

GB-Shrewsbury: PMCV 012 - Childhood Vision Screening Service

Competitive Contract Notice

1. Title: GB-Shrewsbury: PMCV 012 - Childhood Vision Screening Service

2. Awarding Authority:

Shropshire Council

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

Tel. +44 1743252992, Fax. +44 1743253910, Email: procurement@shropshire.gov.uk, URL:

www.shropshire.gov.uk

Contact: Procurement, Attn: Procurement

3. Contract Type: Services

Sub Type: Health and social services.

4. Description: Health services. This contract is to deliver a vision screening programme to all 4-5 year old (reception age) children who attend a school within the Shropshire Administrative Authority and/or who are residents within Shropshire Local Authority boundaries. The primary aim of the childhood vision screening programme is to identify children aged 4 to 5 years with reduced vision in one eye, enabling timely intervention which gives these children a chance at achieving their full visual potential. The programme will also identify children with impaired sight in both eyes, children with poorer vision in both eyes are usually identified in infancy through other screening programmes (the Neonatal Infant Physical Examination and the Retinopathy of Prematurity screening programmes), or are detected through their symptoms.

The contract is initially for a three year period commencing on 1st August 2018 but at the expiry of the Initial Term, the Authority may extend this Contract for further periods of up to 12 months up to a maximum of two extension periods.

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

5. CPV Codes:

85100000 - Health services.

6. NUTS Codes :

UKG22 - Shropshire CC

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

8. Reference Attributed by the Awarding Authority: PMCV 012

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

Currency: GBP

10. Deadline for Expression of Interest: 23/03/2018 12:00:00

11. Address to which they must be sent:

Shropshire Council

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

Tel. +44 1743252992, Fax. +44 1743253910, Email: procurement@shropshire.gov.uk, URL:

www.shropshire.gov.uk

Contact: Procurement, Attn: Procurement

12. Other Information:

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

For more information about this opportunity, please visit the Delta eSourcing portal at:

<https://www.delta-esourcing.com/tenders/UK-GB-Shrewsbury:-PMCV-012---Childhood-Vision-Screening-Service/A529GXSE2T>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/A529GXSE2T>

Suitable for VCO: Yes

Procedure Type: OPEN

Period of Work Start date: 01/08/2018

Period of Work End date: 31/07/2023

Is this a Framework Agreement?: no

personal info

**Commissioning Development & Procurement
Place & Enterprise**
Shirehall, Abbey Foregate
Shrewsbury, SY2 6ND



Tel: (01743) 252993

Fax: (01743) 255901

Please ask for: [REDACTED]

Email: procurement@shropshire.gov.uk

23rd February 2018

Dear Bidder

PMCV 012 – CHILDHOOD VISION SCREENING SERVICE

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 (for completion and return)
2. Tender Response Document (for completion and return)
3. Finance Schedule (for completion and return)
4. TUPE Information Confidentiality Undertaking (for completion and return)
5. Contract terms and conditions including specification.

Tenders should be made on the enclosed Tender Response Document and Finance Schedule. Your Tender must be completed, signed and returned along 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 23rd March 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**

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 raise all clarification questions before the deadline of **16th March 2018**.

Please note it is intended to invite short-listed organisations submitting tenders to interview on 9th April 2018 please therefore keep available this date, although this may be subject to change.

TUPE information is available to all bidders. To obtain the same please complete the TUPE confidentiality undertaking and return a signed copy through the Delta e-tendering portal.

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

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

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

If you have any queries relating to this invitation to tender, please contact us through the Delta e-tendering portal.

personal info

Yours faithfully



Commissioning Development and Procurement Manager
Commissioning Development and Procurement
Place & Enterprise
Shropshire Council

PMCV 012 - Childhood Vision Screening Service Confidentiality Undertaking Regarding TUPE

[Date] 2018

[NAME]

Your ref: *

Our ref: PMCV 012

Dear Procurement Team,

We have taken legal advice in this matter and anticipate preparing a Bid on the basis that the current Transfer of Undertakings Regulations (Protection of Employment) Regulations and the EC Acquired Rights Directive 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 Bid
3. That it will not be disclosed to any other party for any purpose whatsoever, except for the purpose of preparing this Bid 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

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

Please return to: procurement@shropshire.gov.uk.

DATED:day of 2018

BETWEEN

SHROPSHIRE COUNCIL (1)

..... (2)

Contract Ref: PMCV012

Contract for Childhood Vision Screening Service



LEGAL AND DEMOCRATIC SERVICES
The Shirehall Abbey Foregate Shrewsbury SY2 6ND
DX 702024 Shrewsbury 2

THIS AGREEMENT is dated day of..... 2018

BETWEEN:

- (1) **SHROPSHIRE COUNCIL** whose office is at Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND ('the Council')
- (2) whose principal office (**"the Contractor"**)

WHEREAS:

- (A) The Council wishes to receive a School Vision Screening Service (the Service)
- (B) The Contractor has the skills, background and experience in providing the Services required by the Council
- (C) The Contractor is willing to provide the Services as defined below and the Council is willing to appoint the Contractor to provide the Services in accordance with the provisions of this Agreement

NOW IT IS AGREED as follows:

1. Definitions

1.1 In this Agreement, the following words shall have the following meanings:

- 'Agreement' means this Agreement
- 'Associated Person' means in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest; OR any other body that substantially performs any of the functions of the Council that previously had been performed by the Council.
- 'Authorised Officer' means the representative appointed by the Council to manage the Contract on its behalf
- 'Best Practice' means in accordance with the best practice within the industry of the Contractor
- '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.

'Caldicott Guardian'	means the senior health professional responsible for safeguarding the confidentiality of Service User information
'Commencement Date'	1 st August 2018
'Commercially Sensitive Information'	comprises the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business which the Contractor has indicated to the Council in writing that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss;
'Confidential Information'	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Council or the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including all Personal Data and the Commercially Sensitive Information;
'Contract Documents'	means all of the documents annexed to, contained and referred to within this Agreement
'Contractor'	means the party named above and includes its employees, servants and agents paid or unpaid acting on its behalf
'Contractor Personnel'	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor paid or unpaid;
'Contractor's Representative'	the representative appointed by the Contractor to manage the contract on its behalf
'Council'	means the party named above and includes its employees, officers, servants and agents acting on its behalf
'CQC'	Means the Care Quality Commission
'Data Controller'	means: (i) prior to the GDPR coming into

‘Data Processor’	force and becoming applicable within the United Kingdom, shall have the meaning given to such term in the DPA; and
	(ii) once the GDPR comes into force and becomes applicable within the United Kingdom, shall have the meaning given to the term "controller" as set out in Article 4 thereof; ¹ means:
‘Data Protection Act	(i) prior to the GDPR coming into force and becoming applicable within the United Kingdom, shall have the meaning given to such term in the DPA; and
	(ii) once the GDPR comes into force and becomes applicable within the United Kingdom, shall have the meaning given to the term "processor" as set out in Article 4 thereof ² means the Data Protection Act 1998 or any successor or replacement legislation, including without limitation, the GDPR when it comes into force and applies in the United Kingdom
‘Data Protection Legislation’	‘DPA’ the Data Protection Act 1998, the GDPR, 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 and all

¹ Delete this definition if Option 2 of the data protection clauses (Data Protection) and (Protection of Personal Data) are not used

² Delete this definition if Option 2 of the data protection clauses (Data Protection) and (Protection of Personal Data) are not used

	applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
'Data Subject'	shall have the same meaning as set out in the Data Protection Act 1998;
'EIR'	means the Environmental Information Regulations 2004 (as may be amended from time to time.)
'EMIS'	means a clinical web-based support system for GP practices
'Employment Checks'	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, disclosure and barring checks
'Exempt Information'	means any information or class of information (including but not limited to any document, report, Agreement or other material containing information) relating to this Agreement or otherwise relating to the parties to this Agreement which potentially falls within an exemption to FOIA (as set out therein)
"Expiry Date"	shall be either: <ol style="list-style-type: none"> 1) the later of the Initial Expiry Date; or 2) the last day of any agreed extension period further to clause 2 below; or 3) such other date as this Agreement is terminated in accordance with its terms
'Fees'	shall be the sum of.....exclusive of VAT and includes all expenses, materials, labour, plant, equipment, handling of materials and plant, tools and appliances, and all other things necessary for the supply of the required services unless where specifically stated otherwise
'FOIA'	means the Freedom of Information Act 2000 and all subsequent regulations

	made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause
'FOIA notice'	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner.
GDPR	Means the General Data Protection Regulation in force in the UK with effect from 25 th May 2018
'IGSOC'	means the Information Governance Statement of Compliance which is the process by which an organisation must enter into an agreement with the Health and Social Care Information Centre (HSCIC) for access to the NHS National Network (N3).
'Initial Expiry Date'	means 31 st March 2021
'Initial Term'	means a period of three (3) years commencing on the Commencement Date and expiring on the Initial Expiry Date
'Intellectual Property Rights'	means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable
'Option to Extend'	means the Council's option to extend the Initial Term by a maximum period of up to two years, in accordance with the terms of clause 2 of this Agreement commencing from and including the date following the Initial Expiry Date
'Outcomes'	means the targets, results or objectives <i>as specified in the Specification</i>
'Parties'	the Contractor and the Council and 'Party' shall mean either one of them
'Personal Data'	shall have the same meaning as set out in the Data Protection Act 1998;
'Personal Data Breach'	means:

- (i) prior to the GDPR coming into force and becoming applicable within the United Kingdom, any unauthorised or unlawful processing, use of, access to, theft of, loss of, damage to or destruction of Personal Data processed in accordance with this Contract; and
- (ii) once the GDPR comes into force and becomes applicable within the United Kingdom, anything which constitutes a "personal data breach" as set out in in Article 4 thereof;

'Prohibited Act'

the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council.

as defined in the FOIA 2000

means a party to this Agreement to whom a Request for Information is made under FOIA, and who thereafter

'Public body'
'Receiving Party'

'Regulated Activity'	has overall conduct of the request and any response 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.
'Regulatory Bodies'	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;
'Regulated Provider'	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006
'Relevant Transfer'	means a relevant transfer for the purposes of TUPE
'Request for Information'	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
'Review'	means a formal review of the progress of the Services and the achievement of the Outcomes
'Services '	means the delivery of School Vision Screening as more specifically referred to in the Specification
'Service User'	Means the recipients of the Services
'Specification'	The specific description of the Services as set out in Schedule 1annexed to this Agreement
'Sub-Contract'	any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part thereof, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of thereof.
'Sub-Contractor'	the third parties that enter into a Sub-Contract with the Contractor.

'Term'	means the period commencing on the Commencement Date and expiring on the Expiry Date
'TUPE'	means the Transfer of Undertakings (Protection of Employment) Regulations 2006
'Working Day'	any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- 1.2.1 words importing any gender include every gender
- 1.2.2 words importing the singular number include the plural number and vice versa
- 1.2.3 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 1.2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.5 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006.
In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:
 - (i) references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
 - (ii) the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.2.6 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement
- 1.2.7 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule
- 1.2.8 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done
- 1.2.9 the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation
- 1.2.10 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.2.11 where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'
- 1.2.10 Where any statement is qualified by the expression so far as the Contractor is aware or to the Contractor's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.2.12 A reference to writing or written includes faxes but not e-mail, unless otherwise specifically agreed.

2. Term:

- 2.1** It is agreed between the Parties that this Agreement will be for the Initial Term commencing on the Commencement Date and ending on the Initial Expiry Date.
- 2.2** It is further agreed between the Parties that the Council may exercise its Option to Extend this Agreement at the expiry of the Initial Term for further periods of twelve months up to a maximum of two extensions from the Initial Expiry Date
- 2.3** If the Council decides to exercise its Option to Extend the Initial Term it shall notify the Contractor in writing at least 3 months in advance of the expiry date of the Initial Term or extension period as applicable. Where the Parties agree an extension of the Initial Term the provisions of this Agreement between the Council and the Contractor shall be the terms to be applied to the extended Agreement period, save for any agreed variations in writing by the Parties to the terms of this Agreement or the Fees to be paid which are to apply during the extension period.
- 2.4** If the Council decides that it does not wish to exercise its Option to Extend then this Agreement shall terminate on the Initial Expiry Date and the provisions of clause 34 (Consequences of Termination) shall apply

3. Estimated Annual Contract Value: Not Used

4. Services

- 4.1** The Contractor shall provide the Services to the Council in consideration for the Council paying the Fee(s) to the Contractor, subject to the provisions of this Agreement
- 4.2** The Contractor shall provide the services in such places and locations as set out in the Specification
- 4.3** The Contractor shall use its best endeavours to complete the Services by the Expiry Date
- 4.4** The Services shall only be performed by the Contractor unless otherwise agreed in writing between the Parties
- 4.5** The Contractor shall provide the Services in accordance with the Specification with all due skill, care and diligence and in accordance with good industry practice.
- 4.6** The Contractor shall provide the Services in accordance with all current and relevant statutory provisions, regulations or other legislation from time to time in force relating to the provision of the Services and shall include but not be limited to:
- 4.6.1** registration with CQC and all standards required to maintain such registration

- 4.6.2** Data Protection Legislation
- 4.6.3** the Human Rights Act 1998; and
- 4.6.4** where appropriate the Care Act 2014

- 4.7** The Contractor shall during the Term ensure that every person employed by the Contractor in the provision of the Services is properly trained and instructed with regard to his/her tasks in relation to the Services
- 4.8** The Contractor shall carry out its own risk assessments relevant to the Services.
- 4.9** The Contractor shall have a written procedure for dealing with complaints about the Services in accordance with clause 33 (Complaints) hereof
- 4.10** before the Contractor 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 Contractor must without limitation, complete the Employment Checks and any other checks required by the Disclosure and Barring Service
- 4.11** Prior to the engagement by the Contractor of any staff or sub-contractor engaged to provide any part of the Services where such individuals will have contact with children up to the age of eighteen years old or where the performance of the Services may involve contact with vulnerable adults (as defined in the Safeguarding Vulnerable Groups Act 2006) the Contractor shall procure in respect of all staff or potential staff or other persons intended to perform any part of the Services:
 - 4.11.1** that each person being considered for engagement be questioned as to whether he/she has any convictions; and
 - 4.11.2** that the results of a Disclosure and Barring Service (DBS) check of the most extensive available kind is obtained in accordance with Part V of the Police Act 1997 (as amended) and that each DBS check should include a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Service may involve contact with children and/or Safeguarding Vulnerable Groups Act 2006 where the performance of the Service may involve contact with vulnerable adults.
 - 4.11.3** that a copy of the DBS check results are notified to the Council
- 4.12** The Parties agree that there shall be, on dates to be agreed, regular informal reviews of the progress of the development of the Services between the Contractor and the Council to ensure that the Outcomes are being achieved.
- 4.13** In the event that an informal review reveals that Outcomes are not being met, a formal Review meeting shall take place between the Parties upon 14 days written notice being given to the Contractor by the Council
- 4.14** The Review meeting shall record in writing any amendments to the Outcomes agreed between the Council and the Contractor.
- 4.15** Where following a Review, the Council acting reasonably determines that the Contractor has not met the Outcomes the Council may:
 - 4.15.1** serve the Contractor with a written notice (“Notice”) within one month of the Review meeting specifying which of the Outcomes it considers that the Contractor has not met or failed to achieve and giving the Contractor one calendar month from the date of the Notice to remedy the failure
 - 4.15.2** if after one calendar month from the date of the Notice the Contractor has failed to remedy the failure specified in the Notice then this will be considered to be a breach of the terms of this Agreement and the Agreement

may be terminated in accordance with the provisions contained in clause 38 (Termination) herein

4.15.3 The Council shall take into account any verbal or written representations made by the Contractor before proceeding to take any action to terminate this Agreement pursuant to this clause.

5. Use of the Facilities: Not Used

6 Insurance

6.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all legal liability which may be incurred by the Contractor, arising out of the Contractor's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability shall provide for a minimum indemnity limit of £10,000,000 (TEN MILLION POUNDS) and Employers Liability insurance shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS) for any one event.

6.2 The Contractor shall hold unlimited Clinical Negligence Insurance cover for each and every claim

6.3 the Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain policy cover which indemnifies the contractor for negligent acts arising out of the performance of this Agreement. To comply with its obligations under this clause, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, Sub-Contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £5,000,000 (FIVE MILLION POUNDS) in respect of each and every claim.

6.3.1 The Contractor shall hold and maintain the insurances required under this Agreement for a minimum of 21 years following the expiration or earlier termination of this Agreement

6.4 The Contractor warrants that it has complied with this clause 6 and shall provide the Council with 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 Agreement and annually thereafter during the Term. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required under this clause 6, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

6.5 The Contractor shall:

- (a) do nothing to invalidate any insurance policy
- (b) notify the Council if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change

6.6 For the avoidance of doubt, the terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Agreement.

6.7 Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":

6.7.1 if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid

by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the Council:

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

6.7.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Contractor 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 Agreement; or
- (ii) if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Council full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

7 Indemnity

7.1 The Contractor shall indemnify the Council against all liabilities, costs, expenses, damages, losses and breach of its statutory duties or breach of an obligation under the DPA and GDPR (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:

- (a) The performance, defective performance or otherwise of this Agreement by the Contractor or the Contractor Personnel
- (b) Any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the provision of the Services
- (c) Any claim made against the Council by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Contractor or the Contractor Personnel; and
- (d) Any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with the delivery of the Services and performance of this Agreement to the extent that the defective performance is attributable to the acts or omissions of the Contractor or the Contractor Personnel

7.2 The Council shall indemnify the Contractor against all reasonable claims, costs and expenses which the Contractor may incur and which arise, directly from the Council's breach of any of its obligations under this Agreement.

7.3 Nothing in this Agreement shall limit or exclude the liability of either Party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) the indemnities given in this clause 7

8. Fee rates based on time spent – Not Used

9. Payment

9.1 Payment of the Fee(s) shall be made by the Council to the Contractor in arrears within 30 days of receipt of an undisputed invoice. In the event of late payment, interest thereon shall be charged at the prevailing statutory 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 Judgment.

- 9.2 The Contractor shall not be entitled to vary the Fee(s) during the existence of this Agreement unless with the prior written consent of the Council.
- 9.3 The Contractor shall not charge, and the Council shall not be liable, for any expenses, charges, costs, fees except the Fee(s) as set out in this Agreement
- 9.4 All amounts stated are exclusive of VAT which will be charged in addition at the rate in force at the time the Council is required to make payment
- 9.5 Unless otherwise agreed in writing by the Council, the Contractor will pay any of its appointed sub-contractors within the time period specified in the Sub-Contract but in any event no later than 30 days from receipt of an undisputed invoice.

10. The Council's Obligations

To enable the Contractor to perform its obligations under this Agreement the Council shall:

- 10.1 Co-operate with the Contractor and ensure that the Council's staff and agents co-operate with and assist the Contractor as is reasonable and appropriate
- 10.2 Provide the Contractor with any information reasonably required by the Contractor;
- 10.3 Comply with such other requirements as may be otherwise agreed between the parties.
- 10.4 Not Used
- 10.5 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Contractor by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

11. Authorised Officer and Contractor Representative:

- 11.1 The Authorised Officer shall be appointed by the Council to act in the name of the Council for the purposes of the contract evidenced by this Agreement.
- 11.2 The Contractor shall appoint a Contractor Representative to act in the name of the Contractor for the purposes of the contract evidenced by this Agreement
- 11.3 The Parties shall notify each other in writing of any replacement Authorised Officer or Contractor Representative or if any person ceases to be either the Authorised Officer or Contractor Representative.
- 11.4 The Authorised Officer shall monitor on behalf of the Council, the provision of the Services supplied by the Contractor and act as liaison officer with the Contractor's Representative in respect of the operation of the Services. Any issues raised by the Authorised Officer with regard to the delivery of the Services shall in the first instance be addressed and dealt with by the Contractor's Representative on the Contractor's behalf.

12. Intellectual Property

- 12.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Contractor or any employee, agent or subcontractor of the Contractor:
 - 12.1.1 in the course of performing the Services; or
 - 12.1.2 exclusively for the purpose of performing the Services, shall vest in the Council on creation.

- 12.2** Unless stated expressly in writing in this Agreement, neither Party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Agreement
- 12.3** The Contractor shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.
- 12.4** This provision shall survive the expiration or termination of the Agreement.

13. Confidentiality

- 13.1** Not Used
- 13.2** The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) all information given by the Council in connection with the Agreement or which becomes known to the Contractor through his performance of the Agreement or use the same other than for the purpose of executing the Agreement.
- 13.3** The Contractor shall not mention the Council's name in connection with the Agreement or disclose the existence of the Agreement in any publicity material or other similar communication to third parties without the Council's prior consent in writing.
- 13.4** The Contractor will keep confidential any information it becomes aware of by reason of the operation of this Agreement.
- 13.5** Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
 - 13.5.1** treat the other party's Confidential Information as confidential; and
 - 13.5.2** not disclose the other party's Confidential Information to any other person without the owner's prior written consent
- 13.6** Clause 13.5 shall not apply to the extent that:
 - 13.6.1** such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information;
 - 13.6.2** such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 13.6.3** such information was obtained from a third party without obligation of confidentiality;
 - 13.6.4** such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 13.6.5** it is independently developed without access to the other party's Confidential Information.
- 13.7** The Contractor may only disclose the Council's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor

Personnel are aware of and shall comply with these obligations as to confidentiality.

- 13.8** The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement
- 13.9** Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:
- 13.9.1** to any consultant, contractor or other person engaged by the Council;
- 13.9.2** for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council;
- 13.10** The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to this Agreement is made aware of the Council's obligations of confidentiality.
- 13.11** Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 13.12** The provisions of this Clause shall survive the expiration or termination of this Agreement.

