct Staff that they must not carry out paid or unpaid tasks that have not been sanctioned by the Provider either within their rostered hours or within their own time with any Service Users receiving the Service from the Provider. Where a need for additional tasks is identified by Staff or requested by a Service User this information must be passed back to the Provider's Representative for approval.

8.5 The Provider's Staff must establish how the Service User wishes to be addressed and ensure that this is adhered to.

8.6 Staff must establish how the Service User prefers tasks to be carried out and follow those wishes as far as possible. Where there is difficulty in doing so the problem should be discussed with the Service User.

8.7 The Provider should ensure that Staff clearly understand that they should never be accompanied by any unauthorised person when attending a Service User's home.

8.8 Staff must carry identification at all times.

8.9 Staff must adopt a non-smoking policy in a Service User's home

8.10 The Provider will have a risk management policy in respect of Service Users. Steps taken to minimise risk will be discussed with the Service User. 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 Staff.

9. Training / Staff Development

9.1 The Provider will ensure that delivery of the Services is supported by a continuous and robust training programme for its Staff which will ensure that:

- Staff and volunteers are well aware of the range of services available to help meet individual's needs and of their eligibility criteria
- Knowledge is up to date and is appropriate
- The Services are delivered in a way that meets any legislative requirements

9.2 Training and Development support will be available through the Authority's Joint Training team.

10. Involvement

10.1 The Provider will collaborate with Service Users in a broad range of ways to ensure that the Services are accessible, flexible for their needs and responsive to feedback. This may include Service User feedback, co-design and/or co-production as appropriate to the nature of the Service and the issues. The Provider will demonstrate that it is engaging widely and with people with a diverse range of needs and characteristics.

10.2 Where appropriate the Provider will involve other stakeholders including the Authority, health providers, other preventative service providers and the wider voluntary sector to review the effectiveness of involvement with Service Users and how it contributes to future planning.

11 Social Value

- 11.1 The Provider will maximise social, economic and environmental value in accordance with the Authority's approach to Social Value <https://shropshire.gov.uk/social-value/>.
- 11.2 In particular the Provider will contribute to one or more of the following Social Value outcomes:
- NT1 - No. of local people (FTE) employed on contract for one year or the whole duration of the contract, whichever is shorter.
 - NT9 - No. of training opportunities on contract (BTEC, City & Guilds, NVQ, HNC) that have either been completed during the year, or that will be supported by the organisation to completion in the following years - Level 2,3, or 4+
 - NT15 - Provision of expert business advice to VCSEs and SMEs (e.g. financial advice / legal advice / HR advice/HSE)
 - NT16 - Equipment or resources donated to VCSEs (£ equivalent value)
 - NT18 - Total amount (£) spent in LOCAL supply chain through the contract, OR
 - NT19 - Total amount (£) spent through contract with LOCAL SMEs
 - NT26 - Initiatives taken or supported to engage people in health interventions (e.g. stop smoking, obesity, alcoholism, drugs, etc) or wellbeing initiatives in the community, including physical activities for adults and children
 - NT27 - Initiatives to be taken to support older, disabled and vulnerable adults aged 18 and above to build stronger community networks (e.g. befriending schemes, digital inclusion clubs) (Above and beyond the core contract requirements).

12 Measures including Data, Recording and Evaluation

- 12.1 The Provider shall develop measures to demonstrate in the most effective way what Outcomes are delivered and to complement the tools that the Provider shall use
- 12.2 Evaluation of the effectiveness of preventative interventions will be done partly through Service User follow-up or exit questionnaires and will aim to measure long-term impact and/or unmet need. Such evaluation will incorporate, for example, reduction on the reliance on funded services, throughput, services subsequently used by the Service User and any changes in individual Service User risk factors
- 12.3 In addition to achievement of outcomes for individuals, an evaluation of the effectiveness and sustainability of community-based group working will be required. This will incorporate an understanding of, for example:
- Who is accessing the groups – are group attendees representative of the needs profile?
 - Location – are groups available to people in the right places?
 - Accessibility – are groups easy to access?
 - Partnerships – which organisations are involved?
 - Consistency – whilst different approaches work in different parts of the county are the outcomes consistent?

13. Required Insurances

Required Insurances

The Provider (and its Sub-Contractors, agents or consultants) 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 risks which may be incurred by the Provider arising out of the 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 in writing by the Authority, such policy or policies of insurance shall be:

- 1) Public Liability Insurance providing a minimum indemnity cover of £5,000,000.00 (Five Million Pounds) for each and every event;
- 2) Employers (Compulsory) Liability Insurance providing a minimum indemnity cover of £5,000,000.00 (Five Million Pounds) for each and every event;
- 4) Professional Indemnity Insurance providing a minimum indemnity cover of £2,000,000.00 (Two Million Pounds) for each and every event; and

Such insurance shall be maintained in accordance with the terms of clause B27

APPENDIX B

CONDITIONS PRECEDENT

1. Provide the Authority with a copy of the Provider's registration with the CQC where the Provider must be so registered under the Law
2. Provide the Authority with a copy of the Provider's Employers (Compulsory) Liability Insurance Certificate evidencing a minimum cover of £5,000,000 per event.
3. Provide the Authority with a copy of the Provider's Public Liability Insurance Certificate evidencing a minimum cover of £5,000,000 per event.
4. Provide the Authority with a copy of the Provider's Professional Indemnity Insurance evidencing a minimum cover of £2,000,000 per event.
5. The Service Provider shall prior to commencement of this Agreement provide the Council and thereafter upon request, or at least annually during the Term, with:
 - (a) copies of the relevant insurance policy documents (including details of any warranties or exclusions); and
 - (b) receipts or other evidence of payment of the latest premiums due under those policies; and
 - (c) any other evidence reasonably requested by the Council to confirm that the required insurances are in force and effect and meet in full the requirements of Clause B25

APPENDIX C

QUALITY OUTCOMES INDICATORS

1. OUTCOMES

- 1.1 The headline outcomes for the Services in the administrative area of the Authority will be:
- 1.1.1 People's need for long-term formal care and support is delayed and/or reduced
 - 1.1.2 People are enabled to live in a healthy and resilient community and are supported to build strong community networks
 - 1.1.3 People are able to access appropriate information, advice and support regardless of their 'entry point' and location
 - 1.1.4 the Services are enabled to support complementary programmes such as Social Prescribing and 'out of hospital' support
- 1.2 These outcomes will be achieved through:
- 1.2.1 People's need for long-term formal care and support is delayed and/or reduced through:
 - a. Enabling people to maintain or increase their social contact
 - b. Enabling people to improve and maintain their mobility, gait and balance
 - c. Enabling people to reduce their individual concerns
 - d. Enabling people to continue to carry out their activities of daily living or increase their independence
 - e. Enabling people to look after themselves better
 - f. Improved mental health and wellbeing
 - g. Enabling people to maintain or increase their self-reliance and independence in carrying out daily living activities
 - h. Enabling people to access digital and/or assistive technology
 - 1.2.2 People are enabled to live in a healthy and resilient community and are supported to build strong community networks through:
 - a. Enabling people to develop or maintain social contact leading to a reduction in loneliness
 - b. The development of peer support groups in local communities to facilitate community engagement and develop community networks and enable these networks to become independent of services
 - c. Peer support / community-based groups are sustainable
 - d. Peer support / community groups are effective and help people to meet their personal outcome goals
 - e. Access to suitable transport
 - f. Sustaining the conditions for a resilient volunteer resource
 - g. Volunteers' wellbeing and confidence is improved
 - 1.2.3 People are able to access appropriate information, advice and support (including access to finance / debt advice) regardless of their 'entry point' and location
 - a. Accurate, accessible information available in a range of formats suitable for the target audience
 - b. Strong partnerships and relationships with information and advice organisations, statutory organisations and VCSEs
 - c. Increase in enquiries, signposting and referrals, both inwards and outwards
 - 1.2.4 Services are enabled to support complementary programmes such as Let's Talk Local, Social Prescribing and 'out of hospital' support through:
 - a. Supporting existing community networks
 - a. Collaborating with partners and ensuring that an equitable service can be offered by looking at alternative ways of offering services in different localities
 - b. Working closely with the Authority's Adult Services and being involved in meetings and service development
 - c. Collaborating to ensure that people's needs are met and duplication is avoided
 - d. Providing feedback on how well the relationships are working.

2.0 QUALITY ASSURANCE

- 2.1 The Provider must be able to demonstrate to the Authority that it has a commitment to the quality of the Service and must allow officers of the Authority access to all records for the purpose of monitoring and complaint investigation at all times. The Authority will observe appropriate levels of confidentiality at all times.

- 2.2 The Provider must have documented systems which enable it to:
- 2.2.1 check on whether it is delivering the Service in accordance with the terms of this Contract and
 - 2.2.2 check whether it is doing this efficiently and effectively
 - 2.2.3 check on whether Staff are provided safe systems of work
 - 2.2.4 check whether the Service is being delivered in a way which takes account of the Service User's needs and preferences and satisfaction
 - 2.2.5 check to ensure that all records are up to date
 - 2.2.6 check whether in the view of Service Users' family / carers the Authority and other relevant agencies the quality of the Service can be improved
 - 2.2.7 provide information to the Authority evidencing that the systems are in place and being used where requested

3.0 MONITORING

- 3.1 Officers of the Authority may seek to monitor this Contract by:
- 3.1.1 visiting the premises where the Service is provided to undertake a review on any or all aspects of the operation of the Service and compliance by the Provider with the terms set out in this Contract. The Authority will have careful regard to the nature of the Service provided and shall when on premises controlled by the Provider respect Provider's rules as to security health and safety
 - 3.1.2 carrying out a quality assurance exercise which may involve contacting Service Users and/or their families and friends and ascertaining their views on the provision of the Service at the premises where the Service is provided
- 3.2 The Provider will subject to its obligations under the Data Protection Legislation:
- 3.2.1 allow Officers of the Authority access to the premises where the Service is provided (upon the production by Authority Officers of an identity badge) to carry out a monitoring visit
 - 3.2.2 give assistance to Authority Officers and prompt access to any file information or record it holds in respect of Service Users or the provision of Service to the Service Users as required by this Contract
 - 3.2.3 access to all records or information on Service Users or the provision of the Service (this may include informal records such as staff handover book, staff rota)
 - 3.2.4 upon request provide photocopies of documentation such as referral and assessment paperwork (subject to the Authority contributing to the Provider's reasonable photocopy costs)
 - 3.2.5 supplying to the Authority upon request the names of Service Users who utilise the Service and/or any contact details the Provider holds for next of kin or family / friends of the Service User for the purpose of contacting them to ascertain their views of the Service provided
 - 3.2.6 meet reasonable requests by Officers for information in order to investigate complaints made by Service Users; or to assess the financial viability of the Provider, the reliability of service provision throughout the Contract period, consistency and standards, the Service User's and/or their representative's views of the Service.
- 3.3 The Provider will ensure that in accordance with the terms of this Contract, it obtains any necessary consent from Staff and/or Service Users to allow the Authority access to files to monitor the provision of the Service.

4.0 ADMINISTRATION

- 4.1 The Provider will supply information which the Authority may request from time to time in order to comply with Central Government Departments' requirements or as required for Performance Indicators.
- 4.2 Data provided to the Authority must be accurate and robust and the Provider will take all necessary steps to ensure the quality and integrity of data supplied.

APPENDIX D

SERVICE USER and CARER FEEDBACK

The Provider will seek Feedback, in a form to be agreed, from Service Users and, where applicable, their Carers on a regular and ongoing basis. Feedback will be sought for the purpose of (but not necessarily limited to):

- Capturing and understanding Service Users' and Carers' views on the quality of the Services
- Capturing and understanding Service Users' and Carers' views on the effectiveness of the Service
- Understanding which elements of the Service are most effective
- Understanding which elements of the Service could improve and how they could improve
- Understanding whether there are any gaps in provision in the Service

At times Feedback, surveys and/or consultations may be required to elicit views on new policy / guidance from either local or national government. The Provider will disseminate such opportunities to Staff, Service Users, Carers and others as appropriate.

APPENDIX E

CHARGES

[TBC]

APPENDIX F

SAFEGUARDING POLICIES

The Provider will adhere to the following safeguarding policies

- a) Safeguarding Children – <http://westmidlands.procedures.org.uk/>
- b) Adult Safeguarding is the West Midlands Protocol <http://keepingadultssafeinshropshire.co.uk/media/1008/west-mids-adult-safeguarding-information.pdf>

APPENDIX G

INCIDENTS REQUIRING REPORTING PROCEDURE

All accidents, incidents and violent 'near misses' involving Staff and Service Users must be recorded. This record should include the date and location, a description of what happened, the outcome and any steps taken to prevent a recurrence. The Provider will inform the Authority each time a recordable accident, incident or violent 'near miss' occurs and the Authority may wish to discuss each occurrence with the Provider.

Accidents must also be recorded in an accident book.

APPENDIX H

NOT USED

APPENDIX I

TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS

Not Used

APPENDIX J
SERVICE QUALITY PERFORMANCE REPORT

NOT USED

APPENDIX K

DETAILS OF REVIEW MEETINGS

Contract performance will be managed through quarterly review meetings

The Provider will be required to provide a Contract Performance Report 10 working days in advance of the review date.

As a minimum the Review will cover the following:

- a) Performance Management
- b) Complaints/Compliments
- c) Serious Incidents
- d) Finance
- e) Service Improvement
- f) Staffing including professional registrations and accreditations up to date
- g) Health and Safety Compliance
- h) Safeguarding
- i) Data protection and Information Security

APPENDIX L
AGREED VARIATIONS

APPENDIX M

DISPUTE RESOLUTION

Part 1 of Appendix M – Dispute Resolution Process

1 ESCALATED NEGOTIATION

- 1.1 Except to the extent that any injunction is sought relating to a matter arising out of clause B36(Confidentiality), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the 15 Business Days following receipt of the first such offer (the “Negotiation Period”) each of the Parties shall negotiate in good faith and be represented:
 - 1.1.1 for the first 10 Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter that led to the Dispute and has authority to settle the Dispute; and
 - 1.1.2 for the last 5 Business Days, by its chief executive, director, or board member who has authority to settle the Dispute, provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

2 MEDIATION

- 2.1 If the Parties are unable to settle the Dispute by negotiation, they must within 5 Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in Part 2 of this Appendix M.
- 2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.
- 2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

3. EXPERT DETERMINATION

- 3.1 If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within 10 Business Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.
- 3.2 If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.
- 3.3 Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.
- 3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.
- 3.5 The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within 5 Business Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.

- 3.6 The Expert must produce a written decision with reasons within 30 Business Days of receipt of the statement of case referred to in paragraph 1.9, or any longer period as is agreed by the Parties after the Dispute has been referred.
- 3.7 The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 3.8 The Parties must comply with any request or direction of the Expert in relation to the expert determination.
- 3.9 The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties and the Expert agree are within the scope of the expert determination. The Expert must send his decision in writing simultaneously to the Parties. Within 5 Business Days following the date of the decision the Parties must provide the Expert and each other with any requests to correct minor clerical errors or ambiguities in the decision. The Expert must correct any minor clerical errors or ambiguities at his discretion within a further 5 Business Days and send any revised decision simultaneously to the Parties.
- 3.10 The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- 3.11 The decision of the Expert is final and binding, except in the case of manifest error, fraud, collusion, bias, or material breach of instructions on the part of the Expert at which point a Party will be permitted to apply to Court for an Order that:
- 3.11.1 the Expert reconsider his decision (either all of it or part of it); or
- 3.11.2 the Expert's decision be set aside (either all of it or part of it).
- 3.12 If a Party does not abide by the Expert's decision the other Party may apply to Court to enforce it.
- 3.13 All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 3.14 The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.
- 3.15 The Expert is appointed to determine the Dispute or Disputes between the Parties and his decision may not be relied upon by third parties, to whom he shall have no duty of care.

Part 2 of Appendix M - Nominated Mediation Body
[NOT USED]

Part 3 of Appendix M - Recorded Dispute Resolutions

[To be populated during the term of the Contract as appropriate]

APPENDIX N

SUCCESSION PLAN

At the expiry of the Contract term or other reason for termination in accordance with its terms, whichever occurs first, the Provider will co-operate reasonably with the Authority, other agents of the Authority and successor or Replacement Providers to endeavour to ensure continuity and smooth transfer of the Services to avoid any risk to the health and safety of Service Users, their families and employees.

To provide all information in the Provider's possession to the Authority and/or Replacement Provider as is considered necessary to support a smooth transfer of the Services to the Replacement Provider in a reasonable and timely manner.

To participate in all meetings as are considered necessary and organised by the Authority to support the transfer of Services.

To work with the Authority and other agents of the Authority to endeavour to ensure all aspects of the transfer of the Services are undertaken appropriately.

To gain consent from Service Users to transfer data in accordance with Data Protection Legislation

Appendix O

Definitions and Interpretation

1. The headings in this Contract shall not affect its interpretation.
2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
4. References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.
5. References to anybody, organisation or office shall include reference to its applicable successor from time to time.
6. Any references to this Contract or any other documents includes reference to this Contract or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.
7. Use of the singular includes the plural and vice versa.
8. The following terms shall have the following meanings:

Activity means any levels of services set out in a Service Specification

Authorised Person means the Authority and anybody or person concerned with the provision of the Service or care of a Service User

Authority Data means 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 Provider by or on behalf of the Authority or which the Provider is required to generate, process, store or transmit pursuant to this Contract; or
(b) any Personal Data for which the Authority is the Data Controller;

Authority Representative means the person identified in clause A4.1 (*Representatives*) or their replacement

Best Value Duty means the duty imposed by section 3 of the Local Government Act 1999 (the **LGA 1999**) as amended, and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to any applicable guidance issued from time to time

Board of Directors means the executive board or committee of the relevant organisation

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.

Business Continuity Plan means the Provider's plan referred to in Clause B32.2 (*Business Continuity*) relating to continuity of the Services, as agreed with the Authority and as may be amended from time to time

Business Day means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London

Caldicott Guardian means the senior health professional responsible for safeguarding the confidentiality of patient information

Care Quality Commission or CQC means the care quality commission established under the Health and Social Care Act 2008

Carer means a family member or friend of the Service User who provides day-to-day support to the Service User

CEDR means the Centre for Effective Dispute Resolution

Charges means the charges which shall become due and payable by the Authority to the Provider in respect of the provision of the Services in accordance with the provisions of this Contract, as such charges are set out in Appendix E (*Charges*)

Commencement Date means 1st April 2019

Competent Body means anybody that has authority to issue standards or recommendations with which either Party must comply

Conditions Precedent means the conditions precedent, if any, to commencement of service delivery referred to in clause A3.2 (*Commencement and Duration*) and set out in Appendix B (*Conditions Precedent*)

Confidential Information means any information or data in whatever form disclosed, which by its nature is confidential or which the Disclosing Party acting reasonably states in writing to the Receiving Party is to be regarded as confidential, or which the Disclosing Party acting reasonably has marked 'confidential' (including, without limitation, financial information, or marketing or development or work force plans and information, and information relating to services or products) but which is not Service User Health Records or information relating to a particular Service User, or Personal Data, pursuant to an FOIA request, or information which is published as a result of government policy in relation to transparency

Consents means:

- (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or
- (ii) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this Contract or for the provision by the Provider of the Services in accordance with this Contract

Contract has the meaning given to it in clause A1.1 (*Contract*)

Contract Management Meeting means a meeting of the Authority and the Provider held in accordance with clause B29.8 (*Contract Management*)

CQC Regulations means the Care Quality Commission (Registration) Regulation 2009

Data Controller shall have the meaning given to the term "controller" as set out in Article 4 of the GDPR;

Data Processor shall have the meaning given to the term "processor" as set out in Article 4 of the GDPR;

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

Data Subject has the meaning set out in the DPA

DBS means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012

Default means any breach of the obligations of the Provider (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the Provider or the Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Provider is liable to the Authority

Default Interest Rate means the statutory rate of interest applicable to the Late Payment of Commercial Debts Regulations 2013 as may be amended from time to time

Disclosing Party means the Party disclosing Confidential Information

Dispute means a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Contract

DPA means the Data Protection Act 2018

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, criminal record checks and occupational health checks

Employment Regulations means 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;

Enhanced DBS & Barred List Check means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate)

Enhanced DBS & Barred List Check (child) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list

Enhanced DBS & Barred List Check (adult) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult's barred list

Enhanced DBS & Barred List Check (child & adult) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's and adult's barred list

Enhanced DBS Check means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for

Enhanced DBS Position means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted

Equipment means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under this Contract

Expert means the person designated to determine a Dispute by virtue of paragraphs 1.6 or 1.7 of Appendix M (*Dispute Resolution*)

Expert Determination Notice means a notice in writing showing an intention to refer Dispute for expert determination

Expiry Date means either:

- a) the date set out in clause A3.2; or
- b) the last date of an Extension Period; or
- c) 31st March 2024

Extension Period means an additional term following the expiry of the Initial Term to extend the duration of this Contract

Feedback: means communication either verbal, written or by way of other media comments received from Service Users or their Carers in respect of the Services. Feedback may be in the form of, but is not limited to, comments, compliments, complaints, surveys, questionnaires or online mechanisms

First Point of Contact means the Authority's Adult Social Care contact centre

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004

Force Majeure means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (i) any industrial action occurring within the Provider's or any Sub-contractor's organisation; or
- (ii) the failure by any Sub-contractor to perform its obligations under any Sub-contract

Fraud means any offence under the laws of the United Kingdom creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts or defrauding or attempting to defraud or conspiring to defraud the Authority

General Conditions has the meaning given to it in clause A1.1(b) (*Contract*)

GDPR means the General Data Protection Regulations

Good Practice means using standards, practices, methods and procedures conforming to the Law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider, or a person providing services the same as or similar to the Services, at the time the Services are provided, as applicable

Guidance means any applicable local authority, health or social care guidance, direction or determination (but not including any guidance, direction or determination of the Authority) which the Authority and/or the Provider have a duty to have regard to including any document published under section 73B of the NHS Act 2006

Indirect Losses means loss of profits (other than profits directly and solely attributable to the provision of the Services), 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

Initial Expiry Date means 31 March 2022

Initial Term means a period of 3 years commencing on the Commencement Date and expiring on the Initial Expiry Date

Joint Training means a business unit of the Authority which provides adult health and social care training

Law means:

- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (ii) any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
- (iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;

- (iv) Not Used
- (v) Guidance; and
- (vi) any applicable industry code

in each case in force in England and Wales

Lessons Learned means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Provider's provision of the Services

Let's Talk Local means an appointment with a social work practitioner in a community venue to discuss issues related to having a good life, staying independent and living in the community

Losses means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses

Making Every Contact Count' means an approach to behaviour change that utilises the many day to day interactions that organisations and people have with other people to encourage changes in behaviour that have a positive effect on the health and wellbeing of individuals, communities and populations.

