

## **UK-Shrewsbury: Health and social work services.**

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### **Section I: Contracting Authority**

#### **I.1) Name and addresses**

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

Contact: Procurement

Main Address: [www.shropshire.gov.uk](http://www.shropshire.gov.uk)

NUTS Code: UKG22

#### **I.2) Joint procurement**

The contract involves joint procurement: No.

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

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

#### **I.3) Communication**

The procurement documents are available for unrestricted and full direct access, free of charge, at: <https://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Health-and-social-work-services/PCVD3NVF3C>

Additional information can be obtained from: the abovementioned address

Tenders or requests to participate must be sent electronically via <https://www.delta-esourcing.com/tenders/UK-title/PCVD3NVF3C> to the abovementioned address

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

#### **I.4) Type of the contracting authority**

Regional or local authority

#### **I.5) Main activity**

General public services

### **Section II: Object**

#### **II.1) Scope of the procurement**

##### **II.1.1) Title: AMCV 303 - 2 Carers in a Car**

Reference Number: AMCV 303

##### **II.1.2) Main CPV Code:**

85000000 - Health and social work services.

##### **II.1.3) Type of contract: SERVICES**

II.1.4) Short description: Tenders are invited from CQC registered care providers to deliver a Night care support service to be known as '2 carers in a car'.

The scheme requires two carers and one vehicle who can travel to any household within the allocated area to provide support between 10pm and 6.30am. The service is required 7 days per week. This support may be assistance for toilet care, to getting into bed at a later time than when regular carers are available, reassurance if just home from hospital, or as an alternative to a hospital admission where night support is required. This scheme enables care support to be provided to a number of people throughout the night. The group of people supported will vary according to need. Please note: this service cannot be delivered unless 2 carers are available – therefore providers should not bid unless they are able to ensure this cover at all times.

##### **II.1.5) Estimated total value:**

Value excluding VAT: 4,794,300

Currency: GBP

##### **II.1.6) Information about lots:**

This contract is divided into lots: Yes

Tenders may be submitted for: All lots

Maximum number of lots that may be awarded to one tenderer: Not provided

The contracting authority reserves the right to award contracts combining the following lots or groups of lots: Not provided

#### **II.2) Description**

## II.2) Description Lot No. 1

II.2.1) Title: Lot 1: Oswestry and surrounding area

Lot No: 1

II.2.2) Additional CPV codes:

85000000 - Health and social work services.

II.2.3) Place of performance:

UKG22 Shropshire CC

II.2.4) Description of procurement: Oswestry and surrounding area (within an approximate 15-minute radius), 1 car required for this area.

II.2.5) Award criteria:

Price is not the only award criterion and all criteria are stated only in the procurement documents

II.2.6) Estimated value:

Value excluding VAT: 684,900

Currency: GBP

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

Start: 12/05/2022 / End: 11/05/2027

This contract is subject to renewal: Yes

Description of renewals: 5 years

II.2.10) Information about variants:

Variants will be accepted: No

II.2.11) Information about options:

Options: No

Description of options: Not provided

II.2.12) Information about electronic catalogues:

Tenders must be presented in the form of electronic catalogues or include an electronic catalogue: No

II.2.13) Information about European Union funds:

The procurement is related to a project and/or programme financed by European Union funds: No

Identification of the project: Not provided

II.2.14) Additional information: Please note, the estimated value stated is for the whole 5 year duration.

## II.2) Description Lot No. 2

II.2.1) Title: Lot 2: Market Drayton and surrounding area

Lot No: 2

II.2.2) Additional CPV codes:

85000000 - Health and social work services.

II.2.3) Place of performance:

UKG22 Shropshire CC

II.2.4) Description of procurement: Market Drayton and surrounding area (within an approximate 15-minute radius), 1 car required for this area.

II.2.5) Award criteria:

Price is not the only award criterion and all criteria are stated only in the procurement documents

II.2.6) Estimated value:

Value excluding VAT: 684,900

Currency: GBP

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

Start: 12/05/2022 / End: 11/05/2027

This contract is subject to renewal: Yes

Description of renewals: 5 years

II.2.10) Information about variants:

Variants will be accepted: No

II.2.11) Information about options:

Options: No

Description of options: Not provided

II.2.12) Information about electronic catalogues:

Tenders must be presented in the form of electronic catalogues or include an electronic catalogue: No

II.2.13) Information about European Union funds:

The procurement is related to a project and/or programme financed by European Union funds: No

Identification of the project: Not provided

II.2.14) Additional information: Please note, the estimated value stated is for the whole 5 year duration.

II.2) Description Lot No. 3

II.2.1) Title: Lot 3: Ludlow and surrounding area

Lot No: 3

II.2.2) Additional CPV codes:

85000000 - Health and social work services.

II.2.3) Place of performance:

UKG22 Shropshire CC

II.2.4) Description of procurement: Ludlow and surrounding area (within an approximate 15-minute radius), 1 car required for this area.

II.2.5) Award criteria:

Price is not the only award criterion and all criteria are stated only in the procurement documents

II.2.6) Estimated value:

Value excluding VAT: 684,900

Currency: GBP

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

Start: 12/05/2022 / End: 11/05/2027

This contract is subject to renewal: Yes

Description of renewals: 5 years

II.2.10) Information about variants:

Variants will be accepted: No

II.2.11) Information about options:

Options: No

Description of options: Not provided

II.2.12) Information about electronic catalogues:

Tenders must be presented in the form of electronic catalogues or include an electronic catalogue: No

II.2.13) Information about European Union funds:

The procurement is related to a project and/or programme financed by European Union funds: No

Identification of the project: Not provided

II.2.14) Additional information: Please note, the estimated value stated is for the whole 5 year duration.

II.2) Description Lot No. 4

II.2.1) Title: Lot 4: Shrewsbury and surrounding area

Lot No: 4

II.2.2) Additional CPV codes:

85000000 - Health and social work services.

II.2.3) Place of performance:

UKG22 Shropshire CC

II.2.4) Description of procurement: Shrewsbury and surrounding area (within an approximate 15-minute radius), 3 cars required for this area.

II.2.5) Award criteria:

Price is not the only award criterion and all criteria are stated only in the procurement documents

II.2.6) Estimated value:

Value excluding VAT: 2,054,700

Currency: GBP

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

Start: 12/05/2022 / End: 11/05/2027

This contract is subject to renewal: Yes

Description of renewals: 5 years

II.2.10) Information about variants:

Variants will be accepted: No

II.2.11) Information about options:

Options: No

Description of options: Not provided

II.2.12) Information about electronic catalogues:

Tenders must be presented in the form of electronic catalogues or include an electronic catalogue: No

II.2.13) Information about European Union funds:

The procurement is related to a project and/or programme financed by European Union funds: No

Identification of the project: Not provided

II.2.14) Additional information: Please note, the estimated value stated is for the whole 5 year duration.

II.2) Description Lot No. 5

II.2.1) Title: Lot 5: Shrewsbury and surrounding area

Lot No: 5

II.2.2) Additional CPV codes:

85000000 - Health and social work services.

II.2.3) Place of performance:

UKG22 Shropshire CC

II.2.4) Description of procurement: Shrewsbury and surrounding area (within an approximate 15-minute radius), 1 car for CCG fast track clients.

II.2.5) Award criteria:

Price is not the only award criterion and all criteria are stated only in the procurement documents

II.2.6) Estimated value:

Value excluding VAT: 684,900

Currency: GBP

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

Start: 12/05/2022 / End: 11/05/2027

This contract is subject to renewal: Yes

Description of renewals: 5 years

II.2.10) Information about variants:

Variants will be accepted: No

II.2.11) Information about options:

Options: No

Description of options: Not provided

II.2.12) Information about electronic catalogues:

Tenders must be presented in the form of electronic catalogues or include an electronic catalogue: No

II.2.13) Information about European Union funds:

The procurement is related to a project and/or programme financed by European Union funds:  
No

Identification of the project: Not provided

II.2.14) Additional information: Please note, the estimated value stated is for the whole 5 year duration.

### Section III: Legal, Economic, Financial And Technical Information

#### III.1) Conditions for participation

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

List and brief description of conditions:

See tender documentation

#### III.1.2) Economic and financial standing

List and brief description of selection criteria:

See tender documentation

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

See tender documentation

#### III.1.3) Technical and professional ability

List and brief description of selection criteria:

See tender documentation

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

See tender documentation

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

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

The execution of the contract is restricted to the framework of sheltered employment programmes:  
No

#### III.2) Conditions related to the contract

##### III.2.1) Information about a particular profession

Execution of the service is reserved to a particular profession

Reference to the relevant law, regulation or administrative provision:

See tender documentation

##### III.2.2) Contract performance conditions

See tender documentation

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

Obligation to indicate the names and professional qualifications of the staff assigned to performing the contract: Yes

### Section IV: Procedure

#### IV.1) Description OPEN

IV.1.1) Type of procedure: Open

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

The procurement involves the establishment of a framework agreement - NO

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

#### IV.1.6) Information about electronic auction:

An electronic auction will be used: No

Additional information about electronic auction: Not provided

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

The procurement is covered by the Government Procurement Agreement: No

#### IV.2) Administrative information

##### IV.2.1) Previous publication concerning this procedure:

Notice number in the OJ S: Not provided

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

Date: 21/01/2022 Time: 12:00

IV.2.4) Languages in which tenders or requests to participate may be submitted: English,  
IV.2.6) Minimum time frame during which the tenderer must maintain the tender: Not Provided  
IV.2.7) Conditions for opening of tenders:  
Date: 21/01/2022  
Time: 12:00  
Place:  
Shrewsbury

#### Section VI: Complementary Information

##### VI.1) Information about recurrence

This is a recurrent procurement: Yes

Estimated timing for further notices to be published: 5 years

##### VI.2) Information about electronic workflows

Electronic ordering will be used No

Electronic invoicing will be accepted No

Electronic payment will be used No

VI.3) Additional Information: 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.

The contract will be for an initial period of 3 years commencing on the 12th May 2022 with the option to extend for two further periods of 12 months (5 years in total).

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

<https://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Health-and-social-work-services./PCVD3NVF3C>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/PCVD3NVF3C>

##### VI.4) Procedures for review

###### VI.4.1) Review body:

Shropshire Council

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

###### VI.4.2) Body responsible for mediation procedures:

Not provided

###### VI.4.3) Review procedure

Precise information on deadline(s) for review procedures:

Not Provided

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

Shropshire Council

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

###### VI.5) Date Of Dispatch Of This Notice: 21/12/2021

Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
Shropshire SY2 6ND

Date: 21<sup>st</sup> December 2021  
My Ref: AMCV 303  
Your Ref: AMCV 303

Dear Bidder

**AMCV 303 - 2 CARERS IN A CAR  
SHROPSHIRE COUNCIL**

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

- Instructions for Tendering (for completion and return)
- Tender Response Document (for completion and return)
- TUPE Confidentiality Undertaking Letter (for completion and return)
- Draft Contract

Tenders should be made on the enclosed Tender Response Document. Your Tender must be completed, signed, and returned along with a signed copy of the instructions for tendering through our Delta Tenderbox. Please pay particular attention to the points below concerning the returning of tenders.

Returning of Tenders

- The deadline for returning tenders is **noon on 21st January 2021** 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

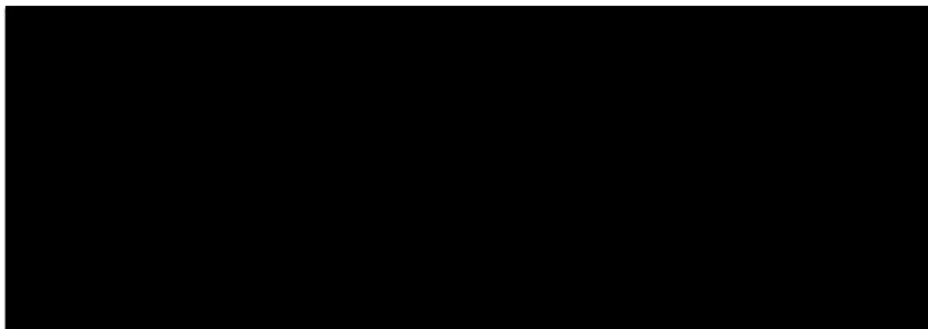
Please note that if supplementary questions are raised by any tenderer prior to the closing of tenders and Shropshire Council decides that the answers help to explain or clarify the information given in the Tender Documents, then both the questions and the answers will be circulated to all enterprises invited to submit a tender. Please raise all clarification questions before the deadline of **14<sup>th</sup> January 2022**.

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](http://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.

Yours faithfully







## **INSTRUCTIONS FOR TENDERING**

**AMCV 303 - 2 CARERS IN A CAR**

## Shropshire Council Instructions for tendering

### **Contract Description/Specification:**

Tenders are invited from CQC registered care providers to deliver a Night care support service to be known as '2 carers in a car'.

### **Background**

Shropshire Council is proud to invite tenders for a creative service to meet the needs of service users at night. This bespoke night-time support is called "Two carers in a car" and it does exactly what it sounds like!

This innovative service came from one question:

- "Why do so many people have to consider moving into residential care?"

We found that often it's because of falls, anxiety and need for assistance through the night. It appeared that many people being discharged from hospital who required support once or twice through the night were being assessed as requiring a residential placement because there was no alternative service and assistive technology wasn't enough in these circumstances. We also found that some people who need to have a full waking night for a short while after leaving hospital needed a service which gradually reduced having been supplied for the first few nights post discharge so the person had a gradual transition from 24 hour care to no night time support so they could gradually regain their independence and confidence.

So, we asked:

- "What can we do to support people to stay at home, support them in their choices for their confidence, comfort and dignity, make sure people are safe and at the same time ensure we are commissioning services that represent value for money for the council?"

'2 carers in a car' was the creative solution which has been successfully run for approximately 3 years across 4 market towns in Shropshire with a separate contract opportunity for each town (and surrounding area), the service is well utilised and TUPE may apply to any new successful providers and would expect the new provider to work with any outgoing provider

The current provision and utilisation are detailed below, the current approximate mileage for this service is 100 miles per night for each car, although this is highly variable based on utilisation and location of clients. Currently at least 75% of clients have been in receipt of this service long term. On average short-term clients stay in the service for approx.10 days, longer term clients stay in the service for approx.180 days.

Shrewsbury (3 runs) – currently 38 people being supported, 161 people supported so far this year.

Market Drayton – currently 10 people being supported, 32 people supported so far this year.

Oswestry – currently 10 people being supported, 39 people supported so far this year.

Ludlow – currently 20 people being supported, 86 people so far this year.

## Required service

The scheme requires two carers and one vehicle who can travel to any household within the allocated area to provide support between 10pm and 6.30am. The service is required 7 days per week. This support may be assistance for toilet care, getting into bed at a later time than when regular carers are available, reassurance if just home from hospital, or as an alternative to a hospital admission where night support is required. This scheme enables care support to be provided to a number of people throughout the night. The group of people supported will vary according to need. **Please note: this service cannot be delivered unless 2 carers are available – therefore providers should not bid unless they are able to ensure this cover at all times.**

Referrals can come from Accident and emergency, Out of hours Doctor's service (Shropdoc), Emergency Duty Team, social care practitioners, district nurses, GP's, alarm call centre & Shropshire, Telford & Wrekin Clinical Commissioning Group, etc. During office hours calls, referrals, requests could go to the provider office however the carer team are required to take referrals directly via a smart phone during the night and be able to allocate their own work and make decisions about calls and care. 75% of all referrals come from Shropshire Council Adult Social Work Teams.

Situations where support may be given are as follows: This list is not exhaustive and is intended as examples.

- Individual went to A and E but did not need an admission, they were sent home late evening. Carers will call and check the person is home, and any support personal care required to get into bed supplied.
- During the night several people have had support to change pads, change position, and use a toilet.
- Anxiety and reassurance – one person who required reassurance when all electrical appliances were turned off.
- Alarm call from someone frightened they are alone.
- Shrop Doc, GP called someone required a catheter change and help to change night clothing or bed that were wet.
- Having had waking night provision, in a move to reduce care support at night carers provide a transition service to provide some reassurance or calls with aim to transfer to AT.
- Carer admission to hospital calls during the night to provide support usually provided by a carer.
- Individual who may get uncomfortable if in bed for too many hours, can be supported to get to toilet, have a drink and then to sit out in a chair or return to bed until the day carer is able to come.
- Person who gets up prior to traditional care starting work having had a lifestyle that involved early morning starts now continues to get up. The carers call and reassure, orientate to time and support back to bed or chair.
- EDT calls where support is required.

Referrers should be able to request the service to commence up to 48 hours before in order that client situations can be planned ahead

The contracted hours will be paid in full and do not depend on a number of referrals, it is expected that in the allocated area all referred calls will be taken whilst appreciating that carers will have to make decisions about what care can be fitted into the working night. The service must remain responsive and flexible.

You will be required to submit service information to the Council on a daily/weekly basis and this will be in a specific template provided by the Council, which will be finalised prior to commencement of contracts. This information will need to include the number of service users receiving the service and evidence of how the service is being delivered.

Providers are advised to bid for each lot based on its own merits. No bids can be predicated on getting other lots for geographical or financial viability and the Council reserves the right to limit the number of areas awarded to any single provider.

**Lots:**

The Council is seeking to appoint 1 provider per market town area.

Market town area
Oswestry and surrounding area (within an approximate 15-minute radius), 1 car required for this area.
Market Drayton and surrounding area (within an approximate 15-minute radius), 1 car required for this area.
Ludlow and surrounding area (within an approximate 15-minute radius), 1 car required for this area.
Shrewsbury and surrounding area (within an approximate 15-minute radius), 3 cars required for this area.
Shrewsbury and surrounding area (within an approximate 15-minute radius), 1 car for CCG fast track clients. TUPE does not apply to this lot.

**Hours of work:** The successful organisation will be required to deliver a service according to the following hours: 10pm and 6.30am. The service is required 7 days per week.

**Rates:** The Council will accept an hourly rate for the whole service (2 carers, vehicle, phone, data outputs and all support and training etc) no higher than £44.15 per hour for the 8.5 hours per night 7 days per week which will be inclusive of bank holidays and weekends as well as mileage and travel.

The Council is seeking competitive rates from providers and preference will be given to competitive rates. These rates will not be subject to an uplift in the contract period ending March 2023.

Hours delivered will be paid through invoices submitted monthly in arrears.

**Staff requirements:**

The successful provider(s) for each town /area will be required to provide appropriately skilled and vetted staff. Staff will be in receipt of an enhanced DBS certificate and will be appropriately trained in the following areas as a minimum:

- Safeguarding
- Moving and Handling
- Hoist Training
- Equality and Diversity
- Mental Capacity Act
- Clinical Observations
- Recognising signs of illness and deterioration in a service user
- Falls prevention and management
- Medication management

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.

The contract will be for an initial period of 3 years commencing on the 12th May 2022 with the option to extend for two further periods of 12 months (5 years in total).