14. Agreement and Transparency

- 14.1** Further to the Local Government Transparency Code 2015 the Council is obliged to publish details of expenditure exceeding £500. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 14.2** Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Council to publish this in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 14.3** The Council may consult with the Contractor to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.
- 14.4** The Contractor shall assist and cooperate with the Council to enable the Council to publish this Agreement

15 Data Protection

- 15.1** The Contractor shall (and shall procure that any of its Contractor's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the Data Protection Act 1998 (DPA) and the Data Protection Legislation and both Parties shall duly observe all their obligations under the DPA and Data Protection Legislation, which arise in connection with this Agreement.
- 15.2** Notwithstanding the general obligation in clause 15.1, where the Contractor is processing Personal Data as a Data Processor for the Council, the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against

accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- 15.2.1** provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA and the Data Protection Legislation;
 - 15.2.2** promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 15.2; and
 - 15.2.3** ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA or the Data Protection Legislation.
- 15.3** The Contractor shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council and in particular the Contractor shall not store any Council Data, which the Council has notified the Contractor requires storage in an encrypted format, on any portable device or media unless that device is encrypted.
- 15.4** To the extent that Council Data is held and/or processed by the Contractor, the Contractor shall supply that Council Data to the Council as requested by the Council in any format specified in this Agreement or if none specified in any format reasonably requested by the Council.
- 15.5** The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.
- 16. Protection of Personal Data**
- 16.1** With respect to the parties' rights and obligations under this Agreement, the parties agree that the Council is the Data Controller and that the Contractor is the Data Processor.
- 16.2** The Contractor shall:
- 16.2.1** Process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Council to the Contractor during the term of this Agreement);
 - 16.2.2** Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any Regulatory Body;
 - 16.2.3** implement appropriate technical and organisational measures, including but not limited to ensuring that Personal Data is not stored on any portable equipment or storage device or media unless encrypted, to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 16.2.4** take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
 - 16.2.5** obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;

- 16.2.6** ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Protection of Personal Data clause ;
- 16.2.7** ensure that no Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
- 16.2.8** notify the Council (within five Working Days) if it receives:
- a) a request from a Data Subject to have access to that person's Personal Data; or
 - b) a complaint or request relating to the Council's obligations under the Data Protection Legislation;
- 16.2.9** provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:
- a) providing the Council with full details of the complaint or request;
 - b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;
 - c) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
 - d) providing the Council with any information requested by the Council;
- 16.2.10** permit the Council or the Council Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with the Audit clause, the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;
- 16.2.11** provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Council); and
- 16.2.12** not process Personal Data outside the United Kingdom without the prior written consent of the Council and, where the Council consents to a transfer, to comply with:
- a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - b) any reasonable instructions notified to it by the Council
- 16.2.13** The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 16.2.14** The Contractor shall ensure that its employees and agents are aware of and comply with this clause and shall fully indemnify the Council against any loss or damage sustained or incurred as a result of any breach of this clause.

17. Implementation Of The General Data Protection Regulation

17.1. With effect from 25th May 2018 clause 18 and the definitions set out therein shall become an operative clause within this Agreement.

17.2. After the 25th May 2018, where there is any conflict, ambiguity or inconsistency between clause 18 below (including any associated definitions) and the remainder of this Agreement, clause 18 shall take precedence.

18. Data Protection

18.1. In interpreting this clause the words and expressions set out below shall have the following meanings and any other words and expressions used are as defined elsewhere in this Agreement:

18.1.1. Data Protection Legislation: (i) the General Data Protection Regulation ((EU) 2016/679) for as long as it is directly applicable in the UK and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; (ii) any successor legislation to the GDPR or the Data Protection Act 1998; (iii) all applicable Law about the processing of personal data and privacy.

18.1.2. Controller, Processor, Data Subject, Personal Data, Personal Data Breach , Data Protection Officer shall have the meaning given in the GDPR;

18.1.3. Data Loss Event: any event that results, or may result, in unauthorised access to, or unauthorised or unlawful processing of, Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or damage to or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

18.1.4. Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

18.1.5. Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

18.1.6. 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;

18.1.7. Sub-processor: any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

18.2. Both parties will comply with all applicable requirements of the Data Protection Legislation and agree to take account of any guidance issued by the Information Commissioner's Office. This clause 18 is in addition to, and does

not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

- 18.3.** The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is as set out in this agreement which includes Schedule 4 sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 18.4.** The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 18.5.** Without prejudice to the generality of clause 18.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:
- 18.5.1.** process that Personal Data only in accordance with Schedule 4 or otherwise on the written instructions of the Council unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data prohibited by Law;
 - 18.5.2.** ensure that it has in place Protective Measures, reviewed and approved by the Council as appropriate, to protect against a Data Loss Event having taken account of the:
 - 18.5.3.** the nature of the data to be protected;
 - 18.5.4.** the harm that might result from a Data Loss Event;
 - 18.5.5.** the state of technological development; and
 - 18.5.6.** the cost of implementing any Protective Measures;
 - 18.5.7.** take reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data;
 - 18.5.8.** ensure that all personnel who have access to and/or process Personal Data:
 - 18.5.9.** do not process Personal Data except in accordance with this Agreement;
 - 18.5.10.** are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement;
 - 18.5.11.** are obliged to keep the Personal Data confidential; and
 - 18.5.12.** have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 18.5.13.** not transfer any Personal Data outside of the European Union unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - 18.5.14.** the Council or the Contractor has provided appropriate safeguards in relation to the transfer as determined by the Council;
 - 18.5.15.** the Data Subject has enforceable rights and effective legal remedies;

- 18.5.16.** the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 18.5.17.** the Contractor complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
 - 18.5.18.** at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Law to retain the Personal Data; and
 - 18.5.19.** maintain complete and accurate records and information to demonstrate its compliance with this clause 18 and allow for audits by the Council or the Council's designated auditor.
- 18.6.** The Contractor shall notify the Council immediately if it:
- 18.6.1.** receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 18.6.2.** receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 18.6.3.** receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 18.6.4.** 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
 - 18.6.5.** becomes aware of a Data Loss Event.
- 18.7.** Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 18.6 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- 18.7.1.** the Council with full details and copies of the complaint, communication or request;
 - 18.7.2.** such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 18.7.3.** the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 18.7.4.** assistance as requested by the Council following any Data Loss Event;
 - 18.7.5.** assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 18.8.** The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- 18.8.1. the Council determines that the processing is not occasional;
 - 18.8.2. the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 18.8.3. the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.9. The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 18.10. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 18.11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- 18.11.1. notify the Council in writing of the intended Sub-processor and processing;
 - 18.11.2. obtain the written consent of the Council;
 - 18.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 18 such that they apply to the Sub-processor; and
 - 18.11.4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 18.12. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 18.13. Either party may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement) or to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 19. Council Data and Personal Information Audits**
- 19.1 Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit for the following purposes:
- 19.1.1 to review the integrity, confidentiality and security of the Council Data;
 - 19.1.2 to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services;
- 19.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

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

20 Service User Health Records

- 20.1** The Contractor must create, maintain, store and retain Service User health records for all Service Users. The Contractor must retain Service User health records for the periods of time required by law and securely destroy them thereafter in accordance with any applicable guidance.
- 20.2** The Contractor must:
- a) use Service User health records solely for the execution of the Contractor's obligations under this Agreement; and
 - b) give each Service User full and accurate information regarding his/her treatment and Services received.
- 20.3** The Contractor must at all times during the term of this Agreement have a Caldicott Guardian and shall notify the Council of their identity and contact details prior to the Commencement Date. If the Contractor replaces its Caldicott Guardian at any time during the term of this Agreement, it shall promptly notify the Council of the identity and contact details of such replacements.
- 20.4** Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.
- 20.5** Where relevant and subject to compliance with the law, the Contractor shall at the reasonable request of the Council promptly transfer or deliver a copy of the Service User health Record held by the Contractor for any Service User for which the Council is responsible to a third party Contractor of healthcare or social care services designated by the Council.
- 20.6** The Contractor undertakes to:
- a) implement and maintain security standards, processes, procedures, practice and controls to the same standard which they apply to personal confidential

identifiable data and in accordance with the NHS Information Governance Toolkit standards to a minimum of Level 2 compliance for its 'organisation type' (as defined in the HSCIC IG Toolkit User Guide – Organisation Types);

b). The Contractor shall provide assurance that good information governance practices are being maintained and must demonstrate, and will allow the Council to audit, that the Contractor (and all Sub-contractors processing Service User information) meets or exceeds the NHS Information Governance Toolkit standards required for its organisation type.

c) The Contractor must, in accordance with HSCIC reporting requirements with respect to suspected and/or actual Information Governance Serious Incidents Requiring Investigation (IG SIRI) and/or Cyber Serious Incidents Requiring Investigation (Cyber SIRI) ensure that serious incidents related to suspected or actual breach of the principles of the DPA or any cyber related incident which has or is suspected of having compromised information assets within cyberspace are:

i) reported in writing to the Council's SIRO and Information Governance Officer within 24 hours of such incident having occurred or suspected of having occurred;

and

ii) that such IG SIRI and Cyber SIRIs are managed in accordance with the current version at the time of the incident of the HSCIC "Checklist Guidance for Reporting, Managing and Investigation Information Governance and Cyber Security Serious Incidents Requiring Investigation" and reported via the IG Toolkit incident Reporting Tool where appropriate

20.7 The Contractor shall ensure that it has and shall maintain throughout the term of this Agreement full and resilient access to the Health & Social Care Network (HSCN) connection 365 days per year which includes (where required) integration with EMIS and registration for the HSCN IG SOC governance requirements

20.8 The Contractor will ensure that they implement any changes in Data Protection Legislation and consent.

21. Assignment, Transfer and Sub-contracting

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

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

(b) transfer all of its rights or obligations by novation, to another person.

without the Contractor's consent where such assignment, transfer or novation is to an Associated Person of the Council;

21.2 Any consent required under Clause 21.1 must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.

21.3 The Contractor will not, without the written consent of the Council, sub-contract its right or obligations under this Agreement nor allow Services to be provided other than through the Contractor Personnel and using its own equipment.

- 21.4** In the event that consent is given by either Party to the other Party to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the sub-contracting Party to the consenting Party immediately it is issued
- 21.5** Subject to clause 21.1, in the event that either Party wishes to assign its rights and obligations under this Agreement, the assignor must obtain a written undertaking from the assignee to the consenting Party that it will be bound by the obligations of the assignor under this Agreement.
- 21.6** Notwithstanding the Contractor's right to sub-contract pursuant to this clause 21, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own and shall be responsible for the work of the Sub-Contractor whose work shall be undertaken to the same standard as stated in the Specification.
- 22. Public Interest Disclosure ('Whistleblowing')**
The Contractor will ensure that his employees and agents are made aware of the Council's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request.
- 23. Publicity – Not Used**
- 24. Prevention of Bribery**
- 24.1** The Contractor:
- a) shall not, and shall procure that all Contractor Personnel shall not, in connection with this Agreement 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 Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 24.2** The Contractor shall:
- a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - b) the Contractor shall, within 10 Working Days of a request from the Council, certify to the Council in writing (such certification to be signed by an officer of the Contractor) the Contractor's compliance with this clause 24 and provide such supporting evidence of compliance with this clause 24 by the Contractor as the Council may reasonably request.
- 24.3** If any breach of clause 24.1 is suspected or known, the Contractor must notify the Council immediately.
- 24.4** If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 24.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Agreement.
- 24.5** The Council may terminate this Agreement by written notice with immediate effect, and recover from the Contractor the amount of any loss directly resulting from the cancellation, if the Contractor or Contractor Personnel (in all cases

whether or not acting with the Contractor's knowledge) breaches clause 24.1. At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 24.5, the Council shall give consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

- a) with the Council; or,
- b) with the actual knowledge; of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or
- c) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.

24.6 Any notice of termination under clause 24.5 must specify:

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

24.7 Despite clause 34 (Disputes), any dispute relating to:

- a) the interpretation of this clause 24; or
- b) the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.

24.8 Any termination under clause 24.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

25. Warranties, liability and indemnities

The Contractor warrants, represents and undertakes that:

25.1 it will carry out the work by the Expiry Date

25.2 it will perform the Services with all due skill and diligence and in a good and workmanlike manner, and in accordance with the Best Practice within the industry of the Contractor and will have adequate numbers of Contractor Personnel to provide the Service

25.3 its Contractor Personnel will have the necessary skill, professional qualifications and experience to deliver the Services in accordance with the Specification and Best Practice

25.4 it will use its best endeavours to achieve the Outcomes

25.5 it has full capacity and authority to enter into this Agreement

25.6 it has obtained all necessary and required licences, consents and permits to provide the Services

25.7 it shall be responsible for all costs, fees, expenses and charges for training necessary or required for the Contractor Personnel to perform the Services

25.8 Not used

25.9 The Contractor shall where appropriate take account of the Human Rights Act 1998 and shall not do anything in breach of it.

25.10 The Contractor will at all times in providing the Services to the Council comply with the provisions of the Health and Safety at work Act 1974 and provide evidence of doing so to the Council at any time upon request and:

- 25.10.1** The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of this Agreement.
- 25.10.2** Not Used
- 25.10.3** Not Used
- 25.10.4** The Contractor shall report all accidents and/or injuries relating to the provision of the Services to the Council immediately.
- 25.10.5** The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council upon request.
- 25.11** The Contractor warrants that none of its current Directors have been involved in liquidation or receivership or have any criminal convictions.
- 25.12** Not Used
- 25.13** the Contractor warrants that the signing of this Agreement on its behalf has been validly authorised and the obligations expressed as being assumed by the Contractor under this Agreement constitute valid legal and binding obligations of the Contractor enforceable against the Contractor in accordance with their terms.
- 25.14** The Contractor acknowledges and confirms that:
- 25.14.1** it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
- 25.14.2** it has received all information requested by it from the Council pursuant to sub-clause 25.14.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
- 25.14.3** it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to sub-clause 25.14.2;
- 25.14.4** it has raised all relevant due diligence questions with the Council before the Commencement Date; and
- 25.14.5** it has entered into this Agreement in reliance on its own diligence
- 25.14.6** as at the Commencement Date, the Contractor warrants and represents that all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement AND shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services
- 25.14.7** The Contractor shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Contractor in accordance with sub-clause 25.14.6 save where such additional costs or adverse effect on performance have been caused by the Contractor

having been provided with fundamentally misleading information by or on behalf of the Council and the Contractor could not reasonably have known that the information incorrect or misleading at the time such information was provided.

- 25.15** The Contractor agrees that where requested in writing during the term of this Agreement 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
- 25.16** In performing its obligations under this Agreement, the Contractor 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
- 26. Freedom of Information Act 2000 & Environmental Information Regulations 2004**
- 26.1** The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 26.2** The Contractor shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Contractor acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.
- 26.3** The Contractor shall and shall procure that its Sub-contractors shall:
- 26.3.1** transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- 26.3.2** provide the Council, at the Contractor's expense, with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
- 26.3.3** provide, at the Contractor's expense, all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 26.4** The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information the Council may consult with the Contractor prior to making any decision or considering any exemption.
- 26.5** In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 26.6** The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council 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 Contractor or the Services:

26.6.1 in certain circumstances without consulting the Contractor; or

26.6.2 following consultation with the Contractor and having taken their views into account;

provided always that where sub-clause 26.6.1 above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

26.7 The Contractor shall ensure that all Information required to be produced or maintained under the terms of this Agreement, or by law or professional practice or in relation to the Agreement is retained for disclosure for at least the duration of the Agreement plus one year together with such other time period as required by the Agreement, law or practice and shall permit the Council to inspect such records as requested from time to time.

26.8 The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other law, of any information (including Exempt Information) whether relating to this Agreement or otherwise relating to any other party.

26.9 Where the Contractor is a Public Body the parties acknowledges that such obligations and duties of the Council as set out above are reciprocal to the Contractor. The Council and the Contractor acknowledge and agree that:

26.9.1 as Public Bodies they are subject to legal duties under the FOIA and EIR which may require either party to disclose on request information relating to this Agreement or otherwise relating to the other party;

26.9.2 they are required by law to consider each and every Request for Information made under FOIA;

26.9.3 that all decisions made by the other pursuant to a request under the FOIA are solely a matter for the Receiving Party and at the discretion of the Receiving Party.

26.9.4 Notwithstanding anything in this Agreement to the contrary (including but without limitation any obligations or confidentiality), the Receiving Party shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Receiving Party shall consult the other party before making any such decision and shall not:

(a) confirm or deny that information is held by the other party, or

(b) disclose information required

to the extent that in the Receiving Party’s opinion the information is eligible in the circumstances for an exemption and therefore the Receiving Party may lawfully refrain from doing either of the things described in part (a) and (b) of this clause.

26.9.5 each party shall bear its own costs of:

a) assessing the application of any exemption under FOIA and/or

b) responding to any FOIA notice and/or

c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

26.9.6 the Receiving Party shall in no circumstances be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA of any Exempt Information or other information whether relating to this Agreement or otherwise relating to the other party.

26.9.7 the other party shall assist the Receiving Party with the request as reasonably necessary to enable the Receiving Party to comply with its obligations under FOIA.

27. Equalities

27.1 The Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age

- a) in the supply and provision of Services under this Agreement, and
- b) in its employment practices.

27.2 Without prejudice to the generality of the foregoing, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or other relevant legislation, or any statutory modification or re-enactment thereof).

27.3 In addition, the Contractor and any Sub-Contractor or person(s) employed by or under the control of the Contractor in providing Services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it

27.4 The Contractor 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 Councils on the elimination of discrimination.

27.5 In the event of any finding of unlawful discrimination being made against the Contractor 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 Contractor and any Sub-Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

27.6 The Contractor and any Sub-Contractor employed by the Contractor will provide a copy of its policies to the Council at any time upon request. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Contractor's compliance with the above conditions.

28. Non-compliance

28.1. If the Council identifies areas of the Services which do not comply with the requirements of this Agreement (including any Schedules to this Agreement) it may send the Contractor a non-compliance notice detailing

- (i) the areas of non-compliance;

- (ii) the action to be taken; and
 - (iii) the date by which the action must be taken (which for the avoidance of doubt must not be a date less than 14 days from the date of the notice).
- 28.2** If the Contractor fails to take any or all of the necessary action by the date given in the non-compliance notice, the Council may send the Contractor a final non-compliance notice detailing
- (i) the areas of non-compliance;
 - (ii) the action to be taken; and
 - (iii) the date by which action must be taken (which for the avoidance of doubt must not be a date less than 14 days from the date of the notice).
- 28.3** If, in the reasonable opinion of the Council, the Contractor fails to undertake all of the remedial actions in the final non-compliance notice by the due date this may be considered a material breach of this Agreement and the Council shall be entitled to take either of the following steps depending on the seriousness of the non-compliance (which in the event of dispute shall be determined in accordance with clause 34 (Disputes):
- (a) to make arrangements to take its own corrective action either itself or through the appointment of another Contractor and to either:
 - (i) deduct all costs in connection therewith from any sums due or to become due to the Contractor under the terms of this Agreement; or
 - (ii) to recover such sums from the Contractor as a debt;
- And/or
- (b) to terminate the Agreement in accordance with clause 38 Termination

29. Waiver

The failure by either Party to enforce at any time or for any period any one or more of the terms and conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

30. Sustainability

The Contractor will at all times use its best endeavours to assist the Council and operate themselves in a manner which meets the aims and objectives set out in the sustainable policies of the Council, copies of which are available on the Council's website

31. Audit And Monitoring

The Contractor will allow access for the Council and its officers to all relevant information for the purposes of audit and the monitoring of this Agreement.

32. Safeguarding

32.1 The Parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

32.2 The Contractor shall:

- (a) ensure that all individuals engaged in the provision of the Services, and prior to commencing the provision of the Service, are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
- (b) monitor the level and validity of the checks under this clause 32.2 for each member of staff.

32.3 The Contractor warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in

accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

32.4 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 32 have been met.

32.5 The Contractor shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users.

32.6 The Contractor 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.

33. Complaints Procedure

33.1 The Contractor shall operate a complaints procedure in respect of any services or works provided under this Agreement 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 Contractor's obligations under this Agreement ("the Complaints Procedure"). For the avoidance of doubt any complaint or issue that the Council has in respect of the Contractor's performance of this Agreement shall be dealt with in accordance with the remainder of this Agreement.

33.2 The Contractor's Complaints Procedure shall comply with applicable Law and the requirements of any regulatory body to which the Contractor is subject or which are applicable to the service being provided (including any change in such requirements) and shall meet the following minimum standards:

33.2.1 is easy for complainants to access and understand

33.2.2 clearly sets out time limits for responding to complaints and keeping the complainant and the Council informed of progress;

33.2.3 provides confidential record keeping to protect employees under this Agreement and the complainant

33.2.4 provides information to the Contractor's management so that services can be improved

33.2.5 provides effective and suitable remedies

33.2.6 is regularly monitored and audited and which takes account of complainant and Council feedback

33.3 The Contractor shall inform any users of the services or works provided under this Agreement of the existence of the complaints procedure and how to access it and will make its Complaints Procedure available on request.

33.4 The Contractor shall investigate and deal with any complaints it receives about the services or works, whether direct from the public or services users, or referred to it by the Council, in accordance with its published complaints procedure.