Negotiation Period means the period of 15 Business Days following receipt of the first offer

Option to Extend means the Authority's option to extend the Initial Term by a period of up to a total of two years commencing 1st April 2022

Outcomes means the outcomes to be achieved by the Provider further to this Contract as set out in Appendix C (*Quality Outcomes Indicators*)

Parties means the Authority and the Provider and "Party" means either one of them

Personal Data has the meaning set out in the GDPR

Prohibited Acts has the meaning given to it in clause B37.1 (*Prohibited Acts*)

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

Provider Representative means the person identified in clause A4.2 (*Representatives*) or their replacement

Provider's Premises means premises controlled or used by the Provider for any purposes connected with the provision of the Services which may be set out or identified in a Service Specification

Public Authority means as defined in section 3 of the FOIA

Quality Outcomes Indicators means the agreed key performance indicators and outcomes to be achieved as set out in Appendix C (*Quality Outcomes Indicators*)

Receiving Party means the Party which has received Confidential Information as applicable

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

Regulatory Body means anybody other than CQC carrying out regulatory functions in relation to the Provider and/or the Services

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

Remedial Action Plan means a plan to rectify a breach of or performance failure under this Contract specifying targets and timescales within which those targets must be achieved

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

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

Required Insurances means the types of policy or policies providing levels of cover as specified in part 13 Appendix A;

Restricted Person means any person: (i) other than an Institutional Investor who has a material interest in the production of tobacco products or alcoholic beverages; or (ii) whom the Co-ordinating Commissioner reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider or in a Material Sub-contractor

Review Meeting means a meeting to be held in accordance with clause B17 (*Review Meetings*) or as otherwise requested in accordance with clause B17.2 (*Review Meetings*)

Safeguarding Policies means the Provider's written policies for safeguarding children and adults, as amended from time to time, and as may be appended at Appendix F (*Safeguarding Children and Vulnerable Adults*)

Second Exception Report means a report issued in accordance with clause B27.22 (*Contract Management*) notifying the recipients of a breach of a Remedial Action Plan and the continuing failure to remedy that breach

Serious Incident means an incident or accident or near-miss where a patient (whether or not a Service User), member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Provider's Premises or where the actions of the Provider, the Staff or the Authority are likely to be of significant public concern

Services means the wellbeing and independence services (and any part or parts of those services) described in the Specification, and/or as otherwise provided or to be provided by the Provider under and in accordance with this Contract

Specification means each of the service specifications defined by the Authority and set out at Appendix A (*Service Specification*)

Service User means the person directly receiving the Services provided by the Provider as specified in the Service Specifications and includes their Carer and Legal Guardian where appropriate

Service User Safety Incident means any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to, harm to that Service User

Service Quality Performance Report means a report in a format to be agreed between the Authority and the Provider

Shropshire Care Closer to Home means a programme aiming to give people in the Authority's administrative area of Shropshire access to the care they need closer to where they live, either in their own home or in the community and which brings together the NHS and the Authority to provide health and social care in the community for people aged 65 and over with complex needs.

Shropshire Infrastructure Partnership means a partnership of voluntary and community sector infrastructure organisations operating in Shropshire which aims to facilitate effective joint working amongst voluntary and community infrastructure organisations in Shropshire

Shropshire Voluntary and Community Sector Assembly means a forum for voluntary and community organisations throughout Shropshire to meet and exchange information, ideas and good practice

Social Prescribing means a non-clinical/non-medical intervention with the aim to prevent worsening health for people with long-term health conditions, reduce the number and intensity of costly interventions in urgent or specialist care, and offer an alternative to those people with non-medical conditions presenting at GP practices.

Social Value means the duty placed on the Authority to have regard to social, economic and environmental wellbeing in connection with public services contracts and which is set out in the Public Services (Social Value) Act 2012

Special Conditions has the meaning given to it in clause A1.1(c) (*Contract*)

Staff means all persons engaged by the Provider to perform its obligations under this Contract and includes the Provider's servants, agents, suppliers and Sub-contractors and volunteers used in the performance of its obligations under this Contract

Standard DBS Check means a disclosure of information which contains certain details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions

Standard DBS Position means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted

Sub-contract means a contract approved by the Authority between the Provider and a third party for the provision of part of the Services

Sub-contractor means any third party appointed by the Provider and approved by the Authority under clause B21.1 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

Succession Plan means a plan agreed by the Parties to deal with transfer of the Services to an alternative provider following expiry or termination of this Contract as set out at Appendix N (*Succession Plan*)

Term means the period commencing on the Commencement Date and expiring on the Expiry Date

VAT means value added tax in accordance with the provisions of the Value Added Tax Act 1994

Variation means a variation to a provision or part of a provision of this Contract

Variation Notice means a notice to vary a provision or part of a provision of this Contract issued under clause B20.2 (*Variations*).

SECTION C
SPECIAL TERMS AND CONDITIONS

Please note: Special Terms and Conditions C1 – C6 Not Used

C7. STAFF TRANSFER - DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Section C7, the following definitions shall apply:

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

Section 1: EMPLOYMENT PROVISIONS

Unless otherwise stated, the following definitions shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Retendering Information: as defined in paragraph 6.10;

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

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

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

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

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

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

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

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

2. INTERPRETATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.4 The indemnities in clause 4.1:

(a) shall not apply to:

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

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

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

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

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

3.2 NOT USED

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

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

(i) any proposed changes to terms and conditions of employment the Provider or Sub-Contractor may consider taking on or after the Effective Date;

(ii) any of the employees informing the Authority and any Former Provide they object to being employed by the Provider or Sub-Contractor; and

(iii) any change in identity of the Transferring Authority Employees' and Transferring Former Provider Employees' employer as a result of the operation of the Employment Regulations or as a result of any proposed measures the Provider or Sub-Contractor may consider taking on or after the Effective Date.

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

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

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

5. PROCUREMENT OBLIGATIONS

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

6. RETENDERING AND PRE-SERVICE TRANSFER OBLIGATIONS

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

(a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

(b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;

(c) the date which is 12 months before the end of the Term; and

(d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six month period),

it shall provide at no cost to the Authority and in a suitably anonymised format so as to comply with the Data Protection Legislation, the Provider's Provisional Personnel List, together with the Staffing Information in relation to the Provider's Provisional Personnel List and it shall provide an updated Provider's Provisional Personnel List at such intervals as are reasonably requested by the Authority.

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

(a) the Provider's Final Personnel List, which shall identify which of the Provider Personnel are Transferring Provider Employees; and

(b) the Staffing Information in relation to the Provider's Final Personnel List (insofar as such information has not previously been provided).

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

6.4 The Provider:

(a) shall promptly notify the Authority forthwith in writing of any material changes to the information provided pursuant to clause 6.1 and clause 6.2 as and when such changes arise; and

(b) warrants, for the benefit of the Authority, any Replacement Provider, and any Replacement Sub-contractor that all information provided pursuant to clause 6.1 and clause 6.2 shall be true and accurate in all material respects at the time of providing the information.

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

(a) replace or re-deploy any Service Provider Personnel listed on the Provider Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

(b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Provider Personnel (including any payments connected with the termination of employment);

(c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;

(d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Personnel List;

(e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

(f) terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Personnel List save by due disciplinary process, and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Provider or relevant Sub-contractor or received from any persons listed on the Provider's Provisional Personnel List regardless of when such notice takes effect.

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

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

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

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

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

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

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

7. EMPLOYMENT REGULATIONS EXIT PROVISIONS

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

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

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

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

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

- (a) arising out of the resignation of any Transferring Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

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

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

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

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

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

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

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

7.9 The indemnity in clause 7.8:

- (a) shall not apply to:
 - (i) in any case in relation to any alleged act or omission of the Replacement Provider and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (ii) any claim that the termination of employment was unfair because the Replacement Provider and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in clause 7.5(a) is made by the Replacement Provider and/or Replacement Sub-contractor to the Provider within six months of the Service Transfer Date.

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

7.11 Not Used.

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

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

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

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

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

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

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

Annex A. Transferring Authority Employees

There are no Transferring Authority Employees

Annex B. Transferring Former Provider Employees

[insert details where applicable]

Annex C. List of Notified Sub-contractors

C8. CONTRACT BINDING ON SUCCESSORS

This Contract will be binding on and will be to the benefit of the Authority and Provider and their respective successors and permitted transferees and assigns.

C9. HUMAN RIGHTS

The Provider must not do or permit to allow anything to be done which is incompatible with the rights contained in the European Convention on Human rights and the Human Rights Act 1998. Without prejudice to the rights of the Authority under clause B25 (*Indemnities*), the Provider must indemnify the Authority against any loss, claims and expenditure resulting from the Provider's breach of this clause.

C10. Not Used

C11. HEALTH AND SAFETY

C11.1 The Provider must promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.

C11.2 The Provider must comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders regulations and codes of practice relating to health and safety which may apply to the Provider's staff and other persons working on the Provider's Premises in the performance of this Contract.

C11.3 The Provider must on written request of the Authority and in any event within 5 Business Days of that request, provide the Authority with a copy of its health and safety policy statement (as required by the Health and Safety at Work Act 1974).

C12. BRANDING POLICY

The Provider must comply with the Authority's local brand policy and guidelines, as revised, updated or re-issued from time to time.

C13. CONFLICTS OF INTEREST

If a Party becomes aware of any conflict of interest which is likely to have an adverse effect on the other Party's decision whether or not to contract or continue to contract substantially on the terms of this Contract, the Party aware of the conflict must immediately declare it to the other. The other Party may then take whatever action under this Contract as it deems necessary.

C14. CHANGE IN CONTROL

C14.1 This clause applies to any Provider Change in Control and/or any Material Sub-Contractor Change in Control, but not to a Change in Control of a company which is a Public Company.

C14.2 The Provider must:

- (a) as soon as possible on, and in any event within 5 Business Days following, a Provider Change in Control; and/or
- (b) immediately on becoming aware of a Sub-contractor Change in Control,

notify the Authority of that Change in Control and submit to the Authority a completed Change in Control Notification.

C14.3 If the Provider indicates in the Change in Control Notification an intention or proposal to make any consequential changes to its operations then, to the extent that those changes require a change to the terms of this Contract in order to be effective, they will only be effective when a Variation is made in accordance with clause B22 (*Variations*). The Authority will not and will not be deemed by a failure to respond or comment on the Change in Control Notification to have agreed to or otherwise to have waived its rights under clause B22 (*Variations*) in respect of that intended or proposed change.

C14.4 The Provider must specify in the Change in Control Notification any intention or proposal to make a consequential change to its operations which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract. If the Provider does not do so it will not be entitled to propose a Variation in respect of that for a period of 6 months following the date of that Change in Control Notification, unless the Authority agrees otherwise.

C14.5 If the Provider does not specify in the Change in Control Notification an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Provider's Premises as a result of or in connection with the Change in Control then, unless the Authority provides its written consent to the relevant action, the Provider must:

- (a) ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this Contract; and
- (b) continue providing the Services from the Provider's Premises,

in each case for at least 12 months following the date of that Change in Control Notification. The provisions of this clause will not apply to an assignment by way of security or the grant of any other similar rights by the Provider consequent upon a financing or re-financing of the transaction resulting in Change of Control.

C14.6 The Provider must supply (and must use its reasonable endeavours to procure that the relevant Sub-contractor supplies) to the Authority, whatever further information relating to the Change in Control the Authority may, within 20 Business Days after receiving the Change in Control Notification, reasonably request.

C14.7 The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Sub-contractor include a provision obliging the Sub-contractor to inform the Provider in writing on, and in any event within 5 Business Days following, a Sub-contractor Change in Control in respect of that Sub-contractor.

C14.8 If:

- (a) there is a Sub-contractor Change in Control; and
- (b) following consideration of the information provided to the Authority in the Change in Control Notification or under clause C17.6, the Authority reasonably concludes that, as a result of that Sub-contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Sub-contractor to provide Services in accordance with this Contract (and, in reaching that conclusion, the Authority may consider any factor, in its absolute discretion, that it considers relevant to the provision of Services),

then:

- (c) the Authority may, by serving a written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within 30 Business Days (or other period reasonably specified by the Authority taking into account the interests of Service Users and the need for the continuity of Services); and
- (d) the Provider must duly replace the relevant Sub-contractor within the period specified under clause C14.8.(c).

C14.9 Notwithstanding any other provision of this Contract:

- (a) a Restricted Person must not hold, and the Provider must not permit a Restricted Person to hold, at any time 5% or more of the total value of any Security in the Provider or in the Provider's Holding Company or any of the Provider's subsidiaries (as defined in the Companies Act 2006); and
- (b) a Restricted Person must not hold, and the Provider must not permit (and must procure that a Sub-contractor must not at any time permit) a Restricted Person to hold, at any time 5% or more of the total value of any Security in a Sub-contractor or in any Holding Company or any of the subsidiaries (as defined in the Companies Act 2006) of a Sub-contractor.

C14.10 If the Provider breaches clause C14.9.(b), the Authority may by serving written notice upon the Provider, require the Provider to replace the relevant Sub-contractor within:

- (a) 5 Business Days; or
- (b) whatever period may be reasonably specified by the Authority (taking into account any factors which the Authority considers relevant in its absolute discretion, including the interests of Service Users and the need for the continuity of Services),

and the Provider must replace the relevant Sub-contractor within the period specified in that notice.

C14.11 Nothing in this clause will prevent or restrict the Provider from discussing with the Co-ordinating Commissioner a proposed Change in Control before it occurs. In those circumstances, all and any information provided to or received by the Authority in relation to that proposed Change in Control will be Confidential Information.

C14.12 Subject to the Law and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.

C14.13 For the purposes of this clause:

Control means in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:

- (i) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or
- (ii) as a result of any powers conferred by the articles of association or any other document regulating that or any other body corporate,

and a **Change in Control** if a person who Controls any body corporate ceases to do so or if another person acquires Control of it, provided that a Change in Control will be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation

Change in Control Notification means a notification in the form to be provided to the Provider by the Authority and to be completed as appropriate by the Provider

Holding Companies means has the definition given to it in section 1159 of the Companies Act 2006

Institutional Investor means an organisation whose primary purpose is to invest its own assets or those held in trust by it for others, including a bank, mutual fund, pension fund, private equity firm, venture capitalist, insurance company or investment trust

Provider Change in Control means any Change in Control of the Provider or any of its Holding Companies

Public Company means:

a company which:

- (i) has shares that can be purchased by the public; and
- (ii) has an authorised share capital of at least £50,000 with each of the company's shares being paid up at least as to one quarter of the nominal value of the share and the whole of any premium on it; and
- (iii) has securities listed on a stock exchange in any jurisdiction

Restricted Person means:

- (i) any person, other than an Institutional Investor, who has a material interest in the production of tobacco products or alcoholic beverages; or
- (ii) any person who the Authority otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the Provider or in a Sub-contractor

Security means shares, debt securities, unit trust schemes (as defined in the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing debt securities, warrants or options to subscribe or purchase securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company

Sub-contractor Change in Control means any Change in Control of a Sub-contractor or any of its Holding Companies.

AMCV 261 – Wellbeing & Independence Service for Shropshire

Confidentiality Undertaking Regarding TUPE

[Date] 2018

[NAME]

Your ref: *

Our ref: **AMCV 261**

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 261 – Wellbeing & Independence Service for Shropshire

Name of TENDERING ORGANISATION
(please insert)

Age UK Shropshire Telford & Wrekin

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

Shropshire Council Tender Response Document

Contract Description:

The Wellbeing and Independence service will help people to remain in their own home with access to opportunities to socialise and to stay healthy with the aim of reducing the likelihood of becoming unwell, using health services and/or needing to receive long term formal care and support. The service will improve people's sense of wellbeing and help to improve their confidence in dealing with everyday life. This may be achieved through interventions and/or support to address circumstances which people may find themselves in which may include (but not be limited to):

- Poor mental health
- Enabling social inclusion and aiding recovery
- Skills for independent living
- Risk of vulnerability
- Inability to cope
- Loneliness
- Isolation
- Risk of falls
- Poor or reduced mobility
- Lack of structure or purpose in their everyday life
- Bereavement

Support will be practical and will have a primary focus on providing enough support for people to be able to live as independently as possible within their own home and to get out and about within their community. These services will include practical support aimed at helping people to develop or maintain daily living skills, reduce vulnerability and enabling people to develop the confidence to engage with their local community and social, physical activity and creative activities.

The Service will be inclusive and will be available to adults aged 18 and above across the Shropshire Council area.

The Council currently commissions such support from a range of voluntary, community and social enterprise (VCSE) organisations which operate in Shropshire.

The Council wishes to procure a single contract which addresses the above and which delivers on all aspects of the Service Specification. In doing so, the Council recognises the importance of a diverse and sustainable VCSE sector in delivering the contract outcomes and in providing choice to people who use services. The Council will therefore expect any proposals to incorporate strong formal or informal structures (such as consortium, partnership or other alliance) which will maximise the effectiveness of the Service and which retains diversity of provision.

Subject to agreement the successful tenderer may be required to administer a 'small grants' fund which complements the outcomes being delivered under this contract from year 2 of the contract onwards.

The budget available is fixed at £816,300 per annum for the duration of the contract which will be for an initial term of 3 years with an option to extend the contact by a further 2 years subject to contract performance and budget availability. From the second year of the contract onwards the available budget may be increased by a further £32,161 per annum to allow for the administration of a 'small grants' fund.

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.

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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	Supplier Information– For information only	13
B Part 2 Section 2	Grounds for <u>Mandatory</u> Exclusion	17
B Part 2 Section 3	Grounds for Discretionary Exclusion	19
Section C	Tender Schedule	27

Evaluation Criteria

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

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

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

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

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

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

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

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

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

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

Award Criteria – Weighted Marked Questions

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

Section / Question No.	Award Criteria	Weighting / Max Marks Available
Quality 100% (1000 marks)		
Section C / Q1	Service delivery model	20% / 200 max marks
Section C / Q2	Range of provision	10% / 100 max marks
Section C / Q3	Maximising funding	10% / 100 max marks
Section C / Q4	Inclusivity and accessibility	10% / 100 max marks
Section C / Q5	Quality of partnerships	15% / 150 max marks
Section C / Q6	Quality assurance	10% / 100 max marks
Section C / Q7	Responding to customer feedback	10% / 100 max marks
Section C / Q8	Proposals for Evaluation of outcomes	5% / 50 max marks
Section C / Q9	Social Value proposals	10% / 100 max marks
Total for quality		100% / 1000 max marks

Quality Questions/ Scoring Scheme

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

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

	5	
Minor Reservations	4	<i>Satisfies the requirement with minor reservations Some minor reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with limited evidence to support the response.</i>
	3	
Serious Reservations	2	<i>Satisfies the requirement with major reservations. Considerable reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>
	1	
Unacceptable	0	<i>Does not meet the requirement Does not comply and/or insufficient information provided to demonstrate how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>

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

The tender receiving the highest mark for Quality Criteria overall will be deemed to be the highest scoring tender. The Council reserves the right to award or not to award the contract to the highest scoring tender

Section A:
1. Form of Tender

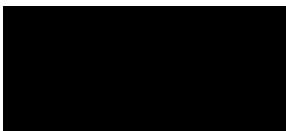
Form of Tender

Shropshire Council

Tender for Wellbeing & Independence Service

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 a Wellbeing & Independence Service for Shropshire 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.....



Date ...10th December 2018.....

DesignationChair.....

Company...Age UK Shropshire Telford & Wrekin.....

Address3 Mardol Gardens, Shrewsbury, Shropshire.....

Post CodeSY1 1PR.....

Tel No 01743 233123.....

Fax No ...01743 248848

E-mail address ...



Web address www.ageukshropshireandtelford.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...Chair.....

Signed (2)

Status...Chief Executive & Company Secretary.....

(For and on behalf of Age UK Shropshire Telford & Wrekin)

Date ...10th December 2018.....

Non-collusive Tendering Certificate

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

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

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

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

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

Signed (1)



Status.....Chair.....

Signed (2)

Status.....Chief Executive & Company Secretary...

(For and on behalf of Age UK Shropshire Telford & Wrekin)

Date10th December 2018.....

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?

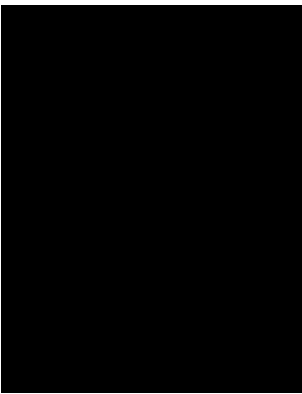
Yes

If yes, please give details:

Name	Relationship
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED]

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...Chair.....
Signed (2)		Status...Chief Executive & Company Secretary.....
(For and on behalf of Age UK Shropshire Telford & Wrekin)		
Date ...10 th December 2018.....		

SECTION B

Standard Selection Questionnaire

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

The standard Selection Questionnaire is a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion. If there are grounds for exclusion (there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning). For the list of exclusion please see

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf

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

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

Supplier Selection Questions: Part 3

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

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

Consequences of misrepresentation

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

Notes for completion

1. The “authority” means the contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite suitable candidates to participate in this procurement process.
2. “You” / “Your” refers to the potential supplier completing this standard Selection Questionnaire i.e. the legal entity responsible for the information provided. The term “potential supplier” is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 (referred to as the “regulations”) and could be a registered company; the lead contact for a group of economic operators; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.
3. Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state ‘N/A’. Should you need to provide additional information in response to the questions, please submit a clearly identified annex.
4. The authority recognises that arrangements set out in section 1.2 of the standard Selection Questionnaire, in relation to a group of economic operators (for example, a consortium) and/or use of sub-contractors, may be subject to change and will, therefore, not be finalised until a later date. The lead contact should notify the authority immediately of any change in the proposed arrangements and ensure a completed Part 1 and Part 2 is submitted for any new organisation relied on to meet the selection criteria. The authority will make a revised assessment of the submission based on the updated information.
5. For Part 1 and Part 2 every organisation that is being relied on to meet the selection must complete and submit the self-declaration.
6. All sub-contractors are required to complete Part 1 and Part 2.
7. For answers to Part 3 - If you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration.

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

¹ See PCR 2015 regulations 71 (8)-(9)

Part 1: Potential supplier Information

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

Section 1	Potential supplier information	
Question number	Question	Response
1.1(a)	Full name of the potential supplier submitting the information	Age UK Shropshire Telford & Wrekin
1.1(b) – (i)	Registered office address (if applicable)	3 Mardol Gardens Shrewsbury Shropshire SY1 1PR
1.1(b) – (ii)	Registered website address (if applicable)	www.ageukshropshireandtelford.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 Ltd by Guarantee
1.1(d)	Date of registration in country of origin	Company registration - 24 th September 2001 Current charity registration – 24 th Sept. 2001 Operated in county as a local charity since 11th Nov 1950
1.1(e)	Company registration number (if applicable)	4292896
1.1(f)	Charity registration number (if applicable)	01090445
1.1(g)	Head office DUNS number (if applicable)	222749751
1.1(h)	Registered VAT number	259 3108 96 Currently deregistering as no longer required
1.1(i) - (i)	If applicable, is your organisation registered with the appropriate professional or trade register(s) in the member state where it is established?	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A x
1.1(i) - (ii)	If you responded yes to 1.1(i) - (i), please provide the relevant details, including the registration number(s).	