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## **1.0 Invitation to Tender**

- 1.1** You are invited to tender for the provision of 2 Carers in a Car as detailed in the Tender Response Document. The contract will be for an initial period of **3 years** commencing on the **12<sup>th</sup> May 2022** with the option to extend for two further periods of 12 months (5 years in total).
- 1.2** Tenders are to be submitted in accordance with the Draft Contract and the instructions outlined within this document.
- 1.3** Tenders must be submitted in accordance with the following instructions. Tenders not complying in any particular way may be rejected by Shropshire Council (the Council) whose decision in the matter shall be final. Persons proposing to submit a Tender are advised to read the Invitation to Tender documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their Tender is accepted.
- 1.4** The Invitation to Tender documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Invitation to tender document other than on an “in confidence” basis to those who have a legitimate need to know or who they need to consult for the purpose of preparing the tender as further detailed in these Instructions for Tendering.
- 1.5** Tenderers shall not at any time release information concerning the invitation to tender and/or the tender documents for publication in the press or on radio, television, screen or any other medium without the prior consent of the Council.
- 1.6** The fact that a Tenderer has been invited to submit a tender does not necessarily mean that it has satisfied the Council regarding any matters raised in the pre-tender questionnaire submitted. The Council makes no representations regarding the Tenderer’s financial stability, technical competence or ability in any way to carry out the required services. The right to return to any matter raised in any pre-tender questionnaire submitted as part of the formal tender evaluation is hereby reserved by the Council.
- 1.7** The Invitation to Tender is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a tenderer to submit a tender or enter into a Contract or any other contractual agreement.
- 1.8** Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council’s involvement.

## **2.0 Terms and Conditions**

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



Council, they will be required to undertake the required services.

### **3.0 Preparation of Tenders**

#### **3.1 Completing the Tender Response Document**

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

**3.1.2** All documents requiring a signature must be signed;

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

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

#### **3.2 Tender Preparation and Costs**

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

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

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

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

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

**3.2.6** It shall be the Tenderer's responsibility to ensure that all calculations and prices in

the Tender documentation are correct at the time of submission.

- 3.2.7** The Tenderer is deemed to have made him/herself acquainted with the Council's requirements and tender accordingly. Should the Tenderer be in any doubt regarding the true meaning and intent of any element of the specification he is invited to have these fully resolved before submitting his Tender. No extras will be allowed for any loss or expense involved through any misunderstanding arising from his/her failure to comply with this requirement.
- 3.2.8** Any Tender error or discrepancy identified by the Council may 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, 21<sup>st</sup> January 2022**.
- 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](mailto: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 14<sup>th</sup> January 2022.
- 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 Draft Contract, the Tender Response document, these Instructions to Tender, together with the formal written acceptance by the Council will form a binding agreement between the Contractor and the Council.

**16.3** The Tenderer shall be prepared to commence the provision of the supply and services on the start date of the contract being **12<sup>th</sup> May 2022**.

#### **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.

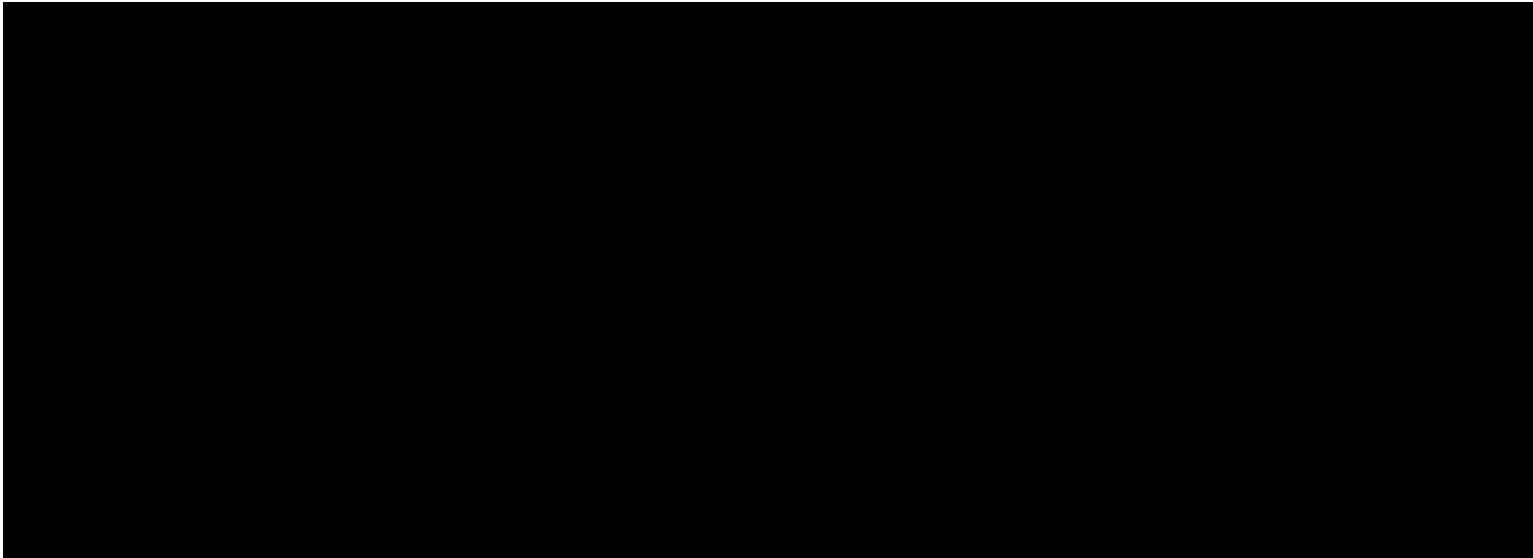
**18.5** Whilst the Tender Documents have been prepared in good faith, they do not purport to be comprehensive nor to have been formally verified. Neither the Council nor any of its staff, agents, elected Members, or advisers accepts any liability or responsibility for the adequacy, accuracy or completeness 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.





## **Tender Response Document**

**AMCV 303 - 2 CARERS IN A CAR**

# Shropshire Council Tender Response Document

## **Contract Description/Specification:**

Tenders are invited from CQC registered care providers to deliver a Night care support service to be known as '2 carers in a car'.

## **Background**

Shropshire Council is proud to invite tenders for a creative service to meet the needs of service users at night. This bespoke night-time support is called "Two carers in a car" and it does exactly what it sounds like!

This innovative service came from one question:

- "Why do so many people have to consider moving into residential care?"

We found that often it's because of falls, anxiety and need for assistance through the night. It appeared that many people being discharged from hospital who required support once or twice through the night were being assessed as requiring a residential placement because there was no alternative service and assistive technology wasn't enough in these circumstances. We also found that some people who need to have a full waking night for a short while after leaving hospital needed a service which gradually reduced having been supplied for the first few nights post discharge so the person had a gradual transition from 24 hour care to no night time support so they could gradually regain their independence and confidence.

So, we asked:

- "What can we do to support people to stay at home, support them in their choices for their confidence, comfort and dignity, make sure people are safe and at the same time ensure we are commissioning services that represent value for money for the council?"

'2 carers in a car' was the creative solution which has been successfully run for approximately 3 years across 4 market towns in Shropshire with a separate contract opportunity for each town (and surrounding area), the service is well utilised and TUPE may apply to any new successful providers and would expect the new provider to work with any outgoing provider

The current provision and utilisation are detailed below, the current approximate mileage for this service is 100 miles per night for each car, although this is highly variable based on utilisation and location of clients. Currently at least 75% of clients have been in receipt of this service long term. On average short-term clients stay in the service for approx.10 days, longer term clients stay in the service for approx.180 days.

Shrewsbury (3 runs) – currently 38 people being supported, 161 people supported so far this year.

Market Drayton – currently 10 people being supported, 32 people supported so far this year.

Oswestry – currently 10 people being supported, 39 people supported so far this year.

Ludlow – currently 20 people being supported, 86 people so far this year.

## Required service

The scheme requires two carers and one vehicle who can travel to any household within the allocated area to provide support between 10pm and 6.30am. The service is required 7 days per week. This support may be assistance for toilet care, getting into bed at a later time than when regular carers are available, reassurance if just home from hospital, or as an alternative to a hospital admission where night support is required. This scheme enables care support to be provided to a number of people throughout the night. The group of people supported will vary according to need. **Please note: this service cannot be delivered unless 2 carers are available – therefore providers should not bid unless they are able to ensure this cover at all times.**

Referrals can come from Accident and emergency, Out of hours Doctor's service (Shropdoc), Emergency Duty Team, social care practitioners, district nurses, GP's, alarm call centre & Shropshire, Telford & Wrekin Clinical Commissioning Group, etc. During office hours calls, referrals, requests could go to the provider office however the carer team are required to take referrals directly via a smart phone during the night and be able to allocate their own work and make decisions about calls and care. 75% of all referrals come from Shropshire Council Adult Social Work Teams.

Situations where support may be given are as follows: This list is not exhaustive and is intended as examples.

- Individual went to A and E but did not need an admission, they were sent home late evening. Carers will call and check the person is home, and any support personal care required to get into bed supplied.
- During the night several people have had support to change pads, change position, and use a toilet.
- Anxiety and reassurance – one person who required reassurance when all electrical appliances were turned off.
- Alarm call from someone frightened they are alone.
- Shrop Doc, GP called someone required a catheter change and help to change night clothing or bed that were wet.
- Having had waking night provision, in a move to reduce care support at night carers provide a transition service to provide some reassurance or calls with aim to transfer to AT.
- Carer admission to hospital calls during the night to provide support usually provided by a carer.
- Individual who may get uncomfortable if in bed for too many hours, can be supported to get to toilet, have a drink and then to sit out in a chair or return to bed until the day carer is able to come.
- Person who gets up prior to traditional care starting work having had a lifestyle that involved early morning starts now continues to get up. The carers call and reassure, orientate to time and support back to bed or chair.
- EDT calls where support is required.

Referrers should be able to request the service to commence up to 48 hours before in order that

client situations can be planned ahead

The contracted hours will be paid in full and do not depend on a number of referrals, it is expected that in the allocated area all referred calls will be taken whilst appreciating that carers will have to make decisions about what care can be fitted into the working night. The service must remain responsive and flexible.

You will be required to submit service information to the Council on a daily/weekly basis and this will be in a specific template provided by the Council, which will be finalised prior to commencement of contracts. This information will need to include the number of service users receiving the service and evidence of how the service is being delivered.

Providers are advised to bid for each lot based on its own merits. No bids can be predicated on getting other lots for geographical or financial viability and the Council reserves the right to limit the number of areas awarded to any single provider.

**Lots:**

The Council is seeking to appoint 1 provider per market town area.

Market town area
Oswestry and surrounding area (within an approximate 15-minute radius), 1 car required for this area.
Market Drayton and surrounding area (within an approximate 15-minute radius), 1 car required for this area.
Ludlow and surrounding area (within an approximate 15-minute radius), 1 car required for this area.
Shrewsbury and surrounding area (within an approximate 15-minute radius), 3 cars required for this area.
Shrewsbury and surrounding area (within an approximate 15-minute radius), 1 car for CCG fast track clients. TUPE does not apply to this lot.

**Hours of work:** The successful organisation will be required to deliver a service according to the following hours: 10pm and 6.30am. The service is required 7 days per week.

**Rates:** The Council will accept an hourly rate for the whole service (2 carers, vehicle, phone, data outputs and all support and training etc) no higher than £44.15 per hour for the 8.5 hours per night 7 days per week which will be inclusive of bank holidays and weekends as well as mileage and travel.

The Council is seeking competitive rates from providers and preference will be given to competitive rates. These rates will not be subject to an uplift in the contract period ending March 2023.

Hours delivered will be paid through invoices submitted monthly in arrears.

**Staff requirements:**

The successful provider(s) for each town /area will be required to provide appropriately skilled and vetted staff. Staff will be in receipt of an enhanced DBS certificate and will be appropriately trained

in the following areas as a minimum:

- Safeguarding
- Moving and Handling
- Hoist Training
- Equality and Diversity
- Mental Capacity Act
- Clinical Observations
- Recognising signs of illness and deterioration in a service user
- Falls prevention and management
- Medication management

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.

The contract will be for an initial period of 3 years commencing on the 12th May 2022 with the option to extend for two further periods of 12 months (5 years in total).

### **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 Part 1 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 your tender response.

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A4	Declaration of Connection with Officers or Elected Members of the Council	13
<b>You must sign all 4 certificates in sections A1 to A4</b>		
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## **Evaluation Criteria**

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

### **Selection Criteria Pass/Fail Questions (Section B)**

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 2 Section 3 - 8	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.

<b>Section / Question No.</b>	<b>Award Criteria</b>	<b>Weighting / Max Marks Available</b>
<b>Price 40% (40 marks)</b>		
Section C / Q 1	Price	40 max marks
<b>Total for price</b>		<b>40 max marks</b>
<b>Quality 50% (50 marks)</b>		
Section C / Q 2.1	Staffing support and flexible and creative response to needs	1 / 10 max marks
Section C / Q 2.2	Selection and recruitment of staff	1 / 10 max marks
Section C / Q 2.3	Assurance of sufficient staff to cover contract requirements	1 / 10 max marks
Section C / Q 2.4	Sufficient back office resource and carers wellbeing	1 / 10 max marks
Section C / Q 2.5	Managing mileage and rota efficiently	1 / 10 max marks
<b>Total for quality</b>		<b>5 / 50 max marks</b>
<b>Social Value 10% (10 marks)</b>		
Section C / Q 3	Social Value proposals	1 / 10 max marks
<b>Total for Social Value</b>		<b>1 / 10 max marks</b>

Shropshire Council is committed to securing Social Value through all its procurement activity. By requiring contractors to deliver Social Value we will improve social, economic and environmental outcomes for Shropshire and beyond. Our Social Value Framework sets how the Council's priorities can be met by a range of Social Value measures

<https://www.shropshire.gov.uk/social-value/>

### **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
<b>Excellent</b>	<b>10</b>	<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>
	<b>9</b>	
<b>Good</b>	<b>8</b>	<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>
	<b>7</b>	
<b>Acceptable</b>	<b>6</b>	<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>
	<b>5</b>	
<b>Minor Reservations</b>	<b>4</b>	<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>
	<b>3</b>	
<b>Serious Reservations</b>	<b>2</b>	<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>
	<b>1</b>	
<b>Unacceptable</b>	<b>0</b>	<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.

Tenders for each town area will be evaluated on the answers provided within this document and judged against the criteria shown in the table below. The Council will not appoint a provider who scores less than 6 on any of questions 1-6. The following award criteria is made up of 'Quality' and 'Price' and shows how each criteria is to be weighted against each other.

**The tender receiving the highest initial mark for Quality Criteria overall will receive the full 50 marks available for Quality. Other tenders will receive a final mark that reflects the final % 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 40. 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.**

The most competitively priced application will receive the maximum mark of 40 for each Town Area bid for. Less competitive applications will receive a % of the maximum mark available that represents the difference in cost or reduction between that application and the most competitively priced application for the Town Area bid for.

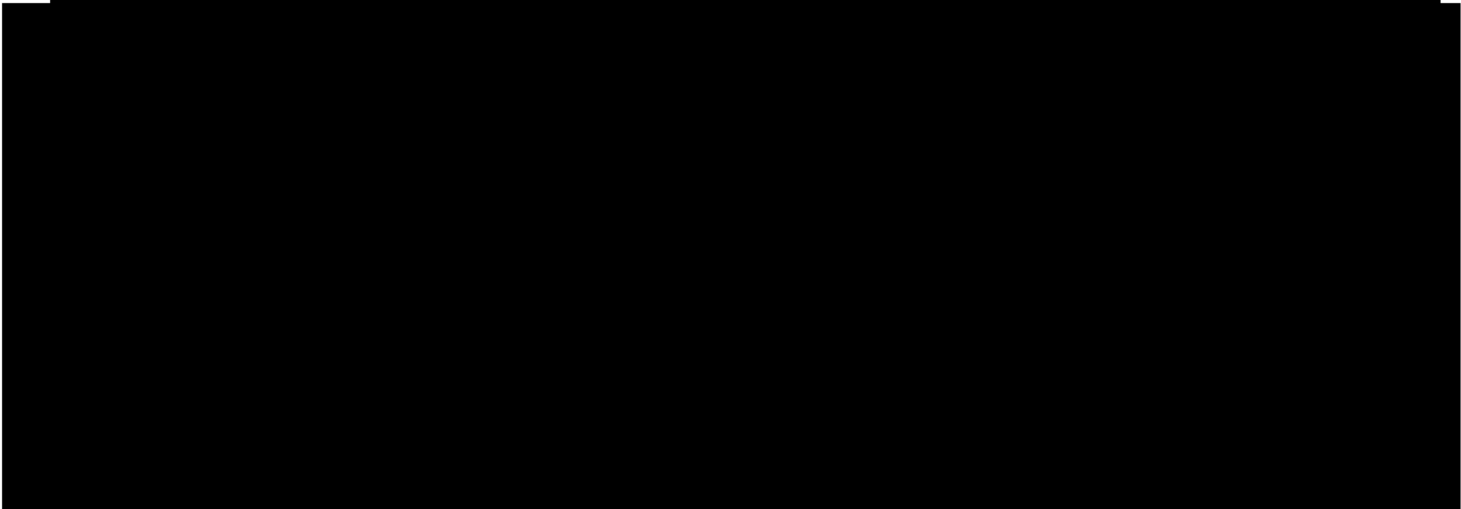
### **Social Value Evaluation and Scoring**

Proposals for delivery of Social Value in accordance with Shropshire Council's Social Value Framework will be scored using the scoring scheme applied to responses in the 'Quality' section of this tender response. Where we have not set out any particular measures for you to consider we will take into account the nature and proportionality of your Social Value commitment in relation to this contract. Where we have set out measures for you to consider we will take into account the extent to which your response meets these particular requirements.

**The tender receiving the highest initial mark for Social Value overall will receive the full 10 marks available for Social Value. Other tenders will receive a final mark that reflects the final % difference in the initial marks between those tenders and the tender receiving the highest initial mark for Social Value overall.**

**The winning tender will be the highest scoring tender for each lot (quality scores added to the Price scores)**



**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.

**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.

**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?

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.*

## **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](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	
1.1(b) – (i)	Registered office address (if applicable)	
1.1(b) – (ii)	Registered website address (if applicable)	
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)	
1.1(d)	Date of registration in country of origin	
1.1(e)	Company registration number (if applicable)	
1.1(f)	Charity registration number (if applicable)	
1.1(g)	Head office DUNS number (if applicable)	
1.1(h)	Registered VAT number	
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?	
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?	
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.
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
1.1(m)	Are you a Small, Medium or Micro Enterprise (SME) <sup>2</sup> ?
1.1(n)	Details of Persons of Significant Control (PSC), where appropriate: <sup>3</sup> - 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)
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)
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)

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.

<sup>2</sup> See EU definition of SME - [https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)

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

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

Section 1	Bidding Model				
Question number	Question	Response			
1.2(a) - (i)	Are you bidding as the lead contact for a group of economic operators?				
1.2(a) - (ii)	Name of group of economic operators (if applicable)				
1.2(a) - (iii)	Proposed legal structure if the group of economic operators intends to form a named single legal entity prior to signing a contract, if awarded. If you do not propose to form a single legal entity, please explain the legal structure.				
1.2(b) - (i)	Are you or, if applicable, the group of economic operators proposing to use sub-contractors?				
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	
1.3(b)	Name of organisation	
1.3(c)	Role in organisation	
1.3(d)	Phone number	
1.3(e)	E-mail address	
1.3(f)	Postal address	
1.3(g)	Signature (electronic is acceptable)	
1.3(h)	Date	

## 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)	<b>Regulations 57(1) and (2)</b> 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.	
	Participation in a criminal organisation.	
	Corruption.	