33.5 The Contractor shall ensure that:

33.5.1 it promptly, and within a maximum of 10 days of receiving the complaint, notifies the complainant that the Contractor is dealing with the complaint

- 33.5.2** under no circumstances is a complaint investigated by a member of its staff employed under this contract who may be part of the complaint.
- 33.5.3** someone who is independent of the matter complained of carries out the investigation
- 33.5.4** the complainant is made aware that they are entitled to have the complaint investigated by the Council if they are not satisfied with either the process of investigation or finding of the Contactor's investigations
- 33.5.5** it deals with the complaint fully, expeditiously and fairly and shall use its reasonable endeavours to resolve the complaint within 28 Working Days of receiving the complaint
- 33.5.6** where a complaint is received by the Contractor relating to the policy or decisions of the Council rather than the Contractor's delivery of its obligations under this Agreement, the Contractor shall promptly, and within two Working Days, refer the complaint to the Council for investigation.
- 33.6** The Contactor shall ensure that all its employees and persons employed under this Agreement are made aware of its Complaints Procedure and shall designate one employee (who shall be identified to the Council) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint
- 33.7** The Contactor shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the Council within 5 Working Days of being requested or at 12 monthly intervals in any event.
- 33.8** Where the Council is investigating a complaint the Contactor is required to participate fully in all investigations within the timescales requested by the Council.
- 33.9** The Contractor should note that if a complaint is made to the Council by a third party relating to the services or works provided, the Local Government Ombudsman has the power to investigate such a complaint and the Council requires the Contractor to fully to co-operate in such investigation. If the Council is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Contractor the Contractor shall indemnify the Council in respect of the costs arising from such maladministration or injustice.
- 34. Disputes**
- 34.1** If any dispute or difference shall arise between the parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the same shall be dealt with as follows:-
 - 34.1.1** In the first instance a special meeting of both the Parties shall be arranged on 14 days written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute
 - 34.1.2** If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve the Council's Director of Operations and the Contractor or other authorised officer whose details have been notified to the Council, with notice of the dispute and those officers shall then appoint their representative to adjudicate and

use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice

34.1.3 If the dispute cannot be resolved in accordance with the preceding sub-clause then it shall be referred to a single arbitrator to be agreed between the Parties and failing such agreement within 14 days of the request of one Party to the other in writing that the matter be referred to arbitration such reference shall be to a single arbitrator appointed for that purpose on the written request of either Party by the President for the time being of the Law Society of England and Wales and any reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the relevant Arbitration Acts and it is further agreed that if any matter is referred to arbitration then each Party will bear its own costs of such referral

35. Force Majeure

35.1 Neither the Council nor the Contractor shall be in breach of this Agreement nor liable for any failure or delay in performing their obligations under this Agreement where it is directly caused, arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Force Majeure Event"), provided that:-

35.1.1 any delay by a sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and

35.1.2 staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay.

35.2 If a Party is subject to a Force Majeure Event it shall not be in breach of this Agreement provided that:-

35.2.1 it promptly notified the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

35.2.2 it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible

in which case the performance of that Party's obligations will be suspended during the period that those circumstances persist and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay.

35.3 Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Agreement and by law):-

35.3.1 any costs arising from that delay will be borne by the Party incurring the same; and

35.3.2 either Party may, if that delay continues for more than 5 weeks, terminate this Agreement immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

36. Rights of Third Parties

The Parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999 (or any amendment or re-enactment thereof).

37. Notices

37.1 Unless otherwise communicated to the Party in writing any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party that is the registered office or main place of business of the Contractor or if the Council, the Shirehall, Abbey Foregate, Shrewsbury SY2 6ND

37.2 A Notice sent by email shall be deemed to be received providing receipt is acknowledged and confirmed, Notice sent by fax shall be deemed to be served on receipt of an error free transmission report, Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged

38. Termination

38.1 Either Party may terminate this Agreement by giving to the other Party at least one month's notice in writing.

38.2 Either Party may terminate this Agreement by notice in writing to the other if:

38.2.1 the other Party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.

38.2.2 the other Party commits a series of minor breaches which, when taken together, amount to a material breach;

38.2.3 the other Party commits a material breach of this Agreement which cannot be remedied under any circumstances;

38.2.4 The Council may terminate this Agreement forthwith by notice where the Contractor commits a material breach as a result of a failure to comply with a non-compliance notice issued in accordance with clause 28 (Non-Compliance).

38.2.5 the other Party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

38.2.6 the other Party ceases to carry on its business or substantially the whole of its business; or

38.2.7 the other Party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

38.3 This Agreement is contingent upon funding from government and the Council can in no way warrant represent or guarantee the continuation of this funding. In the event that the government withdraws funding the Council may terminate this Agreement in whole or in part by serving reasonable written notice on the Contractor

38.4 Where notice to terminate is given pursuant to this clause 38, this Agreement shall terminate with effect on the date specified in the notice

39. Consequences of Termination

39.1 Other than as set out in this Agreement, neither Party shall have any further obligations to the other under this Agreement after its termination

39.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect

39.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies obligations or liabilities of the Parties existing at termination

39.4 Notwithstanding its obligations in this clause 39, if a Party is required by law, regulation, or government or regulatory body to retain any documents or materials containing the other Party's Confidential Information, it shall notify the other Party in writing of such retention, giving details of the documents and/or materials it must retain.

39.5 upon termination of this Agreement for any reason, the Contractor shall, at its own cost, deliver, and require that its employees, agents and sub-contractors deliver, to the Council all information and any other property of the Council which are in the possession or control of the Contractor or the Contractor's employees, agents or Sub-Contractors at the date of termination.

40. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

The Parties agree that the provisions of Schedule 2 shall apply to any Relevant Transfer of staff under this Agreement

41. Staffing Security – Not Used

42. Security Requirements – Not Used

43. Governing Law And Jurisdiction

It is the responsibility of the Contractor to comply with all relevant European and English legislation. This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts

44. Severance

If any provision of this Agreement prohibited by law or judged by any court of competent jurisdiction to be unlawful, void, invalid or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

45. Parent Company Guarantee- Not Used

46. Amendments

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

47. Agency, Partnership etc

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

48. Conflict of Terms

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

49. Entire Agreement

This Agreement contains the entire agreement between the Parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

IN WITNESS of this Agreement

Signed by and on behalf of
Shropshire Council

..... Director of Public Health/Authorised
Officer

Signed by and on behalf of

.....
Signature of authorised signatory

.....
Position in Organisation

Print Name (s)

SCHEDULE 1

SPECIFICATION

Childhood Vision Screening for 4 to 5 year olds Service specification

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Section 1: Purpose of the Screening Programme

1.1 Purpose of the specification

This service specification for the Childhood Vision Screening Programme outlines the service and quality expected by the commissioning body, currently the Local Authority, for the population for whom it is responsible and which meets the policies, recommendations and standards of the UK National Screening Committee (UK NSC).

The service specification does not replicate, duplicate or supersede any relevant legislative provisions which may apply, e.g. the Health and Social Care Act 2008 or the work undertaken by the Care Quality Commission. The specification will be reviewed and amended in line with any new guidance as quickly as possible.

The target population is children age 4-5 within the administrative area of the Council.

1.2 Background

Screening for reduced vision in children aged 4 to 5 years is primarily undertaken to detect individuals with amblyopia, which literally means '*blunted sight*' but is a form of abnormal vision system development. It is commonly defined as impaired vision that is not attributable to a structural abnormality of the eye. The reduced vision (affecting one eye, or very rarely both eyes) is caused by a disturbance to the normal developmental processes in the vision pathways during the most vulnerable period of early childhood. The most common conditions predisposing to amblyopia are strabismus (squint) and refractive error (focusing problems requiring glasses, such as long sightedness).

Early detection of amblyopia is necessary to avoid permanent visual impairment by allowing treatment to be undertaken within the sensitive period of neuroplasticity (growth and change) in the visual system.

Treatment for amblyopia involves training the brain to pay attention to the amblyopic eye.

This involves penalising the 'good' eye by patching or with the use of drops which defocus vision, has been shown to result in improved vision in the amblyopic eye.

1.3 Aim

The primary aim of the childhood vision screening programme is to identify children aged 4 to 5 years with reduced vision in one eye, enabling timely intervention which gives these children a chance at achieving their full visual potential.

The programme will also identify children with impaired sight in both eyes, children with poorer vision in both eyes are usually identified in infancy through other screening programmes (the Neonatal Infant Physical Examination and the Retinopathy of Prematurity screening programmes), or are detected through their symptoms.

1.4 Objectives

The objectives of the Childhood Vision Screening Programme are to

- Offer parents/carers/guardians the opportunity to identify whether their child has impaired sight in one or both eyes before the age of 6 years to ensure the best possible visual outcome from treatment
- Provide information so parents/carers/guardians can make an informed choice whether to accept the offer of vision screening
- Ensure equality of access for all children and families
- Ensure access to screening to all children within the target population
- Enable a coordinated, integrated approach to screening and follow on services

This will be achieved by delivering a population wide programme which

- Identifies the eligible population and ensures delivery is safe, effective, and provides a good participant experience
- Is delivered and supported by suitably trained, competent and qualified staff who participate in recognised ongoing training and development
- Supported by regular, accurate and comparable data collection and audit

1.5 Expected health outcomes

The direct health outcome is the optimal development of vision for children with amblyopia through prompt (before the age of 6 years) access to treatment.

The indirect outcome is the optimal personal (health, social, educational) developmental for all children with reduced vision in one or both eyes

1.6 Principles

- All individuals will be treated with courtesy, respect and an understanding of their needs.
- All those participating in the vision screening programme will have adequate information on the benefits and risks to allow an informed decision to be made before participating.
- The target population will have equitable access to screening.
- Screening will be effectively integrated across a pathway with clear lines of communication between the different services

1.7 Equality

The objectives of the screening programme should include:

Help reduce health inequalities through the delivery of the programme

Key deliverables:

- Screening should be delivered in a way which addresses local health inequalities, tailoring and targeting interventions when necessary
- The service should be delivered in a culturally sensitive way to meet the needs of diverse populations
- A Health Quality Impact Assessment should be undertaken as part of both commissioning and review of this screening programme, including equality characteristics, socio-economic factors and local vulnerable populations
- User involvement should include representation from service users with equality characteristics reflecting the local community including those with protected characteristics
- The Contractor shall exercise high levels of diligence when considering excluding people with protected characteristics in their population from the programme and follow both equality, health inequality and screening guidance when making such decisions (see <https://www.gov.uk/equality-act-2010-guidance>)

The Contractor will be able to demonstrate what systems are in place to address health inequalities and ensure equity of access to screening, subsequent diagnostic testing and outcomes. This will include, for example, how the services are designed to ensure that there are no obstacles to access on the grounds of the nine protected characteristics as defined in the Equality Act 2010 (see <https://www.gov.uk/equality-act-2010-guidance>)

The Contractor will have procedures in place to identify, record and support those persons who are considered vulnerable/ hard-to-reach, including but not exclusive to, Looked After Children, those being educated within the independent sector, or receiving education at home. those who are not registered with a GP; homeless families; those with learning disabilities, physical disabilities or communications difficulties The Contractor will comply with safeguarding policies and good practice recommendations for such persons.

The Contractor is expected to meet the public sector Equality Duty which means that public bodies have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. See <https://www.gov.uk/equality-act-2010-guidance>

- It also requires that public bodies:
- have due regard to the need to eliminate discrimination
 - advance equality of opportunity
 - foster good relations between different people when carrying out their activities

Section 2: Scope of the Screening Programme

2.1 Description of screening programme

The UK National Screening Committee (UK NSC) recommends that screening of children's vision should be offered to all children aged 4 to 5 years. Amblyopia, when an eye does not see well though it appears normal, is the main problem found by screening in this age group. Training the brain to pay attention to the 'lazy eye', by covering the good eye with a patch, or defocusing vision in the good eye using drops, has been shown to help improve the sight in the affected eye in the majority of cases.

In delivering a national screening programme and to ensure national consistency the Contractor is expected to fulfil the following, in conjunction with guidance from the national screening committee where appropriate and as detailed in national policy and standards

- work to nationally agreed standards, guidance and policies
- be required to implement and support national IT developments where available
- be required to respond to national actions such as change of IT software, equipment supplier and techniques as appropriate
- ensure appropriate governance structures are in place
- implement and monitor failsafe procedures and continuously ensure quality and safety
- provide data and reports mapped against programme standards, key performance indicators, and quality indicators as required
- take part in quality assurance (QA) processes and implement changes recommended by QA including urgent suspension of services if required
- ensure that there is sufficient resource to provide screening to the defined population
- report against standard Key Performance Indicators (KPIs) as required
- work with the NHS in reporting, investigating and resolving screening safety incidents and implement agreed actions
- ensure all professionals access and complete appropriate training to maintain continuous professional development and competence
- use materials provided by the national screening programme, e.g. information leaflets, e-learning and other training resources, and protocols to support local service delivery
- work with the Council's public health team to ensure uptake is maximised in the target population and there is equity of access to the service for all patients. The programme interfaces with and is supported by a number of other services (e.g. primary care and hospital eye services). In order to ensure that the programme delivers a co-ordinated and seamless service in a multi-provider environment, the Contractor must work with any providers that support or deliver other elements of the complete pathway or provide interfacing services and must work to common standards, policies and protocols.
- Work with the local Child Health Information System (CHIS) to share information regarding children who are eligible for screening and recording outcomes of screening on CHIS.

2.2 Care pathway

The Childhood Visual Screening pathway consists of the following:

- The eligible population of children aged 4 to 5 years old is identified by the local authority.
- The Council must identify children who reach their 4th birthday in the year preceding the September of any given school year. It is expected that the Council will make all reasonable efforts to ensure that children aged 4 to 5 years old, who move into an area following the start of any school year, are identified and offered screening
- where children are not educated in mainstream school e.g. in Independent school or home educated but are resident in Shropshire, the contractor must have a pathway in place to inform parents/carers of the importance of eye screening and how/where they can access this..
- Children who are under the care of a hospital eye service and / or those who have been registered as severely sight impaired, are not appropriate targets for childhood vision screening. As the Council may not have access to data on hospital eye service attendance, all children who are not certified as severely sight impaired are invited to screening.

- Written information about the childhood vision screening programme is provided to parents /carers and a choice to be screened is offered
- The programme should operate on an opt out basis, with acceptance of the screening offer assumed unless the parents/carers/guardians decline screening
- The offer of screening and subsequent decline should be recorded, with decline being a recorded outcome of the screening offer
- Parents will be asked to state if they are declining screening because their child is already under the care of hospital eye services.
- A local failsafe protocol must be in place to ensure that all children who commence the screen complete the testing and referral pathway
- All children who commence the screen are tested using a crowded LogMAR acuity testing card, with testing undertaken in an Orthoptic led service
- The test is delivered by an Orthoptist or by a screener with competency confirmed by an Orthoptist
- All children with a visual acuity less than 0.20 LogMAR on the Keeler crowded LogMAR test in one or both eyes are referred on for orthoptic examination, cycloplegic refraction, and examination of optical media and retina.
- Children unable to complete the screening test due to lack of co-operation either undergo a second testing attempt or are referred directly onto hospital eye services

A pathway for childhood vision screening is shown Appendix 1 [contractor to supply this prior to commencement of service]

The elements which the Contractor is expected to achieve comprise:

- inviting all eligible children for screening
- provide written information with a choice whether to be screened or not (resources to support this can be found at <https://www.gov.uk/government/consultations/child-vision-screening-resources>)
- conduct visual acuity examination in line with national guidance
- document results on an approved IT system
- ensuring service users who require onward referral are referred to the appropriate service
- undertaking internal Quality Assurance (QA)
- providing clinical oversight and governance for the Programme

The Contractor is expected to review and risk assess local pathways in the light of national Vision Screening programme guidance and to develop, implement and maintain appropriate risk reduction measures. This should involve mechanisms to audit implementation, report incidents, ensure staff training, development and competencies and have appropriate links with internal governance arrangements. Support can be sought from the Quality Assurance teams, NHS England screening teams, Public Health England screening teams, and Immunisation teams.

2.3 Failsafe arrangements

Quality assurance (QA) within the screening pathway is managed by including failsafe processes. Failsafe is a back-up mechanism, in addition to usual care, which ensures that if something goes wrong in the screening pathway, processes are in place to identify (i) what is going wrong and (ii) what action follows to ensure a safe outcome. The Contractor shall comply with the child vision screening guidance on failsafe. It should ensure that it establishes, maintains and follows quality assurance and failsafe processes.

The Contractor is expected to:

- ensure that results have been sent to parents/carers and other appropriate clinicians by agreement by NHS England
- ensure Referrals have been processed appropriately and safely

- track each subject's progress along the screening pathway using the Programme's management software according to national guidance.
- ensure safe systems are in place between different elements of the Programme (e.g. to HES or optometrist)
- have and evidence appropriate failsafe mechanisms in place across the whole screening pathway to review and risk assess local screening pathways in the light of guidance offered by Quality Assurance processes
- develop, implement, and maintain appropriate risk reduction measures, and to report incidents
- ensure that appropriate links are made with internal governance arrangements, such as risk registers
- ensure staff have access to appropriate training and development to maintain competencies

Failsafe Process: [contractor to provide this prior to service commencing]

2.4 Roles and accountabilities through the screening pathway

The childhood vision screening programme is dependent on systematic specified relationships between stakeholders, which include orthoptic services, the vision screening team, schools, optometry services, ophthalmology services, primary care/GPs, and other specialist services.

The Council will take all reasonable steps to ensure that the whole pathway is robust. The Contractor will be expected to fully contribute to ensuring that systems are in place to maintain the quality of the whole screening pathway in their organisation. This will include, but is not limited to:

- provision of robust screening coordination which links with all elements of the screening pathway
- ensure that responsibilities relating to all elements of the screening pathway across organisations and organisational boundaries are identified
- develop joint audit and monitoring processes
- agree joint failsafe mechanisms where required to ensure safe and timely processes across the whole screening pathway
- contribute to appropriate NHS England and public health screening lead initiatives in screening pathway development
- use approved IT systems which enable robust electronic links for screening services across the screening pathway
- links with primary care

The Contractor is expected to have the following posts (and appropriate deputies) in place to oversee the screening programme.

- Childhood Vision Screening Local Co-ordinator: operational lead for the local programme. Responsible for the day to day oversight of all aspects of the programme, including prompt and safe onward referral to the appropriate service
- Childhood Vision Screening Clinical Lead: a clinician (orthoptist or ophthalmologist) responsible for being the champion of, and strategic lead for, the local programme, providing support and oversight

2.5 Commissioning Arrangements

The commissioning of the Childhood Vision Screening Programme (CVSP) pathway involves commissioning at different levels which may include NHS England and CCGs.

The Contractor will provide the screening programme to the target population within the geographical boundaries that is served by the named commissioning body (at this point in time, this will be the Local Authority).

Section 3: Delivery of Screening Programme

3.1 Service model summary

Childhood vision screening is to be carried out in an Orthoptic led service. Screening is to be undertaken on children aged 4 to 5 years old. The Contractor will operate a model that will maximise the uptake of the screening offer, whilst maintaining a safe, inclusive and cost-effective programme.

See section on Care pathway for more details

3.2 Programme co-ordination

The Contractor will be responsible for ensuring that the part of the programme they deliver (see section 2.2) is coordinated and interfaces with other parts of the programme with which they collaborate, in relation to timeliness and data sharing.

The Contractor will ensure that there is an appropriate level of dedicated Childhood Vision Screening co-ordination i.e. Local Co-ordinator and Clinical Lead, with appropriate administrative support, to contribute to strategic development, to ensure timely reporting and to respond to requests for information. Where there is only one named co-ordinator, the Contractor will ensure that there are adequate cover arrangements in place to ensure sustainability, safety and consistency of the programme.

The Contractor and the Council will meet at regular intervals to monitor and review the local screening pathway and outcomes. The meetings should include representatives from programme coordination, clinical services and service management

3.3 Clinical and corporate governance

The Council will:

- ensure co-operation with and representation on the local screening oversight arrangements/structures
- ensure that there is appropriate internal clinical oversight of the programme and have its own management and internal governance of the services provided with the designation of a Clinical Lead and a Local Co-ordinator
- ensure that overall responsibility for the screening programme lies at Director level
- ensure a multidisciplinary steering group/programme board, is in place, with Council representation, with terms of reference and record of meetings
- ensure that there is regular monitoring and audit of the screening programme including outcomes of screening, and that, as part of organisation's clinical governance arrangements, the Contractor's board is assured of the quality and integrity of the screening programme, using available national benchmarks
- have appropriate and timely arrangements in place for referral into treatment services that meet the screening programme standards
- be able to provide documented evidence of clinical governance and effectiveness arrangements on request
- ensure that an annual report of screening services is produced which is signed off by the organisation's board
- have a sound governance framework in place covering the following areas:
 - o information governance/records management
 - o equality and diversity
 - o user involvement, experience and complaints
 - o failsafe procedures
 - o risks & mitigation plans

3.4 Definition, identification and invitation of cohort/ eligibility

The eligible population is:

All children within the target population, both registered and registered, aged 4 to 5 years old in the September of the screening year who have not undergone childhood vision screening elsewhere.

Children who are developmentally unable to perform crowded LogMAR* (Logarithmic Measure of Angle of Resolution) acuity tests should undergo vision screening delivered by an orthoptist using a test appropriate for their developmental stage (the 'alternate' screening pathway).

*LogMAR –a chart comprises rows of letters and is used by ophthalmologists, optometrists and vision scientists to estimate visual acuity.

Screening may be delayed if a child is too unwell to undergo vision screening.

If a child does not undergo screening following a second invitation (for any reason), and there is no record of a declined screening invitation, a letter is sent to the child's parent/carer/guardian explaining this, and advising them to seek a vision test at a local optometrist of their choice.