1.1(j) - (i)	Is it a legal requirement in the state where you are established for you to possess a particular authorisation, or be a member of a particular organisation in order to provide the services specified in this procurement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
1.1(j) - (ii)	If you responded yes to 1.1(j) - (i), please provide additional details of what is required and confirmation that you have complied with this.	
1.1(k)	Trading name(s) that will be used if successful in this procurement.	Age UK Shropshire Telford & Wrekin The partnership's working name will be the Wellbeing & Independence Partnership (WIP)
1.1(l)	Relevant classifications (state whether you fall within one of these, and if so which one) a) Voluntary Community Social Enterprise (VCSE) b) Sheltered Workshop c) Public Service Mutual	VCSE
1.1(m)	Are you a Small, Medium or Micro Enterprise (SME) ² ?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
1.1(n)	Details of Persons of Significant Control (PSC), where appropriate: ³ - Name; - Date of birth; - Nationality; - Country, state or part of the UK where the PSC usually lives; - Service address; - The date he or she became a PSC in relation to the company (for existing companies the 6 April 2016 should be used); - Which conditions for being a PSC are met; - Over 25% up to (and including) 50%, - More than 50% and less than 75%, - 75% or more. (Please enter N/A if not applicable)	None
1.1(o)	Details of immediate parent company: - Full name of the immediate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable) - Head office VAT number (if applicable) (Please enter N/A if not applicable)	N/A
1.1(p)	Details of ultimate parent company: - Full name of the ultimate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable)	N/A

	- Head office VAT number (if applicable) (Please enter N/A if not applicable)	
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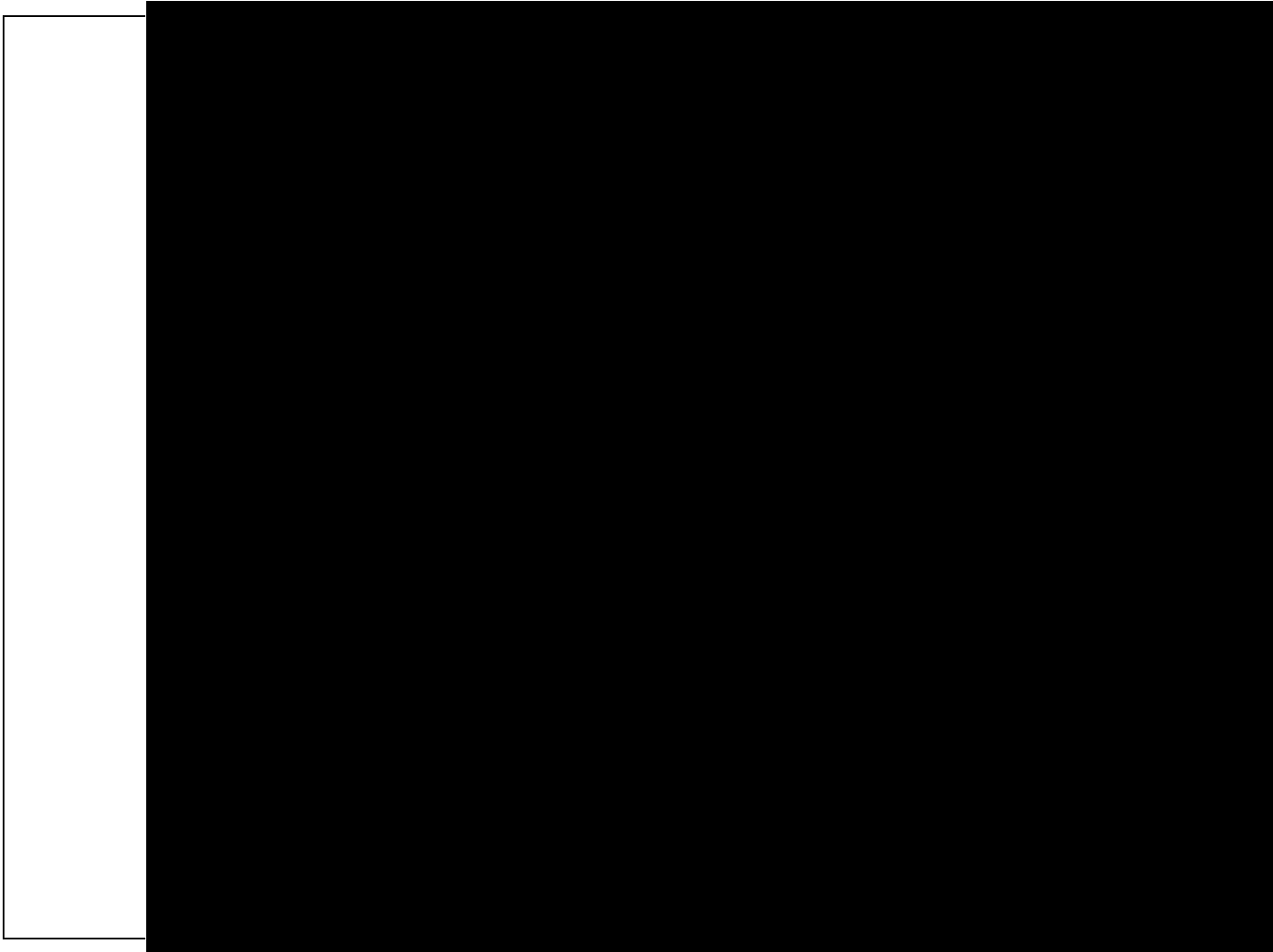
Please note: A criminal record check for relevant convictions may be undertaken for the preferred suppliers and the persons of significant in control of them.

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

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

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

Section 1	Bidding Model	
Question number	Question	Response
1.2(a) - (i)	Are you bidding as the lead contact for a group of economic operators?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, please provide details listed in questions 1.2(a) (ii), (a) (iii) and to 1.2(b) (i), (b) (ii), 1.3, Section 2 and 3. If no, and you are a supporting bidder please provide the name of your group at 1.2(a) (ii) for reference purposes, and complete 1.3, Section 2 and 3.
1.2(a) - (ii)	Name of group of economic operators (if applicable)	Wellbeing & Independence Partnership
1.2(a) - (iii)	Proposed legal structure if the group of economic operators intends to form a named single legal entity prior to signing a contract, if awarded. If you do not propose to form a single legal entity, please explain the legal structure.	We are forming a Wellbeing & Independence Partnership with five other voluntary sector organisations. We will be the lead contractor and the other partners will sub-contract from us. The partners are: <ul style="list-style-type: none"> - Mayfair Community Centre - North Shrewsbury Friendly Neighbours - Qube Oswestry - Royal Voluntary Service - Rural Communities Charity All partners have signed a memorandum of understanding and have agreed, upon tender award, to sign a sub-contract agreement.
1.2(b) - (i)	Are you or, if applicable, the group of economic operators proposing to use sub-contractors?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
1.2(b) - (ii)	If you responded yes to 1.2(b)-(i) please provide additional details for each sub-contractor in the following table: we may ask them to complete this form as well. <div style="background-color: black; width: 100%; height: 150px; margin-top: 10px;"></div>	



Contact details and declaration

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

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

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

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

I am aware of the consequences of serious misrepresentation.

Section 1	Contact details and declaration	
Question Number	Question	Response
1.3(a)	Contact name	[REDACTED]
1.3(b)	Name of organisation	Age UK Shropshire Telford & Wrekin
1.3(c)	Role in organisation	Chief Executive

1.3(d)	Phone number	01743 233123
1.3(e)	E-mail address	[REDACTED]
1.3(f)	Postal address	3 Mardol Gardens, Shrewsbury, SY1 1PR
1.3(g)	Signature (electronic is acceptable)	[REDACTED]
1.3(h)	Date	10 th December 2018

Part 2: Exclusion Grounds

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

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

	<p>questions.</p> <p>Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation.</p>	
3.1(a)	Breach of environmental obligations?	Yes <input type="checkbox"/> No x If yes please provide details at 3.2
3.1(b)	Breach of social obligations?	Yes <input type="checkbox"/> No x If yes please provide details at 3.2
3.1(c)	Breach of labour law obligations?	Yes <input type="checkbox"/> No x If yes please provide details at 3.2
3.1(d)	Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State?	Yes <input type="checkbox"/> No x If yes please provide details at 3.2
3.1(e)	Guilty of grave professional misconduct?	Yes <input type="checkbox"/> No x If yes please provide details at 3.2
3.1(f)	Entered into agreements with other economic operators aimed at distorting competition?	Yes <input type="checkbox"/> No x If yes please provide details at 3.2
3.1(g)	Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure?	Yes <input type="checkbox"/> No x If yes please provide details at 3.2
3.1(h)	Been involved in the preparation of the procurement procedure?	Yes <input type="checkbox"/> No x If yes please provide details at 3.2
3.1(i)	Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions?	Yes <input type="checkbox"/> No x If yes please provide details at 3.2
3.1(j)	Please answer the following statements	
3.1(j) - (i)	The organisation is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.	Yes <input type="checkbox"/> No x If yes please provide details at 3.2

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

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

Section 4	Economic and Financial Standing	
Question number	Question	Response
4.1	Are you able to provide a copy of your audited accounts for the last two years, if requested? If no, can you provide one of the following: answer with Y/N in the relevant box.	Yes x 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 x No <input type="checkbox"/>
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	Yes x No <input type="checkbox"/>
	(c) Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A we can provide these
4.2	Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the	Yes <input type="checkbox"/> No <input type="checkbox"/>

	evaluation criteria for this procurement, please self-certify by answering 'Yes' or 'No' that you meet the requirements set out.	N/a
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Section 5	If you have indicated in the Selection Questionnaire question 1.2 that you are part of a wider group, please provide further details below: N/A	
Name of organisation		
Relationship to the Supplier completing these questions		

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

Section 6	Technical and Professional Ability		
6.1	<p>Relevant experience and contract examples</p> <p>Please provide details of up to three contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs may include samples of grant-funded work. Contracts for supplies or services should have been performed during the past three years. Works contracts may be from the past five years.</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	Contact 3
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Name of customer organisation	[REDACTED]	[REDACTED]	[REDACTED]
Point of contact in the organisation	[REDACTED]	[REDACTED]	[REDACTED]
Position in the organisation	[REDACTED]	[REDACTED]	[REDACTED]
E-mail address	[REDACTED]	[REDACTED]	[REDACTED]
Description of contract	[REDACTED]	[REDACTED]	[REDACTED]
Contract Start date	[REDACTED]	[REDACTED]	[REDACTED]
Contract completion date	[REDACTED]	[REDACTED]	[REDACTED]
Estimated contract value	[REDACTED]	[REDACTED]	[REDACTED]

6.2	<p>Where you intend to sub-contract a proportion of the contract, please demonstrate how you have previously maintained healthy supply chains with your sub-contractor(s)</p> <p>Evidence should include, but is not limited to, details of your supply chain management tracking systems to ensure performance of the contract and including prompt payment or membership of the UK Prompt Payment Code (or equivalent schemes in other countries)</p>
	N/A see 6.3

6.3	<p>If you cannot provide at least one example for questions 6.1, in no more than 500 words please provide an explanation for this e.g. your organisation is a new start-up or you have provided services in the past but not under a contract.</p>
	<p>[Redacted text]</p> <ul style="list-style-type: none"> ■ [Redacted text] ■ [Redacted text] ■ [Redacted text] ■ [Redacted text] ■ [Redacted text] ■ [Redacted text] ■ [Redacted text] ■ [Redacted text] ■ [Redacted text] ■ [Redacted text] ■ [Redacted text] <p>[Redacted text]</p> <p>[Redacted text]</p>

Section 7	Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015	
	<p>Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?</p>	<p>Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/></p>

	If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?	Yes <input type="checkbox"/> Please provide the relevant url to view the statement ... No <input type="checkbox"/> Please provide an explanation

8. Additional Questions

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

Section 8	Additional Questions
8.1	Insurance
	<p>Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below: Yes</p> <p>Employer's (Compulsory) Liability Insurance = £5 Million - Yes we have £10m</p> <p>Public Liability Insurance = £5 Million- Yes we have £10m</p> <p>We also have £5m professional indemnity.</p> <p>*It is a legal requirement that all companies hold Employer's (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders.</p>

8.2 – 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</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

	to prevent unlawful discrimination from reoccurring. 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.	
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

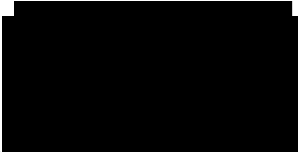
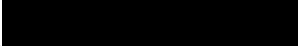
8.3 – Environmental Management

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

8.4 – 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.	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? 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. 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.	<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

8.5 Safeguarding of adults and children

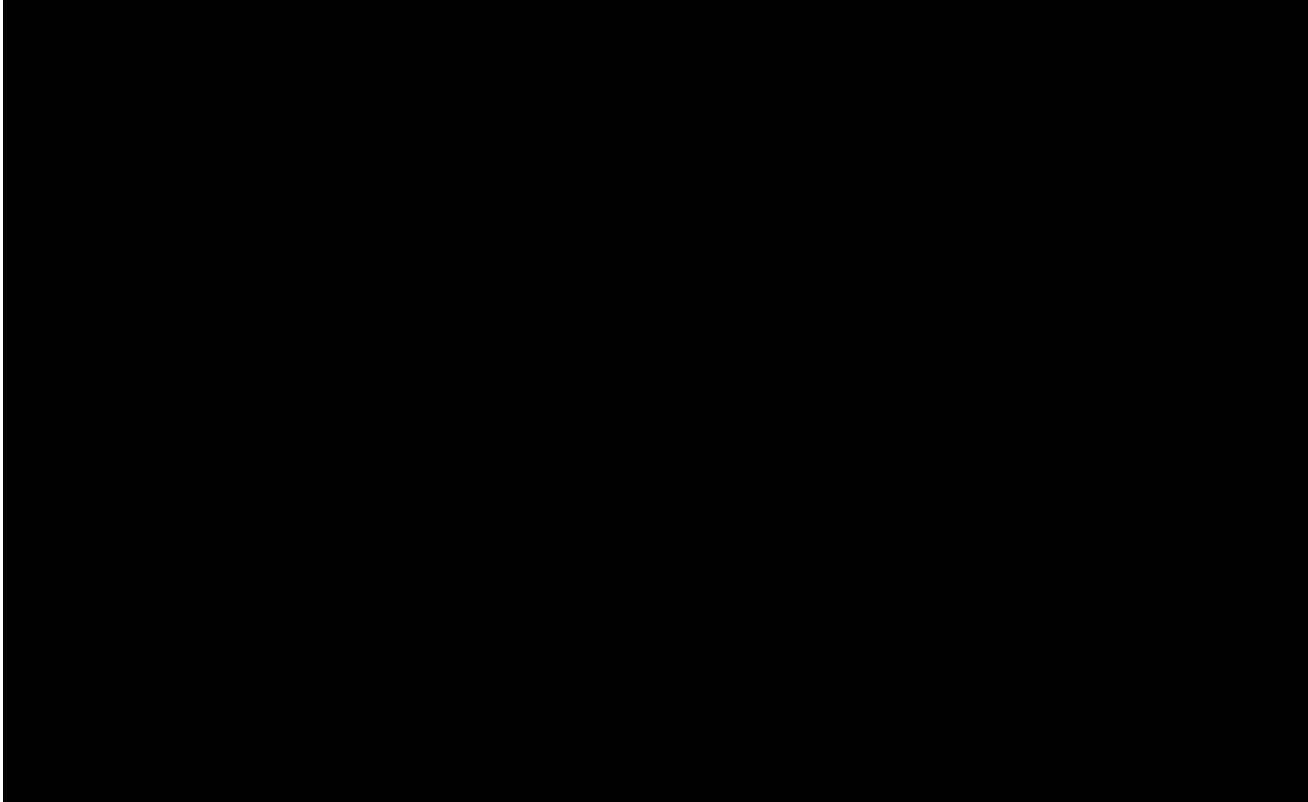
1	Do you have a Safeguarding Policy or statement for safeguarding children? Do you have a Safeguarding Policy or statement for safeguarding adults?	Enclosed YES Enclosed YES
2	For information: our requests for references will include a question relating to your organisation's record for safeguarding.	
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:</p> <p>Shropshire's Safeguarding Children Board (SSCB) http://westmidlands.procedures.org.uk/# and</p> <p>Shropshire Council's approach to adult protection http://keepingadultssafeinshropshire.co.uk/multi-agency-procedures/</p> <p>I certify that We are familiar with and committed to deliver our service in compliance with local safeguarding processes.</p> <p style="text-align: center;"></p> <p>Signed  Status.....Chief Executive... (For and on behalf of Age UK Shropshire Telford & Wrekin.)</p> <p>Date10th December 2018.....</p>	

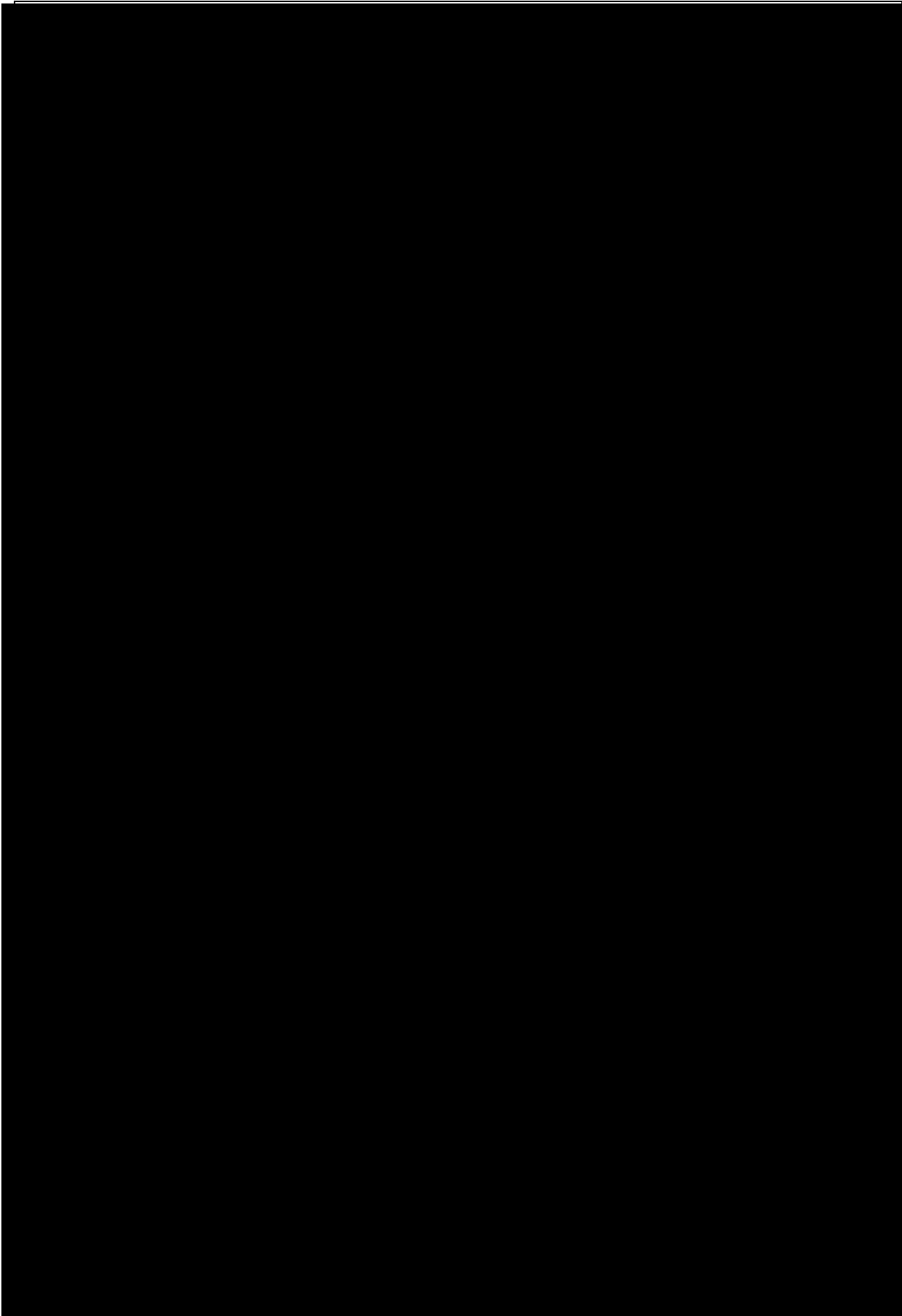
8.6 It is a requirement within the terms and conditions for this Contract that where requested in writing during the term of the Agreement that the Contractor will ensure that an appropriately authorised representative of the Contractor shall attend a Committee meeting of the Council upon being invited to do so by the Council. Please confirm your acceptance of this term by ticking the box below