	Fraud.
	Terrorist offences or offences linked to terrorist activities
	Money laundering or terrorist financing
	Child labour and other forms of trafficking in human beings
2.1(b)	If you have answered yes to question 2.1(a), please provide further details. Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction, Identity of who has been convicted If the relevant documentation is available electronically please provide the web address, issuing authority, precise reference of the documents.
2.2	If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning)
2.3(a)	<b>Regulation 57(3)</b> 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?
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.
2.4	Please confirm that you have in place, or that you will have in place by contract award, the human and technical resources to perform the contract to ensure compliance with the General Data

	Protection Regulation and to ensure the protection of the rights of data subjects
2.4(a)	<p>Please provide details of the technical facilities and measures (including systems and processes) you have in place, or will have in place by contract award, to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects. Your response should include, but should not be limited to facilities and measures:</p> <ul style="list-style-type: none"> <li>○ to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services;</li> <li>○ to comply with the rights of data subjects in respect of receiving privacy information, and access, rectification, deletion and portability of personal data;</li> <li>○ to ensure that any consent based processing meets standards of active, informed consent, and that such consents are recorded and auditable;</li> <li>○ to ensure legal safeguards are in place to legitimise transfers of personal data outside the EU (if such transfers will take place);</li> <li>○ to maintain records of personal data processing activities; and</li> <li>○ to regularly test, assess and evaluate the effectiveness of the above measures.</li> </ul>
2.5	<p>Prior to the commencement of this contract mandatory COVID-19 vaccinations will be legislation for all those staff working in Domiciliary Care other than those who have a valid exemption, could you confirm that you will be compliant with this legislation when it comes in effect in April 2022.</p> <p><b><u>This is a mandatory requirement</u></b></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><b>Regulation 57 (8)</b> 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>	



	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.	
3.1(a)	Breach of environmental obligations?	
3.1(b)	Breach of social obligations?	
3.1(c)	Breach of labour law obligations?	
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?	
3.1(e)	Guilty of grave professional misconduct?	
3.1(f)	Entered into agreements with other economic operators aimed at distorting competition?	
3.1(g)	Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure?	
3.1(h)	Been involved in the preparation of the procurement procedure?	
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?	

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.	



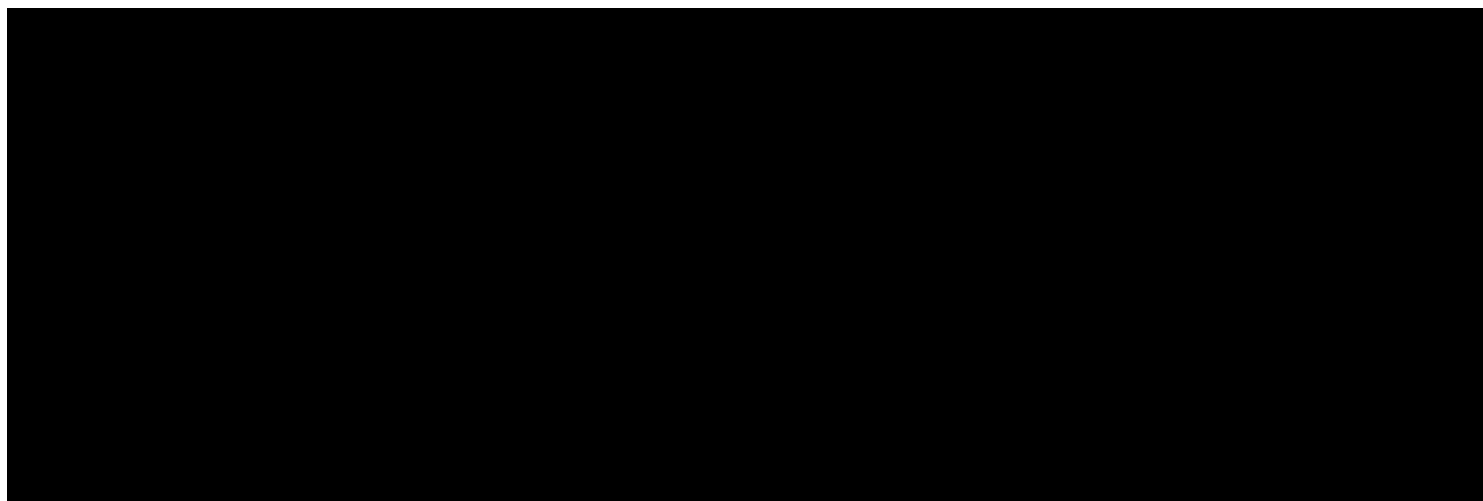
3.1(j) - (ii)	The organisation has withheld such information.	
3.1(j) –(iii)	The organisation is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.	
3.1(j)-(iv)	The organisation has influenced the decision-making process of the contracting authority 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.	
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	

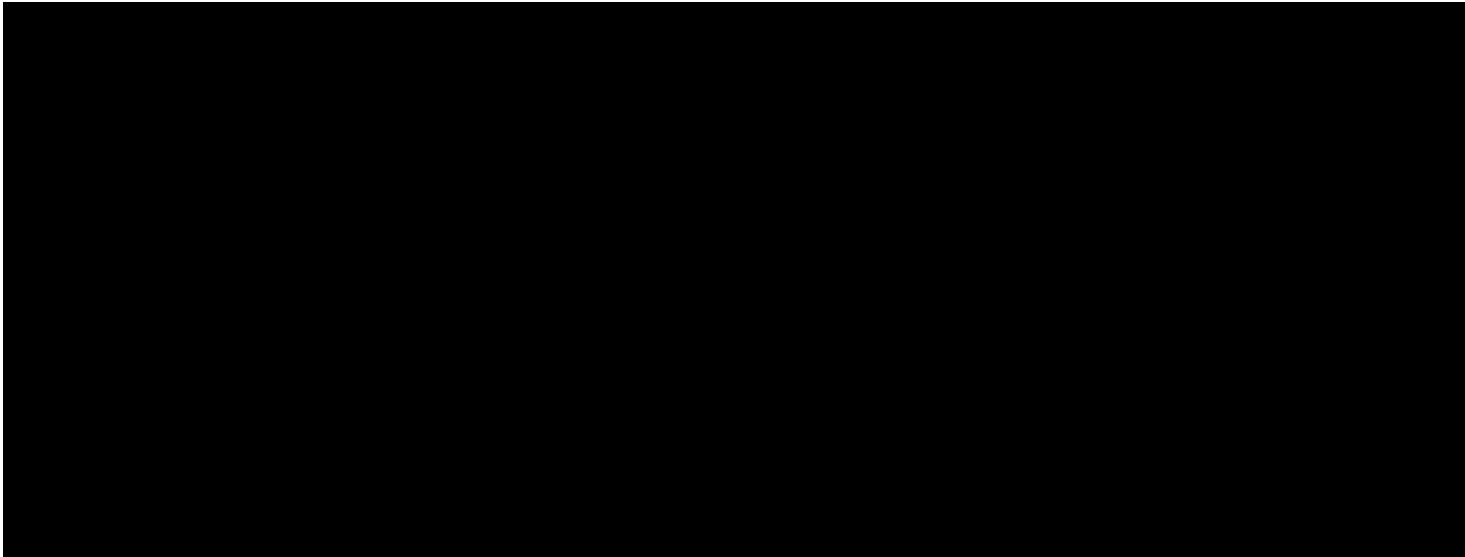
Section 4	Economic and Financial Standing	
Question number	Question	Response
4.1	Are you able to provide a copy of your audited accounts for the last two years, if requested? If no, can you provide <b>one</b> of the following: answer with Y/N in the relevant box.	
	(a) A statement of the turnover, Profit 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.	
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	
	(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).	
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.	

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?	
5.2	If yes, would the parent company be willing to provide a guarantee if necessary?	
5.3	If no, would you be able to obtain a guarantee elsewhere (e.g. from a bank)?	

Section 6	<b>Technical and Professional Ability</b>	
6.1	<p><b>Relevant experience and contract examples</b></p> <p>Please provide details of up to three contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs may include samples of grant-funded work. Contracts for supplies or services should have been performed during the past three years. Works contracts may be from the past five years.</p> <p>The named contact provided should be able to provide written evidence to confirm the accuracy of the information provided below.</p> <p>Consortia bids should provide relevant examples of where the consortium has delivered similar requirements. If this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle is to be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member).</p> <p>Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the main intended provider(s) or sub-contractor(s) who will deliver the contract.</p> <p>If you cannot provide examples see question 6.3</p>	

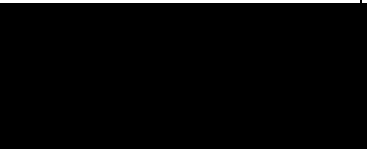




6.2	<p>Where you intend to sub-contract a proportion of the contract, please demonstrate how you have previously maintained healthy supply chains with your sub-contractor(s)</p> <p>Evidence should include, but is not limited to, details of your supply chain management tracking systems to ensure performance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

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

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



	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?	
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## 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	
8.1	Insurance	
	<p>Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:</p> <p>Employer's (Compulsory) Liability Insurance = £5 Million</p> <p>Public Liability Insurance = £5 Million</p> <p>*It is a legal requirement that all companies hold Employer's (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders.</p>	
8.2	<b>Skills and Apprentices 4 –</b>	
a.	Please confirm if you will be supporting apprenticeships and skills development through this contract.	
b.	If yes, can you provide at a later stage documentary evidence to support your commitment to developing and investing in skills, development and apprenticeships to build a more skilled and productive workforce and reducing the risks of supply constraints and increasing labour cost inflation?	

<sup>4</sup> 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/456805/27_08_15_Skills_Apprenticeships_PPN_vfinal.pdf)

### 8.3 – Compliance with equality legislation

For organisations working outside of the UK please refer to equivalent legislation in the country that you are located.	
1.	In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in any jurisdiction other than the UK)?



2.	<p>In the last three years, has your organisation had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds or alleged unlawful discrimination?</p> <p>If you have answered “yes” to one or both of the questions in this module, please provide, as a separate Appendix, a summary of the nature of the investigation and an explanation of the outcome of the investigation to date.</p> <p>If the investigation upheld the complaint against your organisation, please use the Appendix to explain what action (if any) you have taken to prevent unlawful discrimination from reoccurring.</p> <p>You may be excluded if you are unable to demonstrate to the Authority’s satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring.</p>
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>

#### 8.4 – Environmental Management

1.	<p>Has your organisation been convicted of breaching environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator or authority (including local authority)?</p> <p>If your answer to 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>
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>

#### 8.5 – Health & Safety

1.	<p>Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements.</p>
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>

	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.
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?

## 8.6 Climate Impact / Carbon Reduction Plans

The Council has declared a climate emergency and is committed to achieving 'net-zero' carbon impact by 2030. Procured goods, works and services make up a significant proportion of the Council's total carbon footprint. It is therefore important that all contractors take steps to understand the carbon impact of the goods, works or services they provide and are able to set out how they will work with the Council to help us achieve 'net-zero'.

1.	<p>Please certify if your organisation has a Carbon Reduction / Climate Impact / Environmental Policy or Plan that aims to reduce your carbon footprint over the term of this contract.</p> <p>If your answer to this question was "Yes" and you are successful in this tender, we may ask you to submit a copy of your policy or plan.</p>
2.	<p>Does your organisation use a recognised tool to generate Climate Impact Statements and report the climate impact of your operations?</p> <p>If your answer to this question was "Yes" and you are successful in this tender, we may ask you to submit details of the reporting tool you use and any outputs from it.</p>
3.	<p>Is your organisation certified or accredited under any recognised framework (eg Carbon Trust or Planet Mark or equivalent)?</p> <p>If your answer to this question was "Yes" and you are successful in this tender, we may ask you to submit a copy of your latest certification / accreditation.</p> <p>If your answer to this question was "No" please say whether you plan to achieve certification / accreditation under a recognised framework in future.</p>
4.	If you use sub-contractors, do you have processes in place to check whether any of the above apply to these other organisations?

## 8.7 Safeguarding of adults and children

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

1	<p>Do you have a Safeguarding Policy or statement for safeguarding children?</p> <p>Do you have a Safeguarding Policy or statement for safeguarding adults?</p>
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2	For information: our requests for references will include a question relating to your organisation's record for safeguarding.	
3	As a contractor providing a public service on behalf of a Shropshire Council, we expect that you will be familiar and committed to the local safeguarding procedures as prescribed by Shropshire's Safeguarding Children Board (SSCB) and <a href="http://www.safeguardingshropshireschildren.org.uk/scb/index.html">http://www.safeguardingshropshireschildren.org.uk/scb/index.html</a> Shropshire Council's approach to adult protection <a href="http://www.shropshire.gov.uk/adultcarer.nsf/open/F54E8A80CF1343BC80257AAF0058F760">http://www.shropshire.gov.uk/adultcarer.nsf/open/F54E8A80CF1343BC80257AAF0058F760</a>	

## SECTION C – TENDER SCHEDULE

	Pricing Schedule	Max marks
1.	<p>Please submit an all-inclusive hourly rate for any of the town areas below in which you wish to be considered for which your organisation will be paid to work in the zones you have chosen. Please ensure that your all-inclusive hourly rate does not exceed £44.15 for the whole service (2 carers, vehicle, phone, all back-office support etc.). Bids above this rate will not be considered.</p> <p>You may bid for as many Town areas as you wish. A submission of a cost against any of the following areas indicates your bid for that area.</p>	40 max marks











**DATED**

**2022**

**BETWEEN**

**SHROPSHIRE COUNCIL**

**and**

**[add in legal entity of the Service Provider]**

**Contract Ref: [AMCV 303]**

**FOR**

**FOR A TWO CARERS IN A CAR SERVICE**

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THIS AGREEMENT is made the                      day of                      2022 hereinafter called “the AGREEMENT” between

(1) SHROPSHIRE COUNCIL of Shirehall Abbey Foregate Shrewsbury SY2 6ND (“the Council”) and

(2) **Insert name of Service Provider** / a company incorporated in England and Wales under company number [co. number] and whose registered office is at [company address] or [whose address is at [insert the home address of the Service Provider] (the “Service Provider”).

WHEREAS:

- (A) The Council wishes to receive support and care services in the community.
- (B) The Service Provider has the skills, background and experience in providing the Services required by the Council
- (C) The Service Provider is willing to provide the Services as defined below and the Council is willing to appoint the Service Provider to provide the Services in accordance with the provisions of this Agreement

NOW IT IS AGREED as follows:

DEFINITIONS

For the purposes of this Agreement the following words shall have the following meanings: -

Agreement	means this agreement
Allocated Areas	<ul style="list-style-type: none"> <li>i. Oswestry and surrounding area (approximately 15 minutes travel from the centre of the town)</li> <li>ii. Market Drayton and surrounding area (approximately 15 minutes travel from the centre of the town)</li> <li>iii. Ludlow and surrounding area (approximately 15 minutes travel from the centre of the town)</li> <li>iv. Shrewsbury and surrounding area (approximately 15 minutes travel from the centre of the town)</li> <li>v. Shrewsbury and surrounding area (within an approximate 15-minute radius), for CCG fast track clients.</li> </ul>
Associated Person	In respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a

	company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest.
Best Practice	means in accordance with the best practice within the industry of the Service Provider
Best Value	the requirement under section 3 of the Local Government Act 1999 for local authorities to secure continuous improvement.
Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
Care Manager	an Officer of the Council responsible for assessing the social care needs of the Service User.
Carer Team	The Service Provider's Two Carers in a Car delivering the Service
Commencement Date	12 May 2022
Commercially Sensitive Information	comprises the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business which the Service Provider has indicated to the Council in writing that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss;
Confidential Information	all information as defined by Paragraph 5 of Schedule 2
Contract Documents	means all of the documents annexed to, contained and referred to within this Agreement including any Individual Placement Agreements "IPAs"
Contracts Manager	the nominated officer of the Council authorised to oversee contractual arrangements in respect of the Service
Council Data	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (a) supplied to the Service Provider by or on behalf of the Council; or which the Service Provider is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Personal Data for which the Council is the Data Controller
Council Software	software which is owned by or licensed to the Council, including software which is or will be used by the Service Provider for the purposes of providing the Services but excluding the Service Provider Software
Data Controller	is as defined in the Data Protection Legislation
Data Processor	is as defined in the Data Protection Legislation
Data Protection Impact Assessment	an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation'	all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of



Data Protection Officer	practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party Shall have the same meaning defined in the Data Protection Legislation
Data Subject	Shall have the same meaning defined in the Data Protection Legislation
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
Domestic Law	means the Law of the United Kingdom or a part of the United Kingdom
EIR	the Environmental Information Regulations 2004 (as may be amended from time to time.)
Employment Checks	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, disclosure and barring checks and occupational health checks
Exempt Information	any information or class of information (including but not limited to any document, report, Contract or other material containing information) relating to this Agreement or otherwise relating to the parties to this Agreement which potentially falls within an exemption to FOIA (as set out therein)
Expiry Date	Shall be the later of either: i) the Initial Expiry Date; or ii) the last day of any agreed extension period further to clause 16 below. or such other date as this Agreement is terminated in accordance with its terms
First Point of Contact	the Council's office which the Council will ensure that the Service Provider has up to date telephone and email contact details for
FOIA	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this Agreement
FOIA Notice	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner
Force Majeure Event	means any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster. (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations. (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on clause 20 (Force Majeure); and
- (i) interruption or failure of utility service.