Exclusion criteria:

Children who are known to be severely visually impaired, or children who are under the care of hospital eye services should be excluded from invitation to screening.

3.5 Entry into the screening programme

See section: Care pathway and section: Definition, identification and invitation of cohort eligibility.

The Contractor will ensure timely access to all aspects of the screening programme

3.6 Working across interfaces between organisations

The screening programme is dependent on strong working relationships (both formal and informal) between the screening programme, ophthalmology departments, community orthoptic services, local educational services, optometric services, and primary care professionals, including school nurses and GPs.

Accurate and timely communication and handover across these interfaces is essential to reduce the potential for errors and ensure a seamless pathway for service users. It is essential that the responsible care provider is identified at all times, including during and after handover of care.

The Contractor will be expected to fully contribute to ensuring that cross organisational systems are in place to maintain the quality and safety of the entire screening pathway.

This will include, but is not limited to:

- work to nationally agreed programme standards, policies and guidance
- provide strong leadership and clear lines of accountability
- agreement and documentation of roles and responsibilities relating to all elements of the screening pathway across organisations to ensure appropriate handover arrangements are in place between services
- development of audit and monitoring processes
- agree jointly on the failsafe mechanisms required to ensure safe and timely processes across the whole screening pathway
- development of an escalation process for safety incidents

3.7 Information on test / screening programme

The Contractor will ensure that that at the start of the school year, and at other relevant points throughout the screening pathway, parents/carers are provided with information utilising the approved screening programmes booklet (when available) as a guide for discussion. Where there are specific communication requirements (e.g. English is not the parent/carer/guardian's first language, visual/hearing impairment) appropriate interpretation services should be used.

3.8 Testing (equipment, performance of test by individuals)

The Contractor will ensure that the visual acuity examination is performed by a health professional who has been appropriately trained within an orthoptic led service in line with national guidance.

3.9 Results giving, reporting and recording

Screening results should be explained to parents by post or verbally by appropriately trained staff. The professional undertaking the examination is responsible for ensuring that the results and screening outcomes are recorded. This should be undertaken by entering results an IT system that can ensure demonstrable failsafe mechanisms are in place, monitored and managed. Use of such a system is mandatory. These data are necessary for the mandatory audit of the screening programme, including audit of the outcomes of screening.

The Contractor is responsible for ensuring outcome data from screened children is recorded electronically to allow screening outcomes to be effectively assessed.

3.10 Transfer and discharge from care obligations

Children will remain the responsibility of the screening programme until the onward referral is accepted by the accepting service provider.

The Contractor will retain care obligations throughout the Vision Screening care pathway, unless a formal transfer of care is made to another care provider and this is accounted for within a failsafe system.

3.11 Public information

The Contractor must always use the most up to date and accurate patient information leaflets at all stages of the screening pathway to ensure accurate messages about the risks and benefits of screening and any subsequent surveillance or treatment are provided.

- the Contractor must ensure accurate and consistent messaging, particularly around informed choice, and to access nationally-developed resources.

- the Contractor should always link through to the national information on NHS Choices {pages}

3.12 Exclusion criteria

3.13 Staffing and training

The Contractor will have in place one or more named individuals (who may be the clinical lead / co-ordinator) responsible for the coordination of the delivery of the programme. The designated person or persons will contribute to planning, with appropriate administrative support, to ensure timely reporting and response to requests for information. Where there is only one named coordinator / clinical lead, the Contractor will ensure that there are adequate cover arrangements in place to ensure sustainability, safety and consistency of the programme.

The designated persons are also responsible for ensuring that there is an on –going educational programme for health professionals involved in Childhood Vision screening.

The Contractor must facilitate orthoptic-led screener training in line with programme requirements/standards as detailed in each the screening programme specification. The Council will require evidence to ensure training has been completed satisfactorily and recorded and that the Contractor has a system in place to assess ongoing competency in undertaking the examination of visual acuity in children aged 4 to 5 years.

The Contractor will ensure that there are adequate numbers of appropriately trained staff in place to deliver the screening programme in line national guidance.

The Contractor must allow appropriate annual CPD in line with programme and requirements, for example a screening study day or completion of bespoke (to be developed) e-learning for all professionals involved in the screening pathway. (see competencies <https://www.gov.uk/government/publications/child-vision-screening/screening-competencies>)

It is recommended that the BIOS on-line e-learning resource (when available) be undertaken on an annual basis.

3.14 User involvement

The Contractor(s) will be required to:

- demonstrate that they have collected (or have plans in place to collect) the views of Service Users, families and others in respect of the services they provide
- demonstrate how those views will influence service planning and delivery for the purposes of maintaining and improving standards
- make results of user surveys/questionnaires available to NHS England, Public Health England, or national Quality Assessment teams on request.

3.15 Premises and equipment

The Contractor will ensure that:

- Suitable premises and equipment, including appropriate examination areas within schools, are provided for the screening programme and will have appropriate policies in place for equipment maintenance and replacement to ensure programme sustainability.
- An IT system that can ensure demonstrable failsafe processes is in place, monitored and managed should be used. Use of such a system is **mandatory**.

3.16 Safety & Safeguarding

- Safeguarding children and families is fundamental to the Childhood Vision Screening Services. The Contractor shall ensure that all staff comply with the most up to date current Shropshire Safeguarding Children Board (SSCB) and where applicable the "Keeping Adults Safe in Shropshire Board" policies and procedures and national guidance.

The Contractor should have in place their own organisational safeguarding procedures..

- The Contractor must ensure that policies and procedures relating to safeguarding are adhered to, that safeguarding is carried out in accordance with the intercollegiate documents for safeguarding, SSCB guidance, national guidance for example NICE, and lessons learned from Serious case reviews (SCR) together with other reviews and that staff have undertaken training appropriate for their professional role. The Contractor shall ensure that it is represented on the Shropshire Safeguarding Children Board . All staff working with children and their families will have undertaken an enhanced Disclosure and Barring check. See relevant safeguarding policy and requirements
<http://www.safeguardingshropshireschildren.org.uk/scb/>
- Participate in any external safeguarding audits /external reviews as identified by the Authority e.g. Shropshire Safeguarding Children Board (SSCB) review. The Contractor will report the findings of such reviews including any actions that need to be undertaken, to the Council within an agreed timeframe
- Participate in any external safeguarding audits /external reviews as identified by the Authority e.g. Shropshire Safeguarding Children Board (SSCB) review. The Contractor will report the findings of such reviews including any actions that need to be undertaken, to the Council within an agreed timeframe
- Demonstrate effective management and escalation of safeguarding risks and how risks are reviewed and benchmarked

- Where professional concerns exist for the potential safety of practitioners or the public, a risk assessment will be completed before a home visit is undertaken

Also refer to section 4 and clause 28

Section 4: Service Standards, Risks and Quality Assurance

4.1 Key criteria and standards

Childhood vision screening for children aged 4 to 5 years screening standards are available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/598640/Vision_screening_standards_draft_for_consultation.pdf

The Contractor will meet the minimal acceptable standards for all stages of the pathway and continuously work towards the achievable programme standards. A number of resources to support providers are available on the programme website

<https://www.gov.uk/government/consultations/child-vision-screening-resources>

4.2 Risk assessment of pathway

The Contractor is required to have an internal quality assurance and risk management process that assures the Council of its ability to manage the risks of running a screening programme.

The Contractor will:

- ensure that mechanisms are in place to regularly audit implementation of risk reduction measures and report incidents
- ensure that risks are reported through internal governance arrangements, such as risk registers
- review and risk assess local screening pathways in the light of guidance offered by Quality Assurance processes or the National Screening programme

High scoring risks will be identified and agreed between the Contractor and the Council and plans put in place to mitigate against them. The Contractor will identify risks with high scores.

The Contractor and the Council will agree plans and timescales to mitigate risks.

4.3 Quality Assurance

The Contractor will participate fully in national Quality Assurance processes, cooperate in undertaking ad-hoc audits and reviews as requested by Screening Quality Assurance (SQAS) teams and respond in a timely manner to their recommendations. This will include the submission to SQAS teams and the Council of:

- agreed data and reports from external quality assurance schemes
- minimum data sets as required
- self-assessment questionnaires / tools and associated evidence

The Contractor should operate failsafe systems that can identify, as early as possible, children that may have been missed or where screening results are incomplete. The Contractor will respond to SQAS recommendations within agreed timescales. The Contractor will produce with agreement of the Council an action plan to address areas for improvement that have been identified in recommendations. Where SQAS believe there is a significant risk of harm to the population, they can recommend to the Council to suspend a service.

4.4 Safety concerns, safety incidents and serious incidents

The Contractor will comply with the national guidance for the management of safety concerns and incidents in screening programmes and NHS England guidance for the management of serious incidents (<https://www.gov.uk/government/publications/managing-safety-incidents-in-nhsscreening-programmes>).

4.5 Procedures and protocols

The Contractor will be able to demonstrate that it has audited procedures, policies and protocols in place to ensure best practice is consistently applied for all elements of the screening programme.

4.6 Service improvement

Where national recommendations and acceptable/achievable standards are not currently fully implemented the Contractor will be expected to indicate in service plans what changes and improvements will be made over the course of the contract period. The Contractor shall develop a CSIP (continual service improvement plan) in line with the KPIs and the results of internal and external quality assurance checks. The CSIP will respond to any performance issues highlighted by the Council, having regard to any concerns raised via any service user feedback. The CSIP will contain action plans with defined timescales and responsibilities, and will be agreed with the Council.

Section 5: Data and Monitoring

5.1 Key performance indicators

The Contractor shall adhere to the requirements specified in the document NHS screening programmes: national data reporting

5.2 Data collection monitoring

The Contractor should ensure:

- appropriate systems are in place to support programme delivery including audit and monitoring functions
- timely and accurate completion of data for all stages of the care pathway. This should be through use of an IT system that can ensure demonstrable failsafe processes are in place, monitored and managed. Use of such a system is mandatory
- continuous monitoring and collection of data regarding delivery of the service
- compliance with the timely data requirements of the National Screening programmes and Quality Assurance teams
- information and audit data is available to the Council and the Contractor

The National Screening programme will produce regular performance reports for the Council and the Contractor of the screening programme

Section 6 Key Performance Indicators

These are to be provided to termly to the Council as part of the contract monitoring report. Vision Screening Key Performance Indicators. New or additional reporting may be identified during the term of this contract and these will be agreed as required.

Number of children to be screened in academic year

Target will be 100% over academic year to be split between 3 terms.

Number of school sessions delivered (see metrics template)

Metrics Template

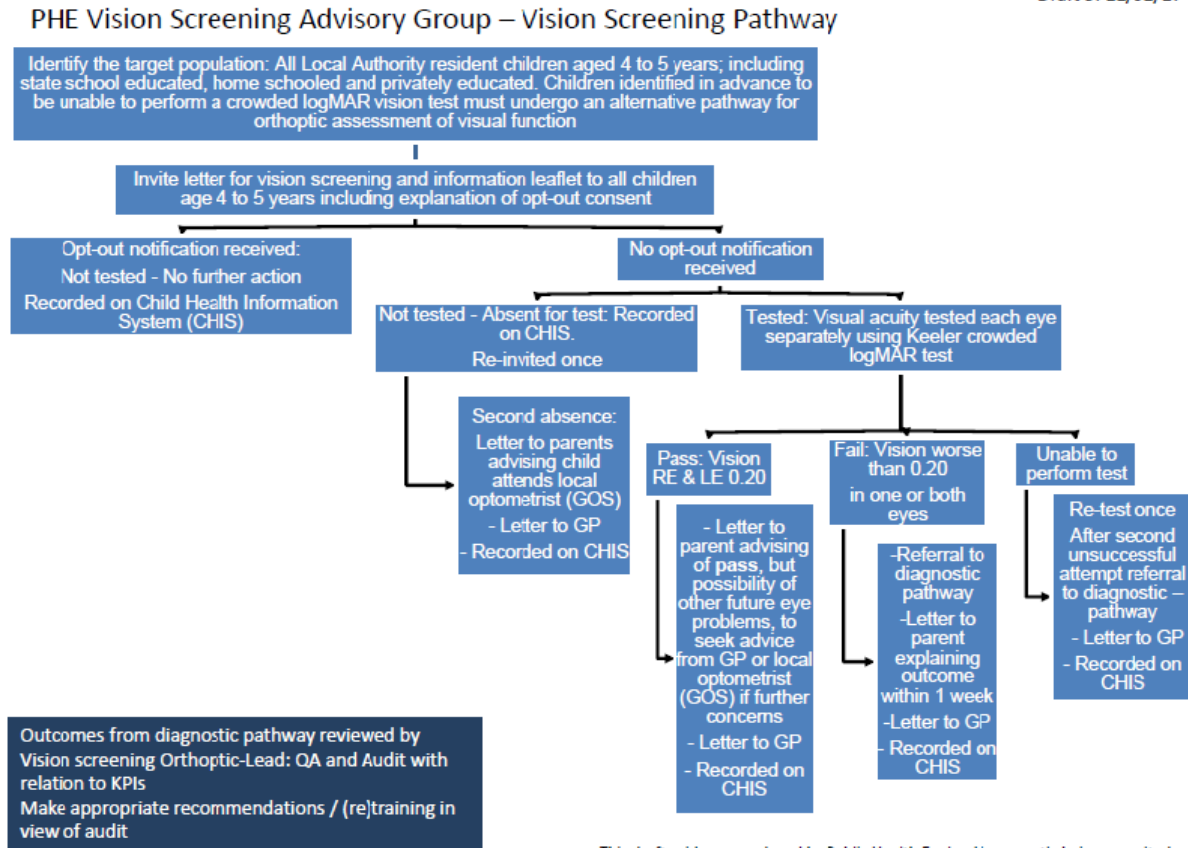
Name of School				
Number of children screened	Number of children referred for follow up	Number of children that were absent on day of screening	Number of absent children screened on return visit	Number of children who had letters to parents/carers advising of missed screening

	Autumn Term Sep - Dec	Spring Term Jan-April	Summer Term April-July
Number of screening sessions delivered Denominator number of sessions to be delivered over academic year			
Number of sessions cancelled denominator number of session planned for term			
Reasons for cancellation			
Total number of children requiring referral/where referred to/what referral was for Denominator number of children screened.			
Number of children seen by community optician as part of the referral pathway Denominator number of referrals to community optician as part of pathway			
Total Number of children opted out of screening			
Total number of absentees where letters sent to			

parents/carers Denominator number of absentees			
Number of children discharged from pathway			
Number of children who are contacted where no follow up information has been received from community optician			
Number of initial DNA letters sent			
Number of repeat DNA letters sent			

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/598638/Vision_screening_diagnostic_pathway_draft_for_consultation.pdf

Draft 5: 11/01/17



Contractor to include screening pathway, tests used, referral process, absentee, abstains from treatment, DNA process and discharge criteria

Abstains/In Treatment

For all children not seen the service should have received an Opt out consent form signed by the parents or stating already in treatment, this should be put in the school folder and recorded on the class list. For children where there has been a verbal abstain it should be clearly recorded on the class list who received the message, attempt to discuss with parents and record conversation on class list. If unable to contact parents A Child Not seen Letter should be completed and put in school folder to be posted to parent by screening administrator.

Absent

Less than 4 children absent.

Any absent child is to be marked absent on class list.

A Child Not Seen Letter should be completed and put in school folder to be posted to parents by screening administrator.

4 or more absentees

Absentee visits will be done if there are a minimum of 4 absentees. Screening Orthoptist to use their judgement if planning smaller numbers in schools closer together, these visits are only to be arranged if they are an efficient use of resources. Orthoptist should keep a copy of the class list and complete results on follow up visit.

*Lang stereotest is test used to detect problems in stereoscopic (depth perception) vision. A missing or limited stereopsis can lead to severe handicaps in many life domains and professions.

SCHEDULE 2

TUPE AND PENSION CLAUSES

Section 1 EMPLOYMENT PROVISIONS

Unless otherwise stated in each Section, the following definitions shall apply:

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

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

Contractor's Provisional Personnel List: a list prepared and updated by the Contractor of all Contractor 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 Contractor and who are expected, if they remain in the employment of the Contractor 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 Contractor Employees;

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

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

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from the Council or any Former Provider to the Contractor 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 Contractor 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 Contractor 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 Contractor supplying services to the Council before the Service Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Contractor (or any sub-contractor of any such sub-contractor);

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

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

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

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

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

Replacement Sub-contractor: a sub-contractor of the Replacement Provider to whom Transferring Contractor 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 Contractor 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 Contractor or Sub-Contractor to the Council or any Replacement Provider giving rise to a Relevant Transfer;

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

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

- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other Employee Liability Information

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

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

Transferring Former Provider Employees: employees of a Former Provider whose contracts of employment transfer with effect from the Effective Date to the Contractor 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 C.

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

2. INTERPRETATION

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

3. PROCEDURE IN THE EVENT OF TRANSFER

3.1 The Council and the Contractor 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 Council and/or any Former Provider.

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

- (a) the Contractor 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 Council and, where required by the Council, give notice to the Former Provider; and

(b) the Council 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 Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the Council 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 Council and/or the Former Provider), the Contractor 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 Contractor and/or the Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

4. INDEMNITIES

4.1 Subject to the Contractor 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 Council shall:

(a) indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Council referred to in clause 3.2 made pursuant to the provisions of clause 3.4 provided that the Contractor 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 Contractor 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 Contractor 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 Council and/or the Former Provider as appropriate nor dismissed by the Contractor 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 Contractor and/or the Sub-contractor (as appropriate) and the Contractor 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 Contractor and/or any Sub-contractor pursuant to clause 4.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Council and any Former Provider, and shall procure that the Sub-contractor shall indemnify the Council and any Former Provider, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor 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 Contractor 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 Contractor 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 Contractor and/or any Sub-contractor to the Council and, if applicable, Former Provider within six months of the Effective Date.

5. PROCUREMENT OBLIGATIONS

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

6. RETENDERING AND PRE-SERVICE TRANSFER OBLIGATIONS

6.1 The Contractor agrees that within 20 Working Days of the earliest of:
(a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer;
(b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
(c) the date which is 12 months before the end of the Term; and
(d) receipt of a written request of the Council at any time (provided that the Council shall only be entitled to make one such request in any six month period), it shall provide at no cost to the Council and in a suitably anonymised format so as to comply with the Data Protection Legislation, the Contractor's Provisional Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Personnel List and it shall provide an updated Contractor's Provisional Personnel List at such intervals as are reasonably requested by the Council.

6.2 At least 28 Working Days prior to the Service Transfer Date, the Contractor shall provide to the Council or at the direction of the Council to any Replacement Provider and/or any Replacement Sub-contractor:
(a) the Contractor's Final Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
(b) the Staffing Information in relation to the Contractor's Final Personnel List (insofar as such information has not previously been provided).

6.3 The Council shall be permitted to use and disclose information provided by the Contractor 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 Contractor:
(a) shall promptly notify the Council forthwith in writing of any material changes to the information provided pursuant to clause 6.1 and clause 6.2 as and when such changes arise; and
(b) warrants, for the benefit of the Council, any Replacement Provider, and any Replacement Sub-contractor that all information provided pursuant

to clause 6.1 and clause 6.2 shall be true and accurate in all material respects at the time of providing the information.

6.5 From the date of the earliest event referred to in clause 6.1(a), clause 6.1(b) and clause 6.1(c), the Contractor 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 Contractor's Provisional Personnel List and shall not without the approval of the Council (not to be unreasonably withheld or delayed):

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

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

(a) the numbers of employees engaged in providing the Services;

(b) the percentage of time spent by each employee engaged in providing the Services; and

(c) a description of the nature of the work undertaken by each employee by location.

6.7 The Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Council, any Replacement Provider and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor 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 Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Council

or, at the direction of the Council, to any Replacement Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Contractor's Final Personnel List who is a Transferring Contractor Employee:

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

6.8 The Council regards compliance with this paragraph 6 as fundamental to the Agreement. In particular, failure to comply with paragraphs 6.1 and 6.2 in respect of the provision of accurate information about the Transferring Contractor Employees shall entitle the Council to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 6.8 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Contractor'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 Council's prior written consent, unless such changes are required by law. The Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

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

7. EMPLOYMENT REGULATIONS EXIT PROVISIONS

7.1 The Council and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Provider and/or a Replacement Sub-contractor. Such change in the identity of the Contractor of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Council and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the

contracts of employment between the Contractor and the Transferring Contractor 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 Contractor Employee.

7.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor 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 Contractor Employees and other employees or former employees of the Contractor 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 Contractor 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 Contractor shall indemnify the Council and/or the Replacement Provider and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Contractor 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 Contractor or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor 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 Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Contractor 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 Contractor to the Council and/or Replacement Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on or before the Service Transfer Date;

(e) a failure of the Contractor 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 Contractor 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 Contractor or any Sub-contractor other than a Transferring Contractor Employee for whom it is alleged the Council and/or the Replacement Provider and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

(g) any claim made by or in respect of a Transferring Contractor 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 Contractor or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Council and/or Replacement Provider to comply with regulation 13(4) of the Employment Regulations.

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

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

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

(b) the Contractor 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 Contractor or a Sub-contractor, the Council shall procure that the Replacement Provider shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

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

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

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

7.8 Subject to the Replacement Provider and/or Replacement Sub-contractor acting in accordance with the provisions of clause 7.5 to clause 7.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Council and any Replacement Provider and/or Replacement Sub-

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

7.13 Subject to clause 7.14, the Council shall procure that the Replacement Provider indemnifies the Contractor 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 Contractor Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor 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 Contractor Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor Employee on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor 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 Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising after the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Contractor 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 Contractor or Sub-contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory Council 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 Contractor 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 Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor 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 Contractor 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 Contractor 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 Contractor or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

7.17 Despite clause 7.16, it is expressly agreed that the parties may by agreement rescind or vary any terms of this 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.