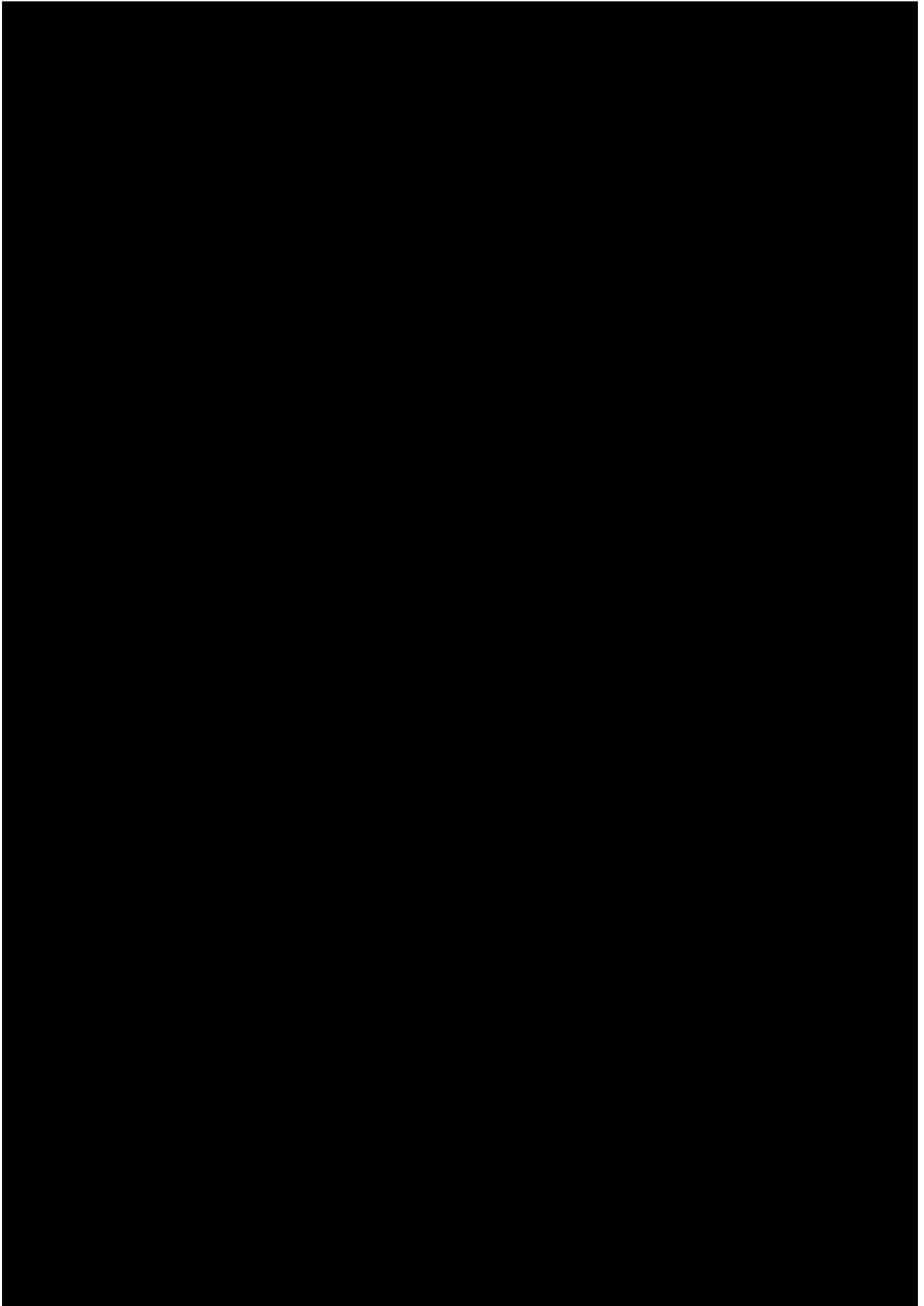
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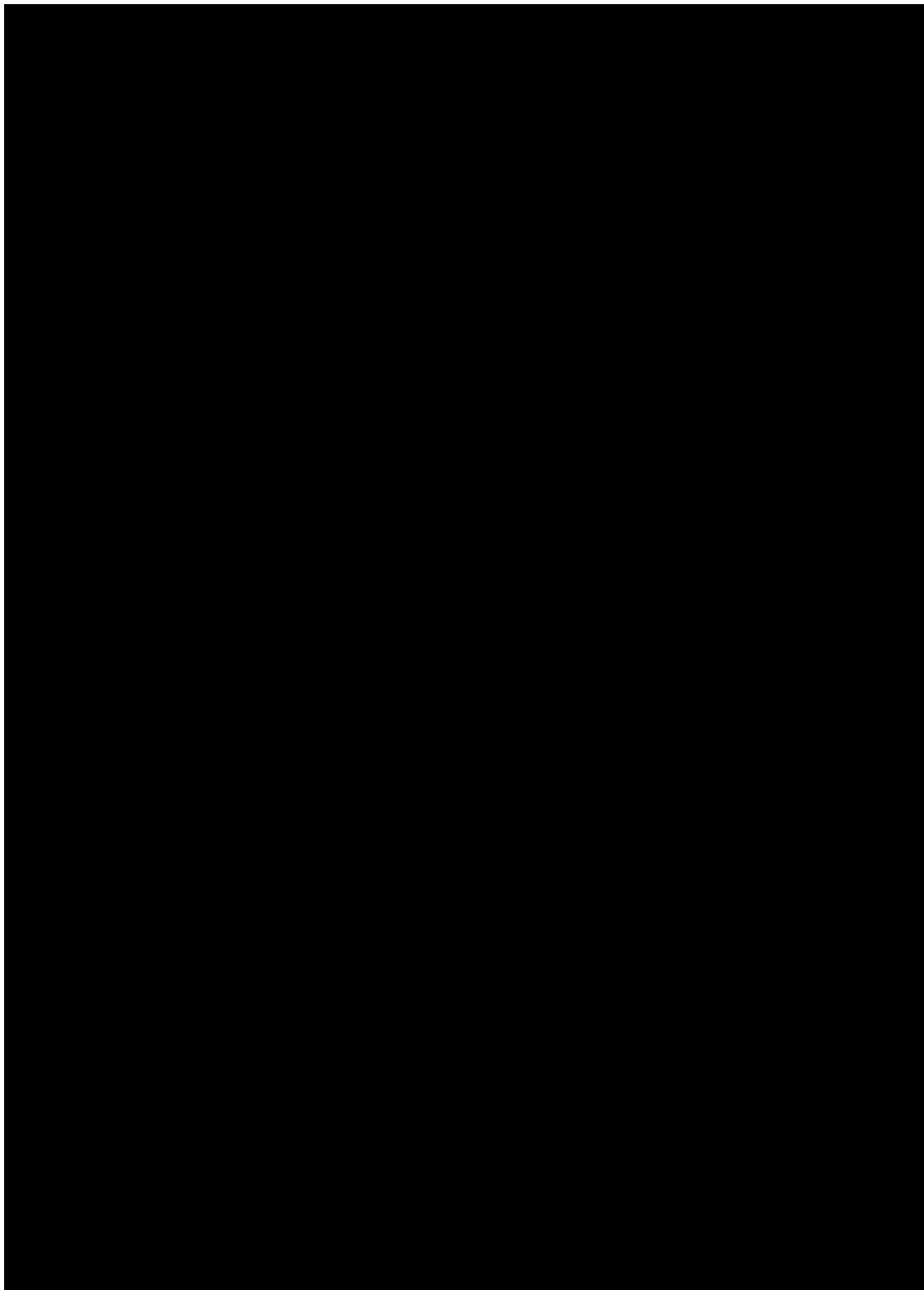
SECTION C – TENDER SCHEDULE

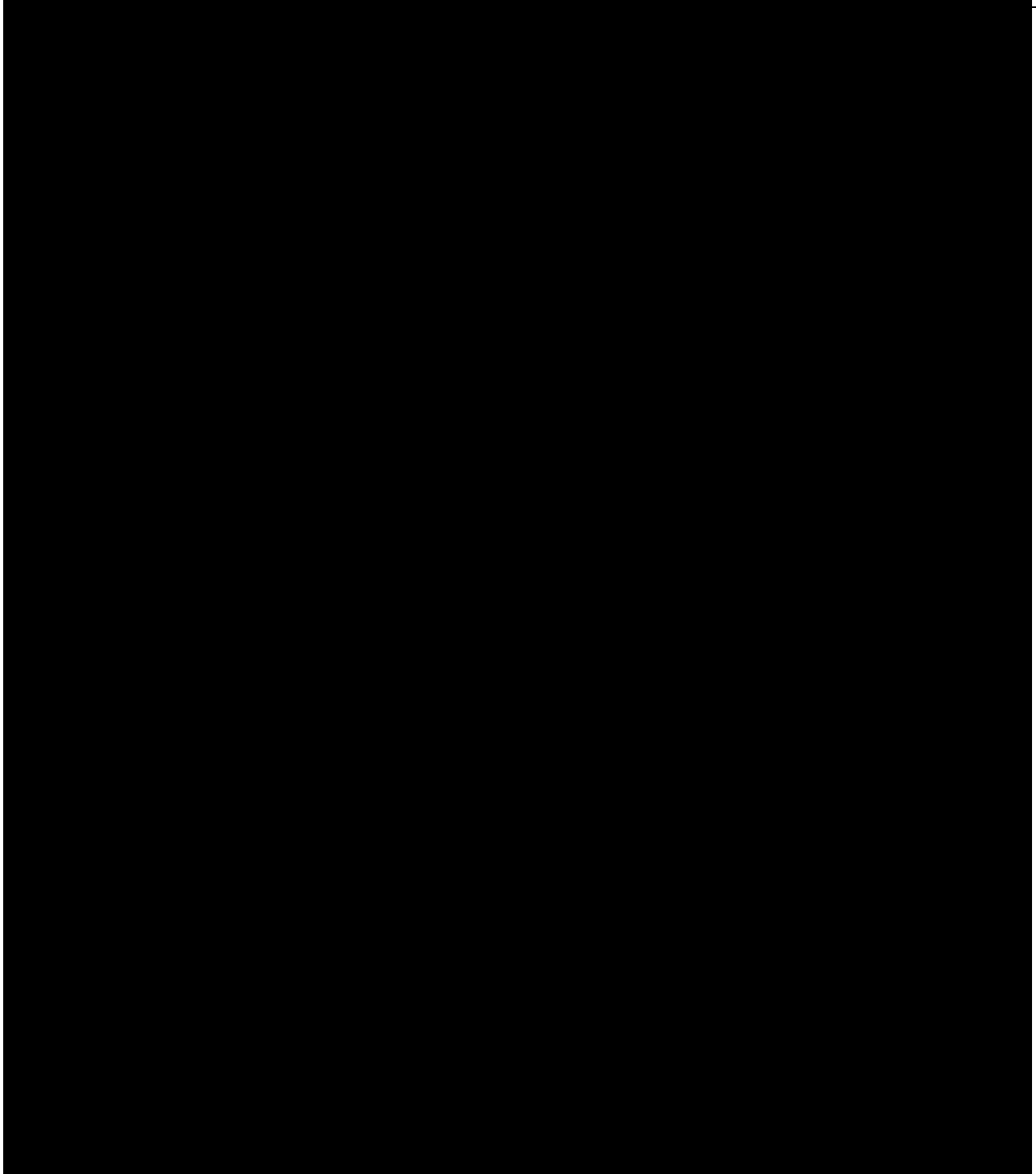
Tender Specification Response		
Please respond to all the following questions and create sufficient space for your responses by expanding the table.		
1.	<p>Describe how you will deliver the service as described in the Service Specification. Your response should make detailed reference to the requirements set out in Sections 2 and 3 of the Service Specification and should include a description of:</p> <ul style="list-style-type: none"> • The delivery structure you plan to use, how it will practically work and operate for the benefit of people who use the service. For clarity, if you plan to use a consortium, lead provider / sub-contract or other partnership structure you should describe how that will operate and which organisations you plan to work with • Your staffing and volunteer structures • How you will ensure there is sufficient capacity and expertise within your organisation to deliver the Services and range of outcomes described in the specification • Your proposed working relationship with Shropshire Council’s Adult Services and other key stakeholders • How you plan to administer the small grants process after year 1 of the contract • How you will use your resources in a flexible way to respond to changing demand • How you will identify customer issues and ensure support is delivered by the right organisation • If applicable, the support given to consortium / partnership members and what this support would entail 	20% / 200 marks



