

GB-Shrewsbury: POCV 007 - Community Postural Stability Instruction Pilot Programme

Competitive Contract Notice

1. Title: GB-Shrewsbury: POCV 007 - Community Postural Stability Instruction Pilot Programme

2. Awarding Authority:

Shropshire Council

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

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

www.shropshire.gov.uk

Contact: Procurement, Attn: Procurement

3. Contract Type: Services

Sub Type: Health and social services.

4. Description: Health training services. Shropshire Council's Public Health is seeking to commission the delivery of a two and half year Community Postural Stability Instruction Pilot programme as part of a whole system approach to falls prevention across the local health economy to commence in Spring 2017. This will test and develop an effective sustainable model for the delivery of a single community-based postural stability programme to reduce the impact of falls and falls- related injuries. The provider will work in collaboration to:

- Create a cohort of independent exercise providers, qualified to deliver Postural Stability exercise as part of the local falls prevention infrastructure.
- Establish a delivery model for evidence-based community based exercise postural stability classes, enabling older people to be referred from local health services
- Deliver a two year programme of evidence-based falls prevention postural stability classes in key community locations across Shropshire

It is estimated that around 19,000 older people will fall in Shropshire each year and that around 3,800 of those will have injurious falls. One third of people aged over 60, and half of those aged over 80, are likely to fall at least once a year. The consequences can be life changing and life threatening – around 30% of older people who sustain a hip fracture die within a year.

Falls are not, however, an inevitable part of ageing. Falls prevention work seeks to prevent the first fall, prevent the next fall, prevent an injurious fall and reduce the severity of injuries from fall. Falls Prevention is a key work programme for Shropshire's Better Care Fund, Shropshire HWB Prevention Programmes, and the Community Fit Clinical Pathway for falls, fractures and frailty.

5. CPV Codes:

80561000 - Health training services.

6. NUTS Codes :

UKG22 - Shropshire CC

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

8. Reference Attributed by the Awarding Authority: POCV 007

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

Currency: GBP

10. Deadline for Expression of Interest: 13/04/2017 12:00:00

11. Address to which they must be sent:

Shropshire Council

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

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

www.shropshire.gov.uk

Contact: Procurement, Attn: Procurement

12. Other Information:

Other Information: The contracting authority considers that this contract may be suitable for economic

operators that are small or medium enterprises (SMEs). However, any selection of tenderers will be based solely on the criteria set out for the procurement.

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

<https://www.delta-esourcing.com/tenders/UK-GB-Shrewsbury:-POCV-007---Community-Postural-Stability-Instruction-Pilot-Programme/ER8THXHPU6>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/ER8THXHPU6>

TKR-2017317-PRO-9820608

Suitable for VCO: Yes

Procedure Type: OPEN

Period of Work Start date: 15/05/2017

Period of Work End date: 14/11/2019

Is this a Framework Agreement?: no

personal info

Commissioning Development & Procurement

Shirehall, Abbey Foregate
Shrewsbury, SY2 6ND



Tel: (01743) 252993

Fax: (01743) 255901

Please ask for: [REDACTED]

Email: procurement@shropshire.gov.uk

17th March 2017

Dear Bidder

**POCV 007 - COMMUNITY POSTURAL STABILITY INSTRUCTION PILOT PROGRAMME
SHROPSHIRE COUNCIL**

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

1. Instructions for Tendering (for completion and return)
2. Tender Response Document (for completion and return)
3. Community Postural Stability Programme Draft Agreement
4. Specification

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. You are recommended to keep a copy of all tender documents and supporting documents for your own records.

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

Returning of Tenders

- The deadline for returning tenders is **noon on 13th April 2017** 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.**

personal info

Tenders **cannot** be accepted if:

- Tenders are received by post, facsimilie 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 **6th April 2017**.

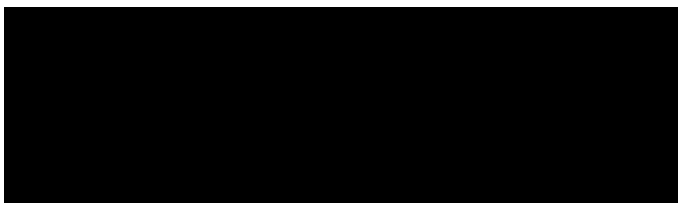
As part of its sustainability policy, Shropshire Council encourages tenderers to minimise packaging, particularly presentational or retail packaging.

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

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

If you have any queries relating to this invitation to tender, please contact me through email: procurement@shropshire.gov.uk .

Yours faithfully



nt Manager

Procurement & Contracts
Enc

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Text highlighted in yellow is where details need to be inserted

Text highlighted in green are optional clauses which require consideration as to whether or not they should be retained.

SHROPSHIRE COUNCIL (1)

AS AUTHORITY

AND

[Insert Name] (2)

AS PROVIDER

Contract Reference: POCV 007

CONTRACT FOR THE
PROVISION OF PUBLIC HEALTH SERVICES
Shropshire Community Postural Stability
Instruction Pilot Programme

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SECTION A: THE PARTICULARS

This Contract is made on 2017

PARTIES

- (1) SHROPSHIRE COUNCIL of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND (the **Authority**); and
- (2) **[insert name of Provider]** of **[insert address]** (the **Provider**).

BACKGROUND

- (A) The Authority wishes to receive the delivery of a Community Postural Stability programme to complement existing similar services within its administrative as set out in further detail within the Specification to this Contract
- (B) The Provider has the skills, background and experience in providing the Services required by the Authority
- (C) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.

IT IS AGREED

A1. CONTRACT

- A1.1. This Contract is comprised of:
- a) these Particulars (Section A);
 - b) the General Terms and Conditions (the 'General Conditions') in (Section B); and
 - c) the Special Terms and Conditions (the 'Special Conditions') in (Section C), where any such terms have been agreed,
- as completed and agreed by the Parties and as varied from time to time in accordance with clause A.B22 (*Variations*) of the General Conditions ("this Contract").

A2. INTERPRETATION

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

A3. COMMENCEMENT AND DURATION

- A3.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the 'Commencement Date').
- A3.2. The Provider shall, subject to having satisfied the Conditions Precedent where applicable, provide the Services from **[insert date]** (the 'Service Commencement Date').
- A3.3. This Contract shall expire automatically on **[insert date]** (the 'Expiry Date'), unless it is extended or terminated earlier in accordance with the provisions of this Contract.

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- A3.4. It is agreed between the Parties that the Authority may extend this Contract at the expiry of the Initial Term for a further period of 6 months from the Initial Expiry Date (Extension Period).
- A3.5. If the Authority decides that it wishes to extend this Contract after the expiry of the Initial Term it shall notify the Provider in writing at least 6 months in advance of the expiry date of the Initial Term and shall advise the Provider of the intended duration of the Extension Period.
- A3.6. If the Authority decides that it does not wish to extend this Contract after the Initial Term or (where this Contract has been continued by an Extension Period) at the end of any subsequent Extension Period then this Contract shall terminate on the Initial Expiry Date or the last date of any Extension Period (whichever is the later) and the provisions of B33 (Consequences of Expiry or Termination) shall apply.
- A3.7. For the avoidance of doubt:
a) the terms of this Contract shall continue in full force and effect to any Extension Period and any reference to "contract period" shall include an Extension Period; and
b) the total duration of this Contract (including all permitted Extension Periods) shall not exceed 3 years from the Service Commencement Date

A4. REPRESENTATIVES

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

Name: Prof Rod Thomson
Title: Director of Public Health
Contact Details: Public Health Department, Shirehall, Abbey Foregate,
Shrewsbury, SY2 6ND.
Telephone: 01743 253934.
Email: rod.thomson@shropshire.gov.uk

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

Name: [insert name]
Title: [insert title]
Contact Details: [insert]

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

A5. NOTICES

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

- A5.2. Notices:

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

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

- a) For the Authority: Shropshire Council

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Address: Shirehall, Abbey Foregate
Shrewsbury
Shropshire
SY2 6ND.

For the attention of: Prof Rod Thomson
Tel: 01743 253934.
Email: rod.thomson@shropshire.gov.uk

b) For the Provider:
Address: [to be completed]
For the attention of: [to be completed]
Tel: [to be completed]

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

A6. ENTIRE CONTRACT

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

A7. COUNTERPARTS

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

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

**SIGNED by and on behalf of
the AUTHORITY**

**Professor Rodney Thompson
Name**

.....
Signature – Director of Public Health

.....
Date

**Dr Kevin Lewis
Name**

.....
Signature – Director of Help2Change

.....
Date

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SIGNED by [Insert Authorised
Signatory's Name]
for and on behalf of
the PROVIDER

.....
Signature

.....
Title

.....
Date

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SECTION B: GENERAL TERMS AND CONDITIONS

B1. SERVICES

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

B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

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

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

B3. SERVICE AND QUALITY OUTCOMES INDICATORS

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

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- e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE where applicable to the Service; and
- f) comply with the Quality Outcomes Indicators set out in Appendix C (*Quality Outcomes Indicators*).

B4. SERVICE USER INVOLVEMENT

- B4.1. The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Practice and their human rights.
- B4.2. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide evidence to the Authority of the involvement of Service Users, Carers and Staff in the development of Services.
- B4.3. The Provider must carry out Service User surveys and shall carry out any other surveys reasonably required by the Authority in relation to the Services. The form (if any), frequency and method of reporting such surveys must comply with the requirements set out in Appendix D (*Service User, and Staff Surveys*) or as otherwise agreed between the Parties in writing from time to time.

B4.4. The Provider must review and provide a written report to the Authority on the results of each survey carried out under clause B4.3 and identify any actions reasonably required to be taken by the Provider in response to the surveys. The Provider must implement such actions as soon as practicable. If required by the Authority, the Provider must publish the outcomes and actions taken in relation to such surveys.

B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

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

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

- B5.4. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide the Authority with a plan detailing how it will comply with its obligations under clause B5.3.

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- B5.5 The Provider and any Sub-Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by Equality and Human Rights Commission, which give practical guidance to Local Authorities on the elimination of discrimination.
- B5.6 In the event of any finding of unlawful discrimination being made against the Provider and any Sub-Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equality and Human Rights Commission over the same period, the Provider and any Sub-Contractor shall inform the Authority of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- B5.7 The Provider and any Sub-Contractor employed by the Provider will provide a copy of its policies to the Authority at any time upon request. In addition, the Authority may reasonably request other information from time to time for the purpose of assessing the Provider's compliance with the above conditions.
- B5.8. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments) whether by provision of a translation service or referral to an appropriate service provider.
- B5.9. The Provider must provide to the Authority as soon as reasonably practicable, any information that the Authority reasonably requires to:
- a) monitor the equity of access to the Services; and
 - b) fulfil their obligations under the Law.
- B5.10. In performing its obligations under this Contract, the Provider shall and shall ensure that each of its sub-contractors shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015

B6. MANAGING ACTIVITY

- B6.1. The Provider must manage Activity in accordance with any activity planning assumptions and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services.

B7. STAFF

- B7.1. At all times, the Provider must ensure that:
- a) each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - b) there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;
 - c) where applicable, Staff are registered with the appropriate professional regulatory body; and
 - d) Staff are aware of and respect equality and human rights of colleagues and Service Users.
 - e) it can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Provider's discretion) for each of the Staff engaged in the Services
- B7.2. If requested by the Authority, the Provider shall as soon as practicable and by no later than 20 Business Days following receipt of that request, provide the Authority with evidence of the Provider's compliance with clause B7.1.

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- B7.3. The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:
- a) proper and sufficient continuous professional and personal development, training and instruction; and
 - b) full and detailed appraisal (in terms of performance and on-going education and training),
- each in accordance with Good Practice and the standards of any applicable relevant professional body.
- B7.4. Not Used
- B7.5. The Provider must carry out Staff surveys in relation to the Services at intervals and in the form set out in Appendix D (*Service User, and Staff Surveys*) or as otherwise agreed in writing from time to time.
- B7.6. Subject to clause B7.7, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
- a) the Employment Checks; and
 - b) such other checks as required by the DBS.
- B7.7. Subject to clause B7.8, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.
- B7.8. Where clause B7.7 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
- a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
 - d) any other reasonable requirement of the Authority.
- B7.9. Where the Authority has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Authority and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the Authority with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.
- B7.10. The Provider must comply and must ensure that any Sub-Contractor will comply with their respective obligations under TUPE [and COSOP] in relation to any persons who transfer to the employment of the Provider or that Sub-Contractor by operation of TUPE [and/or COSOP] as a result of this Contract or any Sub-Contract, and that the Provider or the relevant Sub-Contractor (as appropriate) will ensure a smooth transfer of those persons to its employment.