Section 2 Pensions

Definitions:

Actuary a Fellow of the Institute and Faculty of Actuaries

Broadly Comparable certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013

Direction Letter a letter issued by the NHS Business Services Authority (on behalf of the Secretary of State pursuant to Section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967) to the Provider or a Sub-Contractor, setting out the terms on which the Provider or Sub-Contractor (as appropriate) is to be granted access to the NHS Pension Scheme in connection with this Agreement or the relevant Sub-Contract (as appropriate)

Eligible Employee means each of the Transferred Staff who immediately before the Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with either an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the former provider in the delivery of the Services

For the avoidance of doubt a Staff member who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an “open” Direction Letter or other NHS Pension Scheme “access” facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to New Fair Deal for Staff Pensions protection under this Schedule

Exit Transfer Date the date on which the Eligible Employees transfer their employment to a new provider at the end of the Agreement Term

New Fair Deal: the revised pensions fair deal position set out in the HM Treasury guidance: "*Fair Deal for staff pensions: staff transfer from central government*" issued in October 2013;

NHS Business Services Authority the Special Health Authority established under the NHS Business Services Authority (Establishment and Constitution Order) 2005 SI 2005/2414

NHS Pension Scheme the National Health Service Pension Scheme for England and Wales, established under the Superannuation Act 1972, governed by subsequent regulations under that Act including the National Health Service Pension Scheme Regulations 1995 (SI 1995/300) and the National Health Service Pension Scheme Regulations 2008 (SI 2008/653)

Transfer Amount an amount paid in accordance with Paragraph 2.4 of this Section 2 (B) (Payment of Transfer Amount) and calculated in accordance with the assumptions, principles and timing adjustment referred to in Paragraph 2.2 of this Section 2 (B) (*Calculation of Transfer Amount*) in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or former provider's Broadly Comparable scheme and elected to transfer them to the Provider's Broadly Comparable scheme under the Transfer Option

Transfer Date means the Transferred Staff's first day of employment with the Provider (or its Sub-Contractor)

Transfer Option an option given to each Eligible Employee with either:

- (i) accrued rights in the NHS Pension Scheme; or
 - (ii) accrued rights in a Broadly Comparable scheme,
- as at the Transfer Date, to transfer those rights to the Provider's (or its Sub-Contractor's) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes)

Transfer Option Deadline the first Business Day to fall at least 2 months after the notice detailing the Transfer Option has been sent to each Eligible Employee

Transferred Staff means those employees whose employment compulsorily transfers to the Provider or a Sub-Contractor by operation of the Employment Regulations, COSOP or for any other reason, as a result of the award of this Agreement

2. Pensions on Transfer of Employment on Exit

- 2.1 In the event of any termination or expiry or partial termination or expiry of this Agreement which results in a transfer of the Eligible Employees, the Provider must (and if offering a Broadly Comparable scheme, must use all reasonable efforts to procure that the trustees or managers of that pension scheme must):
- 2.1.1 not adversely affect pension rights accrued by the Eligible Employees in the period ending on the Exit Transfer Date;
 - 2.1.2 within 30 Business Days of being requested to do so by the new provider, (or if the new provider is offering Eligible Employees access to the NHS Pension Scheme, by NHS Business Services Authority), provide a transfer amount calculated in accordance with Paragraph 2.2 below (*Calculation of the Transfer Amount*); and
 - 2.1.3 do all acts and things, and provide all information and access to the Eligible Employees, as may in the reasonable opinion of the Council be necessary or desirable and to enable the Council and/or the new provider to achieve the objectives of New Fair Deal for Staff Pensions.

2.2 Calculation of Transfer Amount

2.2.1 The Council will use reasonable endeavours to procure that 20 Business Days after the Transfer Option Deadline, the Transfer Amount is calculated by the Former Provider's Actuary on the following basis and notified to the Provider along with any appropriate underlying methodology.

2.2.1.1 If the Former Provider offers a Broadly Comparable scheme to Eligible Employees:

2.2.1.1.1 the part of the Transfer Amount which relates to benefits accrued in that Broadly Comparable scheme other than those in sub-paragraph 2.2.1.1.2 below must be aligned to the funding requirements of that scheme; and

2.2.1.1.2 the part of the Transfer Amount which relates to benefits accrued in the NHS Pension Scheme (having been previously bulk transferred into the former provider's Broadly Comparable scheme), must be aligned to whichever of (a) the funding requirements of the Former Provider's Broadly Comparable scheme; or (b) the principles under which the former provider's Broadly Comparable scheme received a bulk transfer payment from the NHS Pension Scheme (together with any shortfall payment), gives the higher figure,

provided that where the principles require the assumptions to be determined as at a particular date, that date will be the Transfer Date.

2.2.1.2 If the Former Provider offers the NHS Pension Scheme to Eligible Employees, the Transfer Amount will be calculated by the NHS Pension Scheme's Actuary on the basis applicable for bulk transfer terms from the NHS Pension Scheme set by the Department of Health from time to time.

Each party will promptly provide to any Actuary calculating or verifying the Transfer Amount any documentation and information which that Actuary may reasonably require.

Annex A.

Admission Agreement – Not Used
Annex B. Transferring Council Employees

There are no Transferring Council Employees

Annex C. Transferring Former Provider Employees

Annex D. List of Notified Sub-contractors

There are no notified sub-contractors

Schedule 3 Outcomes

Childhood Vision Screening

(see also section 6 Performance Indicators and metrics)

- Conditions picked up at screening
 - Amblyopia (poor vision in one or both eye – untreatable after 7 years)
 - Squint (latent/manifest) – eyes look in different direction
 - Nystagmus (latent/manifest) – involuntary eye movement
 - Diplopia (double vision)
 - Microtropia – less than perfect binocular vision (slight deviation of one eye)
 - Ptosis – drooping eyelid
 - Cataract – clouding of lens
 - Retinoblastoma – eye cancer in children
 - Coloboma – a hole in the eye in the iris (front of eye) or choroid (Back of eye)
 - Convergence insufficiency – eyes not working together when focussing near
 - Anisocoria – unequal pupil size

 - Choroidal naevus – mole in back of the eye
 - Maculopathy – issues with the centre of the back of the eye
 - Ocular movement problems (Brown’s syndrome, Duane’s syndromes, Congenital IVth nerve palsy, alphabet patterns)
 - Literacy difficulties
 - Chalazion - cyst / lump in eyelid
 - Heterochromia – difference in iris colour
 - Horner’s syndrome – constricted pupil, eyelid droop, eye sinking in cavity
 - Pseudosquints – appearance of one or both eyes turning in
 - Goldenhar’s syndrome – congenital defect, incomplete palate, ear, nose, jaw

- Future impact of undiagnosed visual problems
 - Health
 - Education and learning
 - Driving
 - Careers: HGV drivers, train driver, pilot, photographer, lifeguard
 - Development of age related vision problems in the “good” eye (AMD/cataract/glaucoma/diabetic), leaving no usable vision

- Service also includes assessment of special needs children as part of the multi-disciplinary assessments at CDC. These children are at higher risk of vision problems which will have a greater impact on their quality of life and medical and educational understanding of their condition. Impairment of other senses increases the reliance on vision for everyday functioning. Approx 160 patients a year.

Information from: BIOS Information for Commissioners of Children's Vision Screening Services, May 2015, available on BIOS website

Public Health Implication

The aim of screening is to identify children with amblyopia (reduced vision) at an age where treatment has the potential to improve vision. Amblyopia is a childhood condition which can go unrecognised. **If left untreated it can result in a permanent, lifelong visual deficit.** The effect of the condition on vision and quality of life is calculated to be relatively mild but it can have a more serious impact if sight in the other eye is lost or damaged³. Accurate detection of amblyopia is primarily achieved through vision testing.

The testing of children with disabilities or with specific needs who require an alternative means of testing must be provided for within the screening service.

References

1. National Screening Committee, 2013. <http://www.screening.nhs.uk/vision-child>
2. BIOS Guidelines on Vision Screening in Children. British and Irish Orthoptic Society, 2014. http://www.orthoptics.org.uk/GP_info
3. [REDACTED] The clinical effectiveness and cost effectiveness of screening programmes for amblyopia and strabismus in children up to the age of 4- years: A systematic review and economic evaluation. Health Technology Assessment, 2008;12(25).
4. BIOS Statement on Orthoptic-led Vision Screening Services, April 2015
5. Guidelines on BIOS Vision Screening Training Programme for Vision Screeners, April 2015

Schedule 4

Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>The collection of children’s names, addresses, date of birth and school attending in order to undertake vision screening at age 4 to 5 years of age. Staff information collected for employment purposes.</i>
Duration of the processing	<i>1st August 2018 to 31st July 2021 (or up to 2023 if extension clauses are applied)</i>
Nature and purposes of the processing	<i>This will include the collection, recording, and storage of personal information in order to undertake vision screening this information may be required to be shared with consent to a referring organisation in order for care/treatment to be undertaken and/or monitored. Results giving, reporting and recording Screening results should be explained to parents by post or verbally by appropriately trained staff. The professional undertaking the examination is responsible for ensuring that the results and screening outcomes are recorded. This should be undertaken by entering results an IT system that can ensure demonstrable failsafe mechanisms are in place, monitored and managed. Use of such a system is mandatory. The information will also be returned to the Child Health Information Service in order for child health record to be updated with vision screening outcome. Collated none identifiable data will also be made available to the Local Authority in order to monitor performance on the contract and plan service delivery. All information whether hard copy or electronic shall be stored securely. Information will only be used for the purposes of this service and to secure further treatment/care/support. The purpose is to provide vision screening for children age 4-5 years. To assess child vision and refer for additional care/treatment/support as required.</i>

	<i>Staff-for employment purposes, to provide TUPE information if required ensure that have appropriate qualifications, skills and experience, hold a current Disclosure and Barring certificate.</i>
Type of Personal Data	<i>Information for the child: name, address, date of birth, NHS number, telephone number, Parent/carer contact details, name of school attending, testing results and referral information Staff: NI number, pay, work base, name, address, telephone number, date of birth, next of kin, DBS outcome.</i>
Categories of Data Subject	<i>Staff (including volunteers, agents, and temporary workers), Pupils Parents School</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>User health records must be retained for the periods of time required by law and then securely destroyed</i>

FINANCIAL MODEL
SHROPSHIRE COUNCIL
PUBLIC HEALTH - CHILDHOOD VISION SCREENING SERVICE

BIDDER NAME:

DATE

SCHEDULE



INSTRUCTIONS FOR TENDERING

**PMCV 012 – CHILDHOOD VISION
SCREENING SERVICE**

Shropshire Council Instructions for tendering

Contract Description:

This contract is to deliver a vision screening programme to all 4-5 year old (reception age) children who attend a school within the Shropshire Administrative Authority and/or who are residents within Shropshire Local Authority boundaries. The primary aim of the childhood vision screening programme is to identify children aged 4 to 5 years with reduced vision in one eye, enabling timely intervention which gives these children a chance at achieving their full visual potential.

The programme will also identify children with impaired sight in both eyes, children with poorer vision in both eyes are usually identified in infancy through other screening programmes (the Neonatal Infant Physical Examination and the Retinopathy of Prematurity screening programmes), or are detected through their symptoms.

The contract is initially for a three year period commencing on 1st August 2018 but at the expiry of the Initial Term, the Authority may extend this Contract for further periods of up to 12 months up to a maximum of two extension periods.

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

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1.0 Invitation to Tender

- 1.1** You are invited to tender for the provision of a Childhood Vision Screening Service as detailed in the Tender Response Document. The contract will be for an initial period of 3 years commencing on the 1st August 2018 with the option to extend for a further period of up to 2 years.
- 1.2** Tenders are to be submitted in accordance with the contract terms and conditions including specification 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 contract terms and conditions including specification 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, 23rd March 2018**.
- 4.2** No unauthorised alteration or addition should be made to the Specification and Tender Response Document, or to any other component of the Tender document. If any such alteration is made, or if these instructions are not fully complied with, the Tender may be rejected.

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

5.0 Variant Bids

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

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

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

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

7.0 Tender Evaluation

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

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

8.0 Clarifications

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

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

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

8.4 All queries should be raised as soon as possible (in writing), in any event not later than 16th March 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 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.

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



Tender Response Document

PMCV 012 – CHILDHOOD VISION SCREENING SERVICE

Name of TENDERING
ORGANISATION
(please insert)

**Shrewsbury and Telford Hospital NHS
Trust**

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

Shrewsbury and Telford Hospital NHS Trust

Shropshire Council Tender Response Document

Contract Description/Specification:

This contract is to deliver a vision screening programme to all 4-5 year old (reception age) children who attend a school within the Shropshire Administrative Authority and/or who are residents within Shropshire Local Authority boundaries. The primary aim of the childhood vision screening programme is to identify children aged 4 to 5 years with reduced vision in one eye, enabling timely intervention which gives these children a chance at achieving their full visual potential.

The programme will also identify children with impaired sight in both eyes, children with poorer vision in both eyes are usually identified in infancy through other screening programmes (the Neonatal Infant Physical Examination and the Retinopathy of Prematurity screening programmes), or are detected through their symptoms.

The contract is initially for a three year period commencing on 1st August 2018 but at the expiry of the Initial Term, the Authority may extend this Contract for further periods of up to 12 months up to a maximum of two extension periods.

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

Instructions for the completion of this document

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

Contents

Section	Description	Page
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A2	Non-Canvassing Certificate	8
A3	Non-Collusive Tendering Certificate	9
A4	Declaration of Connection with Officers or Elected Members of the Council	10
You must sign all 4 certificates in sections A1 to A4		
B Part 1	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	20
Section C	Tender and Pricing 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' and 'Price' and shows how each criteria is to be weighted against each other.

Section / Question No.	Award Criteria	Weighting / Max Marks Available
Price 60% (600 marks)		
Section C / Q 1	Price	600 marks
Total for value for money		max marks
Quality (40% / 400 marks)		
Implementation		10% / marks
Section C / Q 2.1	Implementation Plan	10 / 100 max marks
Service Delivery		25% / marks
Section C / Q 3.1	Accessibility, Visibility, Efficiency and Innovation	6 / 60 max marks
Section C / Q 3.2	Service Meeting Specification	6 / 60 max marks
Section C / Q 3.3	Recruitment and Retention	3 / 30 max marks
Section C / Q 3.4	Information Governance	4 / 40 max marks
Section C / Q 3.5	Contingency Plans and Risk Management	4 / 40 max marks
Section C / Q 3.6	Social Value	2 / 20 max marks
Collaboration and Partnership Working		5% / marks
Section C / Q 4.1	Effective engagement, collaboration and partnership working	5 / 50 max marks
Total for quality		40 / 400 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 initial mark for Quality Criteria overall will receive the full 400 marks available for Quality. Other tenders will receive a final mark that reflects the % difference in the initial marks between those tenders and the tender receiving the highest initial mark for Quality overall.

Price Evaluation and scoring

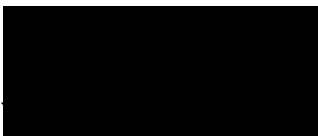


The most competitively priced tender will receive the maximum mark for price being 600. Less competitive tenders will receive a % of the maximum mark that represents the difference in cost between that tender and the most competitively priced tender.

personal info

Price has an overall weighting of 60% of the total evaluation criteria. Please complete the pricing schedule attached. The price that will be evaluated will be the cost of the basket of goods as shown in cell C49 on the 'Summary' worksheet.

Please note, the 9th April 2018 has been allocated as a provisional date for interviews although this may be subject to change.

Section A: 1. Form of Tender

<u>Form of Tender</u>
<p>Shropshire Council Tender for Childhood Vision Screening Service</p>
<p>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 Childhood Vision Screening Service at the prices and terms agreed and subject to the terms of the invitation to tender documentation and the contract terms and conditions including specification for Childhood Vision Screening Service, copies of which we have received.</p>
Signed ..  .. Name.. 
Date22/3/2018.....
Designation ... Chief Operating Officer.....
Company... Shrewsbury and Telford Hospital NHS Trust.....
Address ... Mytton Oak Road, Shrewsbury, Shropshire
Post Code SY3 8XQ.....
Tel No ... 01743 261 000..... Fax No N/A.....
E-mail address .. 
Web address www.sath.nhs.uk.....

personal info

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...Chief Operating Officer.....

Signed (2)  .. Status.....Acting Group Manager.....

(For and on behalf of Shrewsbury and Telford Hospital NHS Trust.....)

Date22/3/2018.....

Non-collusive Tendering Certificate

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

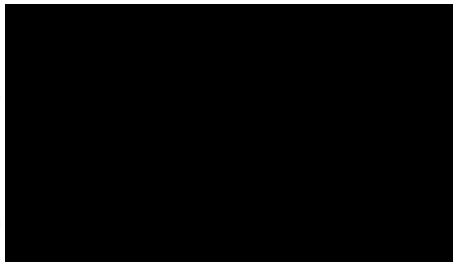
The essence of selective tendering is that the Council shall receive bona fide competitive Tenders from all persons tendering. In recognition of this principle:

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...Chief Operating Officer.....

Signed (2)

Status.....Acting Group Manager.....

(For and on behalf ofShrewsbury and Telford Hospital NHS Trust.....)

Date22/3/2018.....

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?

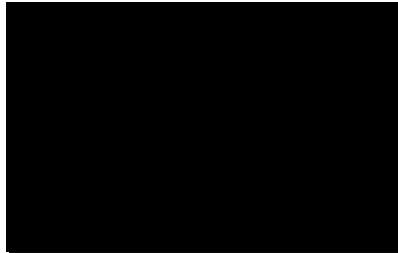
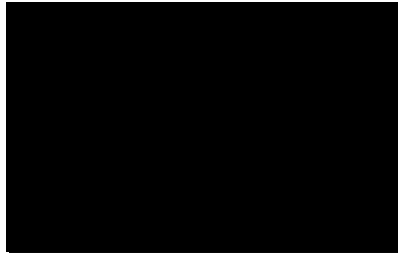
No

If yes, please give details:

Name	Relationship

Please note:

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

Signed (1)		Status...Chief Operating Officer.....
Signed (2)		Status.....Acting Group Manager.....
(For and on behalf of Shrewsbury and Telford Hospital NHS Trust.....)		
Date22/3/2018.....		

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. 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.

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	Shrewsbury & Telford Hospital NHS Trust (SaTH)
1.1(b) – (i)	Registered office address (if applicable)	Mytton Oak Road Shrewsbury Shropshire SY3 8XQ
1.1(b) – (ii)	Registered website address (if applicable)	www.sath.nhs.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)	g) National Health Service
1.1(d)	Date of registration in country of origin	15 th November 2004
1.1(e)	Company registration number (if applicable)	N/A
1.1(f)	Charity registration number (if applicable)	N/A
1.1(g)	Head office DUNS number (if applicable)	N/A
1.1(h)	Registered VAT number	654 9392 96
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?	N/A for this service
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?	No <input type="checkbox"/>
1.1(j) - (ii)	If you responded yes to 1.1(j) - (i), please provide additional details of what is required and confirmation that you have complied with this.	

1.1(k)	Trading name(s) that will be used if successful in this procurement.	Shrewsbury and Telford Hospital NHS Trust
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	NHS service
1.1(m)	Are you a Small, Medium or Micro Enterprise (SME) ² ?	No
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)	N/A
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)	NA
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) - Head office VAT number (if applicable) (Please enter N/A if not applicable)	NA

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, Societas 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?	<p>No</p> <p>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.</p> <p>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.</p>			
1.2(a) - (ii)	Name of group of economic operators (if applicable)	Shrewsbury & Telford Hospital NHS Trust			
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.				
1.2(b) - (i)	Are you or, if applicable, the group of economic operators proposing to use sub-contractors?	Yes <input 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.				
	Name				
	Registered address				
	Trading status				
	Company registration number				
	Head Office DUNS number (if applicable)				
	Registered VAT number				
	Type of organisation				
	SME (Yes/No)				

	The role each sub-contractor will take in providing the works and /or supplies e.g. key deliverables					
	The approximate % of contractual obligations assigned to each sub-contractor					

Contact details and declaration

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

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

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

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

I am aware of the consequences of serious misrepresentation.