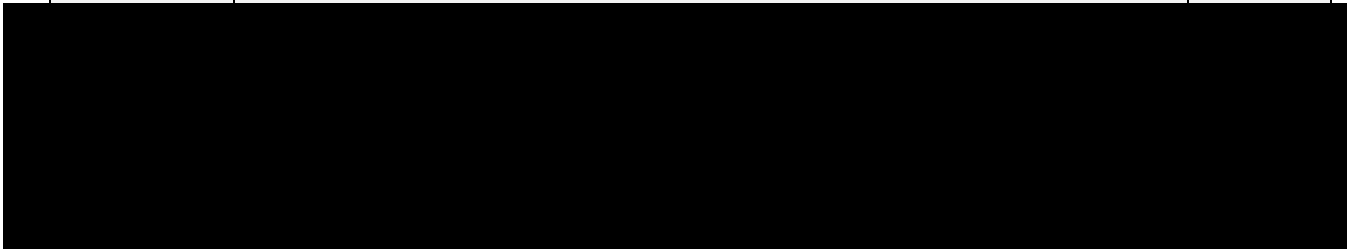


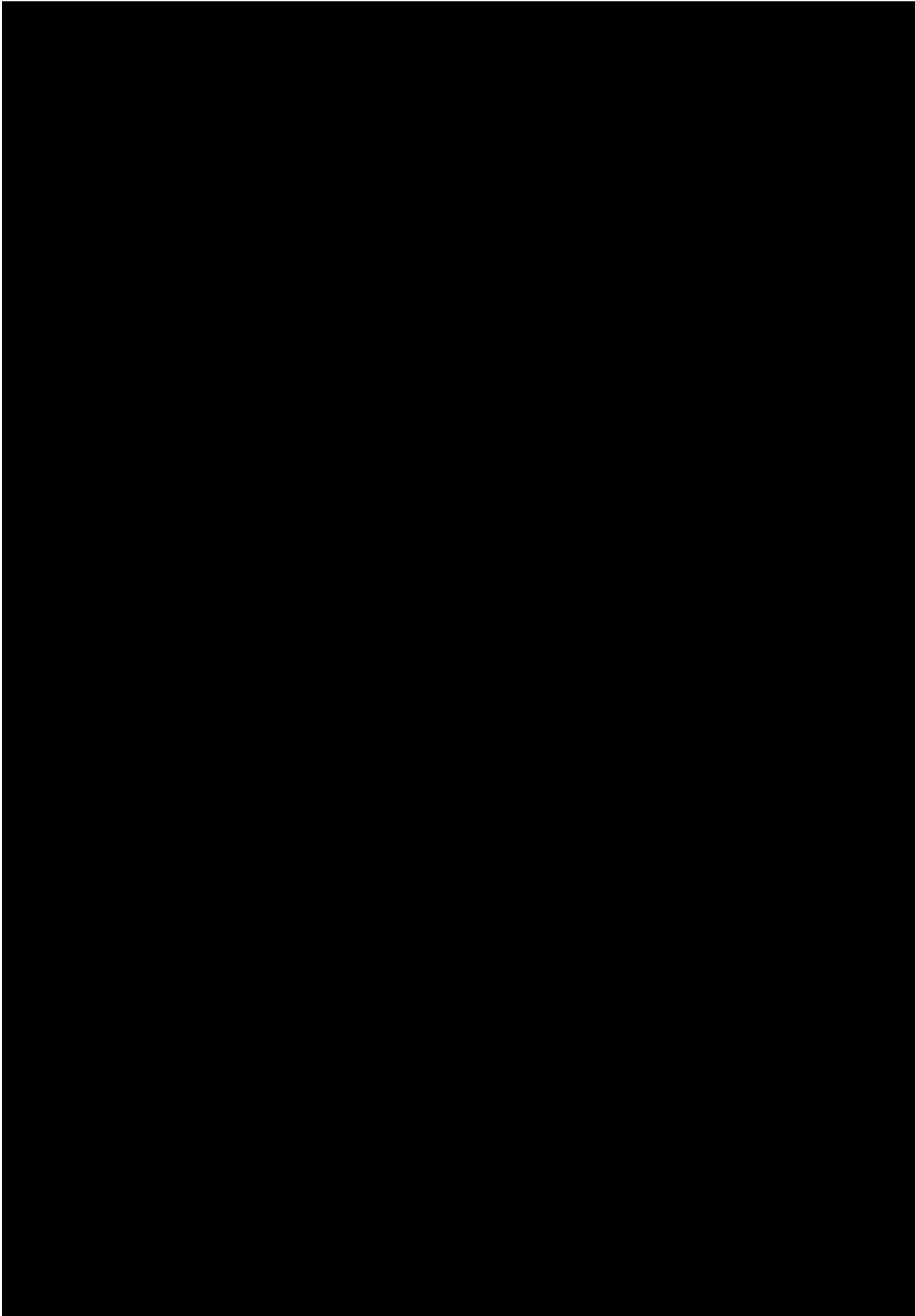


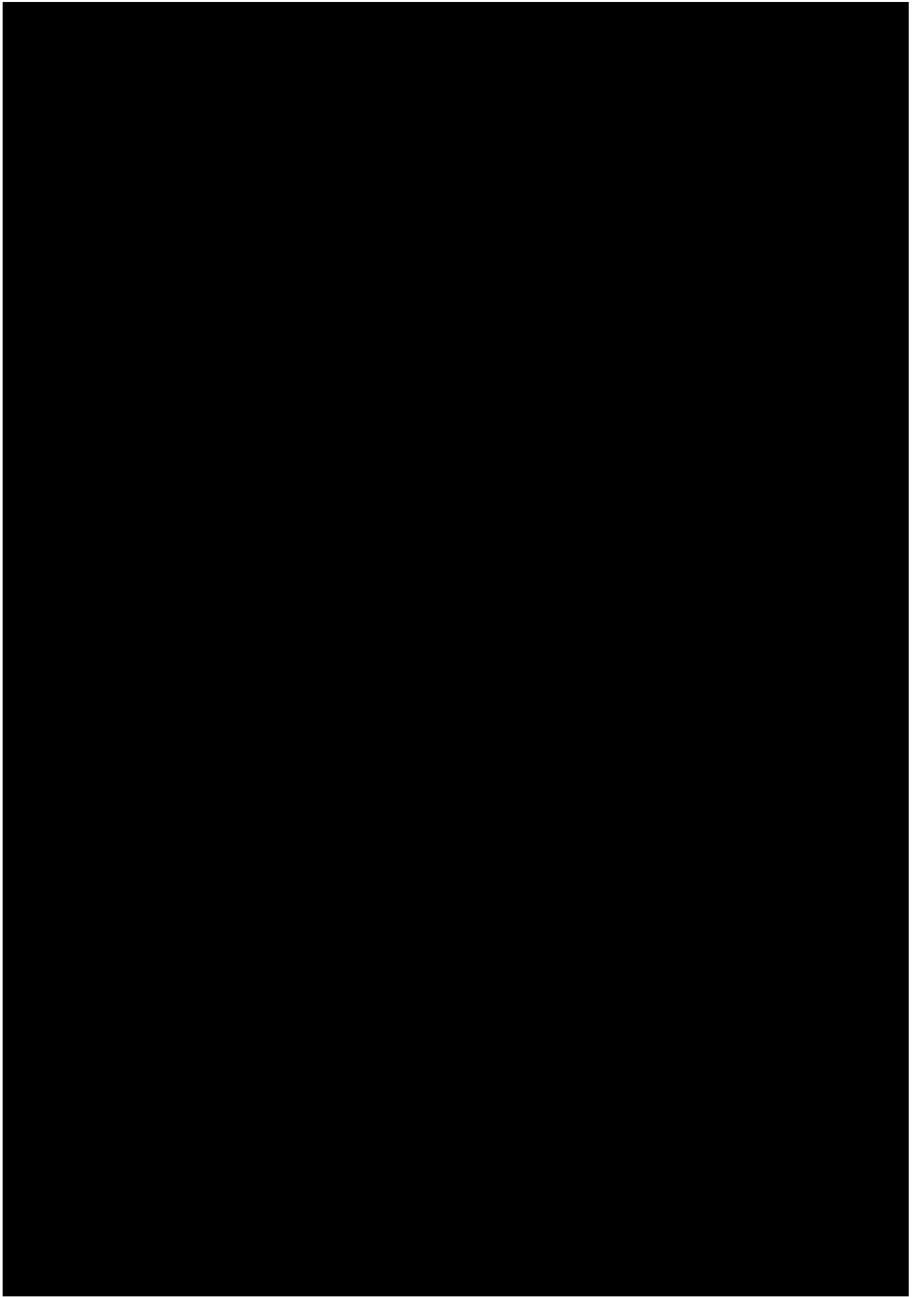


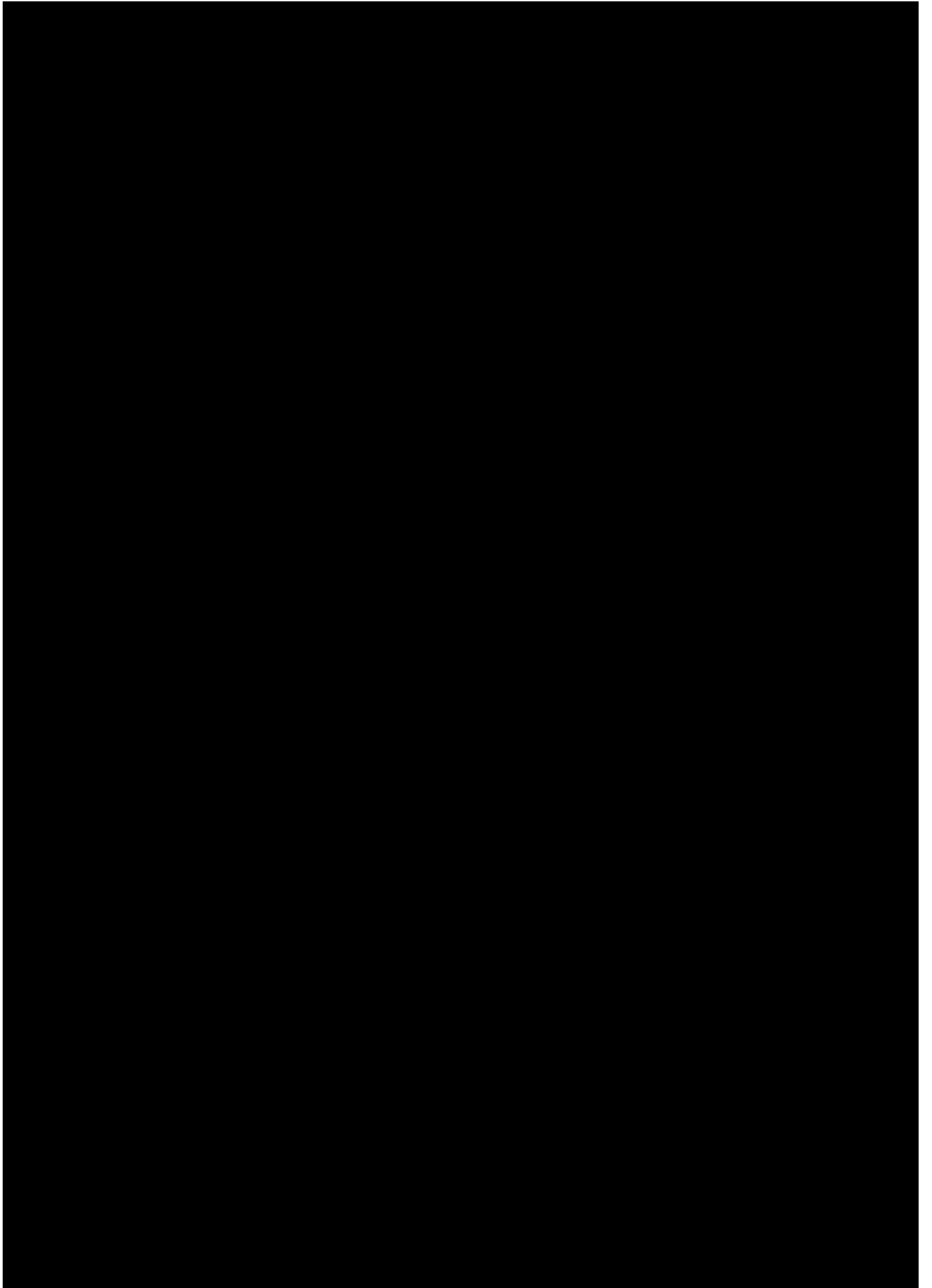


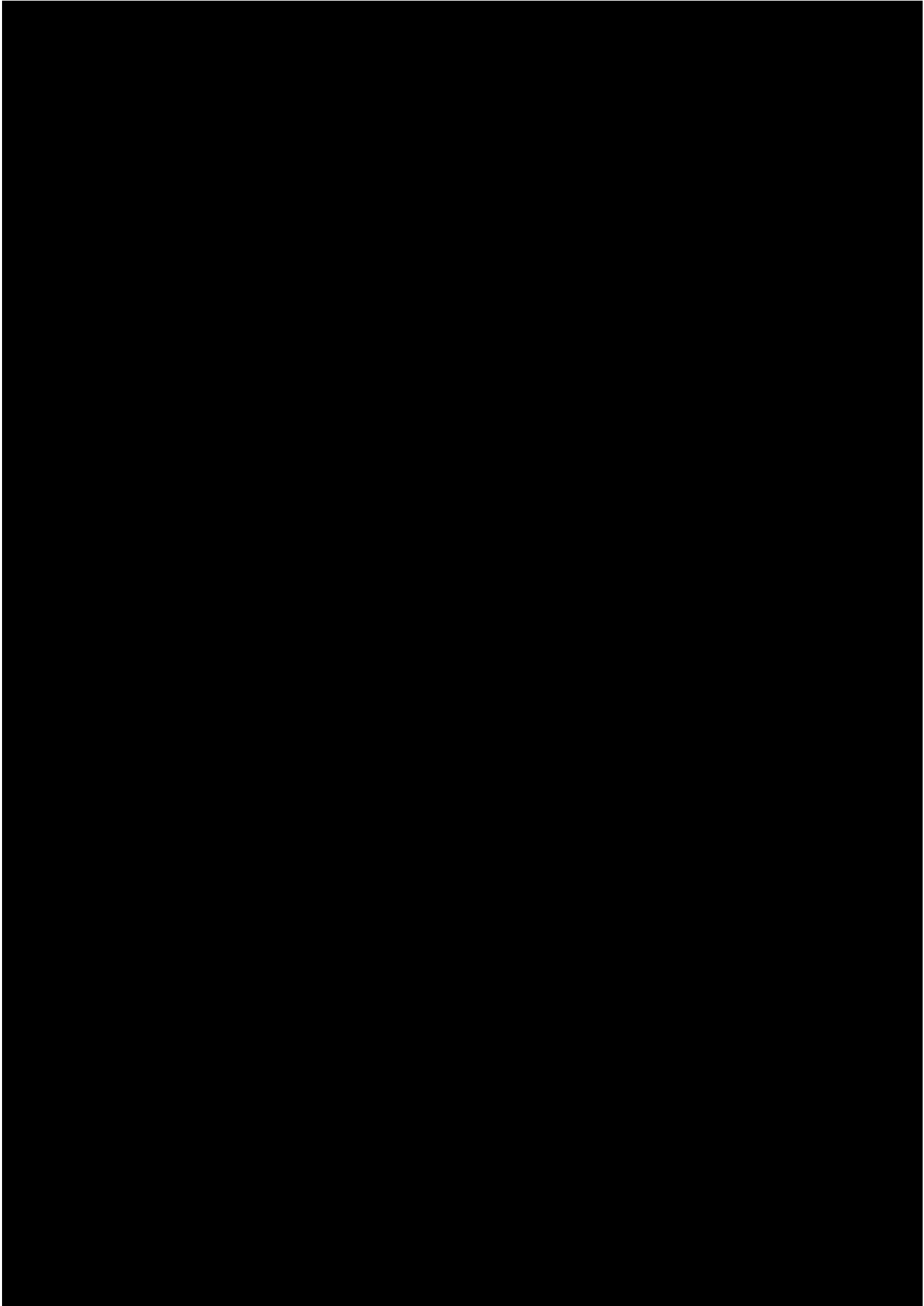
2.	Describe the range of provision / services you will deliver to achieve the outcomes. How will you use all your resources to add value to the contractual payments?	10% / 100 marks
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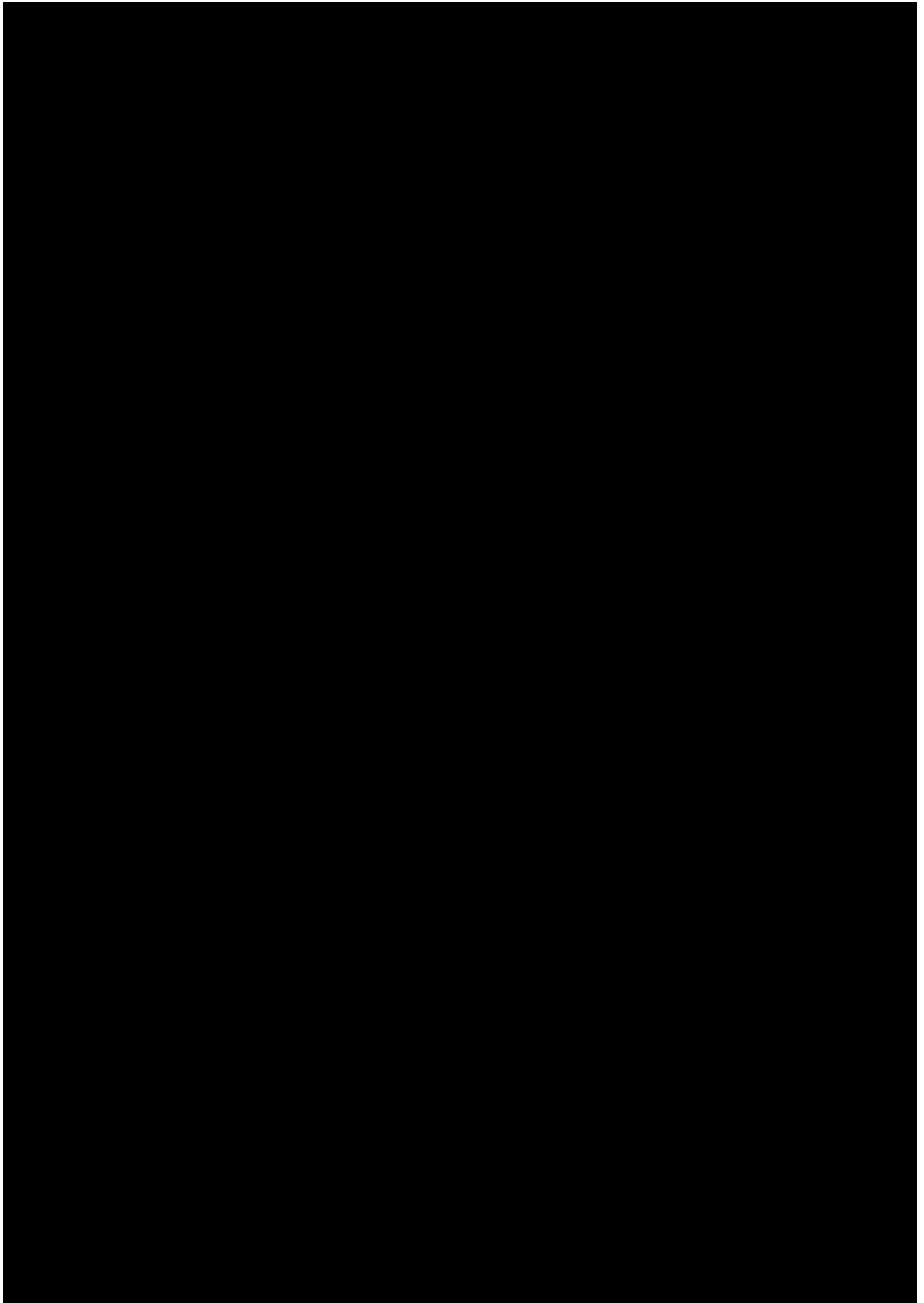