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- B7.11. The Provider shall indemnify and keep indemnified the Authority and any Successor Provider against any Losses incurred by the Authority and/or the Successor Provider in connection with any claim or demand by any transferring employee under TUPE including but not limited to:
- B7.11.1 any failure by the Provider and/or any Sub-Contractor to comply with its obligations under TUPE [and/or COSOP] in connection with any relevant transfer under TUPE [and/or COSOP];
 - B7.11.2 any claim by any person that any proposed or actual substantial change by the Provider and/or any Sub-Contractor to that person's working conditions or any proposed measures on the part of the Provider and/or any Sub-Contractor are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE [and/or COSOP] to the Provider and/or Sub-Contractor; and/or
 - B7.11.3 any claim by any person in relation to any breach of contract arising from any proposed measures on the part of the Provider and/or any Sub-Contractor, whether that claim arises before or after the date of any relevant transfer under TUPE [and/or COSOP] to the Provider and/or Sub-Contractor.
- B7.12 The Provider must indemnify and keep indemnified the Authority and any Successor Provider against any Losses in respect of any inaccuracy in or omission from the information provided under clause B7.9 above
- B7.12. The Parties agree that in addition to this clause B7. the provisions of Section C1 (TUPE) and C2 (Pensions) shall apply to any Relevant Transfer of staff under this Contract

B8. CHARGES AND PAYMENT

- B8.1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Authority shall pay the Provider the Charges.
- B8.2. The Parties shall to the extent reasonably practicable agree the Charges in a transparent and equitable manner and the Charges shall be set out at Appendix E (*Charges*).
- B8.3. The Provider shall invoice the Authority in arrears for payment of the Charges monthly (or such other frequency agreed between the Parties in writing) which the Authority shall pay within 30 days of receipt. . In the event of late payment, interest thereon shall be charged at the Default Interest Rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after Judgment.
- B8.4. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- B8.5. In its performance of this Contract the Provider shall not provide or offer to a Service User any services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).

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- B8.6. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:
- a) the contesting Party shall within 5 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
 - b) any uncontested amount shall be paid in accordance with this Contract.
- B8.7. If a Party contests a payment under clause B8.6 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.6, the contesting Party may refer the matter to dispute resolution under clause A.B30 and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.3.
- B8.8. Subject to any express provision of this Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B8.9. Each Party may retain or set off any sums owed to the other Party which have fallen due and payable against any sum due to the other Party under this Contract or any other agreement between the Parties.
- B8.10. This Contract is contingent upon the Authority receiving adequate funding from central government to enable it to commission the Services and the Authority can in no way warrant represent or guarantee the continuation of such funding throughout the duration of the term of this Contract. In the event that central government withdraws or reduces funding the Authority may at any time either terminate or modify (as is appropriate and reasonable subject to any funding constraints placed upon it) the Services commissioned by this Contract by serving reasonable written notice on the Provider. Where notice to terminate this Contract is given pursuant to this clause B8.10, this Contract will terminate on the date specified in the notice.

B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY

- B9.1. The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.
- B9.2. In addition to the Provider's obligations under clause B9.1, where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.
- B9.3. During the term of this Contract at the reasonable request of the Authority, the Provider must:
- a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;
 - b) implement such improvements; and
 - c) where practicable following implementation of such improvements decrease the price to be paid by the Authority for the Services.
- B9.4. If requested by the Authority, the Provider must identify the improvements that have taken place in accordance with clause B9.3, by reference to any reasonable measurable criteria notified to the Provider by the Authority.

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B10. SAFEGUARDING VULNERABLE ADULTS

- B10.1. The Provider shall adopt Safeguarding Policies and such policies shall comply with the Authority's safeguarding policy as amended from time to time and may be appended at Appendix F (*Safeguarding Policies*) and the requirements of Keeping Adults Safe in Shropshire Board.
- B10.2. At the reasonable written request of the Authority and by no later than 10 Business Days following receipt of such request, the Provider must provide evidence to the Authority that it is addressing any safeguarding concerns.
- B10.3. If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.
- B10.4. The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- B10.5. The Provider must fulfil its commitment to safeguard and promote the welfare of vulnerable adults and shall have the following in place:
- a) clear priorities for safeguarding and protecting vulnerable adults explicitly stated in strategic policy documents and Safeguarding Policies;
 - b) a clear commitment by the Provider's senior management to the importance of safeguarding and protecting vulnerable adults
 - c) a clear line of accountability within the Provider's organisation for overseeing safeguarding and protecting vulnerable adults and that roles and accountability for taking action and reporting internally and in accordance with the Authority's Multi Agency Adult Protection Policy and Procedure are properly defined and understood by those involved
 - d) recruitment and human resources management procedures to take account of the need to safeguard and protect vulnerable adults including safe recruitment policies and practices and enhanced DBS checks for all Staff including agency staff students and volunteers working with vulnerable adults.
 - e) procedures for instigating the Authority's Multi Agency Adult Protection Policy and for dealing with allegations of abuse against members of Staff and volunteers.
 - f) arrangements to ensure that all Staff receive supervision and undertake training in respect of safeguarding in order to equip them to carry out their safeguarding responsibilities effectively. Refresher training must be provided at regular intervals and all Staff including temporary Staff and volunteers who work with vulnerable adults must be made aware of the organisations arrangements for protecting vulnerable adults.
 - g) policies to safeguard and protect vulnerable adults and procedures that are in accordance with the Authority's Multi Agency Protection Policy.
 - h) 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.
 - i) a culture of listening to and engaging in dialogue with vulnerable adults in ways appropriate to their understanding and seeking their views and taking account of those views both in individual decisions and the establishment or development of services.

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- j) ensuring appropriate whistle blowing procedures are in place and there is a culture that enables issues about safeguarding and protecting vulnerable adults to be raised. A copy of the Authority's Speaking Up About Wrongdoing "Whistleblowing" Policy can be found on the Authority's website at www.shropshire.gov.uk.
- B10.6. The Provider shall ensure that all policies required by the Authority are implemented in respect of the Services.
- B10.7. Where the Service or activity being undertaken in this Contract is a Regulated Activity the Provider shall:
- a) comply with the requirements of clause B7.6; and
 - b) monitor the level and validity of the checks under this clause B10.7 for each member of the Provider's Staff.
- B10.8. The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of a Service or activity that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- B10.9. The Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause have been met.
- B10.10. The Provider shall refer information about any person carrying out the Services or the activity to the DBS where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, or vulnerable adults.
- B10.11. The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

B11. INCIDENTS REQUIRING REPORTING

- B11.1. The Provider shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
- B11.2. If the Provider gives a notification to any Regulatory Body under clause B11.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within 5 Business Days or within the timescale set out in Appendix G (*Incidents Requiring Reporting Procedure*).
- B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix G (*Incidents Requiring Reporting Procedure*).
- B11.4. Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause B11.1 and Appendix G (*Incidents Requiring Reporting Procedure*).

B12. CONSENT

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

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B13. SERVICE USER HEALTH RECORDS

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

B13.2. The Provider must:

- a) use Service User health records solely for the execution of the Provider's obligations under this Contract; and
- b) give each Service User full and accurate information regarding his/her treatment and Services received.

B13.3. Not Used

B13.4. Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.

B13.5. Where relevant and subject to compliance with the Law, the Provider shall at the reasonable request of the Authority promptly transfer or deliver a copy of the Service User health Record held by the Provider for any Service User for which the Authority is responsible to a third party provider of healthcare or social care services designated by the Authority.

B13.6. The Provider undertakes to:

a) implement and maintain security standards, processes, procedures, practice and controls to the same standard which they apply to personal confidential identifiable data and in accordance with the 'Community Health Provider' NHS Information Governance Toolkit standards to a minimum of Level 2 compliance for its 'organisation type' (as defined in the HSCIC IG Toolkit User Guide – Organisation Types);

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

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

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

and

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

B14. INFORMATION

B14.1. The Provider must provide the Authority the information specified in Appendix H (*Information Provision*) to measure the quality, quantity or otherwise of the Services.

B14.2. The Provider must deliver the information required under clause B14.1 in the format, manner, frequency and timescales specified in Appendix H (*Information Provision*) and must ensure that the information is accurate and complete.

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B14.3. If the Provider fails to comply with any of the obligations in this clause B14 and/or Appendix H (*Information Provision*), the Authority may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Appendix H (*Information Provision*).

B14.4. In addition to the information required under clause B14.1, the Authority may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

B15. EQUIPMENT

B15.1. The Provider must provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services.

B16. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS

B16.1. The Provider must comply with any Transfer of and Discharge from Care Protocols agreed by the Parties set out in Appendix I (*Transfer of and Discharge from Care Protocols*).

B17. COMPLAINTS

B17.1. The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services

B17.2. In addition to the requirements of clause B17.1 the Provider shall operate a complaints procedure in respect of the Services to deal with any complaint received about the standard of services or the manner in which any Services have been supplied or work has been performed or any other matter connected with the performance of the Provider's obligations under this Contract ("the Complaints Procedure"). For the avoidance of doubt any complaint or issue that the Authority has in respect of the Provider's performance of this Contract shall be dealt with in accordance with the remainder of this Contract.

B17.3. The Provider's Complaints Procedure shall comply with applicable Law and the requirements of any regulatory body to which the Provider is subject or which are applicable to the Service being provided (including any change in such requirements) and shall meet the following minimum standards:

- a) is easy for complainants to access and understand
- b) clearly sets out time limits for responding to complaints and keeping the complainant and the Authority informed of progress;
- c) provides confidential record keeping to protect employees under this Contract and the complainant
- d) provides information to the Provider's management so that services can be improved
- e) provides effective and suitable remedies
- f) is regularly monitored and audited and which takes account of complainant and Authority feedback

B17.4. The Provider shall inform any users of the Services provided under this Contract of the existence of the complaints procedure and how to access it and will make its Complaints Procedure available on request.

B17.5. The Provider shall investigate and deal with any complaints it receives about the Services, whether direct from the public or Services Users, or referred to it by the Authority, in accordance with its published Complaints Procedure. The Provider shall within 10 Working Days (and in so doing, shall) ensure that:

- a) it promptly, and within a maximum of 10 days of receiving the complaint, notifies the complainant that it is dealing with the complaint
- b) under no circumstances is a complaint investigated by a member of its staff employed under this Contract who may be part of the complaint.
- c) someone who is independent of the matter complained of carries out the investigation

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- d) the complainant is made aware that they are entitled to have the complaint investigated by the Authority if they are not satisfied with either the process of investigation or finding of the Provider's investigations
 - e) it deals with the complaint fully, expeditiously and fairly and shall use its reasonable endeavours to resolve the complaint within 28 Working Days of receiving the complaint
 - f) where a complaint is received by the Provider relating to the policy or decisions of the Authority rather than the Provider's delivery of its obligations under this Contract, the Provider shall promptly, and within two Working Days, refer the complaint to the Authority for investigation.
- B17.6. The Provider shall ensure that all its employees and persons employed under this Contract are made aware of its Complaints Procedure and shall designate one employee (who shall be identified to the Authority) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint
- B17.7. The Provider shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the Authority within 5 Working Days of being requested or at 12 monthly intervals in any event.
- B17.8. Where the Authority is investigating a complaint the Provider is required to participate fully in all investigations within the timescales requested by the Authority.
- B17.9. The Provider should note that if a complaint is made to the Authority 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 Authority requires the Provider to fully to co-operate in such investigation. If the Authority is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Provider the Provider shall indemnify the Authority in respect of the costs arising from such maladministration or injustice.
- B17.10. In addition to the above, If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in clause B28 (*Default and Failure to Supply*).