Formal Complaint	A complaint that cannot be resolved through any instant remedial action and is not a service request.
GDPR	Means the General Data Protection Regulation 2016/679 as they apply and are incorporated into UK law by UKGDPR
Information	has the meaning given under section 84 of the Freedom of Information Act 2000
Initial Expiry Date	11 May 2025
Initial Term	means the period commencing on the Commencement Date and expiring on the Initial Expiry Date
Intellectual Property Rights	means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply
Notice	a written communication issued in accordance with Clause 9 of this Agreement
Officer(s)	those officers of the Council who are authorised by the Council to perform functions in connection with this Agreement
Option to Extend	means the Council's option to extend the Initial Term by a period of up to 1 year in the first instance commencing from and including the date following the Initial Expiry Date, and a further Option to Extend 1 year beyond that.
Outcomes	means the targets, results or objectives set out in this Agreement or [as specified in the Specification]
Parties	the Service Provider and the Council and 'Party' shall mean either one of them
Payment	the payments made by the Council to the Service Provider in accordance with clause 2
Payment Review	The review of Payment as detailed in Clause 5
Performance Indicators	The performance indicators relating to this Agreement issued by the Council from time to time
Personal Data	shall have the same meaning as set out in the Data Protection Legislations
Personal Data Breach	means: anything which constitutes a "personal data breach" as set defined in the Data Protection Legislation
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

	<p>advantage to:</p> <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> <li>(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;</li> <li>(c) committing any offence;</li> <li>(i) under the Bribery Act;</li> <li>(ii) under legislation creating offences concerning fraudulent acts;</li> <li>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or</li> <li>(d) defrauding, attempting to defraud or conspiring to defraud the Council.</li> </ul>
Processor Personnel	means all directors, officers, employees, agents, consultants and contractors of the Data Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement
Registration Body	the Care Quality Commission (or any other body which supersedes it) area office for the area where the Service is located and/or any other body which has regulatory powers or responsibilities in respect of the Service Provider
Regulatory Bodies	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;
Regulated Activity	in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Regulated Provider	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006
Relevant Transfer Report	<p>means a relevant transfer for the purposes of TUPE</p> <p>means a formal Report to be prepared by the Service Provider recording and evaluating the Outcomes together with recommendations for future actions</p>
Request for Information	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
Service Provider's Representative (s)	means the representative(s) appointed by the Service Provider to manage this Agreement on its behalf
Service	Means support and care services in the community as more specifically referred to in the Specification
Service Users	the persons or client group designated from time to time by the Council to receive the Service
Specification	the Specification contained in the Schedules 1 to this Agreement
SPIC	the representatives of the Service Providers being Shropshire Partners in Care
Staff	any persons paid or unpaid who deliver the Service on behalf of the Service Provider including a Sub-Contractor

Sub-Contract	any contract or agreement, or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Service or any part thereof, or facilities or services necessary for the provision of the Goods, Works or Services or any part of the Service, or necessary for the management, direction or control of the Goods, Works or Services or any part of thereof
Sub-Contractor	the third parties that enter into a Sub-Contract with the Service Provider
Sub-processor	any third party appointed to process Personal Data on behalf of the Service Provider related to this Agreement.
Tender	means the tender dated [.....] submitted by the Service Provider and accepted by the Council annexed to this Agreement in Appendix 1
Term	means the period commencing on the Commencement Date and expiring on the Expiry Date
Third Party Software	software which is proprietary to any third party which is or will be used by the Service Provider for the purposes of providing the Services
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) and the Acquired Rights Directive
Valid Invoice	Means an invoice submitted by the Service Provider which must contain the following detail required by the Council to enable payment as specified in clause 9 of this Agreement: 1) invoices to be addressed to Shropshire Council at the address referred to above; and 2) submitted on the Service Provider's business letterhead including the Service Provider's name and address, and VAT registration number (where applicable); and 3) [insert details of service/site location, property number and address] to which payment relates; and 4) the Council's Official Order Number
Working Days	Monday to Friday inclusive (not including national bank holidays)
Writing	includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received EXCEPT with respect to Clause 9 (Notices) of this Agreement where the term "Writing" does not include facsimile transmission or electronic mail with respect to the service or receipt of Notices.

## INTERPRETATIONS

- 1 Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 2 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 4 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006. In the case of a

limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:

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

## **CONTRACT CONDITIONS**

NOW IT IS AGREED as follows:

### 1 AGREEMENT AND TERM

- 1(a) In consideration of the Payment the Service Provider will provide to the Service Users the Service in accordance with the terms of this Agreement
- 1(b) This Agreement shall commence on the Commencement Date and shall continue until the Initial Expiry Date subject to clauses 10 (Breach), 11 (Prevention of Bribery) and 16 (Termination) in accordance with the terms of this Agreement.

### 2 PAYMENTS

- 2(a) Payment will be made by the Council within 30 days of receipt of an undisputed Valid Invoice for those charges properly incurred in accordance with the delivery of the Service and invoices are to be submitted to the Council monthly in arrears.
- 2(b) The Council will make payments to the Service Provider for the provision of the Service in the Allocated Areas as follows from the 12 May 2022
  - i. £xxxxxx per night for Oswestry and surrounding area from
  - ii. £xxxxxx per night for Market Drayton and surrounding area
  - iii. £xxxxxx per night for Ludlow and surrounding area
  - iv. £xxxxxx per night for Shrewsbury and surrounding area
  - v. £xxxxxx per night for Shrewsbury and surrounding area CCG Fast Track
- 2(c) The Service Provider shall not make a charge to the Service User or any third party for the Service provided.
- 2(d) The Council reserves the right to set off against the price of the [goods or] Services any sums owed or becoming due to the Council from the Service Provider.

- 2(e) If either Party fails to make any Payment to the other Party under this Agreement within 30 days of receipt of an undisputed Valid Invoice then the Party who should make payment shall pay interest on the overdue amount at the statutory rate above the Bank of England base rate from time to time further to the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after Judgment.
- 2(f) The Service Provider shall not be entitled to vary the Payment during the existence of this Agreement unless with the prior written consent of the Council.
- 2(g) The Service Provider shall not charge, and the Council shall not be liable, for any expenses, charges, costs, fees except the Payments as set out in this Agreement
- 2(h) Unless otherwise agreed in writing by the Council, the Service Provider will pay any of its appointed sub-contractors within the time period specified in the Sub-Contract but in any event no later than 30 days from receipt of an undisputed invoice.
- 2(i) If the Council fails to make any payment due to the Service Provider under this agreement within 30 days following the due date for payment of an undisputed amount, then the Council shall pay interest on the overdue amount at the statutory rate above the Bank of England base rate from time to time further to the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after Judgment.

### 3 COMPLIANCE

- 3(a) The Council undertakes to:
  - 3(a)(i) make the Payments to the Service Provider in accordance with Clause 2
  - 3(a)(ii) liaise with the Service Provider regarding the provision of the Service where appropriate.
  - 3(a)(iii) Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Service Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3(b) The Service Provider undertakes to comply with the following in the provision of the Service:
  - 3(b)(i) provide the Service in accordance with the Specification and with all due diligence care and skill expected of a suitable and experienced provider of such services
  - 3(b)(ii) ensure that no aspect of the Service funded by the Payment is or appears to be party political in intention use or presentation
  - 3(b)(iii) **Not Used**
  - 3(b)(iv) the West Midlands Adult Safeguarding Multi-Agency Policy and Procedures
  - 3(b)(v) all standards required by the Health and Social Care Act 2008 in order to maintain registration thereunder

- 3(b)(vi) all equal opportunities legislation and anti-discriminatory practices including those identified in Clause 30 Equalities
- 3(b)(vii) ensure that Staff and Subcontractors are made aware of the Council's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request
- 3(b)(viii) the Data Protection Act Legislation
- 3(b)(ix) the standard required of a local authority under the Human Rights Act 1998. The Service Provider shall protect and shall not do anything in breach of Service Users' rights under the Act.
- 3(b)(x) the principles of Best Value
- 3(b)(xi) the Health and Safety at Work Act 1974 and any relevant health and safety regulations approved codes of practice and HSE guidance
- 3(b)(xii) declare to the Council at the end of each Financial Year any amount of underspend of the Payment and return the underspend to the Council if requested to do so by the Council.
- 3(b)(xiii) the Services shall only be performed/delivered by the Service Provider unless otherwise agreed in writing between the Parties
- 3(b)(xiv) all current and relevant statutory provisions, regulations or other legislation from time to time in force relating to the provision of the Services
- 3(b)(xv) the Service Provider shall during the Term ensure that every person employed by the Service Provider in the provision of the Services is properly trained and instructed with regard to his/her tasks in relation to the Services
- 3(b)(xvi) before the Service Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Service Provider must without limitation, complete the Employment Checks and any other checks required by the Disclosure and Barring Service
- 3(b)(xvii) the Service Provider shall carry out its own risk assessments relevant to the Services
- 3(b)(xviii) the Service Provider shall have a written procedure for dealing with complaints about the Service in accordance with clause 37 hereof
- 3(b)(xix) the Service Provider agrees that where requested in writing during the term of this Agreement it will ensure that an appropriately authorised representative of the Service Provider shall attend a Committee meeting of the Council upon being invited to do so by the Council

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



- 3(g)(i) serve the Service Provider with a written notice ("Notice") within one month of the Review meeting specifying which of the Outcomes/Performance Indicators it considers that the Service Provider has not met or failed to achieve and giving the Service Provider one calendar month from the date of the Notice to remedy the failure
- 3(g)(ii) if after one calendar month from the date of the Notice the Service Provider has failed to remedy the failure specified in the Notice then this will be considered to be a breach of the terms of this Agreement and the Agreement may be terminated in accordance with the provisions contained in clause 16 herein
- 3(g)(iii) The Council shall take into account any verbal or written representations made by the Service Provider before proceeding to take any action to terminate this Agreement pursuant to this clause.
- 3(h) Within twelve weeks of the last date of delivery of the Service and prior to the Expiry Date, the Service Provider shall prepare and deliver to the Council a satisfactory Report recording the Outcomes/Performance together with its recommendations following the delivery of the Service.
- 3(i) **Not Used**
- 3(j) Should the Service Provider provide the Service to Service Users who lack the mental capacity to make particular decisions it must familiarise itself with and adhere to the Council's Mental Capacity Act Deprivation of Liberty Safeguards Multi-Agency Guidance and Procedure.
- 3(k) If for any reason the Service Provider is unable to comply with any of its obligations under this Agreement it shall notify the Council's Contracts Manager and appropriate Care Manager forthwith in Writing of its failure and the reasons. Compliance with this clause shall not prejudice the Council's rights under clauses 10 (Breach) and 16 (Extension and Termination).
- 3(l) The Service Provider warrants that the signing of this Agreement on its behalf has been validly authorised and the obligations expressed as being assumed by the Service Provider under this Agreement constitute valid legal and binding obligations of the Service Provider enforceable against the Service Provider in accordance with their terms.
- 3(m) The Service Provider warrants that:
  - 3(m)(i) it has full capacity and authority to enter into this Agreement
  - 3(m)(ii) it has obtained all necessary and required licences, consents and permits to provide the Services

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

information incorrect or misleading at the time such information was provided.

- 3(o) The Service Provider will ensure that they make themselves aware, and operate to, local and national Best Practice guidelines, policies and protocols relating to social care that are issued from time to time. The Service Provider should note that the Council may choose to undertake targeted monitoring around this requirement.

#### 4 VARIATION

- 4(a) This Agreement may only be varied by consent of both of the parties and any such variation must be in Writing and signed by an authorised representative of each of the parties and annexed to this Agreement and shall record the date from which the agreed variation shall have effect.
- 4(b) The Service Provider will not enter into any negotiations either directly or indirectly with the Service User or any third party the effect of which would be to vary or amend the terms of this Agreement without the agreement of the Council.

#### 5 PAYMENT REVIEW

- 5(a) The Service Provider may request the Council to review the Payment under this Agreement on the 1st of April following the first full year of operation of the Service and once in each subsequent year of the Agreement provided that such request is submitted to the Council by 1st of March in the previous Financial Year to which the increase will apply.
- 5(b) Following such review the Council may increase the fee payable to the Service Provider which shall be linked to the annual inflationary provision to the Council as determined by the Council's Chief Finance Officer or Officer of equal standing
- 5(c) Should any payment review not be concluded by the 1st of April then the Payment for the preceding Financial Year shall remain in full force until such time as any revised Payment is agreed.
- 5(d) An agreed revised Payment submitted in accordance with 5(c) above shall be back-dated to that date.
- 5(e) The Council's decision after the completion of the payment review shall be final.

#### 6 VAT

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

#### 7 AGENCY

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

#### 8 ACCOUNTING

- 8(a) The Service Provider shall ensure that all necessary accounting arrangements exist to distinguish between the Payment and any funds held on behalf of the Service User or any other funds held by the Service Provider.

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

## 9 NOTICES

- 9(a) The Service Provider shall comply with and give any Notices required under the Agreement or required by any Act of Parliament any instrument rule or order made under any Act of Parliament or any regulation or by-law of any local authority which may have jurisdiction in respect of the Service Provider.
- 9(b) Any Notice under this Agreement must be in Writing and can only be sent by:
  - 9(b)(i) recorded delivery post or
  - 9(b)(ii) personal delivery
- 9(c) The Service Provider's address for the purpose of delivery of a Notice is as set out above and all Notices sent to the Service Provider under this Agreement must be sent to the Service Provider's Registered Manager.
- 9(d) The Council's address for the purpose of delivery of a Notice is the Contracts Manager at the Contracts Unit, Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND.
- 9(e) All such Notices if delivered by hand shall be deemed to be served immediately and if posted shall be deemed to have been served two days after the date when posted unless the party upon whom the Notice was purported to be served has informed the serving party within 24 hours of partial receipt that the Notice was not received in full.

## 10 BREACH

- 10(a) In the event that the Service Provider is in breach of its obligations under this Agreement then the Council shall serve a Notice requiring the Service Provider to take such action as the Council deems necessary to remedy the breach upon the terms and within the time stipulated in the Notice.
- 10(b) The following obligations are conditions of this Agreement and any breach of them shall be deemed a fundamental breach which shall determine this Agreement immediately by the giving of a Written Notice:
  - 10(b)(i) Failure to comply with a Notice to remedy a breach pursuant to clause 10(a)
  - 10(b)(ii) Assignment by the Service Provider of any of its obligations under this Agreement without the prior written consent of the Council and the Service User's agreement.

- 10(b)(iii) If the Service Provider is or has been convicted of any offence the effect of which under the provisions of any legislation would prevent the Council from contracting with him or maintaining any existing contractual relationship
- 10(b)(iv) If the Service Provider is issued with a notice from the Health and Safety Executive or Registration Body prohibiting it from operating.

## 11 PREVENTION OF BRIBERY

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

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

## 12 INSURANCE

- 12(a) The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all legal liability which may be incurred by the Service Provider, arising out of the Service Provider's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS).
- 12(b) The Service Provider warrants that it has complied with this clause 12 and warrants that any insurance policy or policies effected and maintained in accordance with this clause do not contain any endorsements or exclusions which have the effect of voiding, reducing or limiting the cover required in respect of the Services.
- 12(c) The Service Provider shall prior to commencement of this Agreement provide the Council and thereafter upon request, or at least annually during the Term, with:
  - (a) copies of the relevant insurance policy documents (including details of any warranties or exclusions); and
  - (b) receipts or other evidence of payment of the latest premiums due under those policies; and
  - (c) any other evidence reasonably requested by the Council to confirm that the required insurances are in force and effect and meet in full the requirements of this Clause 12.

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

- 12(d) The Service Provider shall:
  - (a) ensure nothing is done to invalidate any insurance policy or cause the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part, including ensuring that any warranties under the policy are complied with;
  - (b) notify the Council as soon as reasonably practicable when it becomes aware of any relevant fact, circumstance or matter which, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
- 12(e) For the avoidance of doubt, the terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Agreement.
- 12(f) Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":
  - 12(f)(i) if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Service Provider shall immediately submit to the Council:
    - (a) details of the policy concerned; and
    - (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

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

### 13 INDEMNITY

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

### 14 CONTRACTS MANAGER AND SERVICE PROVIDER REPRESENTATIVE (NOT USED)

### 15 INTELLECTUAL PROPERTY

- 15(a) In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:
- 15(a)(i) in the course of performing the Services; or
  - 15(a)(ii) exclusively for the purpose of performing the Services, shall vest in the Council on creation.
- 15(b) Unless stated expressly in writing in this Agreement, neither Party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Agreement
- 15(c) The Service Provider shall indemnify the Council against all claims, demands,

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

- 15(d) This provision shall survive the expiration or termination of the Agreement

## 16 EXTENSION AND TERMINATION

- 16(a) Unless terminated in accordance with this Clause 16 or Clause 10 or 11, it is agreed that this Agreement will remain in force for the Initial Term. It is further agreed between the Parties that the Council may exercise its Option to Extend this Agreement for a period of up to 2 years as follows:

16(a)(i) If the Council decides to exercise its Option to Extend the Initial Term it shall notify the Service Provider in writing at least 3 months in advance of the Initial Expiry Date. The provisions of this Agreement between the Council and the Service Provider shall be the terms to be applied to the extended contract period, SAVE FOR any agreed variations in writing by the Parties to the terms of this Agreement or Payments which are to apply during the extension period, and which shall be formalised by way of Deed of Variation between the parties;

16(a)(ii) The total duration of this Agreement shall be 3 years from the Commencement Date

- 16(b) If the Council decides that it does not wish to exercise its Option to Extend then this Agreement shall terminate on the Initial Expiry Date and the provisions of clause 17 (Consequences of Termination) shall apply.

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

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

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

16(c)(iii) by the Council if the Service Provider becomes the subject of a voluntary arrangement under section 1 Insolvency Act 1986 or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; has a receiver manager administrator or administrative receiver appointed over all or any parts of its undertaking assets or income; has passed a resolution for its winding up; has a petition presented to any court for its



- winding up or for an administration order; or if any distraint execution or other process is levied or enforced on any property of the other and is not paid out withdrawn or discharged within 14 days.
- 16(c)(iv) by either Party if the other Party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.
  - 16(c)(v) by either Party where the other Party commits a series of minor breaches which, when taken together, amount to a material breach;
  - 16(c)(vi) by either Party where the other Party commits a material breach of this Agreement which cannot be remedied under any circumstances;
  - 16(c)(vii) by the Council forthwith by notice where the Service Provider commits a material breach as a result of a failure to comply with a Notice issued in accordance with clause 10 (Breach)
  - 16(c)(viii) by either Party where the other Party ceases to carry on its business or substantially the whole of its business;
  - 16(d) In the event of this Agreement being terminated at any time prior to the Expiry Date for any reason then the Council's obligations under Clause 2 (Payment) will cease no further Payment will be made and the Service Provider shall repay to the Council all (if any) of the Payment already received (after the liabilities of the Service Provider in the provision of the Service in accordance with this Agreement have been met).
  - 16(e) Without prejudice to the generality of the foregoing the Council reserves the right to suspend referrals to the Service where in the reasonable opinion of the Council there is any improper conduct on the part of the Service Provider its Staff and Subcontractors and this will be considered a breach of this Agreement which may result in the suspension of referrals and or reduction / clawback of part of the Payment consistent with the reduction in Service. Improper conduct includes any action which the Council may reasonably consider to be to the detriment of the welfare of Service Users either by action or neglect including but not limited to:
    - 16(e)(i) Fraud or theft from Service Users
    - 16(e)(ii) Neglect of Service Users
    - 16(e)(iii) Cruelty and assault to or upon Service Users including verbal and any other forms of psychological abuse
    - 16(e)(iv) Financial malpractice
    - 16(e)(v) Sexual relationships between Staff and Service Users
    - 16(e)(vi) Racial harassment
    - 16(e)(vii) Loss of registration with Registration Body

- 16(e)(viii) Under investigation by the Council.
- 16(f) If the Agreement is terminated as provided by Clause 10 (Breach) or 11 (Prevention of Bribery) or 16 (Extension and Termination) above the Council shall:
- 16(f)(i) cease to be under any obligation to make further Payment until the cost loss and/or damage resulting from or arising out of the termination of the Agreement shall have been calculated and provided such calculation shows a sum or sums due to the Service Provider;
  - 16(f)(ii) be entitled to make other arrangements and if necessary pay other persons to provide the Services
  - 16(f)(iii) be entitled to deduct from any sum or sums which would have been due from the Council to the Service Provider under this Agreement or be entitled to recover the same from the Service Provider as a debt any loss or damage to the Council resulting from or arising out of the termination of this Agreement and further such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating this Agreement and in making alternative arrangements for the provision of the Services provided that the Council will be under a duty to take all reasonable action to mitigate the loss or damage pursuant to this clause.
- 16(g) Whilst this Agreement affords the Council and the Service Provider reciprocal rights to terminate as per the terms of Clause 16(c)(i) the Parties acknowledge that the expectation of most Service Users is that the Parties will not act unreasonably or to the prejudice of the Service Users so far as is reasonably practicable.
- 16(h) Where notice to terminate is given pursuant to this clause 16, this Agreement shall terminate with effect on the date specified in the notice.