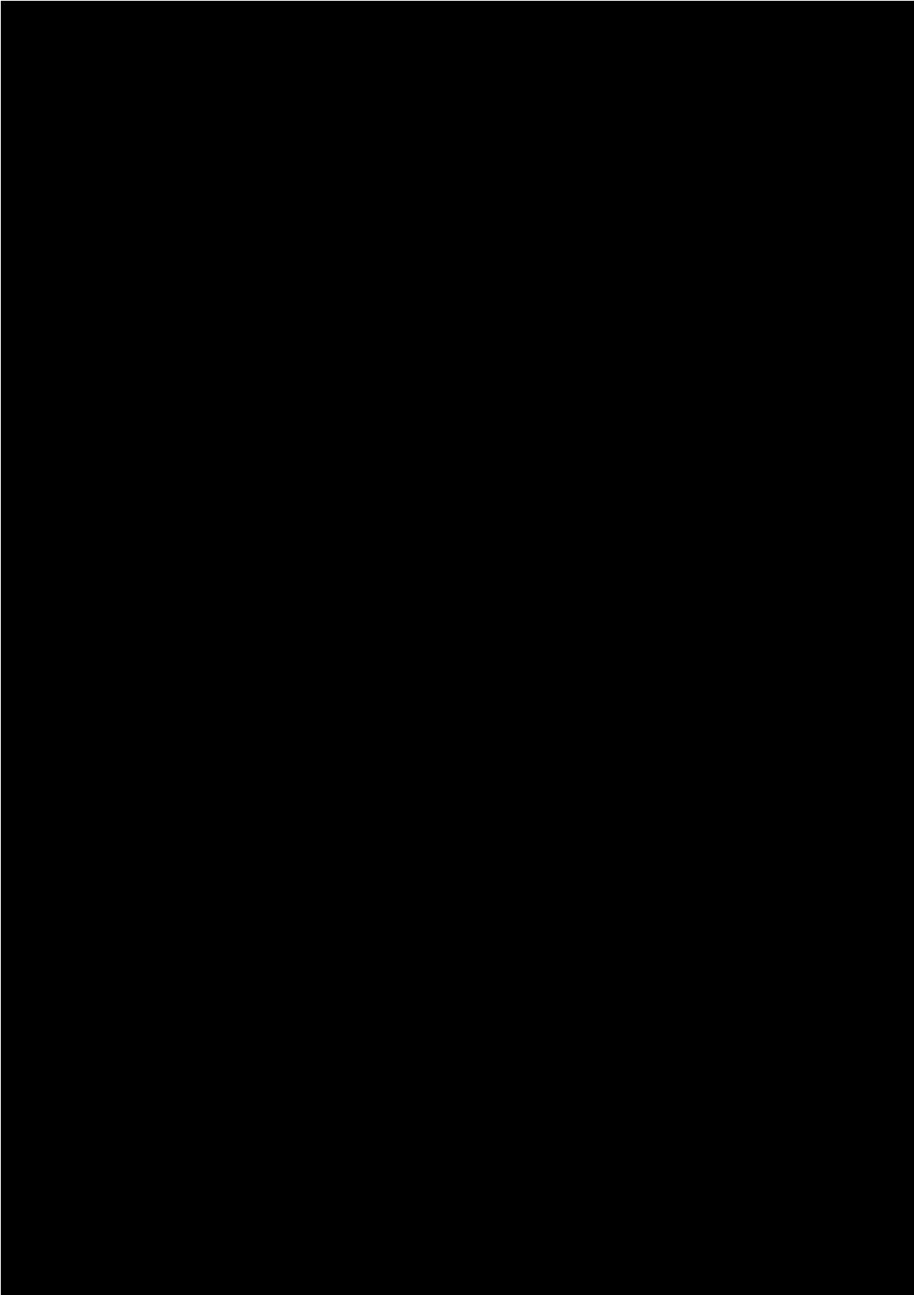


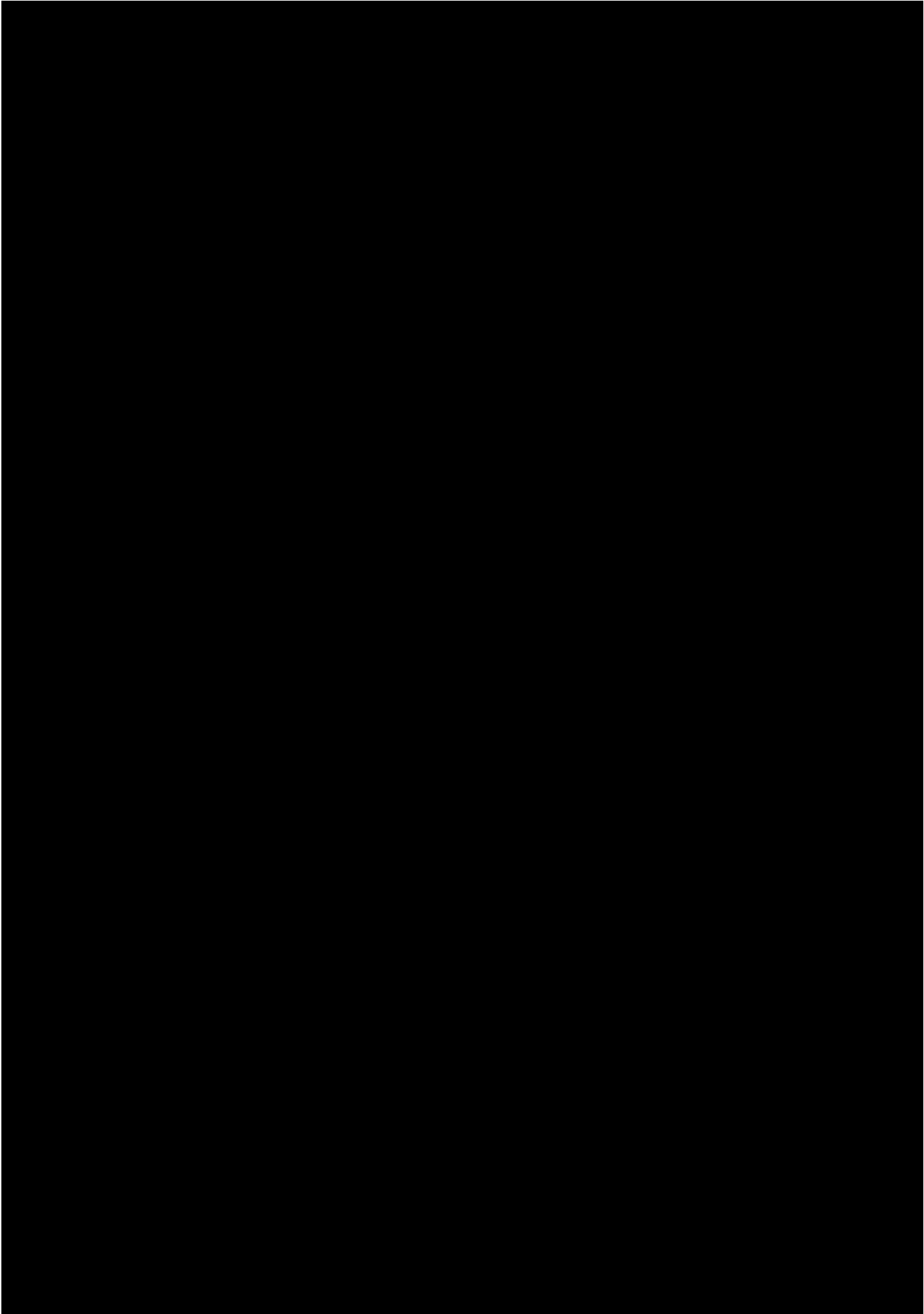


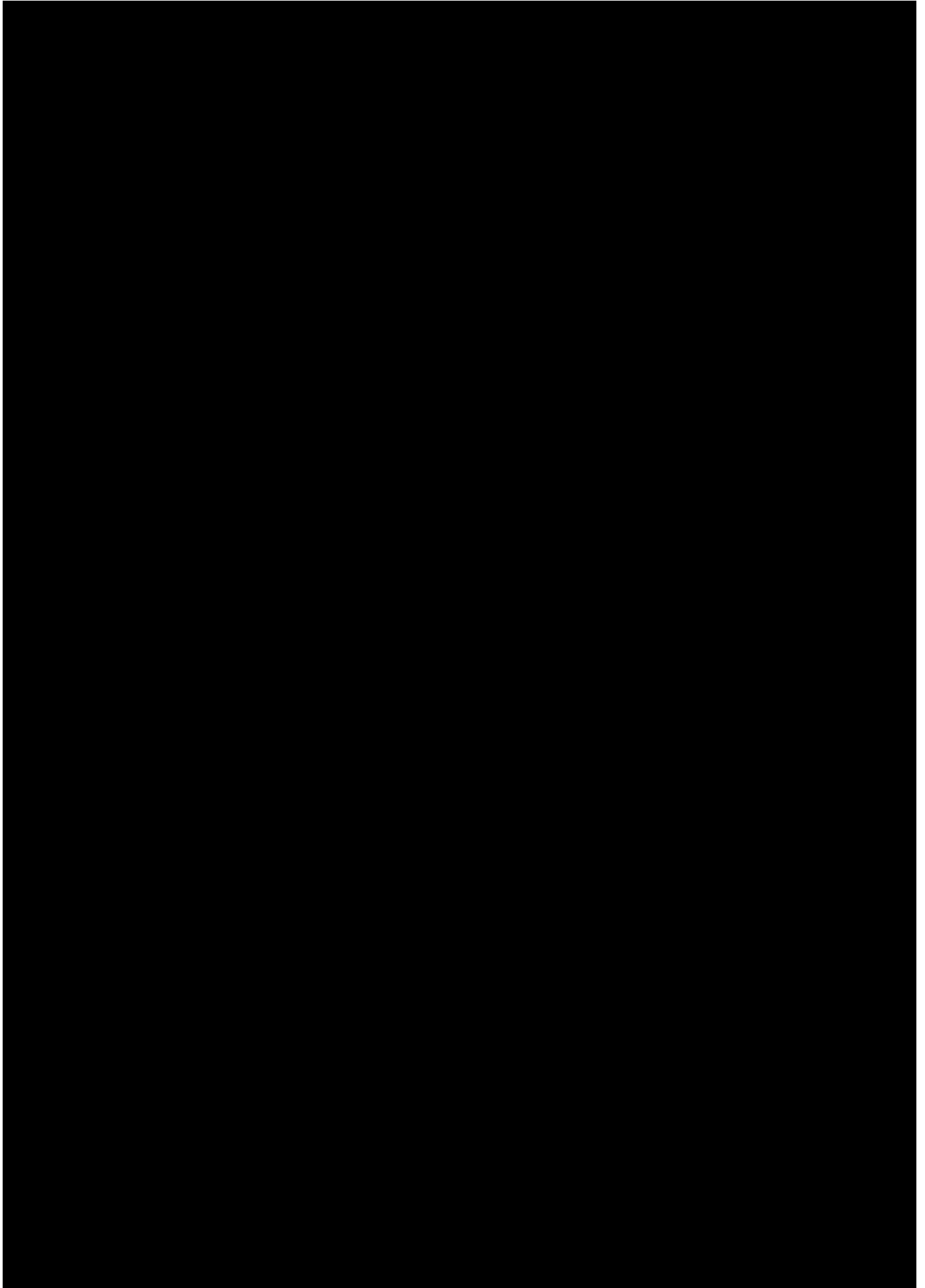


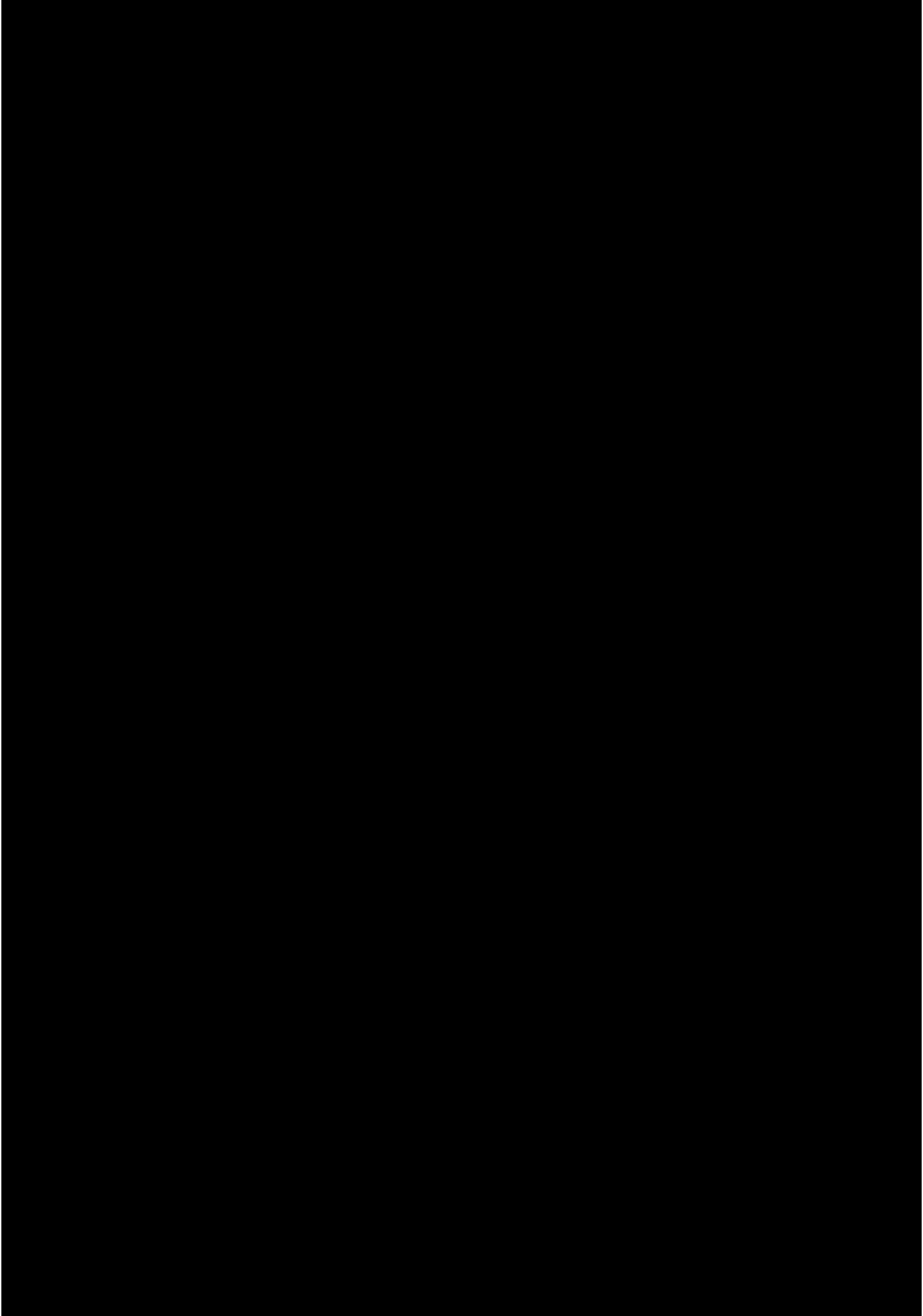


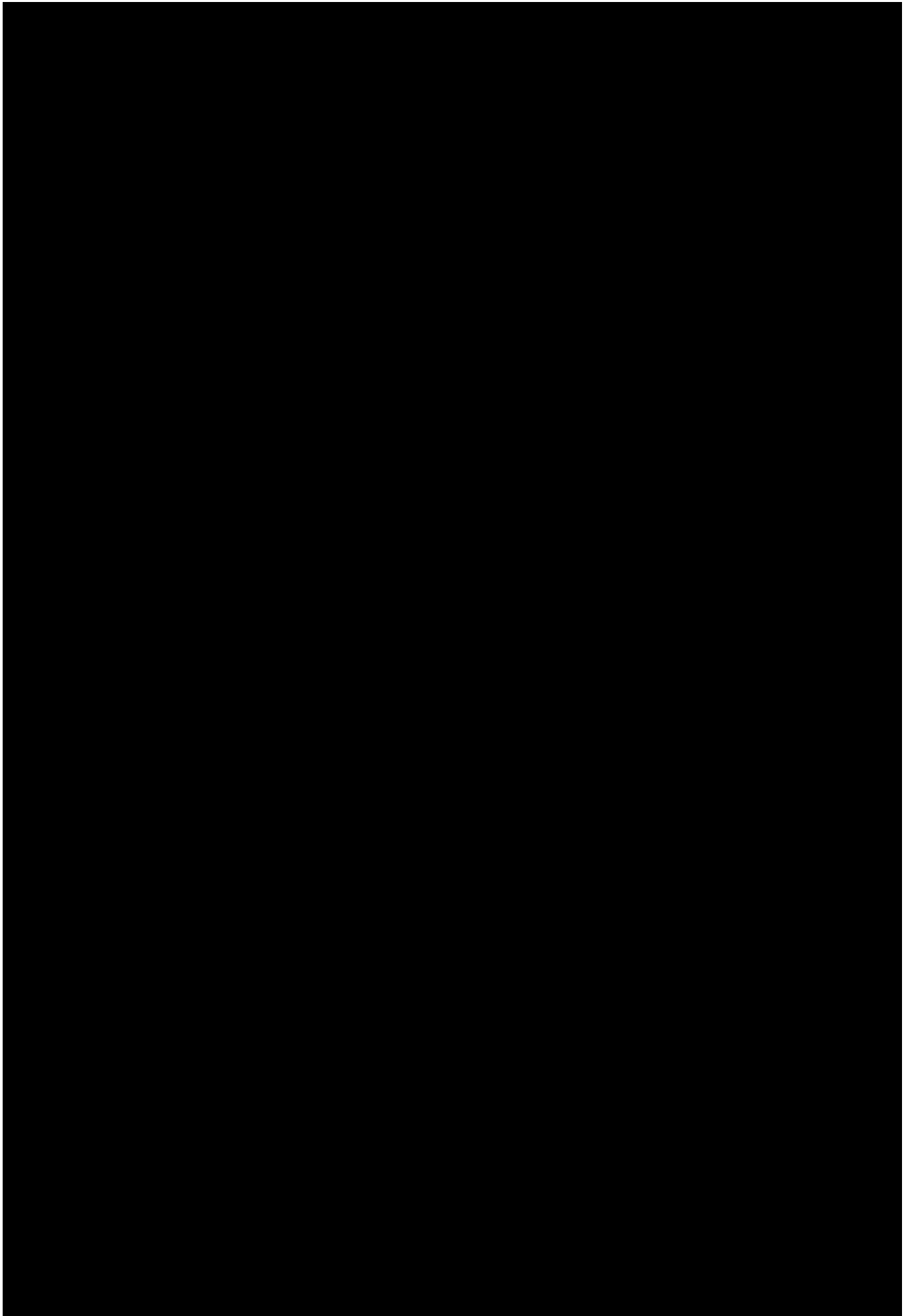


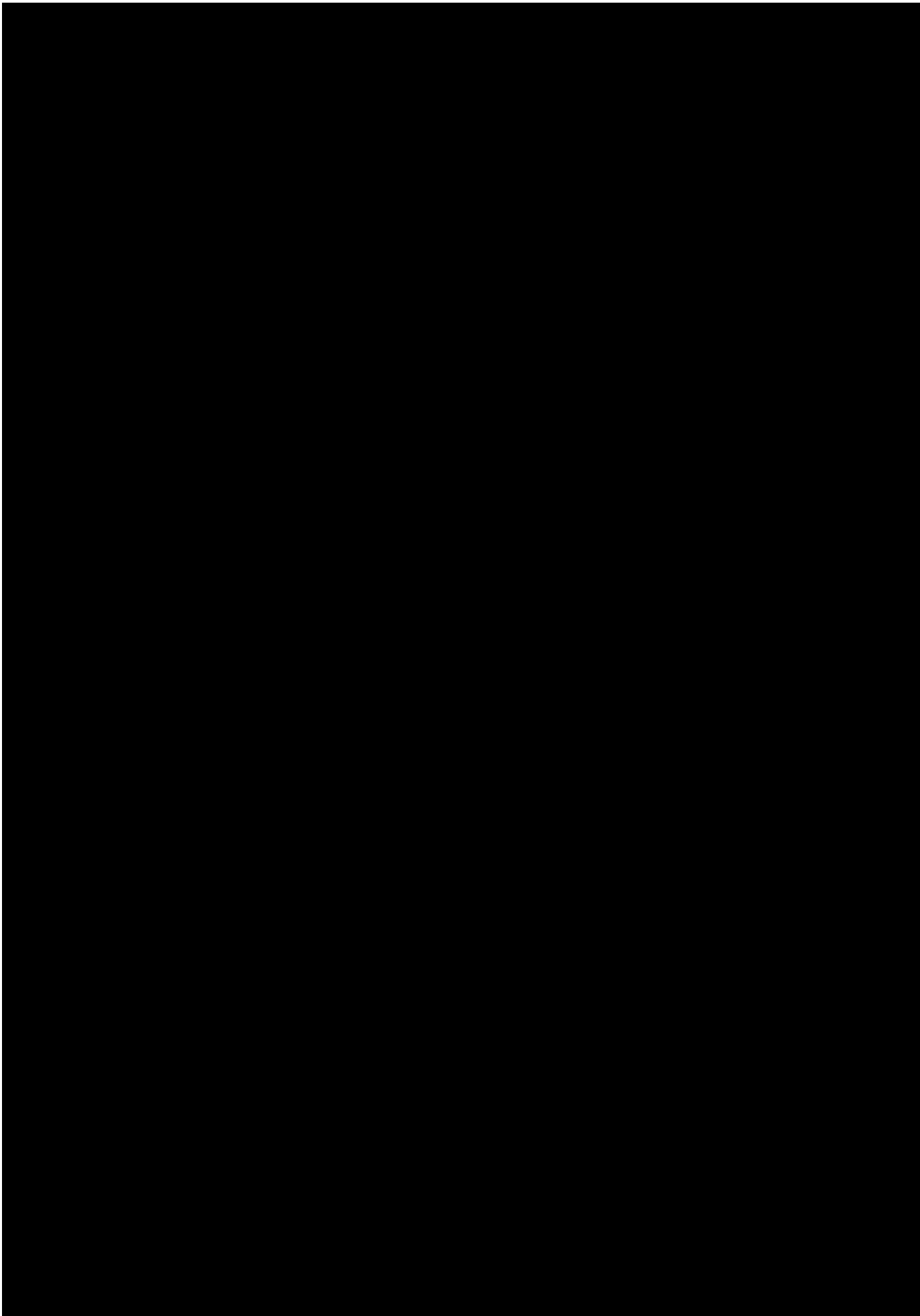








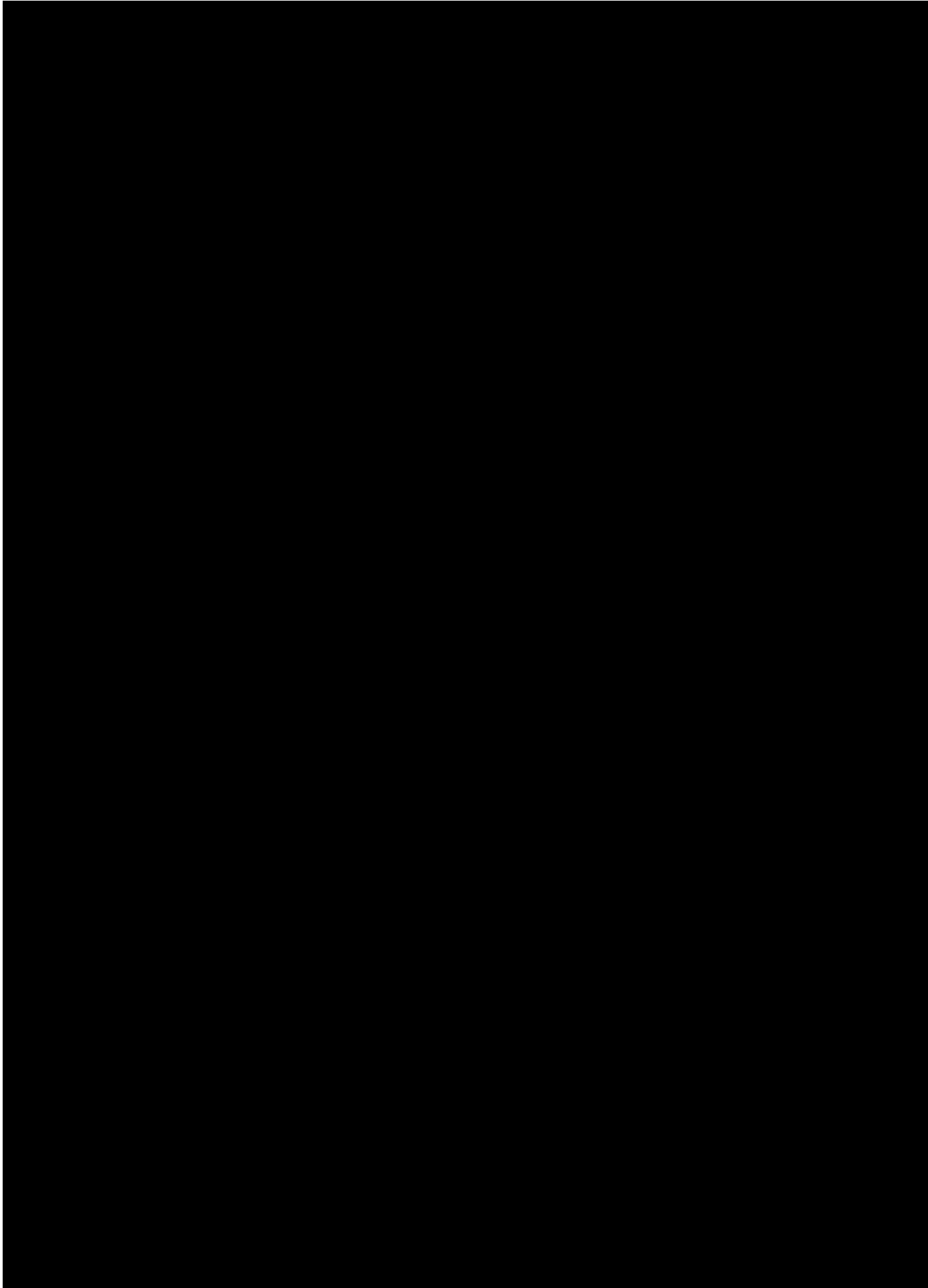




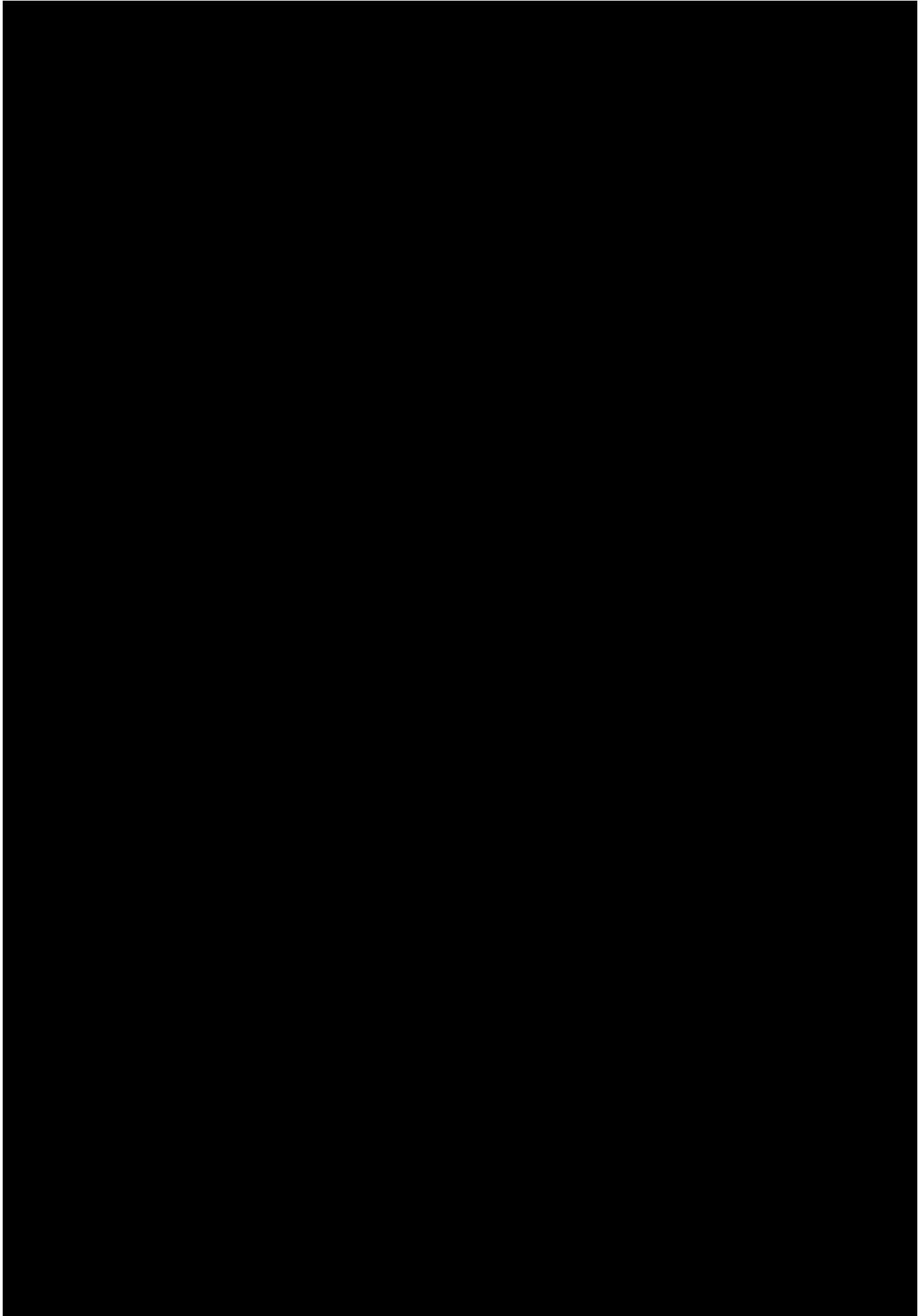
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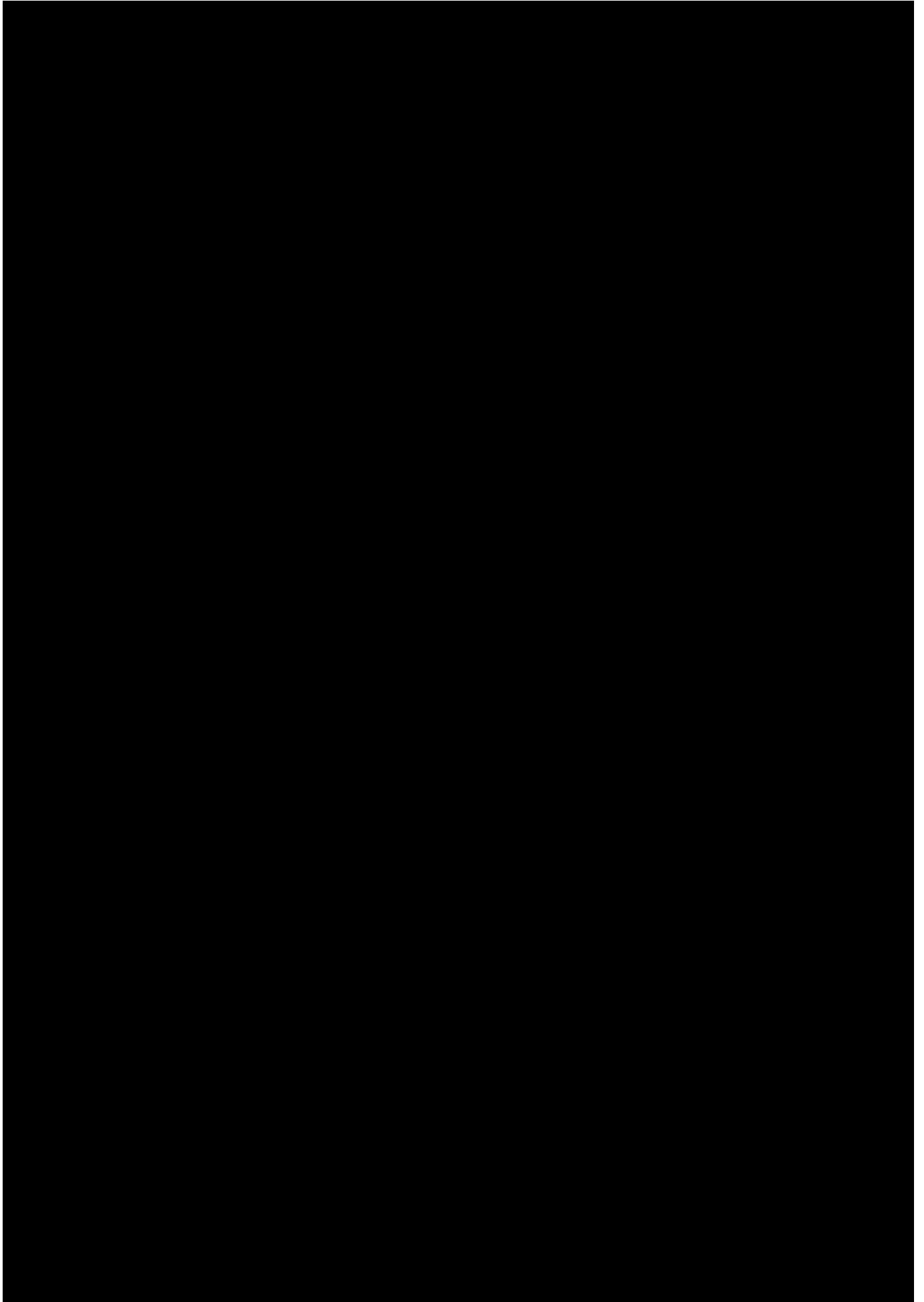
3.	It is important for the sustainability of the Service that the Provider is able to maximise income from alternative funding streams and income generation. Please describe how you will achieve this, giving examples of how you have done this before.	10% / 100 marks
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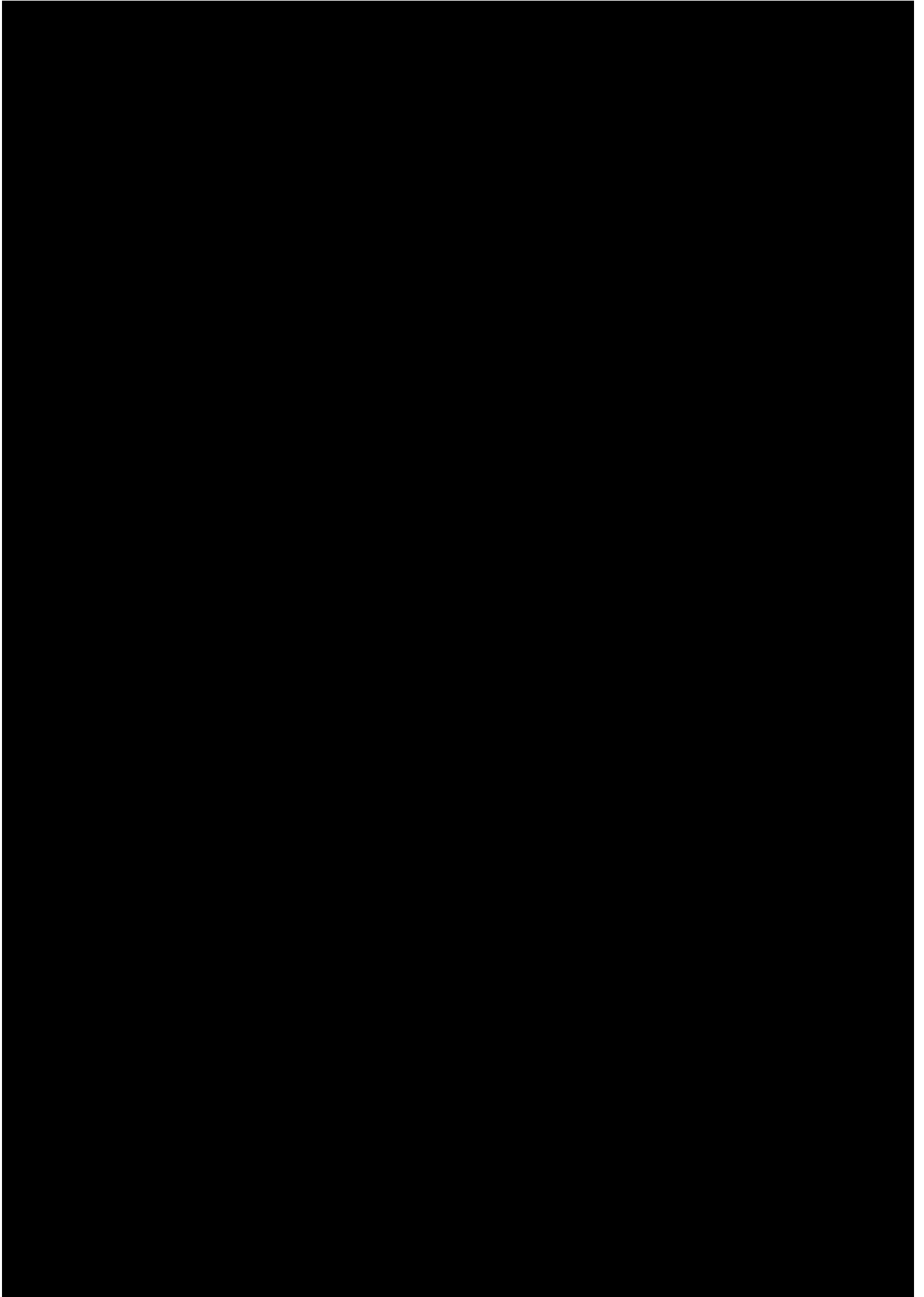
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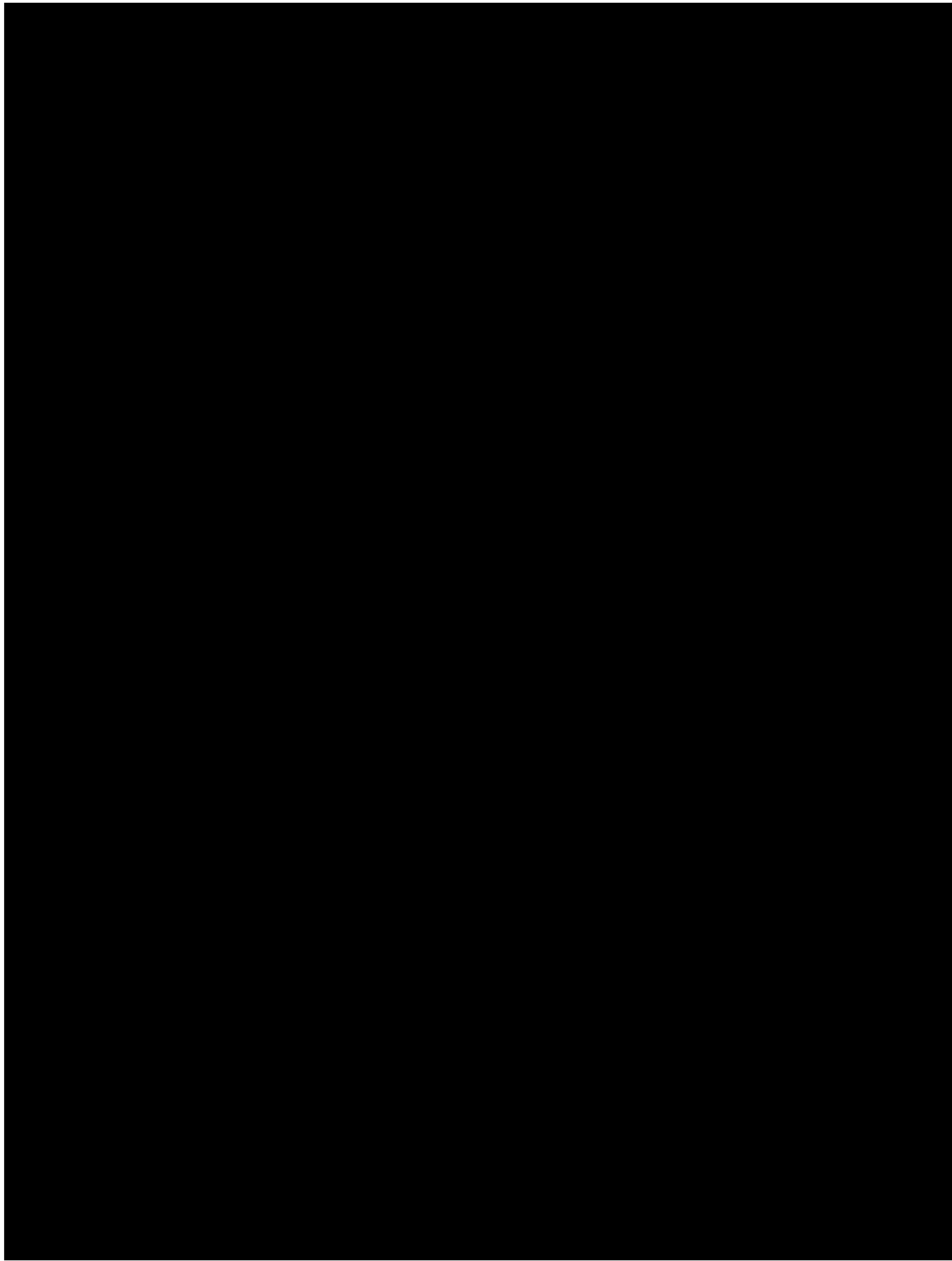