B18. SERVICE REVIEW

- B18.1. The Provider must each quarter of this Contract deliver to the Authority a Service Quality Performance Report against the factors set out in Appendix J (*Service Quality Performance Report*).
- B18.2. The Provider must submit each Service Quality Performance Report in the form and manner specified in Appendix J (*Service Quality Performance Report*).

B19. REVIEW MEETINGS

- B19.1. The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix K (*Details of Review Meetings*).
- B19.2. Notwithstanding clause B19.1, if either the Authority or the Provider:
- a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
 - b) considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,

that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Business Days following that notice.

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B19.3. In the event that a Review Meeting reveals that the Provider is not, in the reasonable opinion of the Authority, satisfactorily performing or meeting its obligations under this Contract the Authority may take such action as it considers appropriate further to the provisions of clause 28 (*Defaults and Failure to Supply*)

B20. CO-OPERATION

B20.1. The Parties must at all times act in good faith towards each other.

B20.2. The Provider must co-operate fully and liaise appropriately with:

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

in order to:

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

B21. WARRANTIES AND REPRESENTATIONS

B21.1. The Provider warrants and represents that:

- a) It has full capacity and authority to enter into this Contract and all necessary Consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- c) in entering this Contract it has not committed any Fraud;
- d) all reasonably material information supplied by it to the Authority during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Authority which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract;

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- e) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract;
- f) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract;
- g) in the 3 years prior to the Commencement Date:
 - (i) It has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) It has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) It has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on going business concern or its ability to fulfil its obligations under this Contract; and
- h) No proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.
- i) the Provider warrants that the signing of this Contract on its behalf has been validly authorised and the obligations expressed as being assumed by the Provider under this Contract constitute valid legal and binding obligations of the Provider enforceable against the Provider in accordance with their terms.
- j) The Provider acknowledges and confirms that:
 - (i) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
 - (ii) it has received all information requested by it from the Authority pursuant to sub-clause B.21.1.j(i) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
 - (iii) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to sub-clause B.21.1.j(ii);
 - (iv) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
 - (v) it has entered into this Contract in reliance on its own diligence
 - (vi) as at the Commencement Date, the Provider warrants and represents that all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract AND shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services
 - (vii) The Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Provider in accordance with sub-clause B.21.1.j(vi) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Provider could not reasonably have known that the information incorrect or misleading at the time such information was provided.

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- k) The Provider agrees that where requested in writing during the term of this Contract it will ensure that an appropriately authorised representative of the Provider shall attend a Committee meeting of the Authority at its own cost upon being invited to do so by the Authority

B21.2. The Authority warrants and represents that:

- a) it has full power and authority to enter into this Contract and all necessary approvals and consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it;
- c) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract; and
- d) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract.

B21.3. The warranties set out in this clause B21 are given on the Commencement Date and repeated on every day during the term of this Contract.

B22. VARIATIONS

B22.1. This Contract may not be amended or varied other than in accordance with this clause B22.

B22.2. Either Party may from time to time during the term of this Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

B22.3. If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract.

B22.4. No Variation to this Contract will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or his nominee) in accordance with clause A5 (*Notices*). All agreed Variations shall form an addendum to this Contract and shall be recorded in Appendix L (*Agreed Variations*).

B23. ASSIGNMENT AND SUB-CONTRACTING

B23.1. The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the Authority in writing:

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

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- B23.2. The Authority's consent to sub-contracting under clause B23.1 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.
- B23.3. Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.
- B23.4. The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Provider.

B24. AUDIT AND INSPECTION

- B24.1. The Provider must comply with all reasonable written requests made by, the National Audit Office, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.
- B24.2. Subject to Law and notwithstanding clause B24.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.
- B24.3. Within 10 Business Days of the Authority's reasonable request, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- B24.4. The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- B24.5. During any audit undertaken under clause B24.1 or B24.2, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:
- a) all reasonable information requested within the scope of the audit;
 - b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
 - c) access to the Staff.

B25. INDEMNITIES

- B25.1. The Provider shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation, breach of its statutory duties or breach of an obligation under the DPA and GDPR and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:

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(a) The performance, defective performance or otherwise of this Contract by the Provider or its Staff

(b) Any claim made against the Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the provision of the Services

(c) Any claim made against the Authority by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Provider or the Staff; and

(d) Any claim made against the Authority by a third party for death, personal injury or damage to property arising out of, or in connection with the delivery of the Services and performance of this Contract to the extent that the defective performance is attributable to the acts or omissions of the Provider or the Staff

B25.2. The Authority shall indemnify the Provider against all reasonable claims, costs and expenses which the Provider may incur and which arise, directly from the Authority's breach of any of its obligations under this Contract or breach of statutory duty or breach of an obligation under the DPA.

B26. LIMITATION OF LIABILITY

B26.1. Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract

B26.2. Nothing in this Contract will exclude or limit the liability of either Party for:

a) death or personal injury caused by its negligence; or

b) fraud or fraudulent misrepresentation.

B27. INSURANCE

B27.1. The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

B27.2. the Provider shall ensure that all its professional consultants or Sub-Contractors (which for the purpose of this clause shall include all Postural Stability Instructors) involved in the provision of the Services hold and maintain equivalent policy cover which indemnifies the Provider and the Authority for negligent acts arising out of the performance of this Contract.

B27.3. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.

B27.5. The Provider shall hold and maintain the insurances required under this Contract for a minimum of 6 years following the expiration or earlier termination of this Contract

B27.6. The Provider warrants that it has complied with this clause B27 and shall provide the Authority with certified copies of the relevant policy documents (including any warranties or exclusions) together with receipts or other evidence of payment of the latest premiums due under those policies prior to the commencement of this Contract and annually thereafter throughout the duration of this Contract.

B27.7. The Provider shall:

(a) do nothing to invalidate any insurance policy

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- (b) notify the Authority if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change
- B27.8 Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":
- B27.9 if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Provider shall immediately submit to the Authority:
- (i) details of the policy concerned; and
 - (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and
- B27.10 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Provider shall:
- (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
 - (ii) if the Provider is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

B28. DEFAULTS AND FAILURE TO SUPPLY

- B28.1. In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Contract including under clause B29, consult with the Provider and then do any of the following:
- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 10 Business Days or such other period of time as the Authority may direct;
 - b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B31;
 - c) without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause B32 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.
- B28.2. If the Authority exercises any of its rights under clause B28.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

B29. CONTRACT MANAGEMENT

- B29.1. If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in Appendix C (*Quality Outcomes Indicators*) and the Provider fails to meet the Quality Outcomes Indicator, the Authority may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Authority may have under this clause B29.

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B29.2. The provisions of this clause B29 do not affect any other rights and obligations the Parties may have under this Contract.

B29.3. Clauses B29.19, B29.23, B29.24 and B29.26 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Authority.

Contract Query

B29.4. If the Authority has a Contract Query it may issue a Contract Query Notice to the Provider.

B29.5. If the Provider has a Contract Query it may issue a Contract Query Notice to the Authority.

Excusing Notice

B29.6. The Receiving Party may issue an Excusing Notice to the Issuing Party within 5 Business Days of the date of the Contract Query Notice.

B29.7. If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within 10 Business Days following the date of the Contract Query Notice.

Contract Management Meeting

B29.8. Unless the Contract Query Notice has been withdrawn, the Authority and the Provider must meet to discuss the Contract Query and any related Excusing Notice within 10 Business Days following the date of the Contract Query Notice.

B29.9. At the Contract Management Meeting the Authority and the Provider must agree either:

- a) that the Contract Query Notice is withdrawn; or
- b) to implement an appropriate Remedial Action Plan; or
- c) to conduct a Joint Investigation.

B29.10. If a Joint Investigation is to be undertaken:

- a) the Authority and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the representatives from each Party to participate in the Joint Investigation.
- b) the Authority and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

Joint Investigation

B29.11. On completion of a Joint Investigation, the Authority and the Provider must produce and agree a JI Report. The JI Report must include (without limitation) a recommendation to be considered at the next Review Meeting that either:

- a) the Contract Query be closed; or
- b) Remedial Action Plan be agreed and implemented.

B29.12. Either the Authority or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Contract to consider a JI Report.

Remedial Action Plan

B29.13. If a Remedial Action Plan is to be implemented, the Authority and the Provider must agree the contents of the Remedial Action Plan within:

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- a) 5 Business Days following the Contract Management Meeting; or
 - b) 5 Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause B29.11.
- B29.14. The Remedial Action Plan must set out:
- a) milestones for performance to be remedied;
 - b) the date by which each milestone must be completed; and
 - c) subject to the maximum sums identified in clause B29.23, the consequences for failing to meet each milestone by the specified date.
- B29.15. The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.
- B29.16. The Authority and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.
- B29.17. If following implementation of a Remedial Action Plan:
- a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;
 - b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

Withholding Payment for Failure to Agree Remedial Action Plan

- B29.18. If the Authority and the Provider cannot agree a Remedial Action Plan within the relevant period specified in clause B29.13, they must jointly notify the Boards of Directors of both the Provider and the Authority.
- B29.19. If, 10 Business Days after notifying the Boards of Directors, the Authority and the Provider still cannot agree a Remedial Action Plan, the Authority may withhold up to 2% of the monthly sums payable by it under clause B8 (Charges and Payment) for each further month the Remedial Action Plan is not agreed.
- B29.20. The Authority must pay the Provider any sums withheld under clause B29.19 within 10 Business Days of receiving the Provider's agreement to the Remedial Action Plan. Unless clause B29.25 applies, those sums are to be paid without interest.

Exception Reports

- B29.21. If a Party breaches a Remedial Action Plan and does not remedy the breach within 5 Business Days of its occurrence, the Provider or the Authority (as the case may be) may issue a First Exception Report to that Party's chief executive and/or Board of Directors. If the Party in breach is the Provider, the Authority may withhold payment from the Provider in accordance with clause B29.23.
- B29.22. If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Authority or the Provider (as the case may be) may issue a Second Exception Report to:
- a) the relevant Party's chief executive and/or Board of Directors; and/or;

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b) any applicable Regulatory Body,

in order that each of them may take whatever steps they think appropriate.

Withholding of Payment at First Exception Report for Breach of Remedial Action Plan

B29.23. If the Provider breaches a Remedial Action Plan:

- a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority under clause B8 (Charges and Payment), from the date of issuing the First Exception Report and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority under clause B8 (Charges and Payment) in relation to each Remedial Action Plan;
- b) the Authority must pay the Provider any sums withheld under clause B29.23(a) within 10 Business Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to clause B29.25, no interest will be payable on those sums.

Retention of Sums Withheld at Second Exception Report for Breach of Remedial Action Plan

B29.24. If the Provider is in breach of a Remedial Action Plan the Authority may, when issuing any Second Exception Report retain permanently any sums withheld under clause B29.23.

Unjustified Withholding or Retention of Payment

B29.25. If the Authority withholds sums under clause B29.19 or clause B29.23 or retain sums under clause B29.24, and within 20 Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld or retained unjustifiably, the Authority must pay those sums to the Provider within 10 Business Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld or retained. If the Authority does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

Retention of Sums Withheld on Expiry or Termination of this Contract

B29.26. If the Provider does not agree a Remedial Action Plan:

- a) within 6 months following the expiry of the relevant time period set out in clause B29.13; or
- b) before the Expiry Date or earlier termination of this Contract,

whichever is the earlier, the Authority may retain permanently any sums withheld under clause B29.19.

B29.27. If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Authority may retain permanently any sums withheld under clause B29.23.

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B30. DISPUTE RESOLUTION

B30.1. If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix M (*Dispute Resolution*), unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.

B31. SUSPENSION AND CONSEQUENCES OF SUSPENSION

B31.1. A suspension event shall have occurred if:

- a) the Authority reasonably considers that a breach by the Provider of any obligation under this Contract:
 - (i) may create an immediate and serious threat to the health or safety of any Service User; or
 - (ii) may result in a material interruption in the provision of any one or more of the Services; or
- b) clause B31.1 does not apply, but the Authority, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of a Service or Services; or
- c) the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each a **Suspension Event**).