Section 1	Contact details and declaration	
Question Number	Question	Response
1.3(a)	Contact name	[REDACTED]
1.3(b)	Name of organisation	The Shrewsbury & Telford Hopsital NHS Trust
1.3(c)	Role in organisation	Chief Operating Officer
1.3(d)	Phone number	01743 261 000
1.3(e)	E-mail address	[REDACTED]
1.3(f)	Postal address	Mytton Oak Road Shrewsbury Shropshire SY3 8XQ
1.3(g)	Signature (electronic is acceptable)	[REDACTED]
1.3(h)	Date	22/3/2018

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.	No
	Corruption.	No
	Fraud.	No
	Terrorist offences or offences linked to terrorist activities	No
	Money laundering or terrorist financing	No
	Child labour and other forms of trafficking in human beings	No
2.1(b)	<p>If you have answered yes to question 2.1(a), please provide further details. Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction, Identity of who has been convicted If the relevant documentation is available electronically please provide the web address, issuing authority, precise reference of the documents.</p>	
2.2	If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning)	N/A

2.3(a)	Regulation 57(3) Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions?	No
2.3(b)	If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines.	N/A

CQC Registration

2.4	Please confirm that you are registered with CQC	Yes
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General Data Protection Regulation (GDPR)

2.5	The service provider needs to demonstrate at all times during the contract duration that it is GDPR compliant and provide an adequate guarantee that it has , or can, implement appropriate technical and organisational measures that are sufficient to secure that the processing will (a) meet the requirements of the GDPR and (b) ensure the protection of the rights of the data subject. The provider should likewise not be passing on any personal data to a sub-contractor or other organisation that cannot comply with these terms and the provider must ensure that this is the case before handing over any personal data.	
2.5 (a)	Please confirm that you are compliant with the new General Data Protection Regulations	
2.5 (b)	Please confirm the technical and organisational measures you have put in place to secure that your data processing (a) meet the requirements of the GDPR (b) ensure the protection of the rights of the data subject and how this would work in practice if you undertook this contract on our behalf?	See above Yes <input type="checkbox"/> Yes <input type="checkbox"/>
2.5 (c)	Please confirm if you would be passing any personal data onto any sub-contractor or other third party organisation in undertaking this contract on our behalf	Yes <input type="checkbox"/>

2.5 (d)	<p>If yes please confirm how you would ensure that such sub-contractor / organisations can also comply with the General Data Protection Regulations</p> <p>This information will be provided to General Medical Practitioners and Referral Assessment Services managed by the Clinical Commissioning Group as part of the clinical pathways to ensure continuation of care. These organisations are bound by the same regulations and have sharing agreements.</p>	

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

Section 3	Grounds for discretionary exclusion	
Question number	Question	Response
	<p>Regulation 57 (8) The detailed grounds for discretionary exclusion of an organisation are set out on this webpage (see link on page 11), which should be referred to before completing these questions.</p> <p>Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation.</p>	
3.1(a)	Breach of environmental obligations?	No If yes please provide details at 3.2
3.1(b)	Breach of social obligations?	No If yes please provide details at 3.2
3.1(c)	Breach of labour law obligations?	No 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?	No If yes please provide details at 3.2
3.1(e)	Guilty of grave professional misconduct?	No If yes please provide details at 3.2
3.1(f)	Entered into agreements with other economic operators aimed at distorting competition?	No 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	No If yes please provide details at 3.2

	participation in the procurement procedure?	
3.1(h)	Been involved in the preparation of the procurement procedure?	No 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?	No 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.	No If yes please provide details at 3.2
3.1(j) - (ii)	The organisation has withheld such information.	No 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.	No 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.	No 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?	Yes

	If no, can you provide one of the following: answer with Y/N in the relevant box.	
	(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
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	Yes
	(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
4.2	Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering 'Yes' or 'No' that you meet the requirements set out.	Yes

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

5.1	Are you able to provide parent company accounts if requested to at a later stage?	NA
5.2	If yes, would the parent company be willing to provide a guarantee if necessary?	NA
5.3	If no, would you be able to obtain a guarantee elsewhere (e.g. from a bank)?	NA

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

	<p>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>
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	Contact 1	Contact 2	Contact 3
Name of customer organisation			
Point of contact in the organisation			
Position in the organisation			
E-mail address			
Description of contract			
Contract Start date			
Contract completion date			
Estimated contract value			

6.2	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)
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	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)

6.3	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.

Section 7	Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015	
	Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?	No
	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

7. 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
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8.1	<p>Insurance</p> <p>Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below: Y-</p> <p>Employer's (Compulsory) Liability Insurance = Unlimited</p> <p>Public Liability Insurance = Unlimited</p> <p>Professional Indemnity Insurance = Unlimited</p> <p>Clinical Negligence Insurance = Unlimited</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>
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4 Procurement Policy Note 14/15– Supporting Apprenticeships and Skills Through Public Procurement
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/456805/27_08_15_Skills_Apprenticeships_PPN_vfinal.pdf

8.2 – 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)?	No
2.	<p>In the last three years, has your organisation had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds or alleged unlawful discrimination?</p> <p>If you have answered "yes" to one or both of the questions in this module, please provide, as a separate Appendix, a summary of the nature of the investigation and an explanation of the outcome of the investigation to date.</p> <p>If the investigation upheld the complaint against your organisation, please use the Appendix to explain what action (if any) you have taken to prevent unlawful discrimination from reoccurring. You may be excluded if you are unable to demonstrate to the Authority's satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring.</p>	o 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?	

8.3 – Environmental Management

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

8.4 – Health & Safety

1.	<p>Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements.</p>	Yes
2.	<p>Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years?</p> <p>If your answer to this question was "Yes", please provide details in a separate Appendix of any enforcement/remedial orders served and give details of any remedial action or changes to procedures you have made as a result.</p> <p>The Authority will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the Authority's satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches.</p>	
3.	<p>If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?</p>	

8.5 Safeguarding of children

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

1	<p>Do you have a Safeguarding Policy or statement for safeguarding children?</p>	Enclosed YES
2	<p>For information: our requests for references will include a question relating to your organisation's record for safeguarding.</p>	
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) and http://www.safeguardingshropshireschildren.org.uk/scb/index.html</p> <p>I/We certify that I/We are familiar with and committed to deliver our service in compliance with local safeguarding processes.</p> <p>Signed [REDACTED] Status...Chief Operating Officer</p> <p>(For and on behalf of ...Shrewsbury and Telford Hospital NHS Trust..)</p> <p>Date22/3/2018.....</p>	
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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

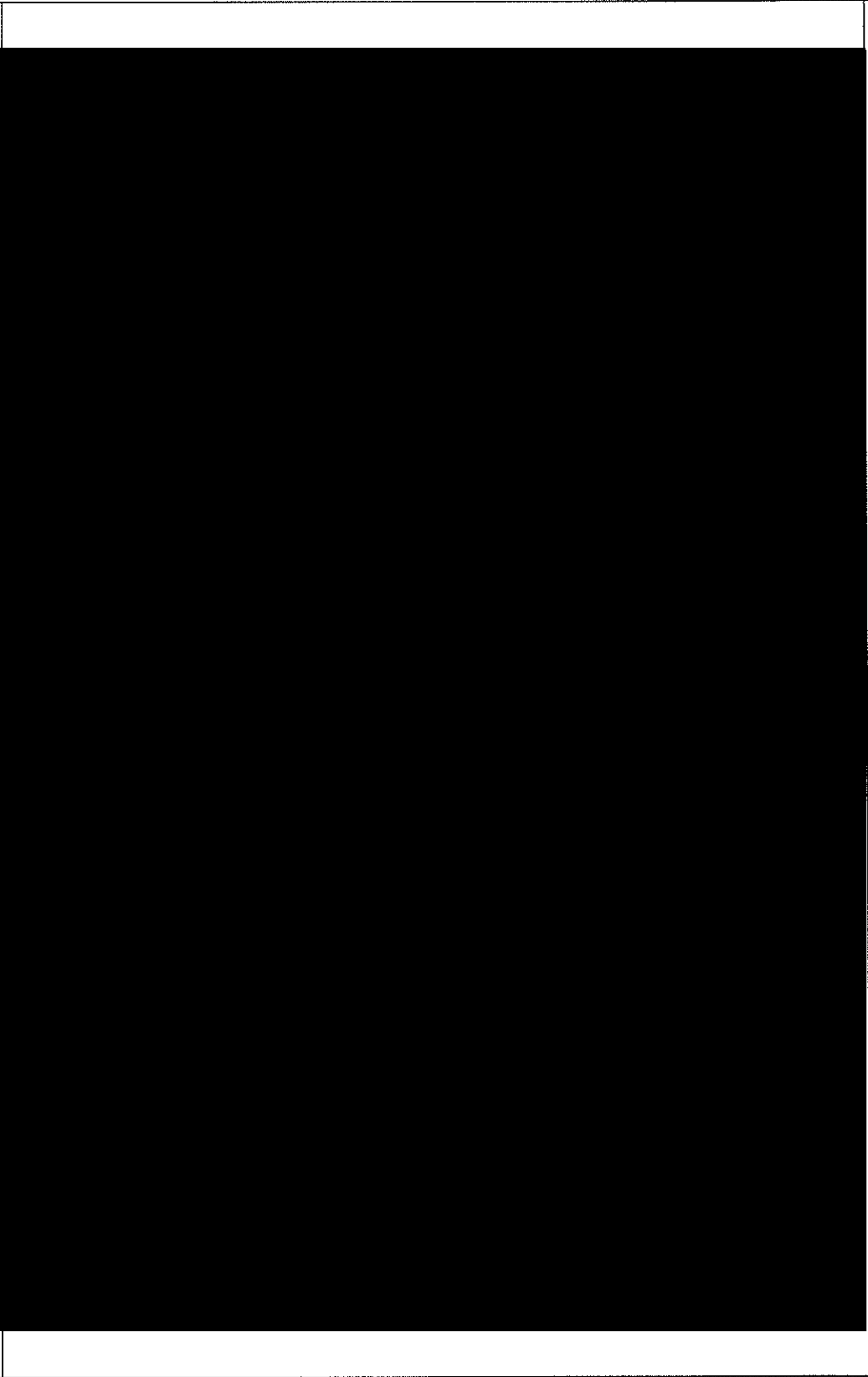
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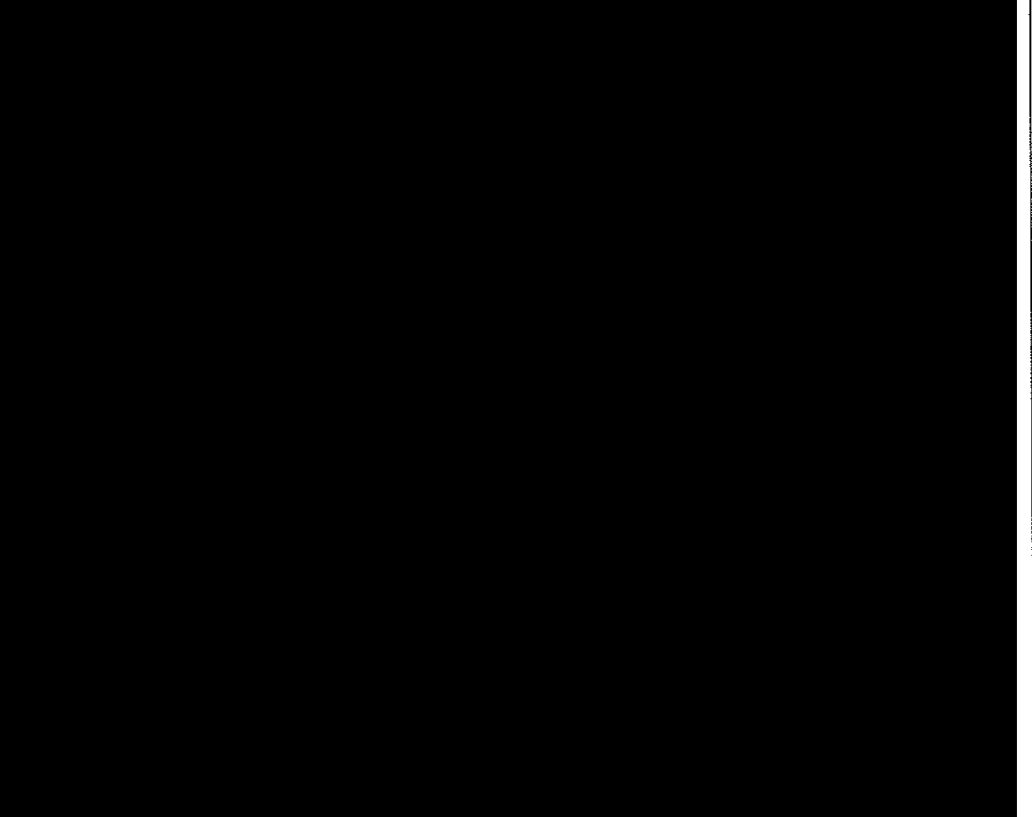
SECTION C – TENDER SCHEDULE

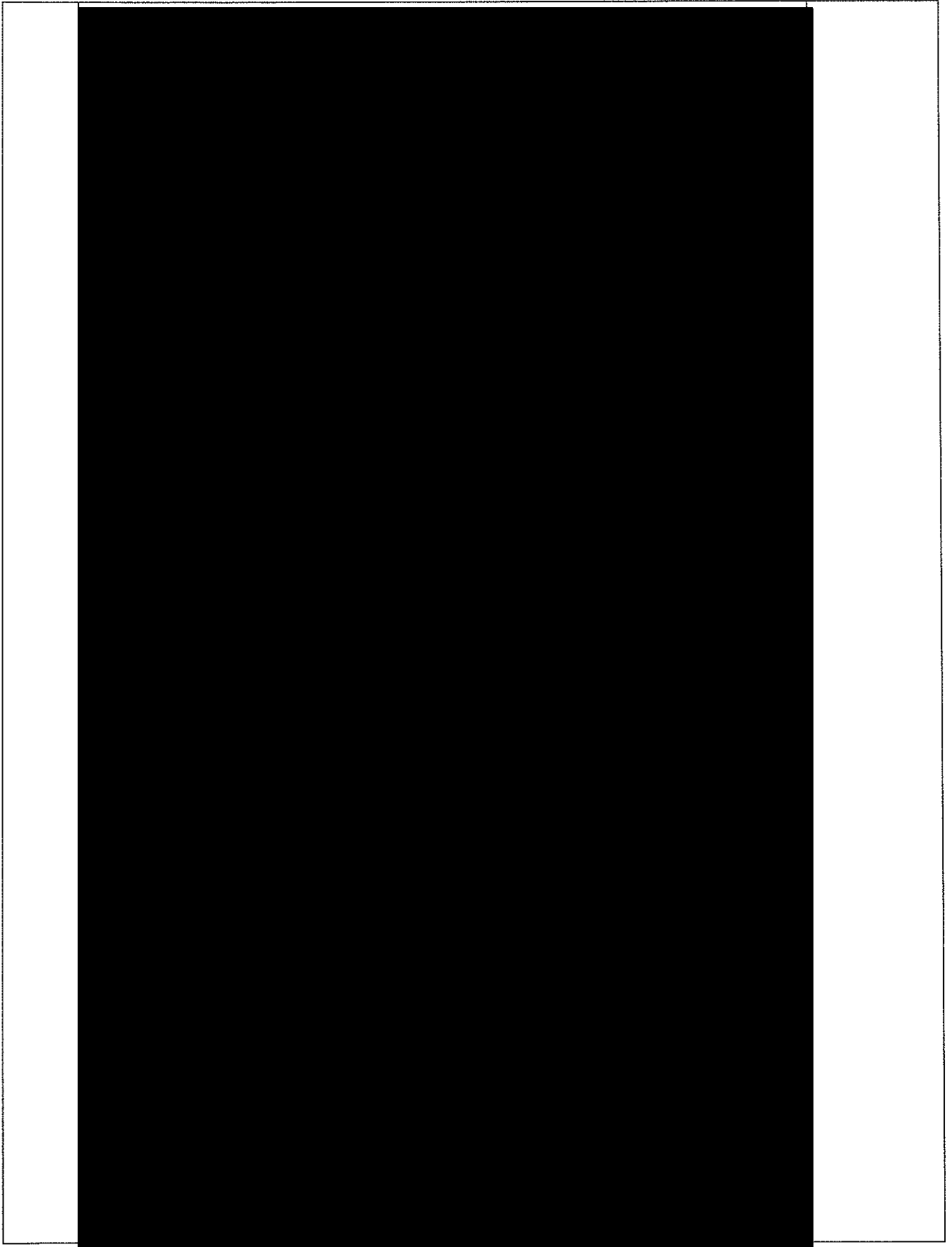
1.	Pricing Schedule
1.1	Please complete the Finance Model spreadsheet which will form part of your tender response.

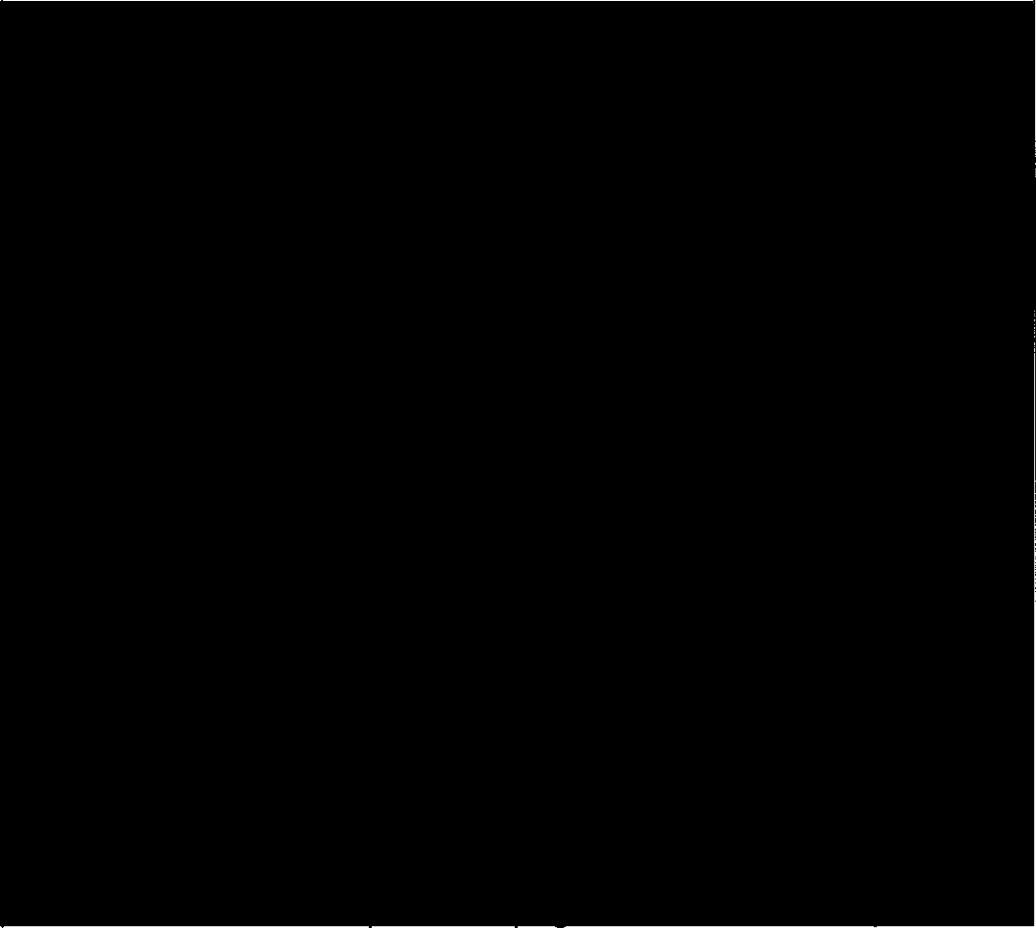
	Tender Schedule <i>(please use Arial 11 Font for all your responses below)</i>	Weighting and Max Marks
2.	Implementation 10%	
2.1	<p>Please describe your implementation plan for the delivery of these services as defined by the service specification. This should include (although not exhaustive):</p> <ul style="list-style-type: none"> • Timescales • Securing premises • Establishing systems, managing the data transfer from current providers and how you will provide assurance that data held within current services/systems will be transferred to the new system to ensure data integrity.- • Ensuring information consent and sharing agreements are gained • Recruitment and retention of staff, staffing structure, 	10 / 100 max marks