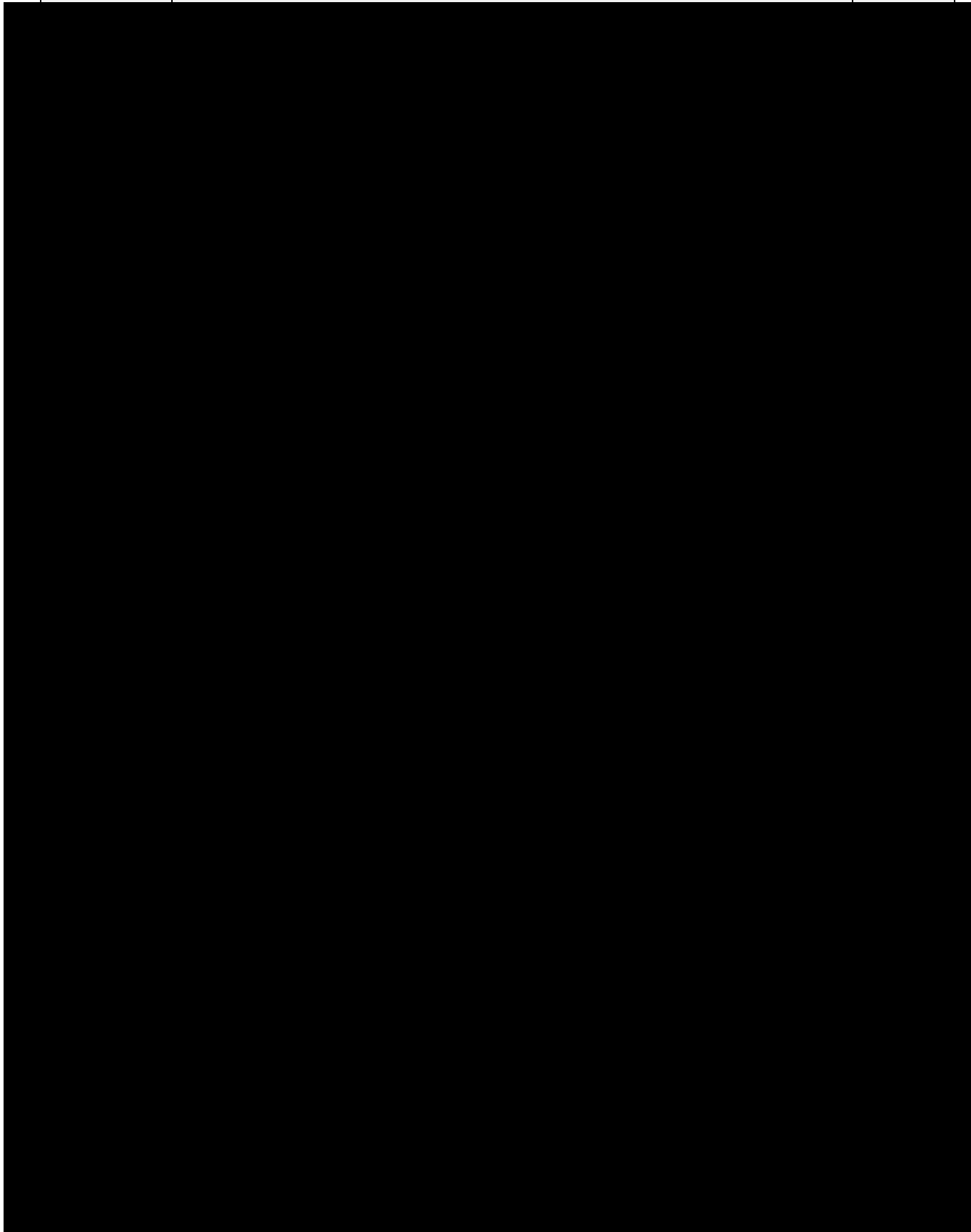


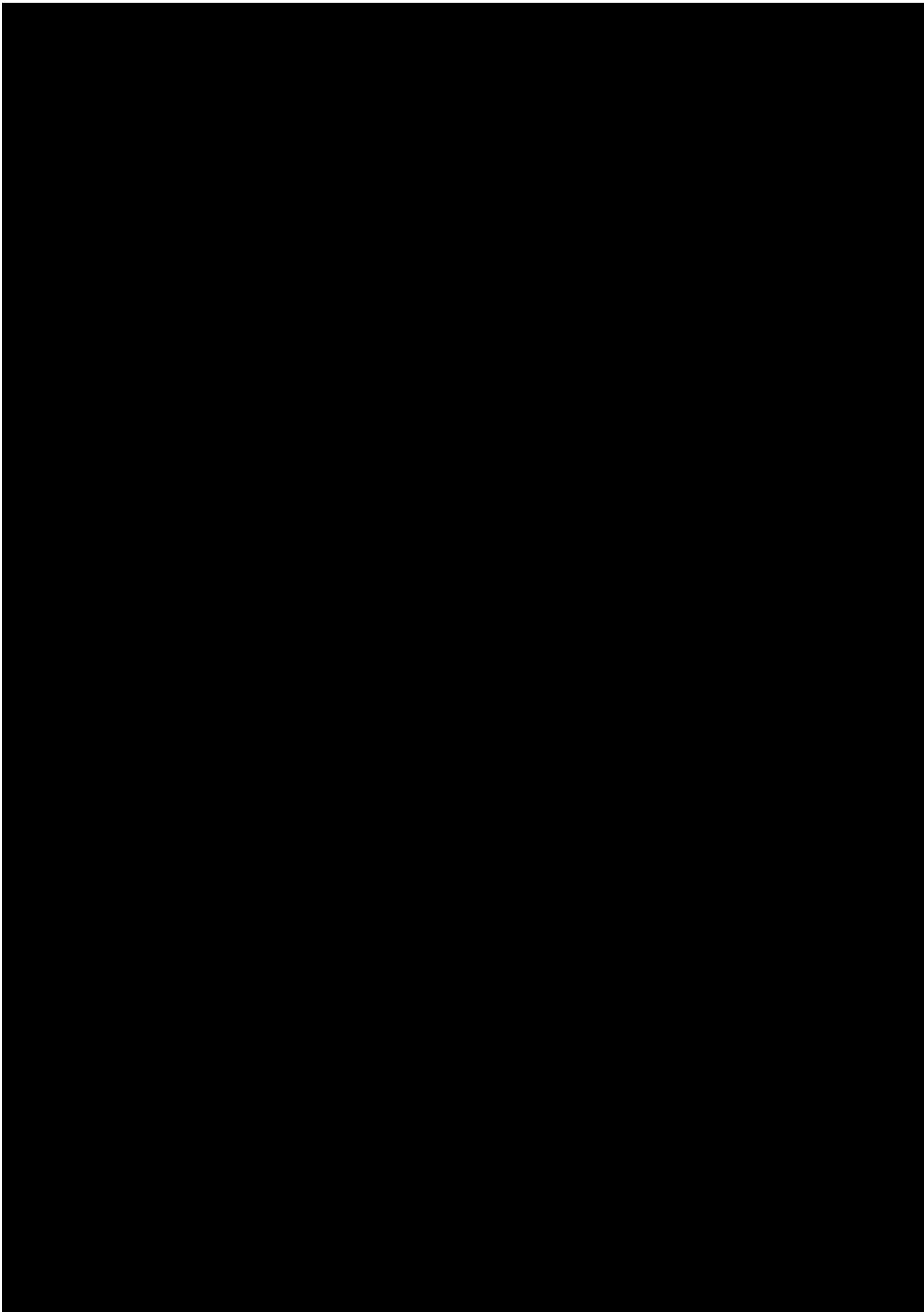




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6.	How will you assure quality across the Service? You should include reference to any proposed engagement with people who use services and with stakeholders and why you think they would view your Service as good quality. Please give examples of where you have used this approach successfully	10% / 100 marks
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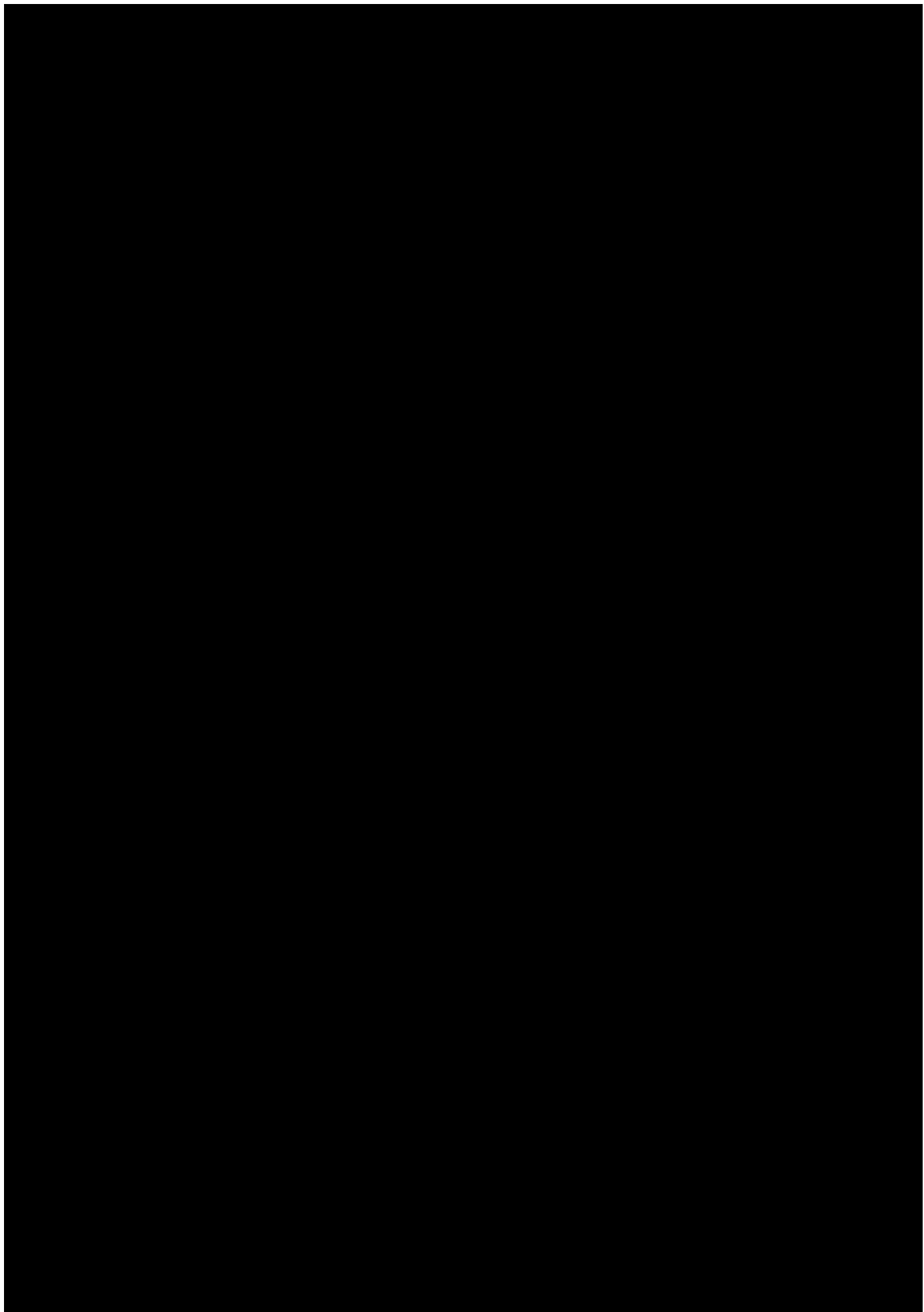
7.	How will you use feedback from people who use the Service and from other stakeholders to inform ongoing development of the service? Please give examples where you have done this before	10% / 100 marks
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- [Redacted text]