B31.2. Where a Suspension Event occurs the Authority:

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

B31.3. During the suspension of any Service under clause B31.2, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to clause B31.2 has been referred to dispute resolution under clause B30 (*Dispute Resolution*).

B31.4. During the suspension of any Service under clause B31.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B31.2; and/or
- b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B31.5.

B31.5. The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.

B31.6. Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).

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- B31.7. Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:
- a) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
 - b) at the cost of the Provider:
 - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
 - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B31.8. As part of its compliance with clause B31.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.
- B31.9. If it is determined, pursuant to clause B30 (*Dispute Resolution*), that the Authority acted unreasonably in suspending a Service, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B31.10. Not Used.

B32. TERMINATION

- B32.1. Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 3 months' written notice at any time after the Service Commencement Date.
- B32.2. The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:
- a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
 - b) the Provider is in persistent breach of its obligations under this Contract;
 - c) the Provider:
 - (i) fails to obtain any Consent;
 - (ii) loses any Consent; or
 - (iii) has any Consent varied or restricted,
the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;
 - d) the Provider has breached the terms of clause B39 (*Prohibited Acts*);
 - e) any of the Provider's necessary registrations are cancelled by a Regulatory Body as applicable;
 - f) the Provider materially breaches its obligations in clause B37 (*Data Protection*);

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- g) two or more Second Exception Reports are issued to the Provider under clause B29.22 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
- h) the Provider breaches the terms of clause B23 (*Assignment and Sub-contracting*);
- i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 30 Business Days following receipt of notice from the Authority identifying the breach.
- l) [the NHS Business Services Authority has notified the Authority that the Provider or any Sub-Contractor has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter);]

Drafting note: To be used where Section C.2(B) applies

B32.3. Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than 30 Business Days without the Parties agreeing alternative arrangements.

B32.4. The Provider may terminate this Contract or any Service with immediate effect by written notice to the Authority if the Authority is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B32.4 if the Authority has failed to remedy such breach within 30 Business Days of receipt of notice from the Provider to do so.

B33. CONSEQUENCE OF EXPIRY OR TERMINATION

B33.1. Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.

B33.2. On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.

B33.3. On the expiry or termination of this Contract or termination of any Service the Provider must co-operate fully with the Authority to migrate the Services in an orderly manner to the successor provider.

B33.4. In the event of termination or expiry of this Contract, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.

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- B33.5. If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B32.4, B32.3 or if the Authority terminates under clause B32.1 (*Termination*), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.
- B33.6. The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B23 (*Assignment and Sub-contracting*), B24 (*Audit and Inspection*), B33 (*Consequence of Expiry or Termination*), B36 (*Confidentiality*) and B38 (*Freedom of Information and Transparency*) Section C (TUPE) will survive termination or expiry of this Contract.

B34. BUSINESS CONTINUITY

B34.1. Not Used

B34.2. Not Used

B35. COUNTER-FRAUD AND SECURITY MANAGEMENT

- B35.1. The Provider must put in place and maintain appropriate counter fraud and security management arrangements.
- B35.2. The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Authority.
- B35.3. The Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- B35.4. If the Provider or its Staff commits Fraud in relation to this or any other contract with the Authority, the Authority may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

B36. CONFIDENTIALITY

- B36.1. Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.
- B36.2. Subject to Clauses B36.3 and B36.4, the Receiving Party agrees:
- a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
 - b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
 - c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- B36.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:
- a) in connection with any dispute resolution under clause B30 (*Dispute Resolution*);
 - b) in connection with any litigation between the Parties;
 - c) to comply with the Law;

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- d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B36.2;
 - e) to comply with a regulatory bodies request.
- B36.4. The obligations in clause B36.1 and clause B36.2 will not apply to any Confidential Information which:
- a) is in or comes into the public domain other than by breach of this Contract;
 - b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
 - c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B36.5. The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B36.
- B36.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B36.
- B36.7. This clause B36 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- B36.8. The obligations in clause B36.1 and clause B36.2B shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

B37. DATA PROTECTION

- B37.1. The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B37.2. To the extent that the Provider is acting as a Data Processor on behalf of the Authority, the Provider shall, in particular, but without limitation:
- a) only process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instruction given by the Authority under this Contract;
 - b) put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements in clause **Error! Reference source not found.** below, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;

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- c) take reasonable steps to ensure the reliability of Staff who will have access to such Personal Data, and ensure that such Staff are properly trained in protecting Personal Data;
 - d) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;
 - e) promptly notify the Authority of any requests for disclosure of or access to the Personal Data;
 - f) Promptly notify the Authority of any breach of the security measures required to be put in place pursuant to this clause B37;
 - g) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.
- B37.3. To the extent that any Authority data is held and/or processed by the Provider, the Provider shall supply that Authority data to the Authority as requested by the Authority.
- B37.4. The Provider and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law.

Data Security

B37.5 Subject to clauses B37.6. to B37.10., the Provider shall be liable to the Authority for loss or corruption of any Authority Data, if and to the extent that such loss or corruption results from an act or omission of the Provider or from any default of the Provider.

B37.6 In the event of loss or corruption of Authority Data resulting from an act or omission of the Provider or a default of the Provider, the Provider shall return such data and software to a fully operational state as soon as is reasonably practicable thereafter. The Provider shall promptly notify the Authority (via the Authority's ICT Helpdesk) within one (1) Business Day if at any time the Provider becomes aware, suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, and inform the Authority of the remedial action the Provider proposes to take.

B37.7 If the Provider fails to comply with clause B37.6, and within any reasonable period notified to the Provider, the Provider fails to take any remedial action in respect of its breach of clause B37.6 as required by the Authority, the Authority may itself restore or procure the restoration of Authority Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so including the restoration of the Authority Data

Audit

B37.8 For the duration of this Contract and for a period of 6 years after the Expiry Date or date of termination if earlier, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all suppliers (including Sub-Contractors) of the Services at the level of detail agreed in Appendix E (Charges);
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any Service Users;
- (c) to review the Provider's compliance with the DPA GDPR, the FOIA, in accordance with this clause B37 (Data Protection) and clause B38 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;

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- (e) to review any books of account kept by the Provider in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) for the purposes of the Local Government Finance Act 1982 (and any other Law relating to the inspection, examination and auditing of the Authority's accounts);
- (h) to carry out an examination pursuant to the Authority's Best Value Duty;
- (i) to verify the accuracy and completeness of the reports delivered or required by this Contract.

B37.9 Except where an audit is imposed on the Authority by a regulatory body or further audits are required as a result of any non-compliance by the Provider with their obligations under this Contract, the Authority may not conduct an audit under this clause B37 more than twice in any calendar year.

B37.10 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services

B37.11 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

(a) all information requested by the above persons within the permitted scope of the audit, to include examining such documents as reasonably required which are owned, held or otherwise within the control of the Provider and any Sub-Contractor and may require the Provider and any Sub-Contractor to produce such oral or written explanations as the Authority or relevant regulatory body considers necessary;

(b) reasonable access to any sites controlled by the Provider and to any equipment (including, but not limited to, any software, IT systems, materials, data or information stored on, accessed by or used to operate the equipment) used (whether exclusively or non-exclusively) in the performance of the Services; and

(c) access to the Provider's Staff

B37.12 The Authority shall endeavour to (but is not obliged to) provide at least 5 Business Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit

B37.13 For the purposes of this clause B37 any reference to the Authority carrying out an audit shall include the ability for that audit to be carried out by the District Auditor, the Authority's internal auditor or any external auditor appointed by the Authority.

B37.14 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

B37.15 If an audit identifies that:

(a) the Provider has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a Remedial Action Plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Provider's costs, then the Remedial Action Plan shall include a requirement for the provision of all such information;

(b) the Authority has overpaid any Charges, the Provider shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and

(c) the Authority has underpaid any Charges, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Provider in relation to invoicing within 20 days;

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DATA AND INFORMATION

B37.16 The Provider acknowledges that the Authority's Data is the property of the Authority and the Authority reserves all IPRs which may, at any time, subsist in the Authority's Data. To the extent that any IPRs in any of the Authority's Data vest in the Provider by operation of law, such IPRs shall be assigned by the Provider to the Authority by operation of this clause 26 immediately upon the creation of such Authority's Data.

B37.17 The Provider shall:

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

B37.18 The Authority hereby grants to the Provider, for the Term, a non-exclusive, non-transferable, royalty-free licence to use the Authority's Data solely for the purpose of meeting, and to the extent necessary to meet, its obligations under this Contract. The Provider shall not:

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

B37.19 To the extent that any Authority Data is held or processed by the Provider, the Provider shall supply such Authority Data to the Authority as may be requested by the Authority from time to time in the format specified by the Authority.

B37.20 On receipt or creation by the Provider of any Authority Data and during any collection, processing, storage and transmission by the Provider of any Authority Data, the Provider shall take, and shall procure that each of the Provider's Personnel shall take, all precautions necessary to preserve the security and integrity of the Authority's Data and to prevent any corruption or loss of the Authority's Data.

B37.21 The Provider acknowledges that the Authority is under transparency obligations stemming from the DCLG Code of Practice on Data transparency and the Provider shall assist the Authority in complying with its obligations in respect of data transparency.

B38. FREEDOM OF INFORMATION AND TRANSPARENCY

B38.1. Where the Parties are both Public Authorities within the meaning of the FOIA, the Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

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- B38.2. If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees and shall procure that all its sub-contractors agree:
- a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
 - b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
 - c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within 2 Business Days) transfer the request to the Authority;
 - d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
 - e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within 5 Business Days of such request and without charge.
- B38.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.
- B38.4. Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- B38.5. In preparing a copy of this Contract for publication pursuant to clause B38.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.
- B38.6. The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.
- B38.7. In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.
- B38.8. The Authority shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA or any other law, of any information (including exempt information) whether relating to this Contract or otherwise relating to any other party.

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- B38.9. The Provider shall ensure that all Information required to be produced or maintained under the terms of this Contract, or by law or professional practice or in relation to the Contract is retained for disclosure for at least the duration of the Contract plus one year together with such other time period as required by the Contract, law or practice and shall permit the Authority to inspect such records as requested from time to time.
- B38.10 The Provider shall notify the Authority of any Commercially Sensitive Information provided to the Authority together with details of the reasons for its sensitivity and the Provider acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Authority may be obliged to disclose such information.
- B38.11 Provide, at the Provider's expense, all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- B38.12 The Provider acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:
- B38.12.1** in certain circumstances without consulting the Provider; or
B38.12.2 following consultation with the Provider and having taken their views into account;

provided always that where sub-clause B38.12.1 above applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- B38.13 The Provider shall ensure that all Information required to be produced or maintained under the terms of this Contract, or by law or professional practice or in relation to the Contract is retained for disclosure for at least the duration of the Contract plus one year together with such other time period as required by the Contract, law or practice and shall permit the Authority to inspect such records as requested from time to time.
- B38.14 The Authority shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other law, of any information (including Exempt Information) whether relating to this Contract or otherwise relating to any other party.

B38. PROHIBITED ACTS

- B38.12. Neither Party shall do any of the following:
- a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and
 - b) in connection with this Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,
- (together "**Prohibited Acts**").

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- B39.2 The Provider:
- a) shall not, and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act
 - b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract
 - c) shall notify the Authority immediately if any breach of this clause B39 is suspected or known. Where such notification has been given to the Authority, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Contract.
- B39.3. If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:
- a) to exercise its right to terminate under clause B32.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
 - b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
 - c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.
- B39.4. Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.
- B39.5. The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within 5 Business Days of the Authority requesting it and enforced by the Provider where applicable.
- B39.6. Should the Provider become aware of or suspect any breach of this clause B38, it will notify the Authority immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.
- B39.7 The Provider shall, within 10 Working Days of a request from the Authority, certify to the Authority in writing (such certification to be signed by an authorised officer of the Provider) the Provider's compliance with this clause B39.
- B39.8 Despite clause B30 (Dispute Resolution), any dispute relating to:
- a) the interpretation of this clause B39; or
 - b) the amount or value of any gift, consideration or commission
- Shall be determined by the Authority and its decision shall be final and conclusive

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B39.9 Any termination under this clause B39 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority

B40. FORCE MAJEURE

B40.1. Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.

B40.2. Subject to clause B40.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.