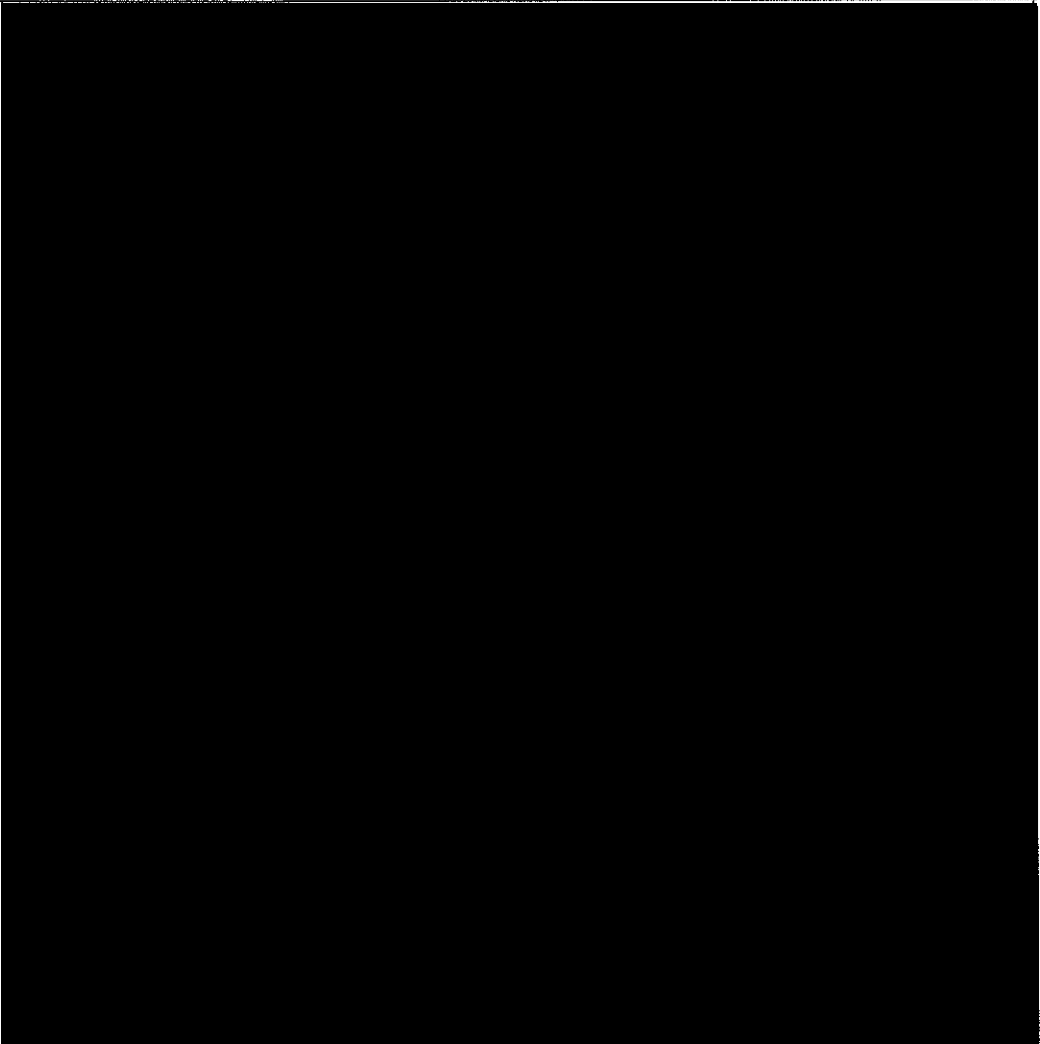
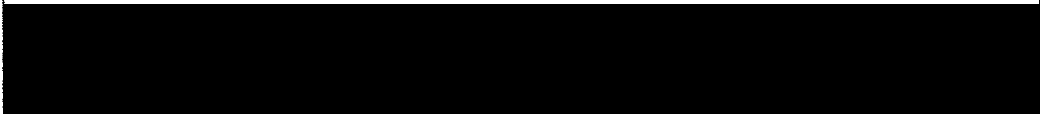
	<ul style="list-style-type: none">• Development of links and/or partnerships with other agencies• Managing and mitigating risk• Communication with stakeholders• Robust referral pathway• Reporting mechanisms• Identify and manage interdependencies with other services <p><i>(Max words 1000 words)</i></p> <div data-bbox="284 533 1321 1541" style="background-color: black; width: 100%; height: 450px;"></div> <div data-bbox="284 1541 1321 1904" style="background-color: black; width: 100%; height: 162px;"></div>	
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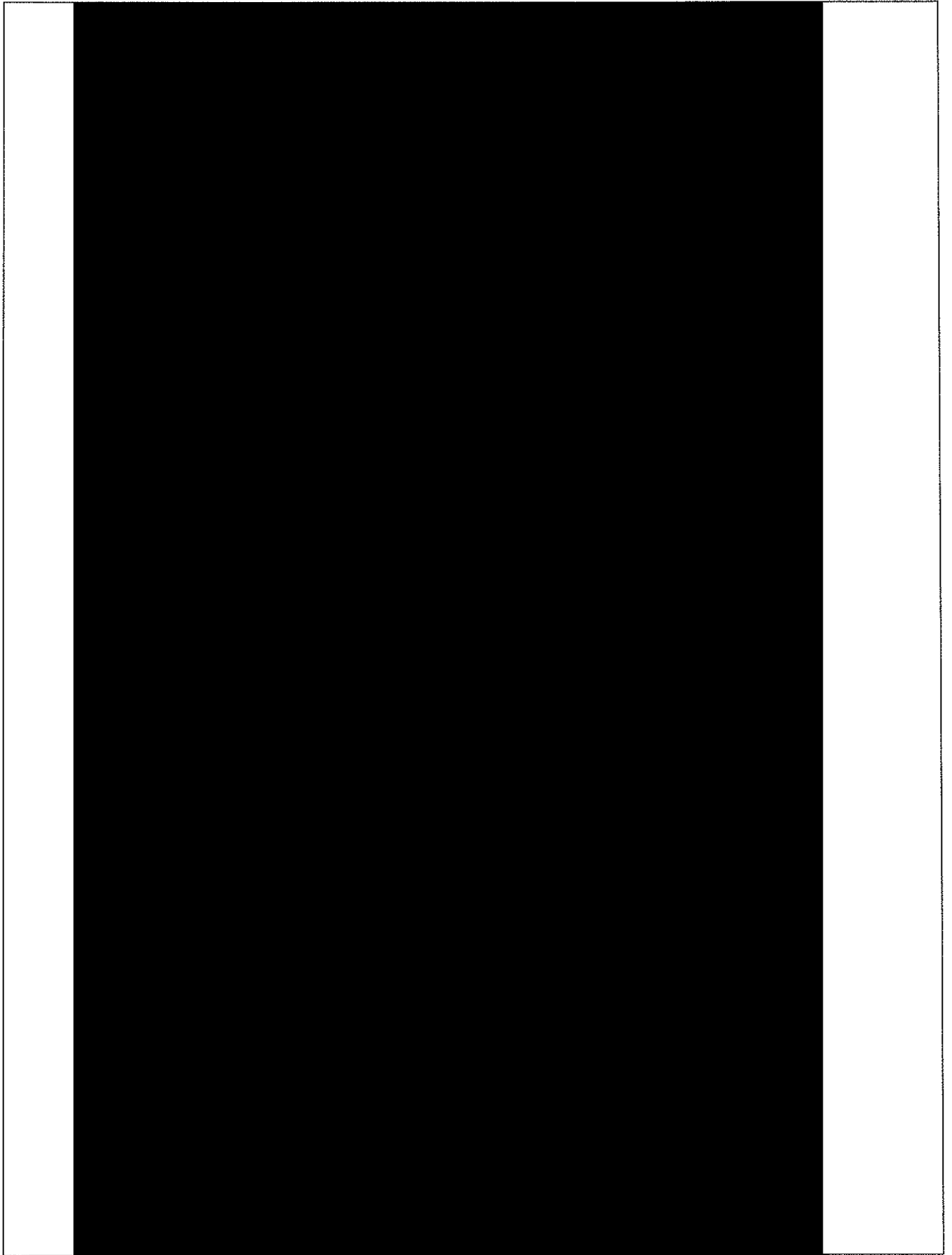
		
3.	Service Delivery 25%	
3.1	Based on the service specification, please describe your overarching proposed service model for providing age 4-5 year vision screening services in Shropshire	6 / 60 max marks

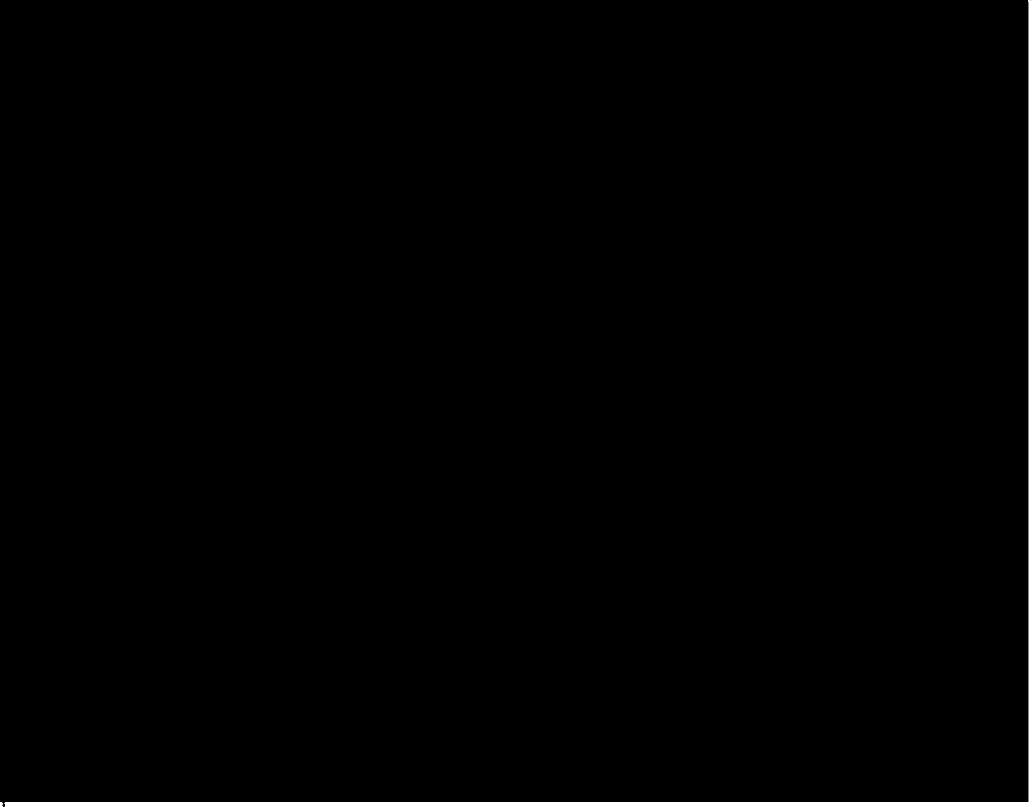
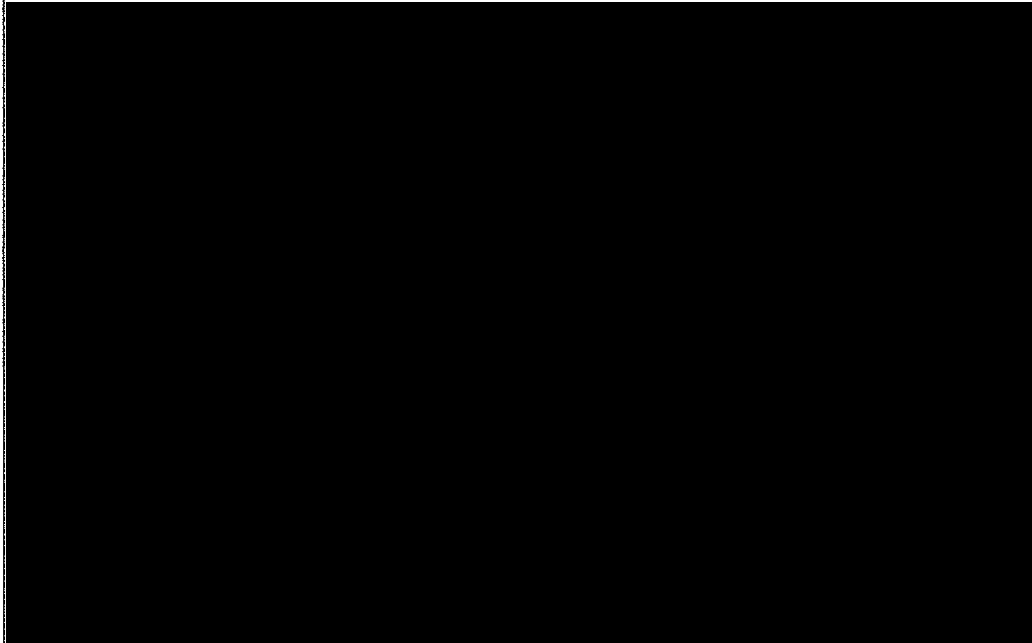
	<p>using the following questions as a basis to your response. Please provide examples/evidence to support your responses where available/applicable.</p> <p>Demonstrate how the service will ensure:</p> <ul style="list-style-type: none">• Accessibility and visibility and delivering services in a rural County• Efficiencies and efficiency savings• Innovation• Use of technology and mobile/flexible working <p><i>(Max words 1000)</i></p> 	
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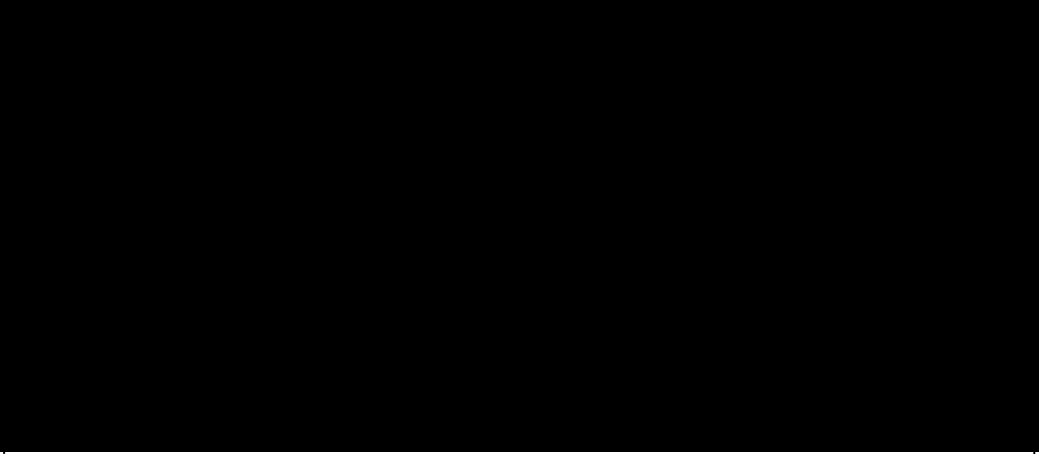
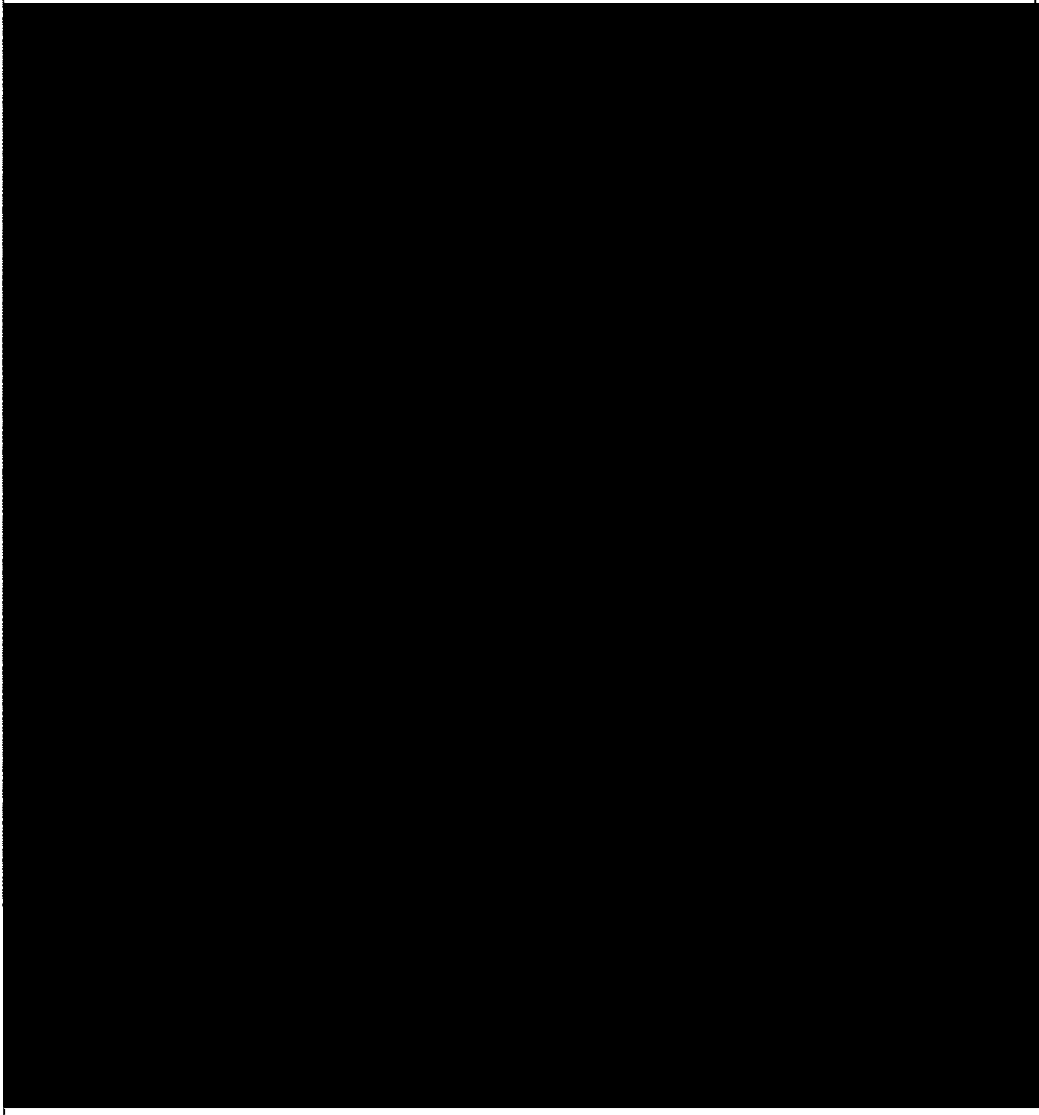



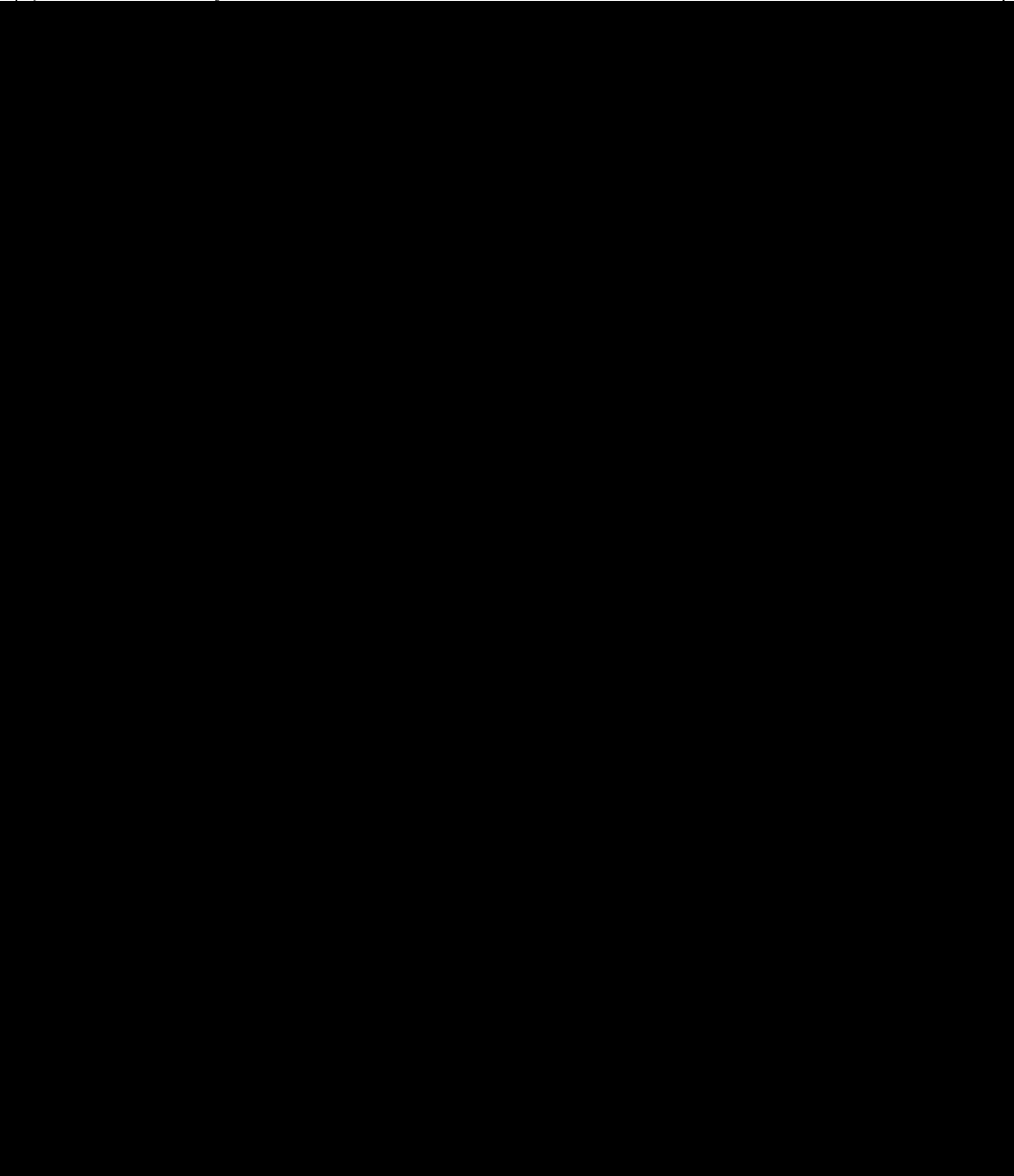
3.2	<p>Demonstrate how the service will:</p> <ul style="list-style-type: none">• Meet the needs of all 4-5 year old children resident in Shropshire including those who are resident in Shropshire but not attending mainstream education• Work proactively with other children's and health service to promote good eye health and treatments for minor eye conditions• Safeguard children and young people• Provide appropriate pathways for service delivery and referrals in to and out of the service Robust referral pathway• Reporting mechanisms• Demonstrate failsafe mechanisms in relation to children not attending screening or referrals• Measure the outcomes; demonstrate how you will evidence the outcomes• Provide metrics, data and reporting <p><i>(Max words 1000)</i></p> 	6 / 60 max marks
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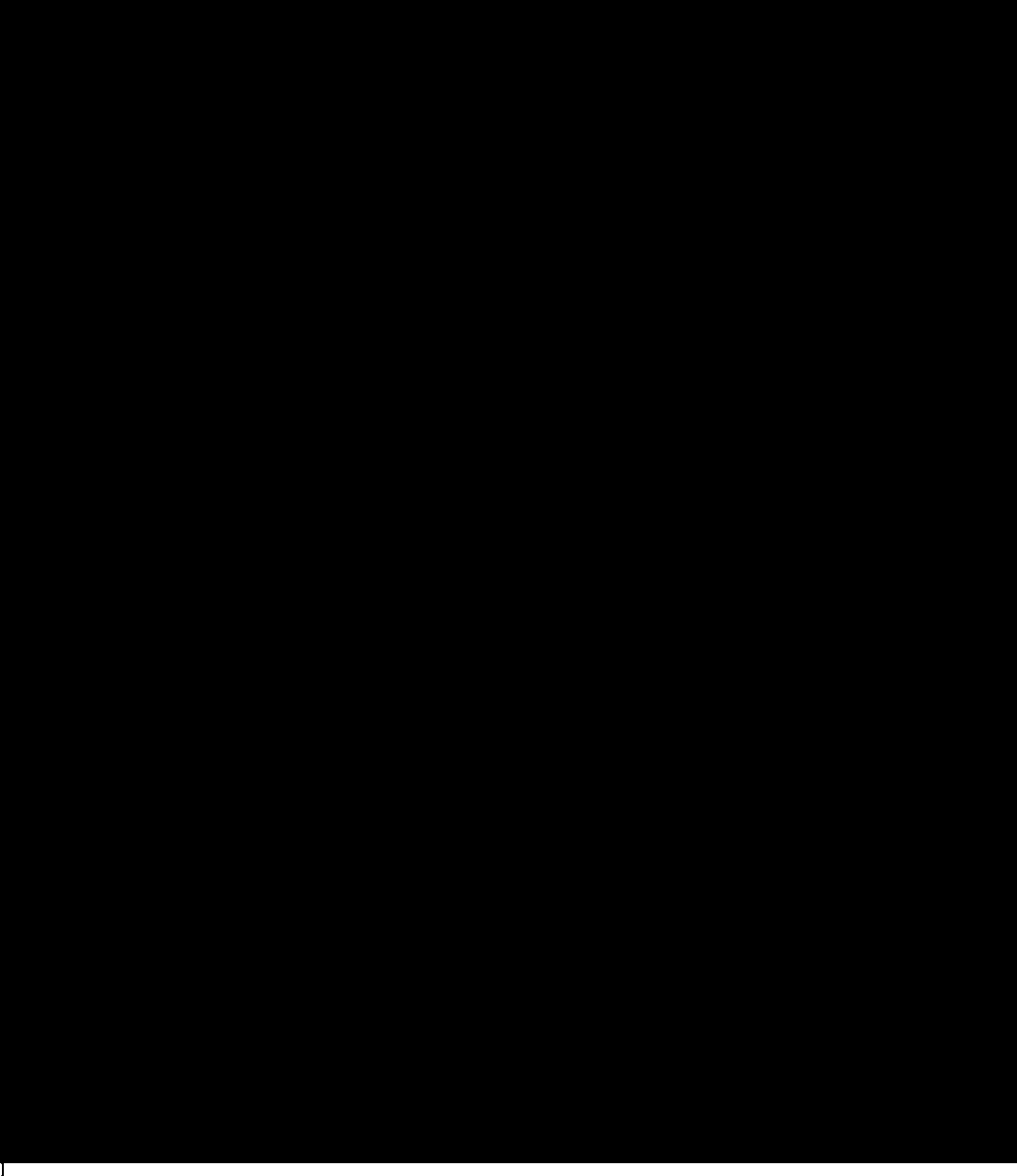
		