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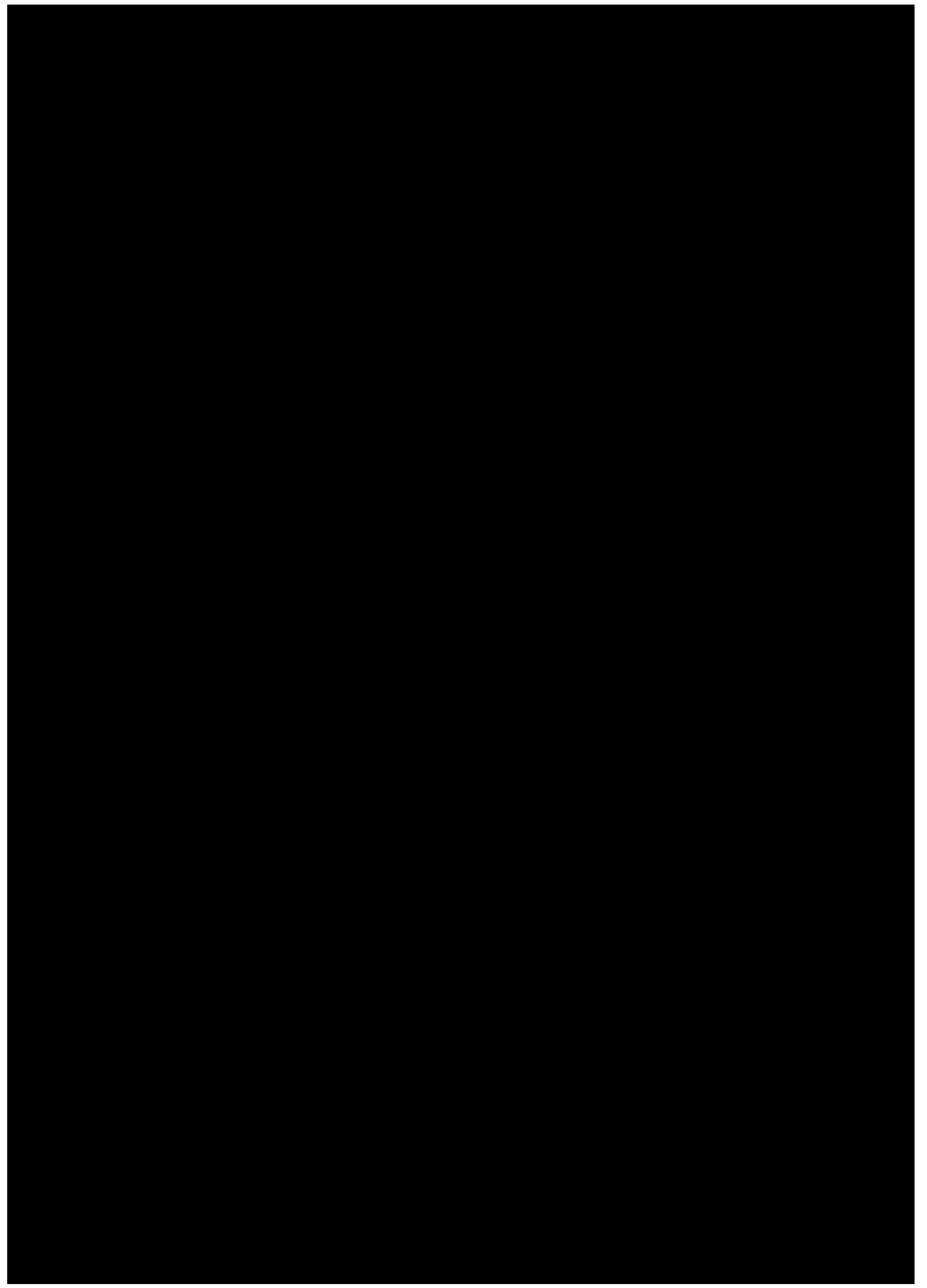
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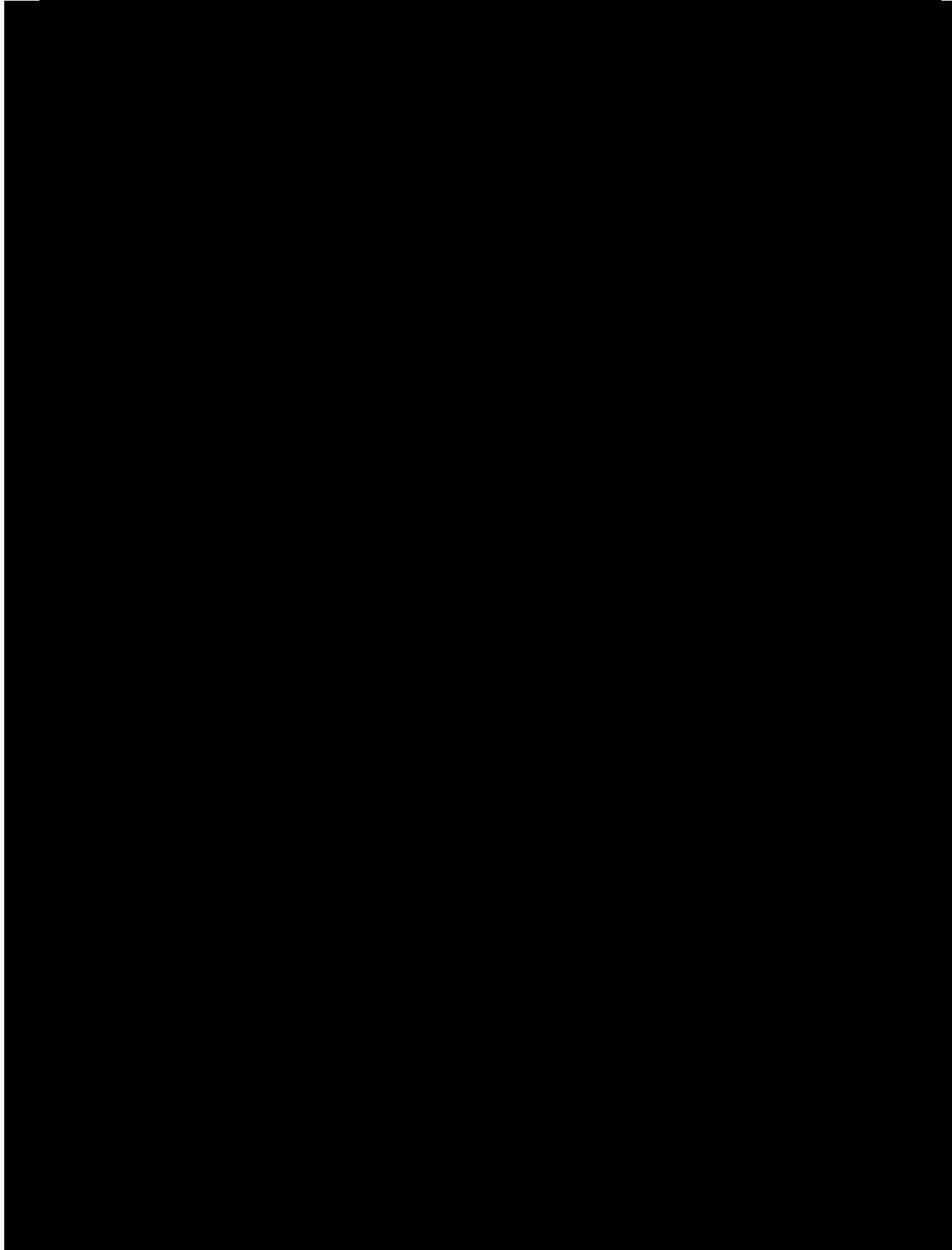
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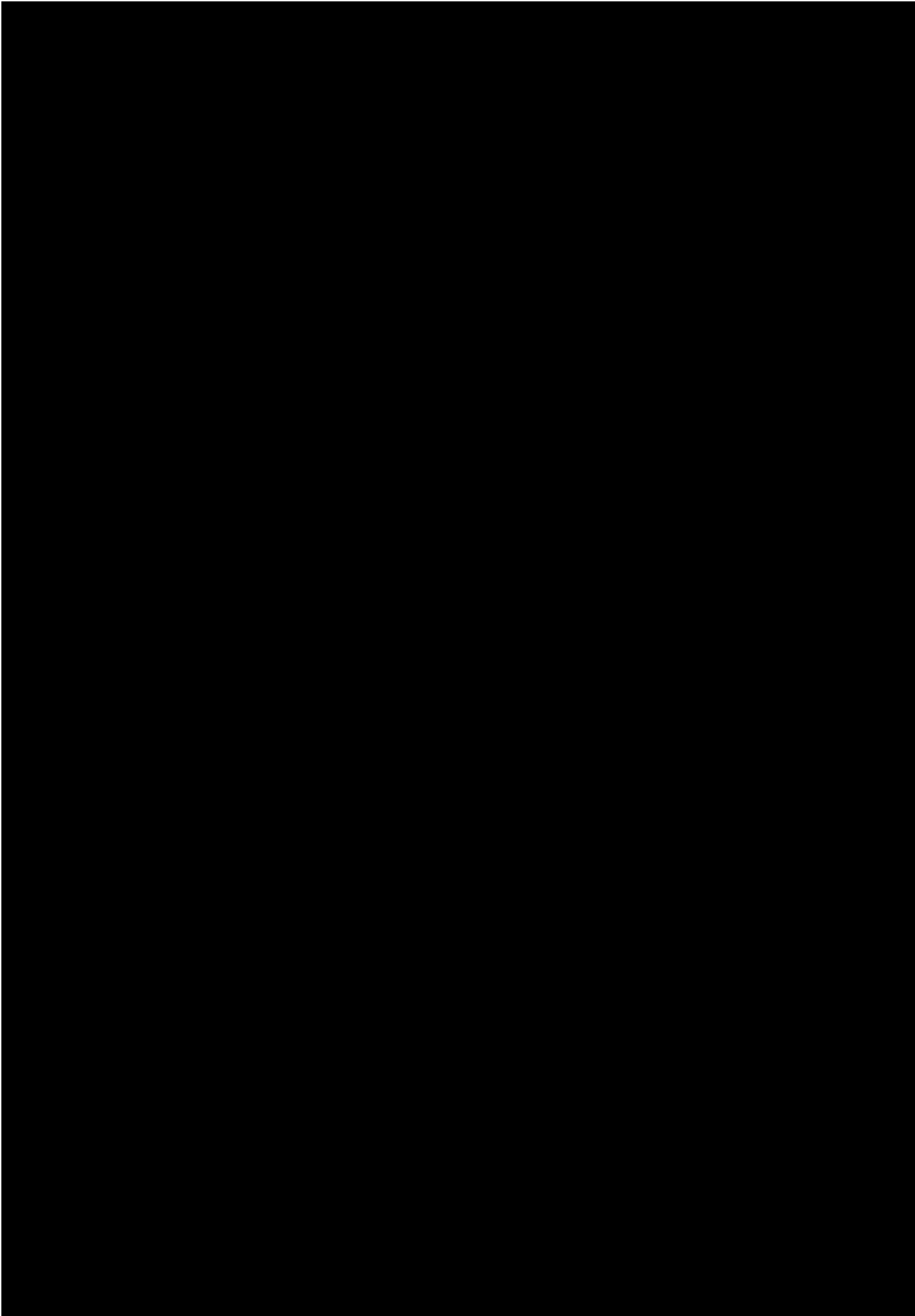
8.	The successful tenderer will develop, with the Council, a methodology for evaluating the extent to which the outcomes set out in the Specification are being achieved. Please describe, with examples, any existing evaluation tools you use, or plan to use, to contribute to this. Tools may be established, validated evaluation tools or self-developed, but must be robust.	5% / 50 marks
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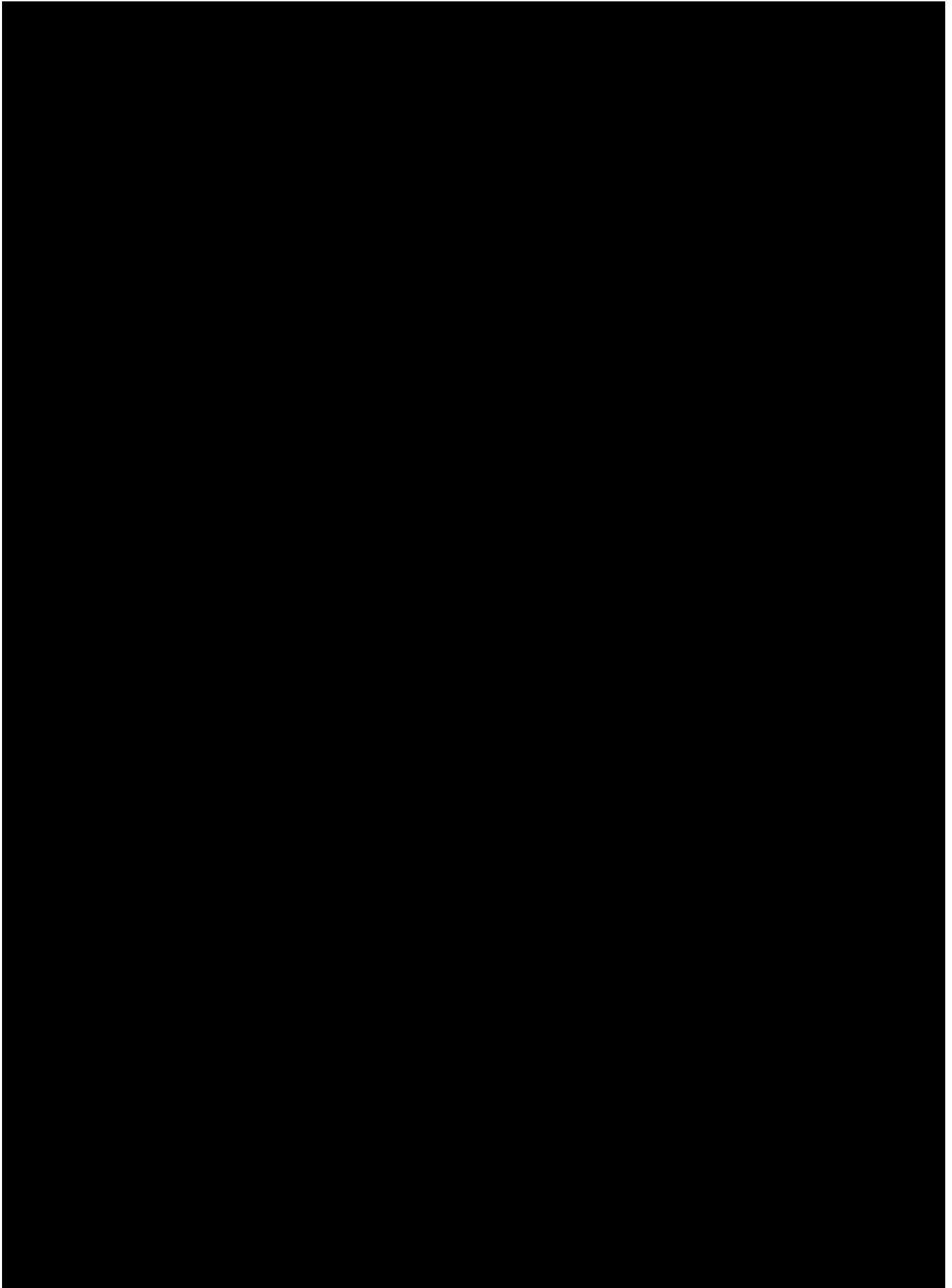
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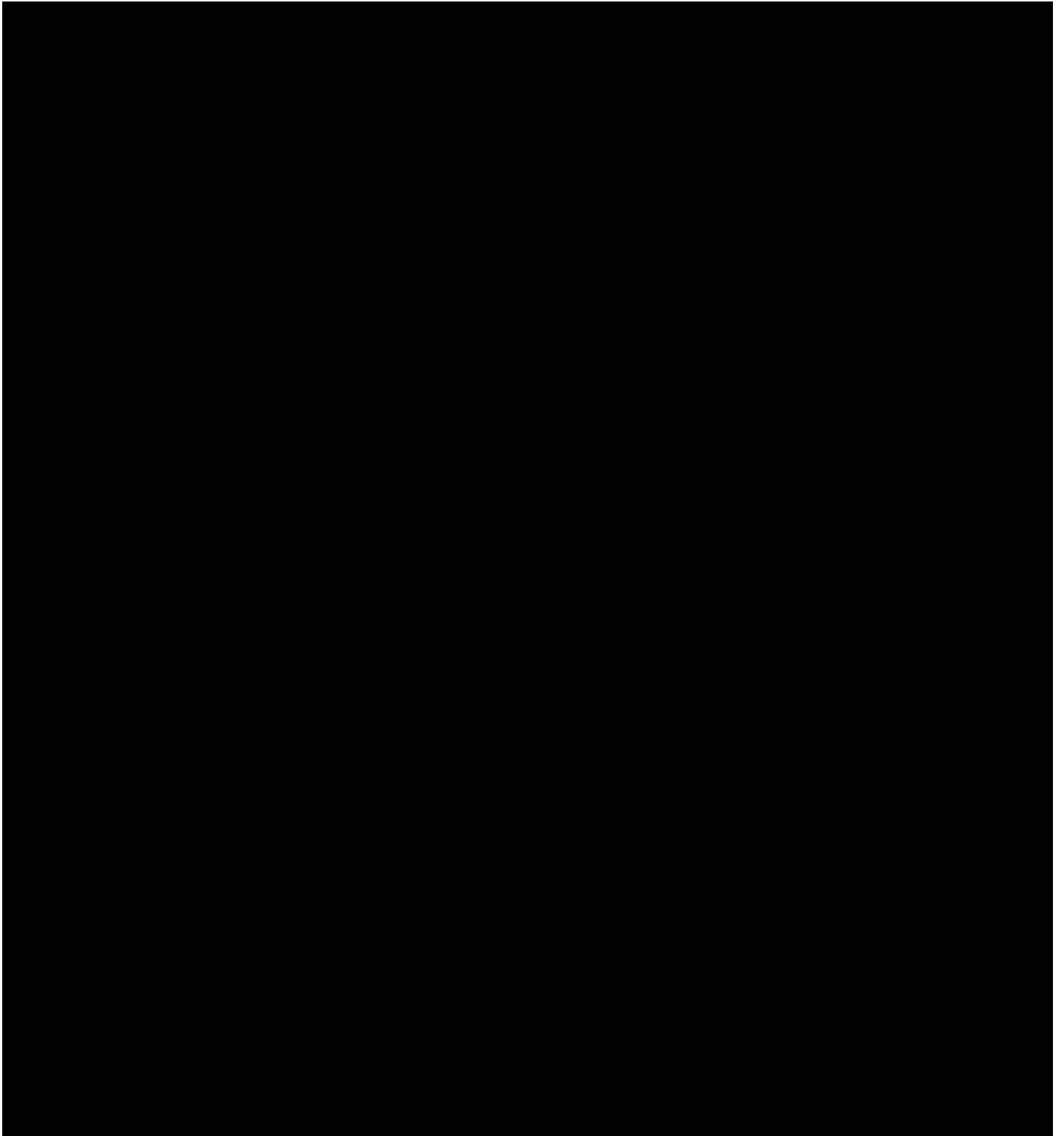


9.	Describe your approach to generating Social Value in accordance with section 12 of the Specification. Please provide examples of previous success or good practice to support your response	10% / 100 marks
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personal & commercial info

Age UK, Shropshire, Telford and Wrekin
 3 Mardol Gardens
 Shrewsbury
 SY1 1PR
 FAO [REDACTED]

Shropshire Council
 Shirehall
 Abbey Foregate
 Shrewsbury
 Shropshire SY2 6ND

Date: 21st December 2018

Emailed to: [REDACTED]

Dear Bidder

AMCV 261 –WELLBING & INDEPENDENCE SERVICE FOR SHROPSHIRE

SUBJECT TO CONTRACT

This is an Award Decision Notice pursuant to The Public Contracts Regulations 2015 (the “Regulations”).

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

However, this letter is not, at this stage, a communication of Shropshire Council’s formal acceptance of your offer. A mandatory “standstill” period is now in force pursuant to the Regulations; this period will end at midnight on 9th January 2019.

Subject to Shropshire Council receiving no notice during the standstill period of any intention to legally challenge the award process, the Council aims to conclude the award of the contract after the expiry of the standstill period.

The award criteria for this contract was set out in full in Invitation to Tender with quality accounting for 100% of the total marks.

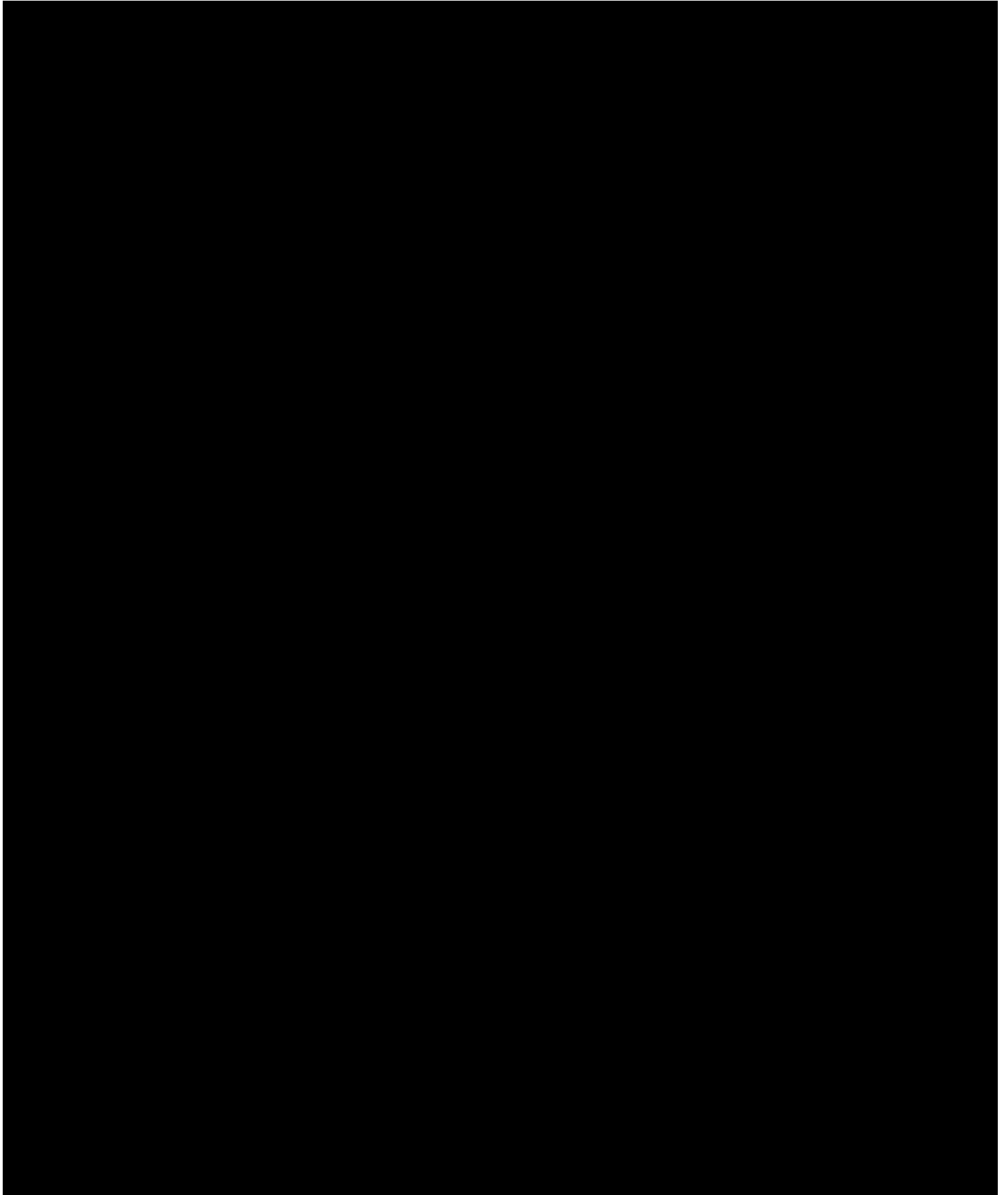
We can confirm that your tender received the following scores and ranking:-

Criteria	Your Weighted Score	Your Rank (out of all 2 tenders received)
Quality (out of 1000 marks)	[REDACTED]	[REDACTED]
Overall	[REDACTED]	[REDACTED]

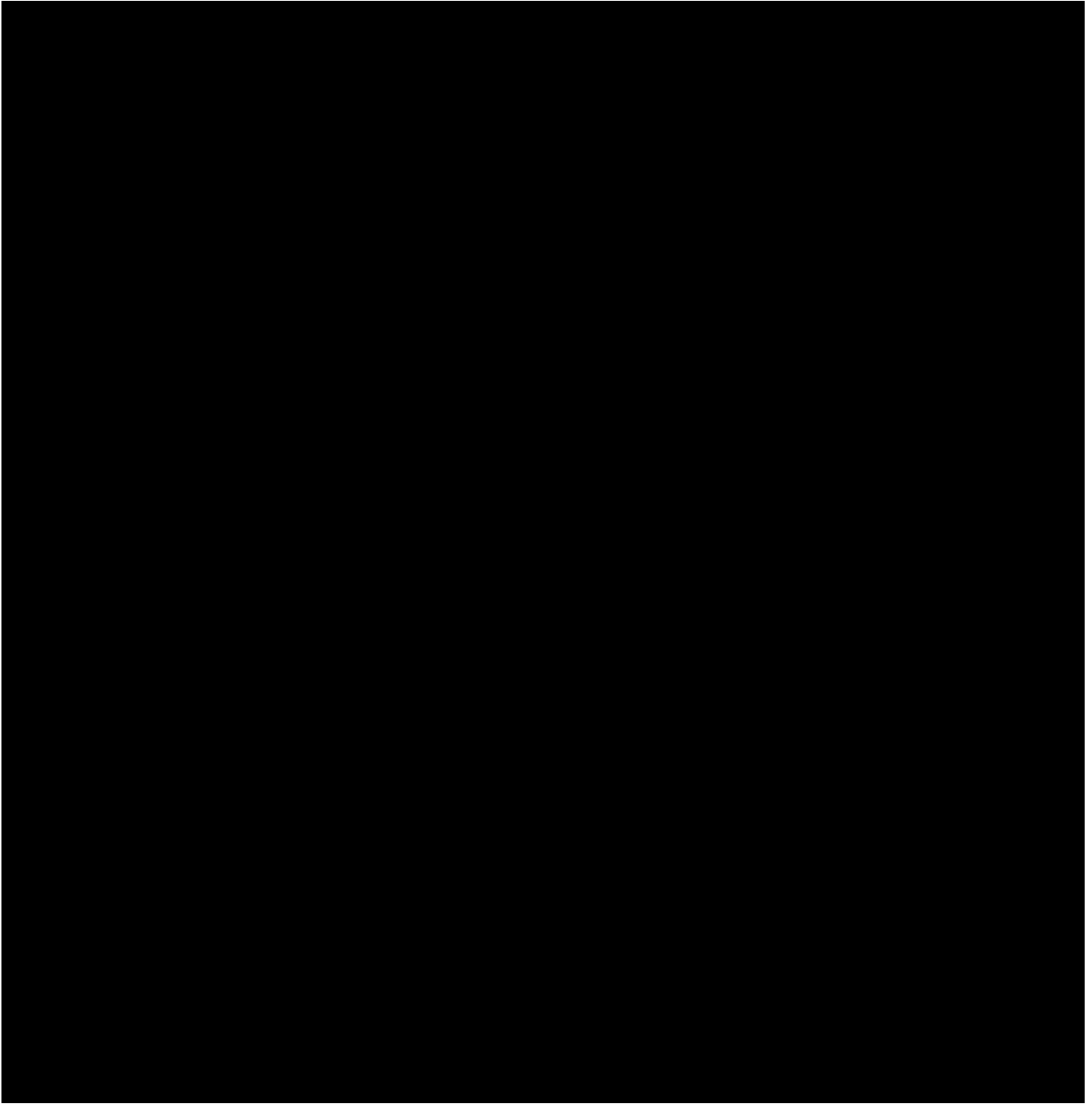
Please find details of the marks allocated to you for Quality and reasoning behind the Quality marks as follows: -



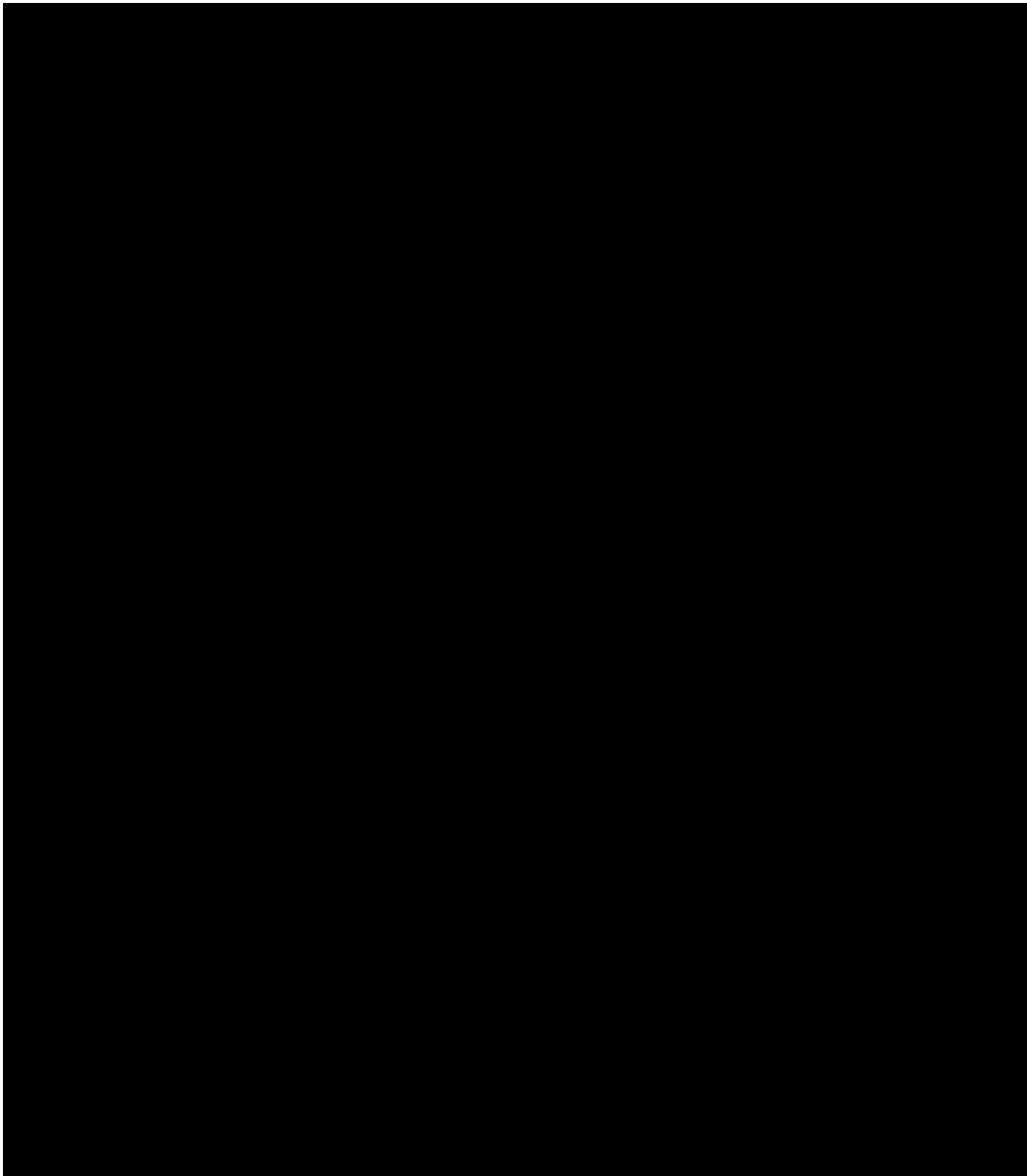
commercial info



commercial info



commercial info



We will be in touch with you again at the end of the standstill period.

Yours faithfully

personal info



Director – Adult Services
Shropshire Council

Commissioning Development
Manager
Finance, Governance & Assurance
Shropshire Council