B40.3. In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:

- a) promptly give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract;
- c) use reasonable endeavours to carry out its obligations under this Contract in any way that is reasonably practicable; and
- d) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

B40.3. A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.

B40.4. The Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.

B40.4. As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Practice.

B40.5. The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

B40.5. The Authority shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

B40.6. The Authority may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 25 Business Days.

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B41. THIRD PARTY RIGHTS

B41.1. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

B42. CAPACITY

B42.1. Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Contract, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon the Authority or in any way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability on the part of the Authority under this Contract (howsoever arising) in any capacity other than as contracting counterparty.

B43. SEVERABILITY

B43.1. If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Contract.

B44. WAIVER

B44.1. Any relaxation or delay by either Party in exercising any right under this Contract will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

B45. PUBLICITY

B45.1. Without prejudice to clause B38 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.

B45.2. The Provider must take all reasonable steps to ensure the observance of the provisions of clause B45.1 by all its staff, servants, agents, consultants and sub-contractors.

B46. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

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

B47. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT REGULATIONS 2006 (TUPE))

The Parties agree that the provisions of Section C (TUPE) shall apply to any Relevant Transfer of Staff under this Contract

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B48 INTELLECTUAL PROPERTY

- B48.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Provider or any employee, agent or sub-contractor of the Provider:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services,
 - (c) shall vest in the Authority on creation.
- B48.2 The provisions of clause B48.1 shall not override any pre-existing binding contractual terms with agents or Sub-Contractors in respect of Intellectual Property which reserve rights of ownership to the agent or Sub-Contractor which the Provider entered into prior to the Commencement Date and which were within the knowledge of the Authority at the Commencement Date.
- B48.3 The Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.
- B48.4 This provision shall survive the expiration or termination of the Contract

B49. GOVERNING LAW AND JURISDICTION

- B49.1. This Contract will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.
- B49.2. Subject to the provisions of clause B30 (Dispute Resolution), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.

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APPENDIX A

SERVICE SPECIFICATIONS

Service Specification No.	POCV 007
Service	Shropshire Community Postural Stability Instruction Pilot Programme
Authority Lead	[REDACTED]
Provider Lead	[REDACTED]
Period	Initial Term: 2 years, 6 months with an option to extend for a further 6 months
Date of Review	TBC upon award of Contract

1. Population Needs

1.1 National/local context and evidence base

Background:

Falls are a major cause of disability and the leading cause of mortality resulting from injury in people aged over 75 years in the UK. Between 30% – 50% of people aged over 60 fall each year.

It is estimated that around 19,000 older people will fall in Shropshire each year and that around 3,800 of those will have injurious falls. One third of people aged over 60, and half of those aged over 80, are likely to fall at least once a year. Falls can result in fractures, particularly in those with osteoporosis. The consequences can be life changing and life threatening – around 30% of older people who sustain a hip fracture die within a year.

Falls are not, however, an inevitable part of ageing. Falls prevention work seeks to prevent the first fall, prevent the next fall, prevent an injurious fall and reduce the severity of injuries from falls. In so doing, it aims not only for better health and greater independence for older people, but also for:

- savings to the NHS (in ambulance call-outs, A&E attendance, hospital admissions, outpatient care, community care) and
- Savings to Adult Social Care (for example, after an osteoporotic fracture, 50% of patients can no longer live independently).

NICE guidelines CG161 (June 2013) recommends strength and balance training for older people living in the community with a history of recurrent falls and/or balance and gait deficit. A muscle-strengthening and balance programme should be offered.

A collaborative and whole system approach to prevention, response and treatment includes evidenced based strength and balance programmes for those at risk of falls.

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Current position: There is a significant gap in therapeutic community based exercise for reducing risk of falls prevention. Research evidence makes clear that effective therapeutic exercise for falls prevention must be highly challenging, progressive and of sufficient “dose” (at least 50 hours), but ongoing exercise is necessary for a lasting effect to prevent falls¹.

The current Falls Prevention Service (SCHT) provides 1-13 weeks exercise programmes in 7 locations in Shropshire, (includes 1 session for assessments) but the lack of ‘follow-on’ or maintenance sessions results in service users having no opportunity to continue with specific falls prevention group exercise and continue or maintain the improvements made.

To reduce waiting list there is also a need to refer patients at lower risk to a community PSI programme thereby enabling the physiotherapist-led Falls Prevention Service (SCHT) to focus on those at higher risk or with more complex needs.

Following a stakeholder event in August 2016, a cohort of independent exercise instructors have submitted formal interest in becoming training Postural Stability Exercise Instructors (Laterlife training) and delivering the Community PSI programme.

The Authority’s Public Health service has supported the commissioning of Shropshire Community Health Trust’s falls prevention services on behalf of the Shropshire Clinical Commissioning Group. The Authority’s Public Health service is now seeking to commission the additional provision of a two and half year Community Postural Stability Pilot programme.

The piloting of a community –based Postural stability exercise programme will inform the future design of Shropshire’s falls prevention services.

Falls Prevention is a key work programme for Shropshire’s Better Care Fund, Shropshire HWB Prevention Programmes, and the Community Fit Clinical Pathway for falls, fractures and frailty.

2. Key Service Outcomes

2.1 Insert any locally agreed outcomes and quality requirements which are NOT Quality Outcomes Indicators which should be set out in Appendix C (*Quality Outcomes Indicators*)

2.1.1 Outcome and performance measures

To include:

- Number of instructors completing PSI qualification and delivering the pilot programme
- Number of referrals to PSI (by referrer including SCHT services)
- Number of classes/session delivered
- Number of self-referrals made
- Numbers completing 12 weeks
- Number completing 20 weeks

■ [prevent falls in older adults: an update meta-analysis and best practice recommendations](#)

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- Numbers reducing falls risk (by Tinnetti/TUAG score)
- Numbers reporting maintenance of evidence-based exercise at 3 months/6months
- Numbers reporting an injurious falls at 3month/6 months

Learning from the pilot to be shared with the commissioner will include

- Financial model to inform the future commissioning of falls prevention services
- Service user feedback

The Provider is required to:

2.1.2 Proactively build and maintain relationships with all relevant organisations and individuals including:

- Independent exercise instructors
- NHS community health services (ensuring referral routes are in place)
- Individuals and communities
- Providers of transport services

2.1.3: Recruit, train, contract and coordinate exercise instructors to deliver the community PSI classes to meet local needs, including roles and responsibilities.

2.1.4: Ensure instructors have and maintain the skills, knowledge and experience required for their roles including processes for information governance.

2.1.5: Develop and deliver standardised high quality community PSI classes to meet local needs and reduce local NHS falls prevention service waiting lists.

3. Scope

3.1 Aims and objectives of service

- To test and develop an effective sustainable model for the delivery of a single community-based postural stability programme to reduce the impact of falls and falls- related injuries.
- To increase access to evidence-based falls prevention intervention in the community
- To reduce preventable falls and their impact on individuals, NHS services and Social Care resources.
- To inform future falls prevention commissioning decisions.

Scope of Work

The Provider will coordinate and manage the delivery of the Community PSI programme in 10 or more locations, which can include those not being covered by SCHAT Falls Prevention Service. The

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Provider will work alongside the Shropshire NHS falls and fracture services to ensure patients discharged from Shropshire NHS falls and fracture services at risk of a first fall or of further falls are given the opportunity to access falls exercise opportunities provision in the community

The target minimum number of classes to be delivered is 40, with each class being made up of 20 sessions of PSI or an equivalent number of sessions. The number and duration of classes may vary to meet local circumstances and costs, but the pilot seeks to optimise the number of classes and people accessing them within the available budget. The Provider will create a financial model to deliver the optimal number of classes within the funding available, working towards achieving the target number.

The programme will deliver postural stability exercise instruction classes for:

1. Over 60s assessed at level 1-3 on SCHAT's Physical Function Assessment Grid/Timed Up and Go including those:
 - Completing a SCHAT Falls Prevention programme requiring a 'follow-on' course.
 - Assessed by SCHAT Falls Prevention Programme as best suited to a community PSI class and not requiring their programme for Levels 3+-5.
 - Self-referrals

(It is anticipated that the majority of classes in the Community PSI programme will be at this level)

2. Over 60s assessed at level 3-5 on SCHAT's Stability Physical Function Assessment Grid/Timed Up and Go where the SCHAT Falls prevention Service does not have the capacity to deliver its 1-13 week programme.

In partnership with the Authority, the Provider will establish their cohort of independent exercise instructors and manage their postural stability instructor training course (LaterLife training). The number of independent exercise instructors to be trained will be agreed with the Authority but will not exceed 15.

The Provider will contract with the cohort of independent instructors for the delivery of the Community PSI programme. The Provider is not expected to employ individual instructors, but to contract them on a sessional basis. The Provider will determine the full responsibilities of the independent instructor and may wish to delegate some local level responsibilities.

The Provider will have responsibility for:

- Final recruitment of a cohort of independent exercise instructors (including, but not exclusive to those initially recruited by Help2Change following a stakeholder event on 31/08/16). All those recruited for the Community PSI programme must meet the entry requirements for the LaterLife PSI course and deliver an exercise class component of the Community PSI programme
- A locally delivered Level 4 Laterlife Postural Stability Instruction training course for the recruited cohort of exercise instructors (<http://www.laterlifetraining.co.uk>). This will be undertaken prior to the commencement of the Community PSI classes. The Provider will be responsible for all arrangements with the training provider, Later Life training.

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- Contractual arrangements with the cohort of independent exercise instructors for both PSI training and delivery of the programme of Community PSI classes.
- Provider responsibilities in operating a referral process with Shropshire Community Health Trust in compliance with necessary governance standards.
- The delivery of the PSI exercise programme.
- Organising appropriate venues and venue assessments
- Quality assurance using an agreed risk assessment methodology. The provider will ensure the required standards are maintained through on going quality monitoring of the exercise instructors delivering the PSI classes.
- Ensuring liability and insurance requirements are met.(Public Liability)
- Providing a central point for referrals (including self-referrals) and triage as required (as agreed with SCHAT Falls Prevention Service)
- Develop and promote direct access pathways / self-referral routes into PSI exercise classes and 'follow -on' activity in the community.
- Partnership/liaison with referring services, particularly the SCHAT Falls Prevention services staff
- Record keeping and performance management.
- Local promotion of classes for self-referral, including use of the Healthy Shropshire Directory
- Establishing the social component of the model (e.g. refreshment/dance/music)
- Implementing a system for managing patient contributions to offset costs.
- Monitoring Participant Feedback and Involvement
- Providing information to encourage and support home exercise and falls prevention, including participation in local or national relevant campaigns.
- Post intervention 'follow up' to be agreed with the commissioner.
- Provision of patient outcome information to referrers.
- Risk assessment for all aspects of the service.
- Coordinate the collection of outcome data and provide it to the commissioner in a written format on a quarterly and annual report basis(Years 1 and 2.5)
- Collaborative working with the Authority and SCHAT falls prevention service to determine the locality of PSI classes. As a pilot to test the potential for community based PSI delivery for falls prevention to reduce the demand on health and social care services the Provider will work collaboratively with the Authority and local health services to amend

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and improve the delivery model and maximise it's potential.

Qualified LLT PSI Falls Exercise Instructors contracted to the Provider to deliver the programme must:

- ❖ Demonstrate understanding of the needs of older people in relation to falls prevention exercise and the barriers for older people to accessing it.
- ❖ Have demonstrable skills in engaging and working with older populations, particularly regarding the dignity and respect of adults.
- ❖ Undertake training and become qualified in LaterLife Postural stability Instruction exercise
- ❖ Operate to safeguarding and information governance protocols.
- ❖ Deliver the exercise classes in line with the Provider's framework.
- ❖ Provide outcome data to the commissioner in a written format to include reduction in falls risk as measured by physical function scores and a measure of the impact on fear of falling for participants attending the sessions.