3.3	<p>Demonstrate how the service will ensure:</p> <ul style="list-style-type: none">• Staff training, CPD and supervision• Staff retention, strategy to cover the service during periods of staff sickness/absence/leave including where these may be long term• Training the wider workforce• Standard Operating procedures <p><i>(Max words 300)</i></p> 	3 / 30 max marks



		
3.4	<p>How will you ensure that Information Governance is maintained and ensure you implement and maintain security standards, processes, procedures, practice and controls in accordance with the NHS Information Governance Toolkit standards to a minimum of Level 2 compliance including how this will be undertaken in instances where there is more than one provider within the service. How will you ensure that you are compliant with the new General Data protection Regulation (GDPR)? You must provide evidence to support your answer.</p> <p><i>(Max words 600)</i></p> 	4 / 40 max marks

		
3.5	<p>Demonstrate how the service will ensure:</p> <ul style="list-style-type: none">• Contingency plans for maintaining service delivery• Risk management/complaints/clinical governance• Audit• Responding to emerging issues• Regulatory and statutory frameworks 	4 / 40 max marks

	 <i>(Max words 700)</i>	
3.6	<p>Describe your approach to securing the Social Value outcomes described in the Service Specification. You may want to specifically reference:</p> <ul style="list-style-type: none">- Your approach to minimising vehicle emissions on this contract- Provision of employment, training or volunteering opportunities, particularly for those people who would most benefit from access to these- Support for and work with the local voluntary and social enterprise sector to complement outcomes <i>(Max words 400)</i> 	2 / 20 max marks

4.	Collaboration and partnership working 5%	
4.1	<p>How will you ensure effective engagement, collaboration and partnership working with other services and specialisms including the voluntary and independent sector, Please provide examples where available.</p> 	5 / 50 max marks



personal & commercial info

The Shrewsbury & Telford Hospital NHS Trust
Mytton Oak Road
Shrewsbury
SY3 8XQ

FAO [REDACTED]

Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
Shropshire SY2 6ND

16th April 2018

Dear Bidder

PMCV 012 - CHILDHOOD VISION SCREENING SERVICE

SHROPSHIRE COUNCIL

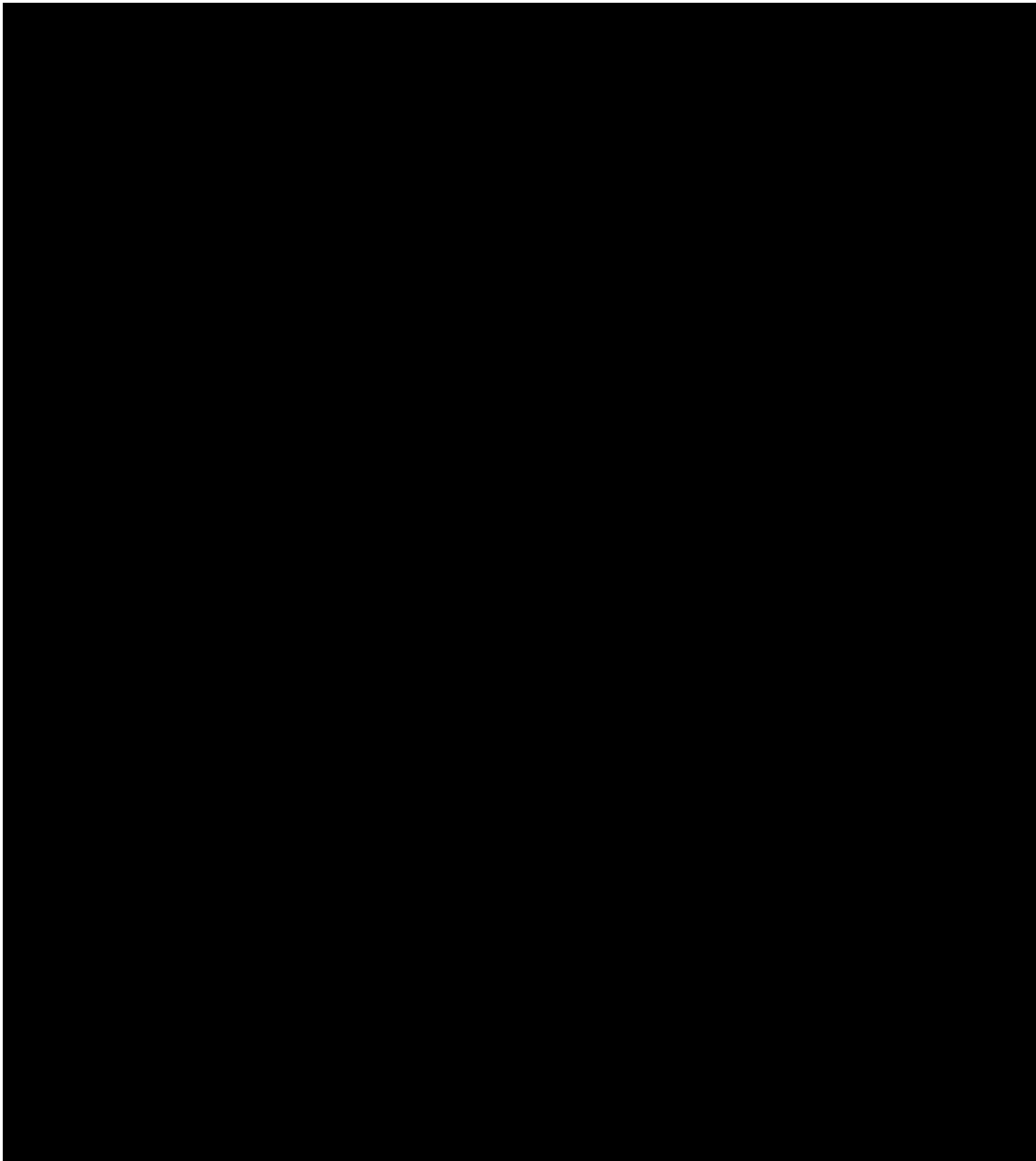
SUBJECT TO CONTRACT

This is an Award Decision Notice. We are pleased to inform you that, following the evaluation process, Shropshire Council proposes to accept your offer in relation to the above Contract.

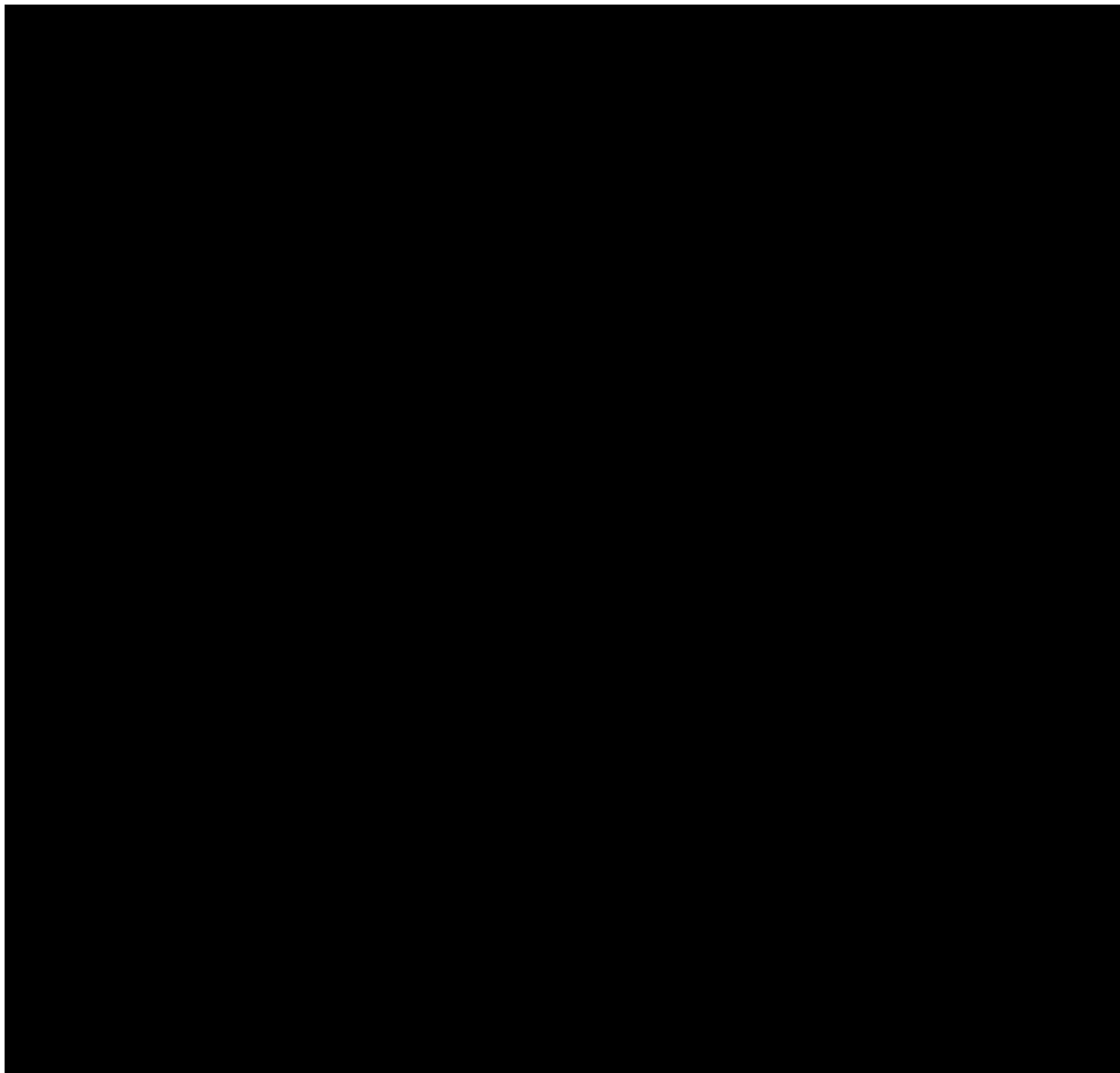
However, this letter is not, at this stage, a communication of Shropshire Council's formal acceptance of your bid. A mandatory "standstill" period is now in force; this period will end at midnight on 26th April 2018.

commercial info

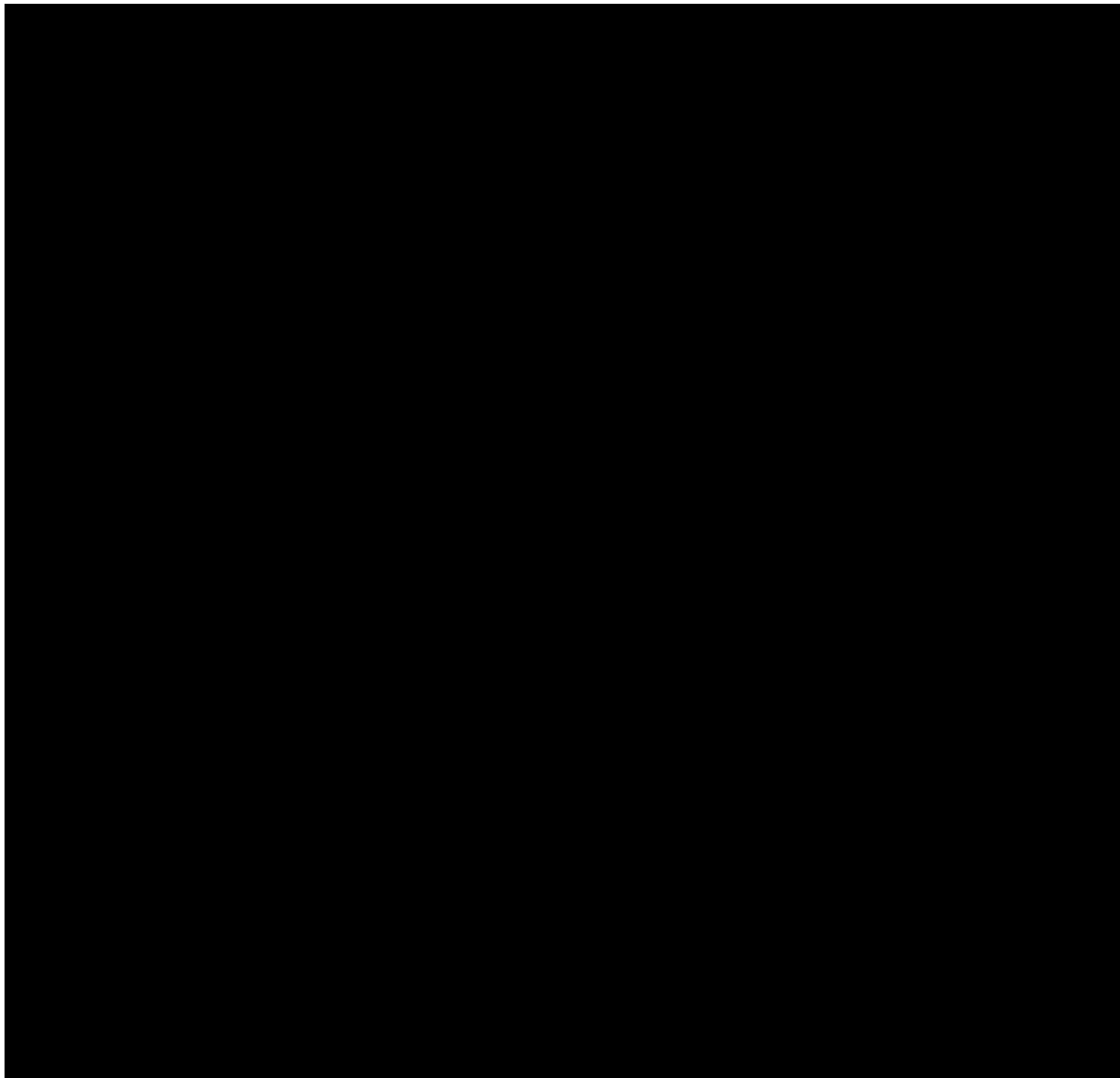
For your further information, we would confirm that your quality submission was scored against the published scoring scheme and the stated award criteria and received the marks set out:



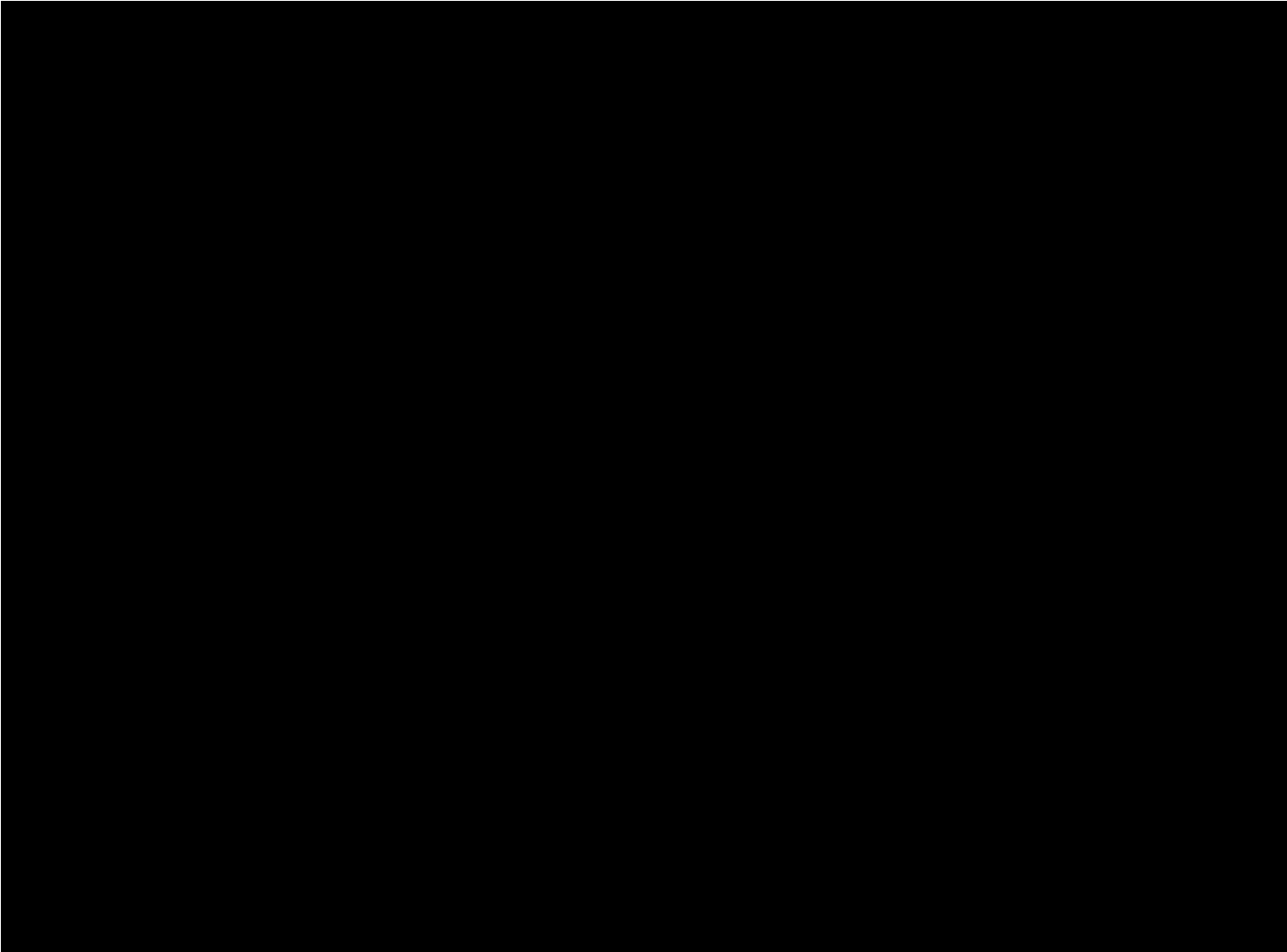
commercial info



commercial info

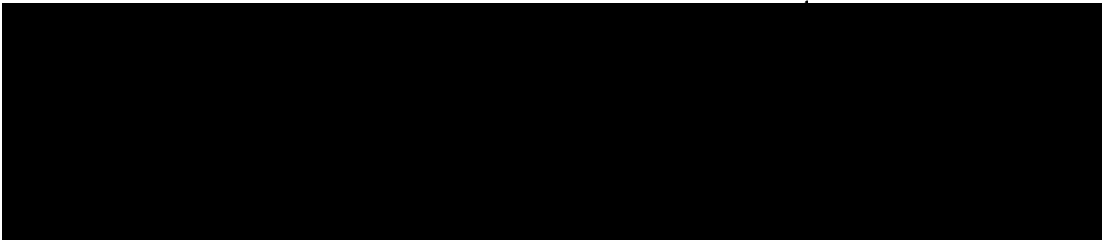


commercial & personal info



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

Yours faithfully



Director of Public Health

Public Health Children & Young People Lead