## 17 CONSEQUENCES OF TERMINATION

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

## 18 DISPUTES

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

## 19 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING

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

## 20 FORCE MAJEURE

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

- 20(b) Save where such delay or failure is caused by the act or omission of the other party (in which event the rights remedies and liabilities of the Parties shall be those conferred and imposed by the other terms of this Agreement and by Law):-
- 20(b)(i) any charges arising from such delay or failure shall be borne by the party incurring the same
- 20(b)(ii) either party may if such delay or failure continues for more than 90 (ninety) days terminate this Agreement forthwith on giving Notice (as determined by Clause 9) to the other party in which event neither party shall be liable to the other by reason of such termination.
- 20(c) For the avoidance of doubt "force majeure" shall not include any labour dispute between the Service Provider and its Staff or the failure to provide the Service by any of the Service Provider's Subcontractors.

## 21 WAIVER

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

## 22 SEVERANCE

If any provision of this Agreement prohibited by law or judged by any court of competent jurisdiction to be unlawful, void 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.

## 23 LAW

It is the responsibility of the Service Provider 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 and Welsh Courts.

## 24 THIRD PARTY RIGHTS

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

## 25 REMEDIES CUMULATIVE

Any remedy or right which either party may exercise in relation to a breach shall be in addition to and shall be capable of being exercised without prejudice to all other rights and remedies available under the Agreement.

## 26 CONCLUSION OF AGREEMENT

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

## 27 SUSTAINABILITY

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

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

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

## 29 TUPE

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

## 30 EQUALITIES

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

## 31 CONFIDENTIAL INFORMATION

- 31(a) The Service Provider will keep confidential any information it becomes aware of by reason of the operation of this Agreement and any other information which the Council may from time to time determine as relevant to this Agreement and shall not use divulge or communicate the same to any third party without the consent in writing of the Council.
- 31(b) The Service Provider shall at all times keep confidential all information held or known in respect of its past or present Service Users.
- 31(c) The Service Provider shall not mention the Council's name in connection with this 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.
- 31(d) Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
  - 31(d)(i) treat the other Party's Confidential Information as confidential; and
  - 31(d)(ii) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent
- 31(e) Clause 31(d) shall not apply to the extent that:
  - 31(e)(i) such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information

- 31(e)(ii) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner
- 31(e)(iii) such information was obtained from a third party without obligation of confidentiality
- 31(e)(iv) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement
- 31(e)(v) it is independently developed without access to the other party's Confidential Information.
- 31(f) The Service Provider may only disclose the Council's Confidential Information to the Service Provider's Staff who are directly involved in the provision of the Service and who need to know the information, and shall ensure that such Service Provider's Staff are aware of and shall comply with these obligations as to confidentiality.
- 31(g) The Service Provider shall not, and shall procure that the Service Provider's Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.
- 31(h) The Service Provider shall ensure that its employees and agents are aware of and comply with Clause 31 and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by the Service Provider, its employees or agents.
- 31(i) The Service Provider its Staff and any person employed or engaged by the Service Provider in connection with this Agreement shall:
  - 31(i)(i) only use the Confidential Information for the purposes of this Agreement
  - 31(i)(ii) not disclose any of the Confidential Information to any third party without the prior written consent of the Council which consent the Council shall be absolutely entitled to refuse
  - 31(i)(iii) not use the Confidential Information for the solicitation of business from the Council
- 31(j) Nothing in this Agreement shall prevent the Council from disclosing the Service Provider's Confidential Information:
  - 31(j)(i) to any consultant, contractor or other person engaged by the Council
  - 31(j)(ii) for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council.
- 31(k) The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to this Agreement is made aware of the Council's obligations of confidentiality.
- 31(l) The provisions of this Clause shall survive the expiration or termination of this Agreement.

## 32 COUNCIL DATA

- 32(a) The Service Provider shall not delete or remove any copyright or proprietary notices contained within or relating to the Council Data.
- 32(b) The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council and in particular the Service Provider shall not store any Council Data, which the Council has notified the Service Provider requires storage in an encrypted format, on any portable device or media unless that device is encrypted.
- 32(c) To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council as requested by the Council in any format specified reasonably requested by the Council.
- 32(d) The Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data and shall take such back

- up copies of the Council Data at regular intervals appropriate to the frequency of the revision of the Council Data.
- 32(e) The Service Provider shall ensure that any system on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council's security policy to include, but not limited to, the following requirements:
    - 32(e)(i) Access to the system is restricted to Service Provider Staff with a legitimate need to access the Council Data
    - 32(e)(ii) The system is kept up to date with the latest versions of operating system and anti-virus updates
    - 32(e)(iii) Transfer of data to and from the system is conducted in a secure manner.
  - 32(f) If the Council Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's default so as to be unusable, the Council may:
    - 32(f)(i) require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Council Data as soon as practicable; and/or
    - 32(f)(ii) itself restore or procure the restoration of Council Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so including the restoration of the Council Data.
  - 32(g) If at any time the Service Provider suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Council via the Council's ICT Helpdesk immediately and inform the Council of the remedial action the Service Provider proposes to take.
  - 32(h) The Service Provider shall check for and delete Malicious Software and if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
  - 32(i) Any cost arising out of the actions of the Parties taken in compliance with the provisions of sub-clause 32(h) above shall be borne by the Parties as follows:
    - 32(i)(i) by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software or the Council Data (whilst the Council Data was under the control of the Service Provider); and
    - 32(i)(ii) by the Council if the Malicious Software originates from the Council Software or the Council Data (whilst the Council Data was under the control of the Council).

### 33 DATA PROTECTION

- 33(a) Both parties will comply with all applicable requirements of the Data Protection Legislation and agree to take account of any guidance issued by the Information Commissioner's Office. This clause 33 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 33(b) Where there is any conflict, ambiguity or inconsistency between this clause (including any associated definitions) and the remainder of this Agreement, this clause 33 shall take precedence.
- 33(c) The parties acknowledge that in respect of the Personal Data identified in Schedule 4 only and for the purposes of the Data Protection Legislation, the Council is the Data Controller, and the Service Provider is the Data Processor and for the remainder of this clause 33 where the context so admits, the Council is referred to as the Data Controller and the Service Provider is referred to as the Data Processor unless otherwise specified in Schedule 4. The only processing that the Data Processor is authorised to do in respect of such Personal Data is as listed in Schedule 4 by the Data Controller and may not be determined by the Data Processor. The provisions of clause 33(d) to 33(j) shall apply to this relationship.



33(c)A The parties acknowledge that the Service Provider shall have access to and will process Personal Data for the purpose of the provision of the Services and whilst the Parties acknowledge that the Data Protection legislation will ultimately determine the status of the parties under the legislation, following an assessment of their respective roles under the Agreement, the Parties agree that, with the exception of the Personal Data identified in Schedule 4, the Service Provider is not processing Personal Data on behalf of the Council but is a Data Controller in its own right in respect of the Personal Data which it processes pursuant to the terms of this Agreement. The Parties consider their relationship in respect of any Personal Data not identified in Schedule 4 to be that of 'controller to controller' and will comply with the obligations of a Data Controller under the Data Protection Legislation and where the Parties share Personal Data as controllers it shall be undertaken in accordance with clause 33(k) to 33(n) below.

#### **Data Processor's Obligations**

- 33(e) Without prejudice to the generality of Clause 33(a), the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider and/or lawful collection of the Personal Data by the Service Provider on behalf of the Council for the duration and purposes of this Agreement.
- 33(f) Without prejudice to the generality of Clause[33(a), the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this Agreement:
- (i) process that Personal Data only on the documented written instructions of the Council as set out in Schedule 4 unless the Service Provider is required by Domestic Law to otherwise process that Personal Data. Where the Service Provider is relying on Domestic Law as the basis for processing Personal Data, the Service Provider shall promptly notify the Council of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Service Provider from so notifying the Council;
  - (ii) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (iv) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
    - (a) the Service Provider has provided appropriate safeguards in relation to the transfer as determined by the Council;
    - (b) the Data Subject has enforceable rights and effective legal remedies;
    - (c) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (d) the Service Provider complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
  - (v) notify the Council immediately if it receives:
    - (a) a request from a Data Subject to have access to that person's Personal Data;
    - (b) a request to rectify, block or erase any Personal Data;
    - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation  
(including any communication from the Information Commissioner);
  - (vi) assist the Council in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (vii) notify the Council without undue delay on becoming aware of a Personal Data Breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;
  - (viii) 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 Domestic Law to store the Personal Data; and
  - (ix) maintain complete and accurate records and information to demonstrate its compliance with this clause 33 and allow for audits by the Council or the Council's designated auditor and immediately inform the Council if, in the

opinion of the Service Provider, an instruction infringes the Data Protection Legislation

- 33(g) The Contractor shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Contractor's obligations under this Clause 33.
- 33(h) The Council does not consent to the Contractor appointing any third-party processor of Personal Data under this Agreement
- 33(i) The Council may, at any time on not less than 30 days' notice, revise this clause 33 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

**Joint Controllers:**

- 33(j) Where the Parties include two or more Joint Controllers as identified in Schedule 4 in accordance with the Data Protection Legislation, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 4 in replacement of Clauses 33(a)-33(n) for the Personal Data under Joint Control.

**Controller to Controller Data Sharing**

- 33(k) Each party acknowledges that one party (referred to in this clause as the Data Discloser) will regularly disclose to the other party Personal Data, as more particularly identified in Schedule 4, to be shared between the parties under this Agreement ("the Shared Personal Data") which has been collected by the Data Discloser for the purposes set out in Schedule 4 ("the Agreed Purposes").
- 33(l) Each party shall:
  - (i) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the permitted recipients identified in Schedule 4 ("the Permitted Recipients") for the Agreed Purposes;
  - (ii) give full information to any Data Subject whose Personal Data may be processed under this Agreement of the nature such processing;
  - (iii) process the Shared Personal Data only for the Agreed Purposes;
  - (iv) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
  - (v) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;

- (vi) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
  - (vii) not transfer any personal data received from the Data Discloser outside the UK unless in compliance with the provisions of clause 33(f)(iv) above:
- 33(m) Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- (a) consult with the other party about any notices given to Data Subjects in relation to the Shared Personal Data;
  - (b) promptly inform the other party about the receipt of any Data Subject Request;
  - (c) provide the other party with reasonable assistance in complying with any Data Subject Request;
  - (d) not disclose or release any Shared Personal Data in response to a Data Subject Request without first consulting the other party wherever possible;
  - (e) assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data Breach notifications, Data Protection Impact Assessments and consultations with supervisory authorities or regulators;
  - (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
  - (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data; and
  - (i) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the other party or the other party's designated auditor.
- [33(n) Each party shall indemnify the other against all direct liabilities, costs, expenses, damages and losses (including all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising directly out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it (if requested).
- 34 COUNCIL DATA AND PERSONAL INFORMATION AUDITS
- 34(a) Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit for the following purposes:
- 34(a)(i) to review the integrity, confidentiality and security of the Council Data

- 34(a)(ii) to review the Service Provider's compliance with the Data Protection Act Legislation, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services
- 34(b) The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 34(c) Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - 34(c)(i) all information requested by the Council within the permitted scope of the audit
  - 34(c)(ii) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services
  - 34(c)(iii) access to Service Provider's Staff
- 34(d) The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Service.
- 34(e) The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days' notice of its intention to conduct an audit.
- 34(f) The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 34(g) This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Agreement which may be conducted as specified in this Agreement.

### 35 AGREEMENT STATUS AND TRANSPARENCY

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

### 36 DEPRIVATION OF LIBERTIES SAFEGUARDS

- 36(a) The Service Provider must always apply the principles of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards. The Service Provider should always consult the relevant codes of practice for further detailed guidance. The Service Provider Manager is the managing authority for the purpose of the Mental Capacity Act: Deprivation of Liberty Safeguards (DOLS).
- [36(b) The Service Provider will comply with the conditions set as a result of DOLS Authorisation being given.
- 36(c) The Service Provider's Registered Manager and Staff will make themselves fully aware of their responsibilities and obligations under the Mental Capacity Amendment Act 2019 and comply with this Act when it comes into force.

### 37 COMPLAINTS PROCEDURE

- 37.1 The Service Provider 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 Service Provider'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 Service Provider's performance of this Agreement shall be dealt with in accordance with the remainder of this Agreement.
- 37.2 The Service Provider's Complaints Procedure shall comply with applicable Law and the requirements of any regulatory body to which the Service Provider is subject or which are applicable to the service being provided (including any change in such requirements) and shall meet the following minimum standards:
- 37.2.1 is easy for complainants to access and understand
- 37.2.2 clearly sets out time limits for responding to complaints and keeping the complainant and the Council informed of progress;
- 37.2.3 provides confidential record keeping to protect employees under this Agreement and the complainant
- 37.2.4 provides information to the Service Provider's management so that services can be improved
- 37.2.5 provides effective and suitable remedies
- 37.2.6 is regularly monitored and audited and which takes account of complainant and Council feedback

- 37.3 The Service Provider 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.
- 37.4 The Service Provider 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.
- 37.5 The Service Provider shall ensure that:
- 37.5.1 it promptly, and within a maximum of 10 days of receiving the complaint, notifies the complainant that the Service Provider is dealing with the complaint
  - 37.5.2 under no circumstances is a complaint investigated by a member of its staff employed under this Agreement who may be part of the complaint.
  - 37.5.3 someone who is independent of the matter complained of carries out the investigation
  - 37.5.4 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 Service Provider's investigations
  - 37.5.5 it deals with the complaint fully, expeditiously and fairly and shall use its reasonable endeavours to resolve the complaint within 21 Working Days of receiving the complaint
  - 37.5.6 where a complaint is received by the Service Provider relating to the policy or decisions of the Council rather than the Service Provider's delivery of its obligations under this Agreement, the Service Provider shall promptly, and within two Working Days, refer the complaint to the Council for investigation.
- 37.6 The Service Provider 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
- 37.7 The Service Provider shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the Council within 5 Working Days of being requested or at 12 monthly intervals in any event.
- 37.8 Where the Council is investigating a complaint the Service Provider is required to participate fully in all investigations within the timescales requested by the Council.
- 37.9 The Service Provider 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 Service

Provider 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 Service Provider, the Service Provider shall indemnify the Council in respect of the costs arising from such maladministration or injustice.

### 38 NOTIFICATION

38(a) The Service Provider will inform the Council's First Point of Contact immediately (normally the first working day) and confirm by email within 3 working days if any of the following occur:

- 38(a)(i) hospital admission of a Service User
- 38(a)(ii) the death of a Service User receiving the Service
- 38(a)(iii) a Formal Complaint received from the Service User
- 38(a)(iv) allegation of or actual abuse to a Service User
- 38(a)(v) disappearance of a Service User
- 38(a)(vi) any circumstances where a Service User has refused provision of the Service
- 38(a)(vii) significant change to the physical or mental condition of the Service User
- 38(a)(viii) major injury to a Service User as defined in the "Reporting of Injuries Diseases and Dangerous Occurrences" Regulations 1995
- 38(a)(ix) allegation of or actual racial harassment or discrimination
- 38(a)(x) any other serious issues causing concern about the well being of a Service User.

38(b) The Service Provider will notify the Council's Contracts Manager by email of inspection reports carried out by the Registration Body within 3 weeks of the final report being received by the Service Provider.

### 39 SAFEGUARDING

39(a) The Parties acknowledge that the Service Provider is a Regulated 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. The Service Provider shall:

- 39(a)(i) ensure that all individuals engaged in the provision of the Service or activity, and prior to commencing the provision of the service or activity, are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and



- 39(a)(ii) monitor the level and validity of the checks under this clause 39(a) for each member of the Service Provider's Staff.
- 39(b) The Service Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of a Service or activity that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 39(c) The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 39 have been met.
- 39(d) The Service Provider shall refer information about any person carrying out the Services or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, children or vulnerable adults.
- 39(e) The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 39(f) Where the service requirement or specification specifies that the Service or activity to be provided under this Agreement involves a Regulated Activity, or the Council otherwise notifies the Service Provider, acting reasonably, that the Service Provider's Staff are required to be subject to a Disclosure and Barring Service check, the Service Provider shall comply with clause 39(a) above.

#### 40 COUNTERPARTS

- 40(a) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 40(b) Transmission of the executed signature page of a counterpart of this Agreement by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

41 ENTIRE AGREEMENT

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

42 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.

43 EMERGENCY PLANNING

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

IN WITNESS of which the parties hereto have executed this document on the above date

## **SCHEDULE 1**

### **SERVICE SPECIFICATION**

#### **1 SERVICE DESCRIPTION**

- 1.1 The Service will be provided by two Care Workers in one vehicle who will be required to travel to any household within the Allocated Areas. The Service Provider should be flexible in order to respond to occasional referrals which might outside of the Allocated Areas if capacity within the contracted hours allows for this.
- 1.2 The Service will enable care and support to be provided to a number of people in their own homes throughout the night. The group of people supported will vary according to need.
- 1.3 The Service is for a full waking night between the hours of 10 p.m. to 6.30 a.m. and 7 days per week.
- 1.4 Service Users may be in need of care post hospital discharge where they would otherwise require 24-hour care but are now transitioning gradually to no night time support and Support may be assistance in the following areas (this list is not exhaustive):
- general personal care
  - toilet care
  - changing catheter
  - changing bed or change of clothes
  - getting into bed at a later time than when regular carers are available
  - reassurance if just home from hospital
  - an alternative to a hospital admission where any night support is required
- 1.5 Requests for the Service should not be time specific with the exception of medication purposes and the expectation of the Council is that the Carer Team will manage the response times and lengths of calls required.

#### **2 REFERRALS**

- 2.1 Referrals may be made to the Service Provider by the following (this list is not exhaustive):
- Accident and emergency
  - Out of hours doctor's service – Shropdoc
  - The Council's Emergency Duty Team
  - Social care practitioners (hospital teams & long term teams)
  - District Nurses
  - Alarm call centres
  - Shropshire, Telford & Wrekin Clinical Commissioning Group
- 2.2 During office hours calls, referrals and requests will go to the Service Provider's office and when the office shuts referrals must be put through by voice mail, text or e-mail to the Carer Team can therefore allocate their own work.
- 2.3 The Carer Team are required to take referrals directly via a smart phone during the night.
- 2.4 New Referrals sent by Social Workers should be sent across to Brokerage on a daily basis, confirming the service commenced.
- 2.5 Any service that comes to an end should also be emailed to Brokerage on a daily basis, confirming the last visit date and why the service has ended.