Purpose:

- To establish a delivery model for evidence-based community based exercise postural stability classes, enabling older people to be referred from local health services, particularly SCHAT NHS falls prevention classes.
- To create a cohort of independent exercise providers, qualified to deliver Postural Stability exercise for falls prevention to older adults (LaterLife training) as part of the local falls prevention infrastructure.
- To deliver a two year programme of evidence-based falls prevention postural stability classes in at least 10 locations across the administrative area of the Authority using the services of a cohort of qualified LaterLife PSI exercise instructors
- To establish a formal referral route so that the take-up of community PSI exercise becomes an integral part of the falls prevention pathway.
- To reduce the backlog of moderate risk falls prevention patients awaiting PSI (Assessed as level 1-3 on Falls Functional Grid).
- To provide open access to specific falls prevention exercise to older adults through self – referral, enabling more people to reduce their risk of falls through exercise to improve gait, balance and strength.
- Test the viability of client contributions to reduce costs through 'social' model for community PSI
- Support patients in taking responsibility for reducing their risk of falls through long-term adherence to improving and maintain gait, strength and balance
- Establish a clear patient journey from NHS services to community provision
- Promote social interaction, better mental wellbeing, reducing isolation.

3.2 Service description/pathway

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Access to the Service to be through:

- Referral from SCHAT services, including SCHAT falls Prevention Team. Patients identified and screened for falls risk by SCHAT staff (e.g. Timed Up and Go score of 1-3) will be eligible. The Provider will collaborate with SCHAT and the Authority in the development of a referral process. Additional sources of referral may be included during the term of this Contract.
- Self-referral. The Provider will undertake local promotion and networking with community organisations to generate self-referrals.
- The provider will act as a single point of referral, and ensure that exercise programmes are established to meet the referral demand.

3.3 Population covered

Classes are to be delivered for adults over 60 years in communities within the administrative area of Shropshire Council.

Classes to be delivered in key population areas to be agreed with the Authority, but to include Oswestry, Ludlow, Shrewsbury, Bridgnorth, Whitchurch.

3.4 Any acceptance and exclusion criteria and thresholds

The Service is open to over 60 years olds registered with a Shropshire GP practice, living in community dwellings.

Access to the Service to be through referrals from Shropshire NHS services, especially SCHAT, and falls prevention specialists, and self-referral.

3.4.1 Exclusion criteria:

- Care Home residents
- People who have cognitive problems and are unable to follow basic instructions,
- Some medical conditions identified on assessment whereby benefit from community falls prevention exercise interventions cannot be gained.

3.5 Interdependencies with other services

- Shropshire NHS services, especially SCHAT, and falls prevention specialists.
- Referral process to be developed in agreement between SCHAT, The Authority's Public Health service and the Provider.
- Community engagement in each locality.

3.6 Any activity planning assumptions

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The Provider must ensure that each Postural Stability Exercise Instructor completes the Laterlife Training Instruction course and has in place appropriate Public Liability Insurance Cover prior to the commencement of any Postural Stability classes undertaken as part of the delivery of the Services

4. Applicable Service Standards

4.1 Applicable national standards eg NICE

NICE guidelines CG161 (June 2013) recommends strength and balance training for older people living in the community with a history of recurrent falls and/or balance and gait deficit. A muscle-strengthening and balance programme should be offered

4.2 Applicable local standards

5. Location of Provider Premises

The Provider's Premises are located at:

N/A

6. Required Insurances: Public Liability Insurance Cover, Employment Liability Insurance Cover,

6.1 If required, insert types of insurances and levels of cover required

Public Liability Insurance: Minimum Indemnity Cover of £5 million pounds for any one event
Employers Liability Insurance Cover: Minimum Indemnity Cover of £5 million pounds for any one event

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APPENDIX B: CONDITIONS PRECEDENT

1. The Provider must provide the Authority with a copy of the following documents within 60 days (unless otherwise stated) of the Service Commencement Date:
 - a) Provider's and where applicable, sub-contractor's and Postural Stability Exercise Instructors registration with appropriate Regulatory Body (where applicable) and where the Provider must be so registered under the Law
 - b) Copies of all sub-contracts entered into by the Provider with respect to the delivery of the Services including the contracts held with Postural Stability Exercise Instructors
 - c) Evidence of the Required Insurances held by the Provider
 - d) Evidence of the Public Liability Insurances (with a minimum indemnity cover of £5 million for any one event) held by each of the Postural Stability Exercise Instructors 30 days prior to the first date that each of the Postural Stability Exercise Instructors intends to commence delivery of the Postural Stability classes upon completion of their Laterlife training
 - e) [a copy of the/each Direction Letter]
 - f) [Local Government Pension Scheme Admission Agreement]
 - g) Provide assurance to the Authority that good information governance practices are being maintained and the Provider must demonstrate, and will allow the Authority to audit, that it meets or exceeds the NHS Information Governance Toolkit standards required for their organisation type.

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APPENDIX C: QUALITY OUTCOMES INDICATORS

Quality Indicators	Outcomes	Threshold	Method of Measurement	Consequence of breach	Report due
Service User Experience			Survey/questionnaires	Review	6 monthly Quarterly report
PSI Instructor Satisfaction Survey			Questionnaires		
Access		Tbd in Yr 2 following Y1 review	Prompt access to PSI class following referral	Review	Quarterly report
Removing barriers		Tbd in Yr 2 following Y1 review	Implementation of referral pathways	Review/action plan	Quarterly report
Outcomes		Tbd in Yr 2 following Y1 review	Set activity outcomes	Review/action plan	Annual report
Quality of life			QoL questions included service follow up questionnaires/surveys	review	Annual report

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APPENDIX D: SERVICE USER, CARER AND STAFF SURVEYS

Form	Frequency	Reporting Process
Service user satisfaction questionnaire/survey	By classes, following service user's completion of a class of PSI sessions	6 monthly report
Follow up survey	at 3 and 6 months following completion of a class	Annual report

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APPENDIX E: CHARGES

For the Initial Term, a maximum payment of £138,000 (One Hundred and Thirty Eight Thousand Pounds) shall be paid to the Provider for the delivery of the Service as follows:

[Breakdown of the payments to be made to the Provider and payment intervals TBC upon award of contract]

[Please list the price(s) for the Services]

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APPENDIX F: SAFEGUARDING POLICIES

[Please append safeguarding vulnerable adults policy of Provider]

To be inserted by the Provider upon award of Contract

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APPENDIX G: INCIDENTS REQUIRING REPORTING PROCEDURE

The Provider must ensure that procedures are in place for reporting, investigating and learning from Serious Untoward Incidents and Patient Safety Incidents.

The Provider must provide a copy of its incident reporting procedure or describe comprehensively the system that is in place for dealing with Serious Untoward Incidents and Participant Safety incidents.

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APPENDIX H: INFORMATION PROVISION

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Activity				
<u>Activity Performance Indicators</u>	<u>Threshold</u>	<u>Method of measurement</u>	<u>Consequence of breach</u>	<u>Report Due</u>
<u>Number of instructors completing PSI qualification</u>		<u>Training body certification</u>	Performance notice	Quarterly progress report and annual End of Year report
<u>Number of instructors delivering the Psi programme</u>	90%	<u>Sub-contract</u>		
<u>Number of referrals from health services</u>	Yr2 target to be set on Yr 1 figures	<u>Recorded by class/instructor</u>		
<u>Number of self-referrals</u>	Yr2 target to be set on Yr 1 figures	<u>Recorded by class/instructor</u>		
<u>Number of participants assessed at baseline for risk of falls</u>		<u>Tinnetti/Time Up and Go scores (as per PSI training)</u>		
<u>Numbers completing 12 weeks Psi sessions</u>	Yr2 target to be set on Yr 1 figures	<u>Recorded by class/instructor</u>		
<u>Number completing 20 weeks</u>	Yr2 target to be set on Yr 1 figures	<u>Recorded by class/instructor</u>		
<u>Numbers assessed as reducing falls risk (by Tinnetti/TUAG score)</u>	Yr2 target to be set on Yr 1 figures	<u>End of intervention assessment</u>		
<u>Numbers/percentage reporting maintenance of evidence-based exercise at 3 months/6months</u>	Yr2 target to be set on Yr 1 figures	<u>Survey /questionnaire</u>		
<u>Open book accounting to demonstrate true costs and income generated as learning form the pilot</u>	None	<u>6 month report/end of year report</u>		
<u>Progress reports</u>	Quarterly reports	<u>Quarterly progress meetings with commissioner End of year report</u>		

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APPENDIX I: TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS

End of intervention requirements;

End of intervention activity	Method of measurement	Report due
Participants to be provided with end of intervention postural stability assessment results	End of intervention questionnaire	Quarterly
Participant to be provided with Home exercise information (on-line, printed_	End of intervention questionnaire	Quarterly
Partic0ants to be signposted to local 'follow-on activities'	End of intervention questionnaire	Quarterly

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APPENDIX J: SERVICE QUALITY PERFORMANCE REPORT

The Provider will agree Quality Assurance procedures as identified in Later Life Postural Stability Instruction training.

This will include Service User feedback (service users satisfaction)

Any issues identified should be raised with the Authority as they are identified along with an action plan to resolve.

A quarterly summary of activity should be provided to the Authority

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APPENDIX K: DETAILS OF REVIEW MEETINGS

There will be monthly meeting to review progress with the Authority in the first quarter of the contract.

There will be Quarterly meetings to review the delivery of the contract between the Provider and the Authority, with representation from the SCHAT Falls Prevention service as deemed appropriate by the Authority.

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APPENDIX M: DISPUTE RESOLUTION

Part 1 of Appendix M – Dispute Resolution Process

1. ESCALATED NEGOTIATION

1.1 Except to the extent that any injunction is sought relating to a matter arising out of clause B36 (Confidentiality), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the 15 Business Days following receipt of the first such offer (the “Negotiation Period”) each of the Parties shall negotiate in good faith and be represented:

1.1.1 for the first 10 Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter that led to the Dispute and has authority to settle the Dispute; and

1.1.2 for the last 5 Business Days, by its chief executive, director, or board member who has authority to settle the Dispute, provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

2. MEDIATION

2.1 If the Parties are unable to settle the Dispute by negotiation, they must within 5 Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in Part 2 of this Appendix M.

2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.

2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

3. EXPERT DETERMINATION

3.1 If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within 10 Business Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.

3.2 If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.

3.3 Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.

3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.

3.5 The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within 5 Business Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.

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

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Part 2 of Appendix M - Nominated Mediation Body

N/A

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Part 3 of Appendix M - Recorded Dispute Resolutions

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APPENDIX N: SUCCESSION PLAN

TBC upon award of contract

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APPENDIX O: DEFINITIONS AND INTERPRETATION

1. The headings in this Contract shall not affect its interpretation.
2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
4. References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.
5. References to anybody, organisation or office shall include reference to its applicable successor from time to time.
6. Any references to this Contract or any other documents includes reference to this Contract or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.
7. Use of the singular includes the plural and vice versa.
8. Words importing any gender include every gender
9. The headings to the clauses, schedules and paragraphs of this Contract are not to affect the interpretation
10. Where the word 'including' is used in this Contract, it shall be understood as meaning 'including without limitation'
11. A reference to writing or written includes faxes but not e-mail, unless otherwise specifically agreed.
12. The following terms shall have the following meanings:

Activity means any levels of services and/or Service User flows set out in a Service Specification

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

Authority Representative means the person identified in clause A4.1 or their replacement

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

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

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

Carer means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage

CEDR means the Centre for Effective Dispute Resolution

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

Commencement Date means the date identified in clause A3.1.