- 2.6 Referrers should be able to request the service to commence up to 48 hours before in order that client situations can be planned ahead.
- 2.7 Information on clients who have commenced or ceased to receive the service should be forwarded to brokerage as soon as possible the following day.
- 2.7 Weekly updates to be forwarded to Brokerage detailing the clients still being supported and those who have ended for the previous period. The updates should be sent across on a Monday or Tuesday for the previous full week.
- 2.8 Emails from Brokerage / Social Workers need to be responded to on the same day, or as near to that as possible.
- 2.9 The contracted hours will be paid in full and do not depend on a number of referrals, it is expected that in the allocated area all referred calls will be taken whilst appreciating that carers will have to make decisions about what care can be fitted into the working night. The service must remain responsive and flexible or as near to that as possible.
- 2.10 Essential information for Carer Team to prior to first visit –
- Name
  - DOB
  - Address
  - Telephone number
  - Support requirements
  - Access arrangements
  - Details of other persons in the house
  - Any significant medical issues
  - Next of Kin or emergency contact details
  - Any significant risks
  - Confirmation of agreement from service user/family to service.

### 3 OUTPUTS

- 3.1 The Service Provider will submit service information to the Council on a weekly basis on the template provided by the Council.
- 3.2 Any service that comes to an end should also be emailed to Brokerage on a daily basis, confirming the last visit date and why the service has ended.
- 3.3 Weekly updates to be forwarded to Brokerage detailing the clients still being supported and those who have ended for the previous period. The updates should be sent across on a Monday or Tuesday for the previous full week.

## **SCHEDULE 2 SERVICE STANDARDS**

### **1 GUIDING PRINCIPLES**

The Council expects the Service to be provided in a manner that accords with the statement of principles set out below. These principles will need to be applied to the operation of the organisation, the working practices and the personnel procedures.

- 1.1 The provision of good quality care or support which aims to meet assessed needs of each Service User as identified in the Support Plan.
- 1.2 The provision of the Service in a manner that promotes and encourages the independence of the Service User and acknowledges their right to incur an acceptable degree of calculated risk.
- 1.3 The provision of the Service in a manner that offers confidentiality, respect, dignity and privacy to the Service User.
- 1.4 Decisions about the provision of the Service should not be made without the Service User's participation and agreement. For those unable to make informed choices then consultation will take place with carers or advocates.
- 1.5 Service Users' choice should be encouraged with regard to the manner in which the Service is provided within the constraints and timescales agreed at the commencement of the Support Plan.
- 1.6 The confidentiality of any information gained about Service Users should be respected whilst ensuring that Staff are clear that they have a duty to share any concerns about a Service User's mental and physical welfare with their managers and other professionals involved in the Service User's support.
- 1.7 Service Users are vulnerable and must be protected.

### **2 ADMINISTRATION**

- 2.1 The Service Provider will supply information which the Council may request from time to time in order to comply with Department of Health and Social Care or the Department for Communities and Local Government requirements.
- 2.2 The Council shall convene regular Contract Monitoring meetings with the Service Provider no less than twice yearly.
- 2.3 These meetings will be an opportunity for both Parties to review the service performance against the Agreement as well as explore options to improve service delivery.

### **3 STAFF IDENTIFICATION (applicable where Staff are entering the Service User's home)**

- 3.1 All Staff must be provided with identification which should be worn as a name badge and must be issued to Staff prior to attending any Service Users. This should:
  - include a photograph
  - be large enough to be easily identified by someone with visual impairmentinclude the printed name of the Manager/Worker, the name of the Service Provider and telephone contact number of the Service Provider.
- 3.2 Staff must ensure that identification is shown each time that they visit a Service User for the first time and must ensure that it is available to be shown upon request. It is the responsibility of the Service Provider to ensure that such identification cards are returned to the Service Provider should a Staff member's employment cease. Dates of issue and retrieval should be kept on Staff files.

### **4 RIGHTS OF SERVICE USERS**

Service Users have the right to:

- 4.1 be treated as individuals with unique needs
- 4.2 exercise personal independence and choice
- 4.3 have their personal dignity respected
- 4.4 have their cultural social religious and emotional needs respected
- 4.5 have access to all personal information held by the Service Provider
- 4.6 participate in formulating their own assessment of needs
- 4.7 participate in any reviews or re-assessment of their needs

- 4.8 receive a non-discriminatory service
- 4.9 receive assistance to maintain personal skills
- 4.10 have access to a formal complaint's procedure
- 4.11 maintain their entitlements associated with citizenship
- 4.12 be involved in any decision-making process as it affects them including the right to refuse reasonably a part of the Service and to comment on the Service by means of an independent representative if necessary, without fear of reprisal.

## **5 RECORD KEEPING AND CONFIDENTIALITY**

- 5.1 The Service Provider's facilities for storing records such as filing cabinets must be lockable and in a secure environment. Evidence must be available that any statutory requirements relating to the premises have been complied with.
- 5.2 The following information should be recorded in respect of each Service User and the language used on the records must be both appropriate and professional:
  - 5.2.1 name, address, date of birth
  - 5.2.2 gender, ethnic origin and significant, relevant items of personal/medical history and critical incidents
  - 5.2.3 next of kin - name, address and telephone number
  - 5.2.4 GP - name, address and telephone number
  - 5.2.5 date of referral, Service commencement and termination
  - 5.2.6 current Support Plan details
  - 5.2.7 current risk assessment
- 5.3 A register of Staff must be maintained which should include the following information
  - 5.3.1 name, address and telephone number
  - 5.3.2 position held and hours worked
  - 5.3.3 next of kin - name, address and telephone number
  - 5.3.4 GP - name, address and telephone number
  - 5.3.5 Date of issue of identification and retrieval if appropriate
  - 5.3.6 Recruitment details including references, evidence of Disclosure and Barring Service check and interview
  - 5.3.7 Induction and training records
  - 5.3.8 Copies of training certificates and qualifications
- 5.4 The Service Provider will ensure that each member of Staff is made aware that their files may be inspected by officers of the Council or purchasing healthcare professionals for the purpose of monitoring.
- 5.5 The Service Provider will ensure that:
  - 5.5.1 Service Users are able to find out how the Service Provider deals with confidential and sensitive information about them and should be given a leaflet (or other communication relevant to their level of understanding) that clearly explains what information is kept on them and how they can access this.
  - 5.5.2 Service Users and Staff have access to their personal records in private and as quickly as possible if requested and no later than 21 days whilst considering the interest of any third party information which can only be given with the third party's permission.
  - 5.5.3 when the Service User has examined the records they are signed and dated by a member of Staff to show they have been examined and by the Service User when possible.
  - 5.5.4 Staff are required to sign and date an acknowledgement that they have examined records pertaining to them upon the fulfilment of their request.
  - 5.5.5 it has a policy document that details Staff Code of Conduct in relation to confidentiality. This document must be shared with and understood by Staff used to provide the Service and regularly updated.
  - 5.5.6 Staff induction contains training on confidentiality procedures. Staff files should evidence the date and nature of the induction on confidentiality that was given to new Staff.

- 5.5.7 confidential and security training needs are assessed on an ongoing basis taking into account the role of each member of Staff used to provide the Service and this should be done annually.
- 5.5.8 Staff contracts explicitly mention confidentiality and disclosure issues
- 5.5.9 flows of Service User information are reviewed.
- 5.5.10 information collections have a named owner (member of Staff) who is responsible for protecting access.
- 5.5.11 confidential information on Service Users is safeguarded so that unauthorised people do not gain access to it.
- 5.5.12 protocols governing the sharing of Service User information with other organisations is agreed and understood.
- 5.5.13 a named individual is appointed who will have responsibility for data security.
- 5.5.14 it has a programme to review typical risks regarding Service Users identifiable information.
- 5.5.15 incidents involving security breaches are anticipated and dealt with appropriately.
- 5.5.16 security issues are monitored and reported.
- 5.5.17 passwords are used to safeguard information held on computer regarding the Service.
- 5.5.18 only authorised persons have access to information and only if they need it to carry out their roles.
- 5.5.19 if it is uncertain about the application of the above to the provision of the Service it will contact the Council for clarification.

## **6 SUPERVISION**

Supervision on a one-to-one basis must be available to all Staff to enable them to discuss concerns and developments about any of the Service Users with whom they are working. Staff must feel able to request these meetings but the Care Manager should ensure that he/she takes the initiative in arranging meetings on a regular basis and that they are well documented.

## **7 INFORMATION FOR SERVICE USERS**

The Service Provider must offer a written statement/brochure concerning its services not later than the first visit and should retain evidence to demonstrate this in the event that the Service User declines. This document should include:

- a brief statement about the Service Provider
- how the Service User or someone on his/her behalf can contact the manager or other relevant person at all times.
- a statement about how the Service User can complain. This should include details of who will deal with the complaint and the time limit within which a response will be made.
- a statement concerning confidentiality.
- the phone number and contact name for out of hours emergencies (only applicable to out of hours services)
- inform the Service User of their right of access to any personal information held on them by the Service Provider.

## **8 POLICIES AND PROCEDURES**

- 8.1 Policies and Procedures should be consistent with the Guiding Principles outlined in Paragraph 1 of this Schedule.
- 8.2 The Service Provider should provide guidance for Staff on the tasks which may have to be undertaken how Staff should treat Service Users and informal carers and how they should handle specific situations. As a minimum Staff should receive written and verbal guidance during induction on:
  - Disciplinary Procedure
  - Grievance Procedure
  - Equal Opportunities Policy

- Gifts and Bequests to Staff
- Dealing with complaints
- Reporting Practice
- Confidentiality
- Code of Conduct
- Whistleblowing
- Protection of vulnerable adults in accordance with the Multi-Agency Adult Protection Policy
- Persons responsible for controlling aspects of Health and Safety
- Health Safety and Welfare responsibilities of Management and Employees
- Reporting of Health and Safety issues of concern by Staff to their manager
- Handling of Money
- Accident Reporting and Recording
- Substances Hazardous to Health
- Risk Assessments including pregnancy and work
- Violence at Work
- Record Keeping by Staff
- Manual Handling
- Control of and Administration of Medicines
- Providing Transport to Service Users
- Hygiene Practice and Infection Control
- Food Handling
- Missing Person/Non-entry to Service User's Home
- Equipment - state of and handling
- Protective clothing
- Lone/Out of Hours Working
- Emergency Procedures

8.3 Staff must sign to confirm that they have read and understood all the above policies and procedures.

## **9 USE OF CAR FOR WORK PURPOSES**

- 9.1 Staff using their cars for work purposes must ensure that they comply with all road traffic regulation and have appropriate insurance class for business use. A copy of the insurance certificate will be kept on the Staff member's file and will be available for inspection.
- 9.2 Business related Staff travel and transport costs will be the responsibility of the Service Provider as part of the Service.
- 9.3 Vehicles used by Staff to transport the Service Users should carry appropriate insurance and be regularly serviced and any concerns about roadworthiness and safety reported to the Service Provider's Manager.
- 9.4 Staff who use their cars to transport Service Users must:-
- Declare any driving convictions
  - Be authorised by the Service Provider
  - Hold a current driving licence appropriate for the vehicle driven

## **10 QUALITY ASSURANCE**

- 10.1 The Service Provider must be able to demonstrate to the Council that it has a commitment to quality services and must allow officers of the Council access to all records for the purpose of monitoring and complaint investigation at all times.
- 10.2 The Service Provider must have systems which enable it to:
- check on whether it is delivering the promised service
  - check on whether it is doing this efficiently and effectively
  - check on whether Staff are provided with a safe system of work



- check whether the Service is being delivered in a way which takes account of the Service User's needs and preferences and the Guiding Principles outlined in Paragraph 1 of this Schedule
  - check to ensure that all records are up to date
  - provide information to the Council on the above
- 10.3 The Service Provider will be required to seek Service Users' views on the Service not less than every twelve months; unless requested otherwise by the Service User this should be undertaken through a visit to the Service User's home. However the initial views of Service Users should be sought by the Service Provider within the first four weeks from commencement of the Service to them. All contact made must be recorded in Writing on record sheets or pro-formas and be made available in both a full and analysed format to the Council when monitoring the Service.

## **11 MONITORING**

- 11.1 The Service Provider shall co-operate with the Council and shall comply with all reasonable requests from the Council to allow monitoring and evaluation of the effective provision of the Service by the Service Provider which shall include the recruitment and selection of Staff adherence to policies and procedures statutory legislation and the Safeguarding adults: multi-agency policy and procedures for the West Midlands or the Shropshire Safeguarding Children Board procedures where applicable.
- 11.2 Without prejudice to the generality of the foregoing the Service Provider shall permit Council officers at all reasonable times to inspect or witness the Service Provider's provision of the Service for the purpose of monitoring the Service Provider's performance of its obligations under this Agreement. The Council will have careful regard to the nature of the Service provided and shall when on premises controlled by the Service Provider respect the Service Provider's rules as to security health and safety.
- 11.3 The Service may be monitored by an inspection of the Service if required by the Council from time to time. This will be carried out by a nominated officer from the Council's Contracts Unit who will undertake a review on the operation of the Service and compliance with this Agreement. A report will be prepared on this and shared with the Service Provider.

## **12 THE OPERATION OF THE ORGANISATION**

- 12.1 The Service Provider must demonstrate that it has adequate management arrangements in place and these must be approved by the Council.
- 12.2 The Service Provider must be able to demonstrate that it has a stable and viable business framework. The Council reserves the right to request sight of the Service Provider's most up to date business plan.
- 12.3 The Service Provider is responsible for the payment of income tax and national insurance to its Staff as well as the provision of adequate insurance cover.
- 12.4 The Service Provider's premises and equipment such as filing cabinets must be secure. Evidence should be available that any statutory requirements relating to the premises have been complied with.
- 12.5 All aspects of the business must meet the requirements of the Regulatory Body where appropriate.
- 12.6 If the business is run from domestic premises a separate part of the accommodation must be designated for office use and secured appropriately.
- 12.7 The Service Provider is responsible for notification with the Information Commissioner's Office and for maintaining registration.
- 12.8 All Service User information held on computer must have adequate password protection.
- 12.9 The Service Provider shall demonstrate management and quality assurance systems to the Council on request and provide copies of the relevant documentation as well as full access to actual records which must include recruitment and selection

induction and training programmes staff development records supervision discipline and grievance issues and contracts of employment.

12.10 The Service Provider shall permit a duly authorised officer of the Council to enter at all reasonable times their offices for the purpose of monitoring and reviewing the Service and to inspect records including personal files of employees for which reasonable notice will be given.

12.11 The range of services will include personal and domestic care. Domiciliary care services should be available fifty-two weeks per year, seven days per week, including Bank Holidays.

### **13 KEYS AND ACCESS TO SERVICE USERS' PROPERTIES**

13.1 The Service Provider must ensure that key box numbers are held securely and that they cannot be linked to a Service User's address or name by any person not involved professionally in the individual's care and support.

13.2 The Service Provider will notify the Service User or their next of kin where appropriate when a member of Staff leaves in order for the key box number to be changed.

### **14.0 WORKING PRACTICES**

14.1 Working practices should be consistent with the Guiding Principles outlined in Paragraph 1 of this Schedule.

14.2 Managers and Staff must establish how the Service User wishes to be addressed and ensure that this is adhered to.

14.3 Staff must establish how the Service User prefers tasks to be carried out and follow those wishes as far as possible.

14.4 The Service Provider must ensure that Staff clearly understand the professional boundaries of their contract with Service Users e.g., Staff should not give Service Users their home address or telephone number. The Service Provider must ensure that all Staff know that it is not acceptable for there to be a relationship between Staff and Service Users either physical or financial or that could be perceived as being of an exploitative nature and this should be viewed as a disciplinary matter.

14.5 The Service Provider's Manager and/or Staff must bring to the attention of appropriate Council staff any serious concerns regarding the health and welfare of individual Service Users or any positive changes in the Service User's situation or capabilities.

14.6 On referral Staff should be given relevant basic information about the Service User's needs and special requirements. The information should include all basic identifying information, any needs arising from the Service User's specific disabilities and support needs. It is the Carer Team's responsibility to ensure that they have sufficient information to deliver a safe and effective service and the Carer Team may refuse a referral if sufficient information is not received.

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

14.8 The Service Provider must ensure that all Staff are aware that they must not without due reason enter rooms in the Service User's property where tasks not being carried out.

14.9 The Service Provider must have arrangements in place to deal with any operational difficulties at all times during which staff are deployed. The use of call diversion or mobile telephones is acceptable.

14.10 The duty manager or supervisor should have access at all times to the Council's Out of Hours Duty Team number.

14.11 There must be arrangements for emergency support for Staff.

14.12 The Service Provider is responsible for supplying appropriate protective clothing free of charge to the Staff e.g., aprons overall and rubber/latex gloves as well as goggles if required and for ensuring that universal precautions are followed. The Service

Provider must comply with the Personal Protective Equipment at Work Regulations 1992.

- 14.13 The Service Provider must fulfil its commitment to safeguard and promote the welfare of Service Users and vulnerable adults and shall have the following in place:
- 14.13.1 Clear priorities for safeguarding and protecting vulnerable adults explicitly stated in strategic policy documents.
  - 14.13.2 A clear commitment by senior management of the organisation to the importance of safeguarding and protecting vulnerable adults.
  - 14.13.3 A clear line of accountability within the organisation for overseeing safeguarding and protecting vulnerable adults and that roles and accountability for taking action and reporting internally and in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands are properly defined and understood by those involved. The policy can be found on the Council's website at [www.shropshire.gov.uk](http://www.shropshire.gov.uk).
  - 14.13.4 Procedures for instigating the West Midlands Safeguarding Policy and for dealing with allegations of abuse against members of Staff and volunteers.
  - 14.13.5 Arrangements to ensure that all Staff receive supervision and undertake safeguarding and protection of vulnerable adult training in order to equip them to carry out their safeguarding responsibilities effectively. Refresher training must be provided at regular intervals and all Staff including temporary Staff and volunteers who work with vulnerable adults must be made aware of the organisations arrangements for protecting vulnerable adults.
  - 14.13.6 Policies to safeguard and protect vulnerable adults and procedures that are in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands.
  - 14.13.7 Arrangements to work effectively with other organisations involved in the delivery of services to vulnerable adults in order to protect vulnerable adults including arrangements for sharing information in accordance with section 4.19.1 of Safeguarding adults: multi-agency policy and procedures for the West Midlands.
  - 14.13.8 A culture of listening to and engaging in dialogue with vulnerable adults and seeking their views and taking account of those views both in individual decisions and the establishment or development of services.
  - 14.13.9 Whistle blowing procedures and a culture that enables issues about safeguarding and protecting vulnerable adults to be raised.
- 14.14 The Service Provider shall ensure that the national minimum wage and travel time in accordance with legislation.
- 14.15 The Service Provider will submit a return to the Council confirming that it is in compliance with the national minimum wage and travel time requirements if requested to do so.

## **15 HEALTH & SAFETY**

- 15.1 The Service Provider must have a Health and Safety Policy in line with the Health & Safety at Work Act 1974 and of the Health & Safety at Work Regulations 1992 and any amendments thereof and management must make Staff aware of its contents.
- 15.2 Staff should be required to follow good practice in moving and handling
- 15.3 Staff should not undertake to move, transfer and position Service Users until they have received adequate training in conjunction with best current practice.
- 15.4 The Service Provider is responsible for ensuring that moving and handling training is carried out by a qualified trainer (ROSPA or equivalent). A certificate of achievement must be in evidence on all Staff files and must be made available for inspection to the Council. Staff must be provided with refresher training.
- 15.5 All Staff should attend a one day training course on Safer Moving and Handling within four weeks of being in post. It is further required that moving and handling refresher

- training is received by all Staff by an appropriate trainer on an annual basis thereafter.
- 15.6 Instruction on the use of new manual handling equipment must be provided to Staff who use it and this instruction should be documented.
  - 15.7 Records of all Health & Safety training, including refresher training must be kept and held locally.
  - 15.8 Due to the to the nature of the Service it is accepted that full risk assessments will be difficult to undertake prior to provision of care to an individual and so the Service Provider will carry out an initial, emergency risk assessment within 72 hours of commencement of provision of care to a Service User.
  - 15.9 Where a Service User receives care for a minimum of 14 days the Service Provider will complete a full risk assessment on the service being provided.
  - 15.10 Where a general assessment of tasks to be undertaken indicates a possibility of injury from manual handling operations a specific moving and handling assessment must be completed by a trained member of the Service Provider's staff.
  - 15.11 The Service Provider must have a policy procedure for managing violence and aggression and the use of restraint and physical intervention in line with the Council's Management of Actual and Potential Aggression Policy.
  - 15.12 All accidents, incidents and violent 'near misses' involving Staff and Service Users must be recorded. This record should include any steps taken to prevent a recurrence. Accidents must also be recorded in an Accident Book.
  - 15.13 For as long as this Agreement remains in force the Service Provider must have in place and adhere to a Health and Safety policy which complies with all statutory requirements and provide details of this policy to the Council at any time upon request.
  - 15.14 The Service Provider will ensure that infection control guidelines are available, and Staff are trained to follow them.
  - 15.15 The Service Provider will endeavour to ensure that care guidelines reflect current evidence-based infection control guidelines.
  - 15.16 The Service Provider must comply with Skills for Care Certificate Standards on the control of infection.
  - 15.17 Correct adequate disposable protective equipment must be provided to Staff for their use.
  - 15.18 Quality monitoring by the Service Provider should cover infection control issues to ensure that Staff are following the guidelines.

## **16 RECRUITMENT AND SELECTION**

- 16.1 The Service Provider must inform Staff that the Council reserves the right to view their Staff records.
- 16.2 The Service Provider shall at all times during the period of this Agreement engage sufficient Staff of sufficient ability, skill, knowledge, training and experience for the proper performance of the Service and shall continuously supervise the performance of Staff and ensure that there is a sufficient reserve available to provide the Service at all times.
- 16.3 The Service Provider shall be entirely responsible for the employment and conditions of service of its own employees and shall at all times be fully responsible for the payment of all salaries and wages income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any persons employed by the Service Provider and shall fully and promptly indemnify the Council in respect of any liability of the Council in respect thereof.
- 16.4 The Service Provider will ensure that:
  - 16.4.1 There is a clear written job description and employee specification for all Staff.
  - 16.4.2 Job applications are in Writing and describe previous experience, training, full employment history since leaving school and explain the reason for leaving and any gaps in employment.

- 16.4.3 Candidates selected for possible appointment are interviewed and two satisfactory written references are obtained, one of which must be from their current or last employer and from a previous employer from the care sector where applicable. Provision must be made for references to be taken from all previous employers if required. References should ask reasons for leaving, whether the employers providing the reference would offer re-employment and whether any disciplinary investigations have been undertaken and why.
- 16.4.4 References are received and checked before employment commences, including the authenticity of the reference.
- 16.4.5 Job applicants make a written declaration of previous convictions and disqualifying conditions and provide information of any other name by which they have been known.
- 16.4.6 Recruitment procedures are in accordance with clause 34 of this Agreement (Safeguarding)
- 16.4.7 The identity of all Staff is verified prior to employment using an official document.
- 16.4.8 The authenticity of qualifications is checked prior to employment.
- 16.4.9 Staff are provided with information about their conditions of employment.
- 16.4.10 All Staff make a written undertaking in respect of confidentiality.
- 16.4.11 All new Staff are appointed on a probationary contract, renewal of which must be dependent upon satisfactory performance and completion of the Induction Programme. This provision must also apply to internal transfers.
- 16.4.12 Where any concerns have been raised about a potential member of Staff by a referee or through the Disclosure and Barring Service check and the person is nevertheless deemed to be suitable for care work appropriate and sufficient monitoring is undertaken by the Service Provider in respect of the concerns raised. The Service Provider must be able to demonstrate that such monitoring has been carried out.

## **17 QUALIFICATIONS AND EXPERIENCE**

- 17.1 Managers should manage Staff and systems effectively and establish positive relationships with other professionals.
- 17.2 Staff appointed must have previous experience or have adequate training to meet the needs of the range of Service Users.
- 17.3 Staff must be able to demonstrate their ability to follow policies and procedures.
- 17.4 Staff must demonstrate an ability to understand the policies and procedures of the Service Provider particularly as they affect Service Users.
- 17.5 All Staff must be able to demonstrate an understanding of and commitment to equal opportunities and non-discrimination.
- 17.6 Managers must have had experience of social care and will ensure that the qualifications for managers and for Staff as required by the Regulatory Body are obtained within the specified timescales.
- 17.7 The Service Provider will ensure that as a minimum the levels of training for Staff are met within the specified times as required by the Regulatory Body if applicable.
- 17.8 The Service Provider should have a rolling programme of training; this programme should specify targets which need to be met in order to meet the relevant objectives as required by the Regulatory Body.

## **18 INDUCTION AND TRAINING**

- 18.1 All Staff will undertake a thorough and fully documented induction training programme which will be made available to the Council upon request which will include:
  - 18.1.1 A programme introducing Staff to the organisation its policies procedures and standards
  - 18.1.2 Confidentiality and security of Service User information and access to information

- 18.1.3 Adult protection in accordance with the Safeguarding adults: multi-agency policy and procedures for the West Midlands
- 18.1.4 Equal opportunities
- 18.1.5 Health and Safety including basic moving and handling information
- 18.1.6 Working practices and how the organisation's policies procedures and standards apply to a day on a day basis.
- 18.1.7 Moving and Handling
- 18.1.8 Hoist Training
- 18.1.9 Mental Capacity Act
- 18.1.10 Clinical Observations
- 18.1.11 Recognising signs of illness and deterioration in a service user
- 18.1.12 Falls prevention and management.
- 18.2 The Certificate Standards incorporate standards that are specific to adult social care and standards that are generic to the working environment. All Staff should complete the Care Certificate Standards within 12 weeks of starting in post.
- 18.3 Lone working should not be permitted until the Care Certificate Standards are completed or until competence has been assessed and a manager signs off the member of Staff as 'safe to leave' to work alone. Not all Staff however will need to complete the full induction standards, for example if they have already completed an induction or have a relevant vocational qualification.
- 18.4 New Staff will need to work towards achieving the organisation's identified training/skills competency matrix or move onto health and social care diplomas following completion of the Care Certificate Standards.
- 18.5 Staff who have not worked in the care sector before should receive sufficient shadow work shifts and instruction to enable them to be confident and able to carry out any tasks allocated to them in the Support Plans.
- 18.6 There must be opportunities for Staff to undertake further or refresher training in all areas.
- 18.7 Certificates of training must be kept on staffing files. Where certificates are not awarded clear records of training should be kept.

### SCHEDULE 3

#### Section 1: EMPLOYMENT PROVISIONS

Unless otherwise stated, the following definitions shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Retendering Information:** as defined in paragraph 6.10;

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

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

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

(a) their ages, dates of commencement of employment or engagement and gender;

(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;

(c) the identity of the employer or relevant contracting Party;



- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other Employee Liability Information

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

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

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

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

## **2. INTERPRETATION**

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

## **3. PROCEDURE IN THE EVENT OF TRANSFER**

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

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

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

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

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

- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Provider and/or the Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

#### **4. INDEMNITIES**

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

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

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

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

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

4.4 The indemnities in clause 4.1:

(a) shall not apply to:

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

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

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

#### **5. PROCUREMENT OBLIGATIONS**

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

## **6. RETENDERING AND PRE-SERVICE TRANSFER OBLIGATIONS**

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

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

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

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

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

6.4 The Provider:

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

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

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

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

any notice to terminate employment given by the Provider or relevant Sub-contractor or received from any persons listed on the Provider's Provisional Personnel List regardless of when such notice takes effect.

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

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

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

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

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

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

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

## **7. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

7.1 The Authority and the Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this

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

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

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

(a) any act or omission of the Provider or any Sub-contractor whether occurring before, on or after the Service Transfer Date;

(b) the breach or non-observance by the Provider or any Sub-contractor occurring on or before the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Provider Employees; and/or

(ii) any other custom or practice with a trade union or staff association in respect of any Transferring Provider Employees which the Provider or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

(d) any proceeding, claim or demand by HMRC or other statutory council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Provider to the Authority and/or Replacement Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

(e) a failure of the Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance

contributions relating to the Transferring Provider Employees in respect of the period up to (and including) the Service Transfer Date);

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

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

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

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

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

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

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

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

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

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

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

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

(c) the situation has not otherwise been resolved

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

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

7.9 The indemnity in clause 7.8:

(a) shall not apply to:

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

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

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

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

7.11 Not Used.

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

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

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

(b) the breach or non-observance by the Replacement Provider and/or Replacement Sub-contractor on or after the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Provider Employees; and/or

(ii) any custom or practice in respect of any Transferring Provider Employees which the Replacement Provider and/or Replacement Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Replacement Provider and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

(d) any proposal by the Replacement Provider and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Provider Employees on or after their transfer to the Replacement Provider or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Replacement Provider or Replacement Sub-contractor to, or in respect of, any Transferring Provider Employee on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Provider in writing;

(f) any proceeding, claim or demand by HMRC or other statutory council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Provider or Sub-contractor, to the Replacement Provider or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

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

(h) any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Replacement Provider or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

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

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

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

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

#### **Annex A. Admission Agreement (Not Used)**

#### **Annex B. Transferring Council Employees**

There are no Transferring Council Employees

#### **Annex C. Transferring Former Provider Employees**

There are no Transferring Former Provider Employees



## SCHEDULE 4

### PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Data Controller, who may take account of the view of the Data Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Data Controller's Data Protection Officer are: Information Governance Officer email: [Information.Request@Shropshire.gov.uk](mailto:Information.Request@Shropshire.gov.uk)
2. The contact details of the Data Processor's Data Protection Officer shall be provided promptly upon request.
3. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
4. Any such further instructions shall be incorporated into this Schedule.

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

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

#### **Schedule 4A**

#### **Personal Data Sharing between Data Controllers**

Further to clause 33, Personal Data may be shared between the Parties in accordance with this Schedule:

<b>Description</b>	<b>Details</b>
<b>Agreed Purposes:</b>	In connection with the provision of the Service the Service Provider will also need to collect Personal Data from Service users to use and process for their own set purposes, in respect of this data the Service Provider will be the Data Controller.
<b>Permitted Recipients:</b>	The parties to this Agreement, the employees of each party and any third parties engaged to perform obligations in connection with this Agreement.
<b>Shared Personal Data:</b>	<p>Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:</p> <p>Records relating to care delivery</p> <p>in respect of the following categories of Data Subject:</p> <p>Service Users</p>

Signed by and on behalf of  
Shropshire Council

..... Head of Legal & Democratic Services

..... Legal Services Manager

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

Name.....

Position in Organisation.....



Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
Shropshire SY2 6ND

Date: 11<sup>th</sup> February 2022

My Ref: AMCV 303

Your Ref: AMCV 303

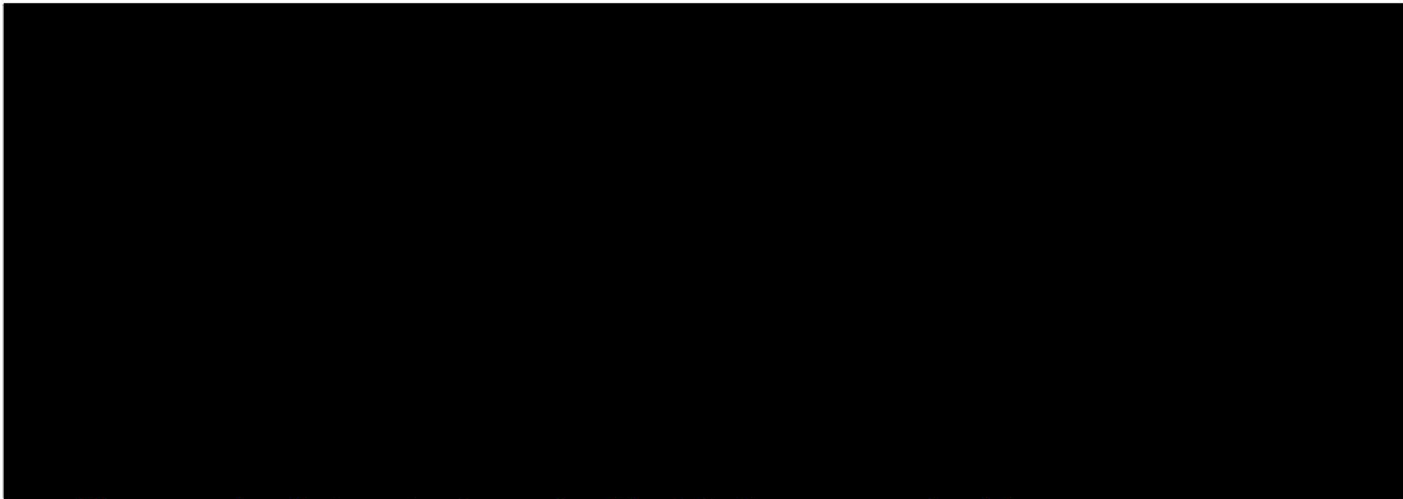
Dear Bidder

**AMCV 303 – 2 CARERS IN A CAR  
LOT 3 - LUDLOW AND SURROUNDING AREA**

**SUBJECT TO CONTRACT**

This is an Award Decision Notice.

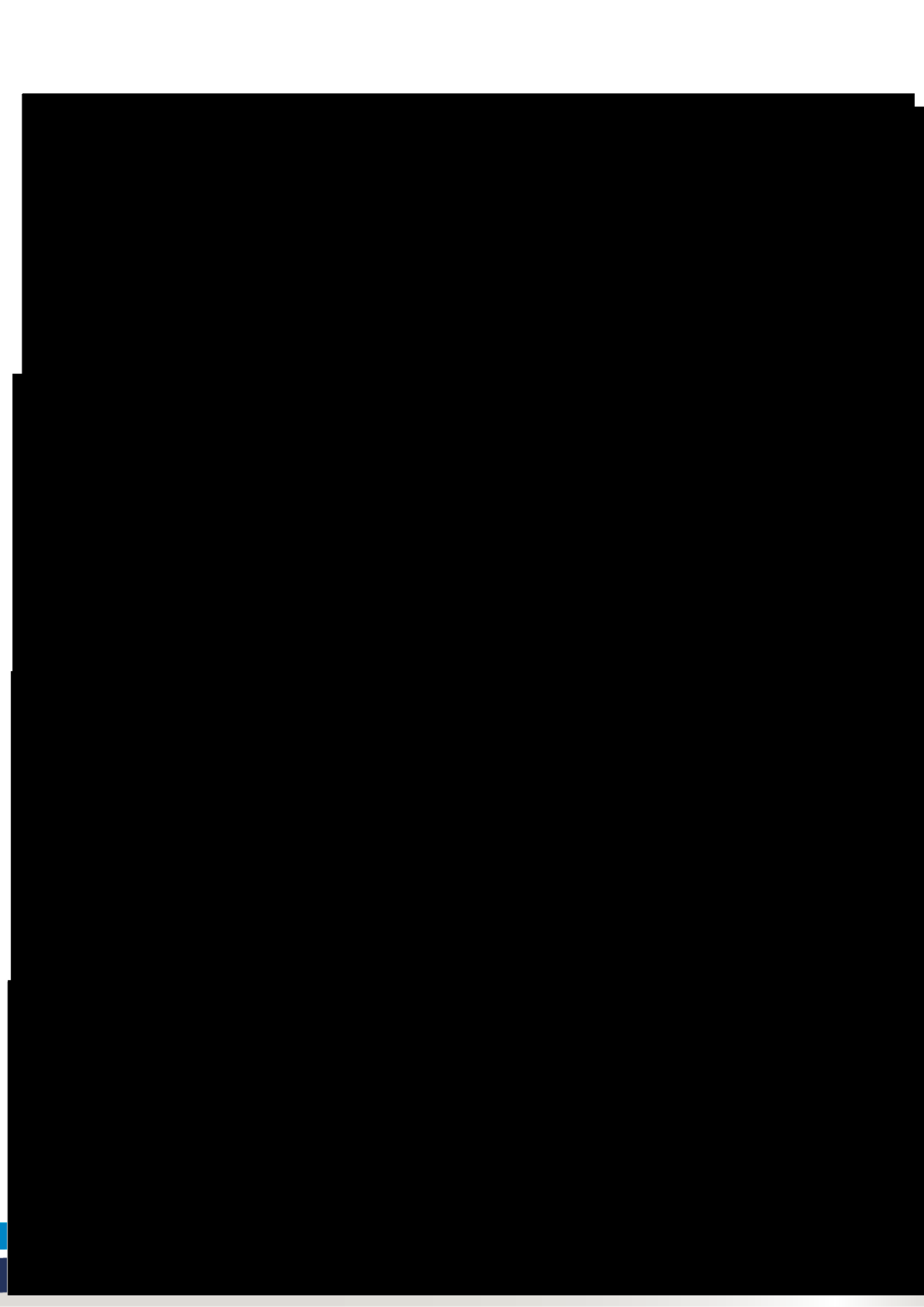
We are pleased to inform you that, following the evaluation process, Shropshire Council proposes to accept your offer in relation to the above Contract.