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

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

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

Consents means:

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

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

Contract Query means:

- (i) a query on the part of the Authority in relation to the performance or non-performance by the Provider of any obligation on its part under this Contract; or
- (ii) a query on the part of the Provider in relation to the performance or non-performance by the Authority of any obligation on its part under this Contract,

as appropriate

Contract Query Notice means a notice setting out in reasonable detail the nature of a Contract Query

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

COSOP means Cabinet Office Statement of Practice

Data Processor has the meaning set out in the DPA

Data Subject has the meaning set out in the DPA

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

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

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

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

Disclosing Party means the Party disclosing Confidential Information

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

DPA means the Data Protection Act 1998

Employment Checks means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks

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

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

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

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

Excusing Notice means a notice setting out in reasonable detail the Receiving Party's reasons for believing that a Contract Query is unfounded, or that the matters giving rise to the Contract Query are:

- (i) due wholly or partly to an act or omission by the Issuing Party; or
- (ii) a direct result of the Receiving Party following the instructions of the Issuing Party; or
- (iii) due to circumstances beyond the Receiving Party's reasonable control but which do not constitute an event of Force Majeure

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

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

Expiry Date means either:

- a) the date set out in clause A3.3; or
 - b) the last date of the Extension Period;
- whichever occurs soonest

Extension Period means an additional period of up to 6calendar months following the expiry of the Initial Term

First Exception Report means a report issued in accordance with clause B29.21 (*Contract Management*) notifying the relevant Party's chief executive and/or Board of Directors of that Party's breach of a Remedial Action Plan and failure to remedy that breach

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

Force Majeure means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of

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terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

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

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

GDPR means the General Data Protection Regulations which shall be in force in the UK with effect from 25th May 2018

General Conditions has the meaning given to it in clause A1

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

Guidance means any applicable local authority, health or social care guidance, direction or determination which the Authority and/or the Provider have a duty to have regard

Immediate Action Plan means a plan setting out immediate actions to be undertaken by the Provider to protect the safety of Services to Service Users, the public and/or Staff

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

Initial Term means the term commencing on the Commencement Date and expiring on the Initial Expiry Date

Initial Expiry Date means the last date of the Initial Term

Issuing Party means the Party which has issued a Contract Query Notice

JI Report means a report detailing the findings and outcomes of a Joint Investigation

Joint Investigation means an investigation by the Issuing party and the Receiving Party into the matters referred to in a Contract Query Notice

LaterLife Training: www.laterlifetraining.co.uk

Law means:

- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
 - (ii) any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
 - (iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
 - (iv) National Standards;
 - (v) Guidance; and
 - (vi) any applicable industry code
- in each case in force in England and Wales

Legal Guardian means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs

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

Local Healthwatch means the local independent consumer champion for health and social care in England

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

NICE means National Institute for Health and Clinical Excellence being the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body)

National Standards means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time

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

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

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

Personal Data has the meaning set out in the DPA

Prohibited Acts has the meaning given to it in clause B38.12 (*Prohibited Acts*)

Provider Representative means the person identified in clause A4.2 or their replacement

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

PSI: means Postural Stability Instruction.

Public Authority means as defined in section 3 of the FOIA

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

Receiving Party means the Party which has received a Contract Query Notice or Confidential Information as applicable

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

Regulated Provider is as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006

Relevant Transfer means a relevant transfer for the purposes of TUPE

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

Required Insurances means the types of policy or policies providing levels of cover as specified in the Service Specification(s)

Review Meeting means a meeting to be held in accordance with clause B19 (*Review Meetings*) or as otherwise requested in accordance with clause B19.2 (*Review Meetings*)

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

SCHT: means the Shropshire Community Trust

Second Exception Report means a report issued in accordance with clause B29.22 (*Contract Management*) notifying the recipients of a breach of a Remedial Action Plan and the continuing failure to remedy that breach

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

Service Commencement Date means the date set out in clause A3.2.

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

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

Service Quality Performance Report means a report as described in Appendix J (*Service Quality Performance Report*)

Services means the services (and any part or parts of those services) described in each of, or, as the context admits, all of the Service Specifications, and/or as otherwise provided or to be provided by the Provider under and in accordance with this Contract

Special Conditions has the meaning given to it in clause A1

Staff means all persons employed by the Provider to perform its obligations under this Contract together with the Provider's servants, agents, suppliers and Sub-contractors used in the performance of its obligations under this Contract and for the avoidance of doubt includes all self-employed Postural Stability Exercise Instructors utilised by the Provider to provide the Services

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

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

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

Sub-contractor means any third party appointed by the Provider and approved by the Authority (to include Postural Stability Instructors) under clause B23 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

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

Successor Provider means any provider to whom a member of Staff is transferred pursuant to TUPE in relation to the Services immediately on termination or expiry of this Contract

Tender means the tender dated [.....] submitted by the Provider and accepted by the Authority [annexed to this Contract in Appendix [...]]

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Transfer of and Discharge from Care Protocols means the protocols set out in Appendix I (*Transfer and Discharge from Care Protocols*)

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006

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

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

Variation Notice means a notice to vary a provision or part of a provision of this Contract issued under clause B22.2 (*Variations*).

SECTION C

SPECIAL TERMS AND CONDITIONS

Section C.1 EMPLOYMENT PROVISIONS

Unless otherwise stated in each Section, in Sections C.1 to C2(A), the following definitions shall apply:

COSOP: means the Cabinet Office Statement of Practice Staff Transfers in the Public Sector January 2000;

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

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

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from the 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;

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- (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 [and/or COSOP];

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 D to whom Transferring Authority Employees and/or Transferring Former Provider Employees will transfer on a Relevant Transfer Date;

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

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

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

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

Replacement Services: any services which are the same as or substantially similar to the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of Partial Termination of this Contract, 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;

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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 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 Contract, is attached at Annex B.

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

Transferring 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 Contract to whom the Employment Regulations will apply on the Service Transfer Date whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the 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

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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

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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 Contract;
- (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 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 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,

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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 Contract. 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 Contract 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 Contract or otherwise) resulting in the Services being undertaken by a Replacement Provider and/or a Replacement Sub-

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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 Authority 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 Council relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring 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 Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

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(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 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

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(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 Authority 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 Council 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

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by HMRC or other statutory Council relates to financial obligations arising after the Service Transfer Date;

(g) a failure of the Replacement Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring 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 Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Section C.2 Pensions

Section C.2 (A) - Local Authority Pension Scheme

1. Definitions and Interpretation:

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

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

Administering Authority: means Shropshire Council

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

(a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or

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

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

Eligible Employees:

(a) the Transferring Authority Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or

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(b) the Transferring Former Provider Employees who are former employees of the Authority and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services.

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

LGPS: Local Government Pension Scheme

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

2. PENSIONS

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

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

3. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

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

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

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

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

3.5 The Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority and where such benefits are of a discretionary nature they shall be awarded on the basis of the

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Authority's written policy in relation to such benefits at the time of the Effective Date. The Provider shall be responsible for meeting all costs associated with the award of such benefits.

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

4 PROVIDER CEASES TO BE AN ADMISSION BODY

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

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

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

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

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

5. PROVIDER PENSION SCHEME

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

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

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

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

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

(a) if the Provider Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Provider or relevant Sub-Contractor. The replacement scheme must comply with this Clause 5 (Provider Pension Scheme); and

(b) where the Provider Pension Scheme has not been established at the Effective Date or Cessation Date (as the case may be), the Eligible Employees shall be provided with benefits in respect of death-in-service which are no less favourable than the death-in-service benefits provided by the Legacy Scheme immediately before the Effective Date or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Provider Pension Scheme; and

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

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

6. TRANSFER TO ANOTHER EMPLOYER

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

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

7. CLAIMS FROM ELIGIBLE EMPLOYEES OR TRADE UNIONS

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

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

8. PENSIONS EXIT PROVISIONS

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

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

Section C.2 (B) NHS Pension Scheme

1. Definitions

- 1.1 Terms not defined at the end of this Schedule or in the Definitions clause of Section C1 are to be interpreted in accordance with the Definitions and Interpretation section of this Contract.

2. Pension Protection For Eligible Employees

2.1 Continued membership of the NHS Pension Scheme

- 2.1.1 In accordance with New Fair Deal, the Provider and/or each Sub-Contractor to which the employment of any Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHS Pension Scheme, must on or before the Transfer Date, each secure a Direction Letter to enable the Eligible Employees to retain either continuous active membership of or eligibility for, the NHS Pension Scheme, for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.1.2 Without prejudice to Appendix B (*Conditions Precedent*), the Provider must supply to the Authority at least **[28 days]²** before the Transfer Date a complete copy of each Direction Letter.
- 2.1.3 The Provider (or its Sub-Contractor if relevant) will comply with the terms of the Direction Letter (including any terms which change as a result of changes in legislation) in respect of the Eligible Employees until the day before the Exit Transfer Date for so long as they are employed on the delivery of the Services.
- 2.1.4 Where any member of Staff omitted from the Direction Letter supplied in accordance with paragraph 2.1.2 above is subsequently found to be an Eligible Employee, the Provider (or its Sub-Contractor if relevant) will ensure that that person is treated as an Eligible Employee from the Transfer Date so that their Pension Benefits and Premature Retirement Rights are not adversely affected.

[DRAFTING NOTE: The Paragraph below, 2.2 (Broadly Comparable Pension Benefits) will not be relevant and may be deleted where the Provider and/or any relevant Sub-Contractor(s) either participate automatically in the NHS Pension Scheme or have each secured a Direction Letter in respect of all Eligible Employees by the time the Contract is entered into. If the Provider is not automatically an employer in the NHS Pension Scheme, it is anticipated that Direction Letter(s) will be secured in the vast majority of cases.]

2.2 Broadly Comparable Pension Benefits

- 2.2.1 If the Authority in its sole discretion (having considered the exceptional cases provided for in New Fair Deal for Staff Pensions) agrees that the Provider (or any Sub-Contractor) need not provide the Eligible Employees with access to the NHS Pension Scheme, the Provider (or any Sub-Contractor) must ensure that, with effect from the Transfer Date until the day before the Exit Transfer Date, the Eligible

² 28 days is a suggested timescale. Please select a timescale which is in accordance with the circumstances of your particular Contract.

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Employees are offered access to a scheme under which the Pension Benefits are Broadly Comparable to those provided under the NHS Pension Scheme.

- 2.2.2 The Provider must supply to the Authority details of its (or its Sub-Contractor's) Broadly Comparable scheme and provide a full copy of the valid certificate of Broad Comparability covering all Eligible Employees, as soon as it is able to do so and in any event no later than [28] days³ before the Transfer Date.

2.3 Transfer Option

As soon as reasonably practicable and in any event no later than [20 Business Days]⁴ after the Transfer Date, the Provider must provide the Eligible Employees with the Transfer Option, where the former provider offered, or the Provider offers, a Broadly Comparable scheme.

2.4 Calculation of Transfer Amount⁵

- 2.4.1 The Authority will use reasonable endeavours to procure that [20 Business Days]⁶ after the Transfer Option Deadline, the Transfer Amount is calculated by the Former Provider's Actuary⁷ on the following basis and notified to the Provider along with any appropriate underlying methodology.

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

2.4.1.1.1 the part of the Transfer Amount which relates to benefits accrued in that Broadly Comparable scheme other than those in sub-paragraph 2.4.1.1.2 below must be aligned to the funding requirements of that scheme; and

2.4.1.1.2 the part of the Transfer Amount which relates to benefits accrued in the NHS Pension Scheme (having been previously bulk transferred into the former provider's Broadly Comparable scheme), must be aligned to whichever of (a) the funding requirements of the Former Provider's Broadly Comparable scheme; or (b) the principles⁸ under which the former provider's Broadly Comparable scheme received a bulk transfer payment from the NHS Pension Scheme (together with any shortfall payment)⁹, gives the higher figure,

³ Again, 28 days is a suggested timescale. Please select a timescale which is in accordance with the circumstances of your particular Contract.

⁴ This is a suggested timescale bearing in mind that the whole process for the bulk transfer should take no more than 6 months.

⁵ In accordance with B.4 of New Fair Deal for Staff Pensions, the terms of the bulk transfer should be determined by the former provider's Actuary at the outset of the procurement process.

⁶ This is a suggested timescale. It is not unreasonable if all the data is available and agreed well in advance of the Transfer Date.

⁷ If the former provider is an NHS Employer within the meaning of the NHS Pension Scheme Regulations, the former provider's Actuary will be the NHS Pension Scheme Actuary (currently the Government Actuary's Department).

⁸ The principles should be set out in a formal bulk transfer note issued on behalf of the NHS Pension Scheme. Where a shortfall applied, further principles should be set out in a separate note that is subject to the terms of the contract for services with the former provider.

⁹ B8 to B14 inclusive of New Fair Deal for Staff Pensions which deal with price adjustments/shortfall requirements are relevant here and are discussed in Section 2. of Stage 2 of the guidance issued in February 2014 by the Department of Health in respect of the impact of New Fair Deal for Staff Pensions on NHS Pension Scheme participation.