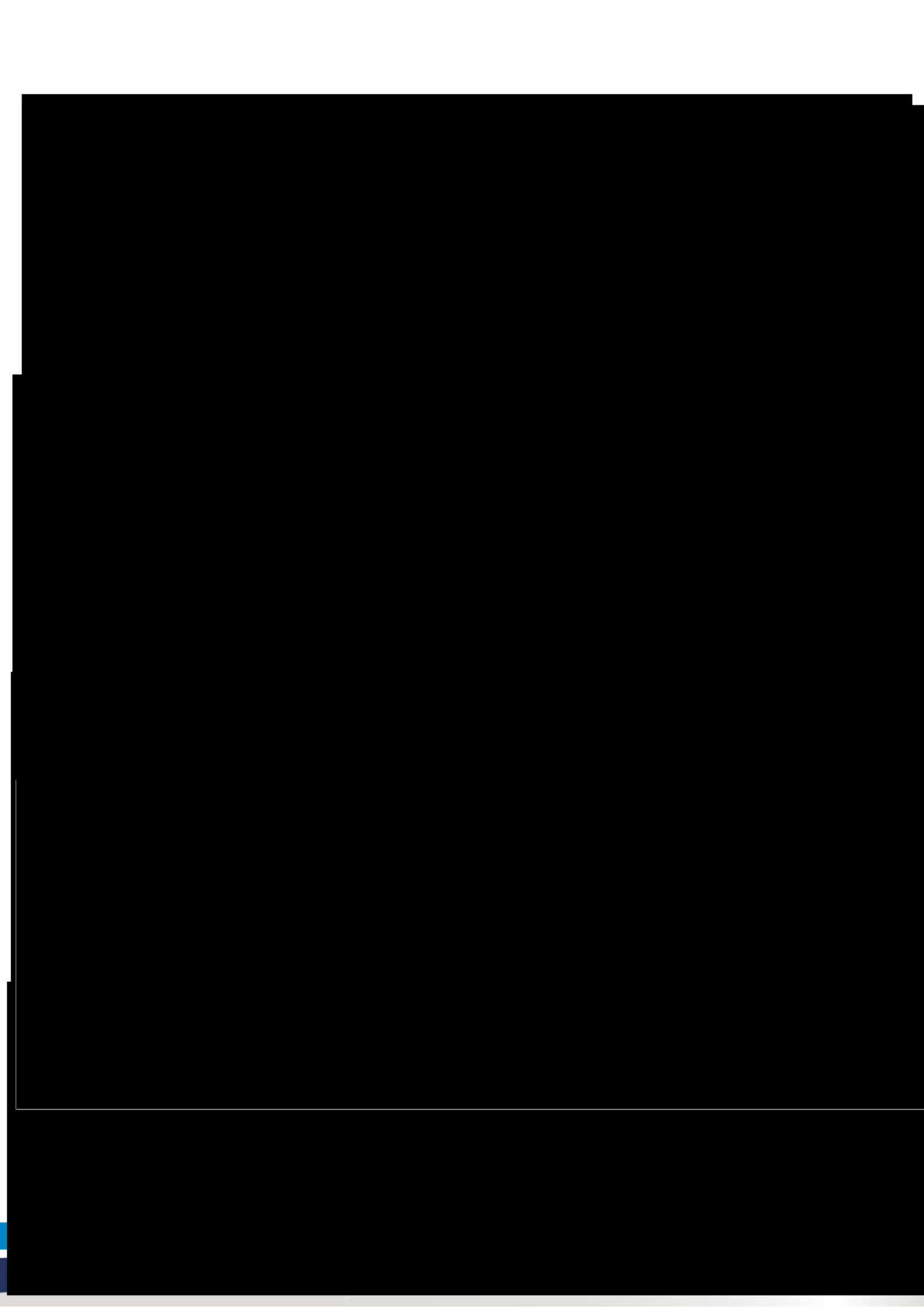


We can confirm that your tender received the following scores and ranking:



For your further information we would confirm that your quality submission was scored against the published 0-10 scoring scheme and the stated award criteria and received the marks as set out on the table above. We have also included some commentary to the marks:













Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
Shropshire SY2 6ND

Date: 11th February 2022

My Ref: AMCV 303

Your Ref: AMCV 303

Dear Bidder

**AMCV 303 – 2 CARERS IN A CAR**

**LOT 1 - OSWESTRY AND SURROUNDING AREA**

**LOT 2 - MARKET DRAYTON AND SURROUNDING AREA**

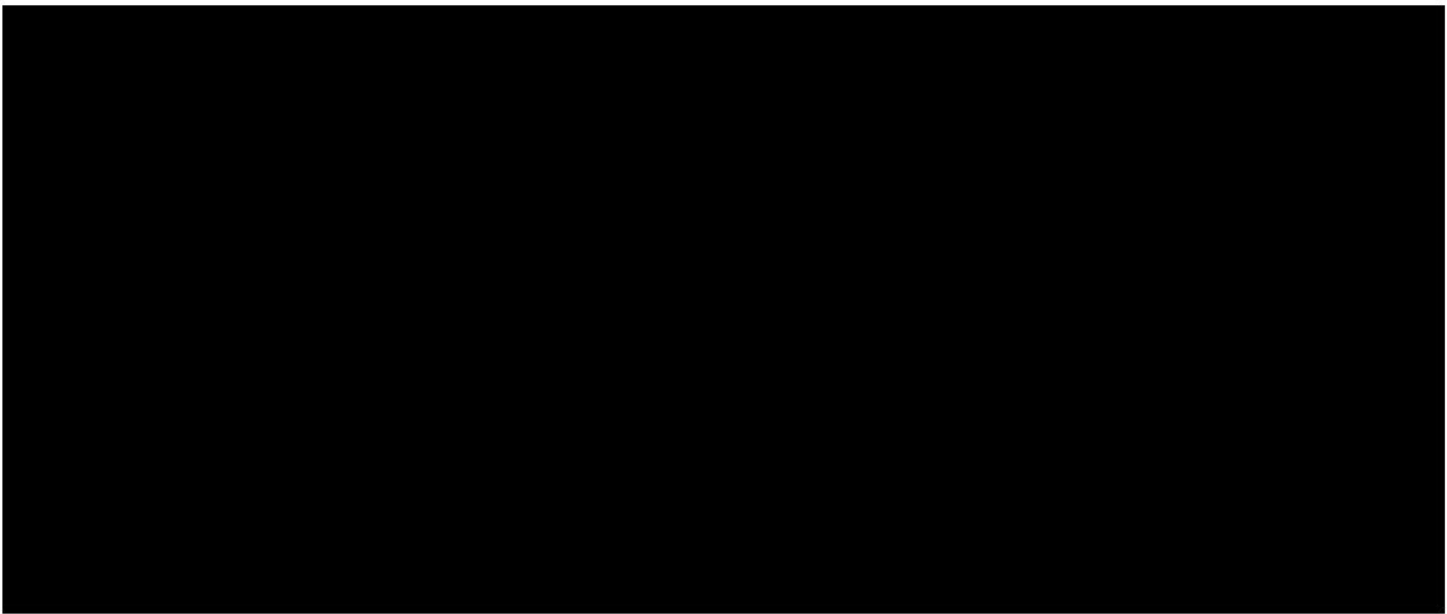
**LOT 4 - SHREWSBURY AND SURROUNDING AREA**

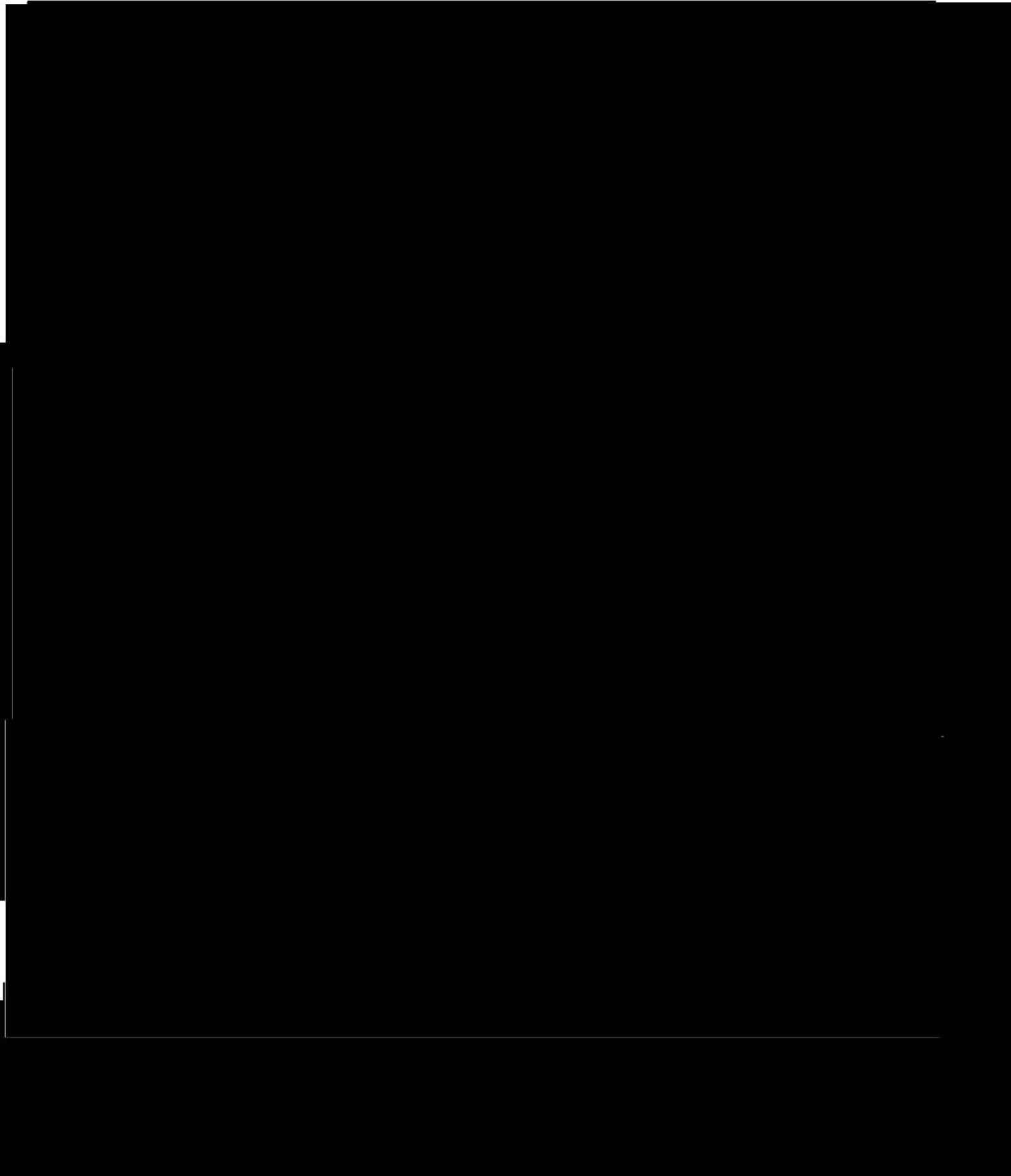
**LOT 5 - SHREWSBURY AND SURROUNDING AREA CCG FAST TRACK**

**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 Contracts.







[REDACTED]

## **UK-Shrewsbury: Health and social work services.**

UK-Shrewsbury: Health and social work services.

### Section I: Contracting Authority

#### I.1) Name, Addresses and Contact Point(s):

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

Contact: Procurement

Main Address: [www.shropshire.gov.uk](http://www.shropshire.gov.uk)

NUTS Code: UKG22

#### I.2) Joint procurement:

The contract involves joint procurement: No

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

The contract is awarded by a central purchasing body: No

#### I.4) Type of the contracting authority:

Regional or local authority

#### I.5) Main activity:

General public services

### Section II: Object Of The Contract

#### II.1) Scope of the procurement

II.1.1) Title: AMCV 303 - 2 Carers in a Car

Reference number: AMCV 303

II.1.2) Main CPV code:

85000000 - Health and social work services.

II.1.3) Type of contract: SERVICES

II.1.4) Short description: This is an award notice for 2 Carers in a Car. The scheme requires two carers and one vehicle who can travel to any household within the allocated area to provide support between 10pm and 6.30am. The service is required 7 days per week for the following areas:

Lot 1 - Oswestry and surrounding area

Lot 2 - Market Drayton and surrounding area

Lot 3 - Ludlow and surrounding area

Lot 4 - Shrewsbury and surrounding area

Lot 5 - Shrewsbury and surrounding area CCG fast track

The contract will be for an initial period of 3 years commencing on the 12th May 2022 with the option to extend for two further periods of 12 months (5 years in total).

II.1.6) Information about lots

This contract is divided into lots: Yes

Currency: GBP

#### II.2) Description (lot no. 1)

II.2.1) Title: Lot 1: Oswestry and surrounding area  
Lot No: 1

II.2.2) Additional CPV code(s):  
85000000 - Health and social work services.

II.2.3) Place of performance  
Nuts code:  
UKG22 - Shropshire CC

Main site or place of performance:  
Shropshire CC

II.2.4) Description of the procurement: Oswestry and surrounding area (within an approximate 15-minute radius), 1 car required for this area.

II.2.5) Award criteria:  
Quality criterion - Name: Quality / Weighting: 50

Cost criterion - Name: Price / Weighting: 40  
Cost criterion - Name: Social Value / Weighting: 10

II.2.11) Information about options  
Options: No

II.2.13) Information about European Union funds  
The procurement is related to a project and/or programme financed by European Union funds:  
No

II.2.14) Additional information: Not Provided

## II.2) Description (lot no. 2)

II.2.1) Title: Lot 2: Market Drayton and surrounding area  
Lot No: 2

II.2.2) Additional CPV code(s):  
85000000 - Health and social work services.

II.2.3) Place of performance  
Nuts code:  
UKG22 - Shropshire CC

Main site or place of performance:  
Shropshire CC

II.2.4) Description of the procurement: Market Drayton and surrounding area (within an approximate 15-minute radius), 1 car required for this area.

II.2.5) Award criteria:

Quality criterion - Name: Quality / Weighting: 50

Cost criterion - Name: Price / Weighting: 40

Cost criterion - Name: Social Value / Weighting: 10

II.2.11) Information about options

Options: No

II.2.13) Information about European Union funds

The procurement is related to a project and/or programme financed by European Union funds:  
No

II.2.14) Additional information: Not Provided

II.2) Description (lot no. 3)

II.2.1) Title: Lot 3: Ludlow and surrounding area

Lot No: 3

II.2.2) Additional CPV code(s):

85000000 - Health and social work services.

II.2.3) Place of performance

Nuts code:

UKG22 - Shropshire CC

Main site or place of performance:

Shropshire CC

II.2.4) Description of the procurement: Ludlow and surrounding area (within an approximate 15-minute radius), 1 car required for this area.

II.2.5) Award criteria:

Quality criterion - Name: Quality / Weighting: 50

Cost criterion - Name: Price / Weighting: 40

Cost criterion - Name: Social Value / Weighting: 10

II.2.11) Information about options

Options: No

II.2.13) Information about European Union funds

The procurement is related to a project and/or programme financed by European Union funds:  
No

II.2.14) Additional information: Not Provided

II.2) Description (lot no. 4)

II.2.1) Title: Lot 4: Shrewsbury and surrounding area

Lot No:4

II.2.2) Additional CPV code(s):

85000000 - Health and social work services.

II.2.3) Place of performance

Nuts code:

UKG22 - Shropshire CC

Main site or place of performance:

Shropshire CC

II.2.4) Description of the procurement: Shrewsbury and surrounding area (within an approximate 15-minute radius), 3 cars required for this area.

II.2.5) Award criteria:

Quality criterion - Name: Quality / Weighting: 50

Cost criterion - Name: Price / Weighting: 40

Cost criterion - Name: Social Value / Weighting: 10

II.2.11) Information about options

Options: No

II.2.13) Information about European Union funds

The procurement is related to a project and/or programme financed by European Union funds:  
No

II.2.14) Additional information: Not Provided

II.2) Description (lot no. 5)

II.2.1) Title:Lot 5: Shrewsbury and surrounding area

Lot No:5

II.2.2) Additional CPV code(s):

85000000 - Health and social work services.

II.2.3) Place of performance

Nuts code:

UKG22 - Shropshire CC

Main site or place of performance:

Shropshire CC

II.2.4) Description of the procurement: Shrewsbury and surrounding area (within an approximate 15-minute radius), 1 car for CCG fast track clients.

II.2.5) Award criteria:

Quality criterion - Name: Quality / Weighting: 50

Cost criterion - Name: Price / Weighting: 40



Cost criterion - Name: Social Value / Weighting: 10

II.2.11) Information about options

Options: No

II.2.13) Information about European Union funds

The procurement is related to a project and/or programme financed by European Union funds:  
No

II.2.14) Additional information: Not Provided

#### Section IV: Procedure

IV.1) Description

IV.1.1) Type of procedure: Open

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

The procurement involves the establishment of a framework agreement: No

IV.1.6) Information about electronic auction

An electronic auction has been used: No

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

The procurement is covered by the Government Procurement Agreement: No

IV.2) Administrative information

IV.2.1) Previous publication concerning this procedure

Notice number in the OJEU: 2021/S 000-032482

IV.2.9) Information about termination of call for competition in the form of a prior information notice

The contracting authority will not award any further contracts based on the above prior information notice: No

#### Section V: Award of contract

Award Of Contract (No.1)

Contract No: Not Provided

Lot Number: Not Provided

Title: Not Provided

A contract/lot is awarded: Yes

V.2) Award of contract

V.2.1) Date of conclusion of the contract: 22/02/2022

V.2.2) Information about tenders

Number of tenders received: 5

Number of tenders received from SMEs: Not Provided  
Number of tenders received from tenderers from other EU Member States: 0  
Number of tenders received from tenderers from non-EU Member States: 0  
Number of tenders received by electronic means: 5

V.2.3) Name and address of the contractor

The contract has been awarded to a group of economic operators: No

Contractor (No.1)

Care of Excellence Ltd., [REDACTED]  
[REDACTED]

V.2.4) Information on value of the contract/lot (excluding VAT)

Initial estimated total value of the contract/lot: Not Provided

Total value of the contract/lot: [REDACTED]

Currency: GBP

V.2.5) Information about subcontracting

The contract is likely to be subcontracted: No

Award Of Contract (No.2)

Contract No: Not Provided

Lot Number: Not Provided

Title: Not Provided

A contract/lot is awarded: Yes

V.2) Award of contract

V.2.1) Date of conclusion of the contract: 22/02/2022

V.2.2) Information about tenders

Number of tenders received: 5

Number of tenders received from SMEs: Not Provided

Number of tenders received from tenderers from other EU Member States: 0

Number of tenders received from tenderers from non-EU Member States: 0

Number of tenders received by electronic means: 5

V.2.3) Name and address of the contractor

The contract has been awarded to a group of economic operators: No

Contractor (No.1)

GP Homecare Ltd t/a Radis Community Care, [REDACTED]  
[REDACTED]  
[REDACTED]

V.2.4) Information on value of the contract/lot (excluding VAT)

Initial estimated total value of the contract/lot: Not Provided

Total value of the contract/lot: [REDACTED]

Currency: GBP

V.2.5) Information about subcontracting

The contract is likely to be subcontracted: No

#### Section VI: Complementary information

VI.3) Additional information: 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.

The contract will be for an initial period of 3 years commencing on the 12th May 2022 with the option to extend for two further periods of 12 months (5 years in total).

To view this notice, please click here:

<https://www.delta-esourcing.com/delta/viewNotice.html?noticeId=668699480>

#### VI.4) Procedures for review

##### VI.4.1) Review body

Shropshire Council

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

##### VI.4.3) Review procedure

Precise information on deadline(s) for review procedures: Not Provided

##### VI.4.4) Service from which information about the review procedure may be obtained

Shropshire Council

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

#### VI.5) Date of dispatch of this notice: 23/02/2022