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

2.4.1.2 If the Former Provider offers the NHS Pension Scheme to Eligible Employees, the Transfer Amount will be calculated by the NHS Pension Scheme's Actuary on the basis applicable for bulk transfer terms from the NHS Pension Scheme set by the Department of Health from time to time¹⁰.

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

2.5 Payment of Transfer Amount

Subject to:

- 2.5.1 the period for acceptance of the Transfer Option having expired; and
- 2.5.2 the Provider having (and/or having procured that any relevant Sub-Contractor has) provided the trustees or managers of the Former Provider's pension scheme (or NHS Business Services Authority, as appropriate) with completed and signed forms of consent in a form acceptable to the Former Provider's pension scheme from each Eligible Employee in respect of the Transfer Option; and
- 2.5.3 if relevant, the issue of a contracting-out certificate in respect of the Provider's (or any Sub-Contractor's) Broadly Comparable scheme which covers the employment of the Eligible Employees; and
- 2.5.4 the calculation of the Transfer Amount in accordance with Paragraph **Error! Reference source not found.** (*Calculation of Transfer Amount*); and
- 2.5.5 the trustees or managers of the Provider's (or any Sub-Contractor's) Broadly Comparable scheme (or NHS Business Services Authority, as appropriate) having confirmed in writing to the trustees or managers of the Former Provider's pension scheme (or NHS Business Services Authority, as appropriate) that they are ready, willing and able to receive the Transfer Amount and the bank details of where the Transfer Amount should be sent, and not having revoked that confirmation,

the Authority will use reasonable endeavours to procure that the Former Provider's pension scheme (or the NHS Pension Scheme, as appropriate) will, on or before the Payment Date, transfer to the Provider's (or Sub-Contractor's) Broadly Comparable scheme (or NHS Pension Scheme) the Transfer Amount in cash, together with any cash or other assets which are referable to additional voluntary contributions (if any) paid by the Eligible Employees which do not give rise to salary-related benefits.

2.6 Credit for Transfer Amount

Subject to prior receipt of the Transfer Amount (and any shortfall payable),¹¹ by the trustees or managers of the Provider's (or Sub-Contractor's) Broadly Comparable scheme (or NHS

¹⁰ Commissioners should obtain a signed note from the NHS Pension Scheme Actuary during the procurement specifying the bulk transfer terms that apply.

¹¹ In terms of shortfalls, please see section 2 of Stage 2 of the guidance issued in February 2014 by the Department of Health in respect of the impact of New Fair Deal for Staff Pensions on NHS Pension Scheme participation.

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Business Services, as appropriate), the Provider must procure that year-for-year day-for-day service credits are granted in the Provider's (or Sub-Contractor's) Broadly Comparable scheme (or NHS Pension Scheme), or an actuarial equivalent agreed by the Authority's Actuary (and NHS Pension Scheme Actuary) in accordance with New Fair Deal for Staff Pensions as a suitable reflection of the differences in benefit structure between the NHS Pension Scheme and the Provider's (or Sub-Contractor's) pension scheme.

3. Premature Retirement Rights

3.1 From the Transfer Date until the day before the Exit Transfer Date, the Provider must provide (and/or must ensure that any relevant Sub-Contractor must provide) Premature Retirement Rights in respect of the Eligible Employees that are the same as the benefits they would have received had they remained employees of an NHS Body or other employer which participates automatically in the NHS Pension Scheme.

4. Cancellation of any Direction Letter(s) and Right of Set-Off

4.1 If the Authority is entitled to terminate this Contract under Clause B32. (*Termination*); the Authority may in its sole discretion instead of exercising its right under clause B32.2 l) (*Termination*:) permit the Provider (or the relevant Sub-Contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority.

4.2 If the Authority is notified by NHS Business Services Authority of any NHS Pension Scheme Arrears, the Authority will be entitled to deduct all or part of those arrears from any amount due to be paid by that Authority to the Provider having given the Provider 5 Business Days' notice of its intention to do so, and to pay any sum deducted to NHS Business Services Authority in full or partial settlement of the NHS Pension Scheme Arrears. This set-off right is in addition to and not instead of the Authority's right to terminate the Contract under clause B32.2 l) (*Termination*:).

5. Compensation

5.1 If the Provider (or any Sub-Contractor) is unable to provide the Eligible Employees with either:

5.1.1 membership of the NHS Pension Scheme (having used its best endeavours to secure a Direction Letter); or

5.1.2 a Broadly Comparable scheme,

the Authority may in its sole discretion permit the Provider to (or procure that the relevant Sub-Contractor) compensate the Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Provider (or Sub-Contractor as relevant) having consulted with a view to reaching agreement any recognised trade union or, in the absence of such body, the Eligible Employees. The Provider must (or must procure that the relevant Sub-Contractor) meet the costs of the Authority in determining whether the level of compensation offered is reasonable in the circumstances.

5.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract under clause B32.2 l) (*Termination*:).

6 Provider Indemnities Regarding Pension Benefits and Premature Retirement Rights

6.1 The Provider must indemnify and keep indemnified the Authority and any Replacement Provider against all Losses arising out of any claim by any Eligible Employee that the provision of (or failure to provide) Pension Benefits and Premature Retirement Rights from the Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

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- 6.2 The Provider must indemnify and keep indemnified the Authority, NHS Business Services Authority and any Replacement Provider against all Losses arising out of the Provider (or its Sub-Contractor) allowing anyone who is not an Eligible Employee to join or claim membership of the NHS Pension Scheme at any time during the Contract Term.
- 6.3 The Provider must indemnify the Authority, NHS Business Services Authority and any Replacement Provider against all Losses arising out of its breach of this Section C.2 (B) and/or the terms of the Direction Letter.

7 Sub-contractors

- 7.1 If the Provider enters into a Sub-contract it will impose obligations on its Sub-Contractor in the same terms as those imposed on the Provider in relation to Pension Benefits and Premature Retirement Benefits by this Section C.2 (B), including requiring that:
- 7.1.1 If the Provider has secured a Direction Letter, the Sub-Contractor also secures a Direction Letter in respect of the Eligible Employees for their future service with the Sub-Contractor as a condition of being awarded the Sub-Contract; or
- 7.1.2 If the Provider has offered the Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHS Pension Scheme, the Sub-Contractor either secures a Direction Letter in respect of the Eligible Employees or provides Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHS Pension Scheme and in either case the option for Eligible Employees to transfer their accrued rights in the Provider's pension scheme into the Sub-Contractor's Broadly Comparable scheme (or where a Direction Letter is secured by the Sub-Contractor, the NHS Pension Scheme) on the basis set out in Paragraph 2.6 (*Credit for Transfer Amount*), except that the Provider or the Sub-Contractor as agreed between them, must make up any shortfall in the transfer amount received from the Provider's pension scheme.

8 Direct Enforceability by the Eligible Employees

- 8.1 Notwithstanding clause B 41. (*Third Party Rights*), the provisions of this Section C.2 (B) may be directly enforced by an Eligible Employee against the Provider and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 will apply to the extent necessary to ensure that any Eligible Employee will have the right to enforce any obligation owed to him or her by the Provider under this Schedule in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 8.2 Further, the Provider must ensure that the Contracts (Rights of Third Parties) Act 1999 will apply to any Sub-Contract to the extent necessary to ensure that any Eligible Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

9 Pensions on Transfer of Employment on Exit

- 9.1 In the event of any termination or expiry or partial termination or expiry of this Contract which results in a transfer of the Eligible Employees, the Provider must (and if offering a Broadly Comparable scheme, must use all reasonable efforts to procure that the trustees or managers of that pension scheme must):
- 9.1.1 not adversely affect pension rights accrued by the Eligible Employees in the period ending on the Exit Transfer Date;
- 9.1.2 within 30 Business Days of being requested to do so by the new provider, (or if the new provider is offering Eligible Employees access to the NHS Pension Scheme, by NHS Business Services Authority), provide a transfer amount calculated in accordance with Paragraph 2.4 (*Calculation of the Transfer Amount*); and

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9.1.3 do all acts and things, and provide all information and access to the Eligible Employees, as may in the reasonable opinion of the Commissioners be necessary or desirable and to enable the Authority and/or the new provider to achieve the objectives of New Fair Deal for Staff Pensions.

10. Definitions

10.1 In this section C2(B) the following definitions shall apply:

Actuary	a Fellow of the Institute and Faculty of Actuaries
Broadly Comparable	certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013
Contract Term	the period specified as such in Clause A3 (or where applicable that period as extended in accordance with the provisions of clause A3)
Direction Letter	a letter issued by the NHS Business Services Authority (on behalf of the Secretary of State pursuant to Section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967) to the Provider or a Sub-Contractor, setting out the terms on which the Provider or Sub-Contractor (as appropriate) is to be granted access to the NHS Pension Scheme in connection with this Contract or the relevant Sub-Contract (as appropriate)
Eligible Employee	<p>each of the Transferred Staff who immediately before the Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with either an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the former provider in the delivery of the Services</p> <p>For the avoidance of doubt a Staff member who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHS Pension Scheme "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to New Fair Deal for Staff Pensions protection under this Schedule</p>
Exit Transfer Date	the date on which the Eligible Employees transfer their employment to a new provider at the end of the Contract Term

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Losses	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses
New Fair Deal:	the revised pensions fair deal position set out in the HM Treasury guidance: " <i>Fair Deal for staff pensions: staff transfer from central government</i> " issued in October 2013;
NHS Body	has the meaning given to it in section 275 of the National Health Service Act 2006
NHS Business Services Authority	the Special Health Authority established under the NHS Business Services Authority (Establishment and Constitution Order) 2005 SI 2005/2414
NHS Pension Scheme	the National Health Service Pension Scheme for England and Wales, established under the Superannuation Act 1972, governed by subsequent regulations under that Act including the National Health Service Pension Scheme Regulations 1995 (SI 1995/300) and the National Health Service Pension Scheme Regulations 2008 (SI 2008/653)
NHS Pension Scheme Actuary	the Government Actuary's Department or any successor Actuary
NHS Pension Scheme Arrears	any failure on the part of the Provider or any Sub-Contractor to pay employer's or deduct and pay across employee's contributions to the NHS Pension Scheme or meet any other financial obligations under the NHS Pension Scheme or any Direction Letter in respect of the Eligible Employees
Payment Date	[20 Business Days] after the last of the conditions in Paragraph Error! Reference source not found. of this Section C.2 (B) (<i>Payment of Transfer Amount</i>) has been satisfied
Pension Benefits	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme
Premature Retirement Rights	rights to which the Transferred Staff (had they remained in the employment of an NHS Body or other employer which participates automatically in the NHS Pension Scheme) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866), and Section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time

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Transfer Amount	an amount paid in accordance with Paragraph 2.5 of this Section C.2 (B) (Payment of Transfer Amount) and calculated in accordance with the assumptions, principles and timing adjustment referred to in Paragraph Error! Reference source not found. of this Section C.2 (B) (<i>Calculation of Transfer Amount</i>) in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or former provider's Broadly Comparable scheme and elected to transfer them to the Provider's Broadly Comparable scheme under the Transfer Option
Transfer Date	the Transferred Staff's first day of employment with the Provider (or its Sub-Contractor)
Transfer Option	an option given to each Eligible Employee with either: <ul style="list-style-type: none">accrued rights in the NHS Pension Scheme; or) accrued rights in a Broadly Comparable scheme, as at the Transfer Date, to transfer those rights to the Provider's (or its Sub-Contractor's) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes)
Transfer Option Deadline	the first Business Day to fall at least [3 months] ¹² after the notice detailing the Transfer Option has been sent to each Eligible Employee
Transferred Staff	those employees whose employment compulsorily transfers to the Provider or a Sub-Contractor by operation of the Employment Regulations, COSOP or for any other reason, as a result of the award of this Contract

Deleted:

¹² B.7 of New Fair Deal for Staff Pensions indicates that Eligible Employees should normally be given a 3 month period in which to exercise their Transfer Option.

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PUBLIC HEALTH SERVICES CONTRACT

Annex A.

Admission Agreement

Annex B. Transferring Authority Employees

There are no Transferring Authority Employees

Annex C. Transferring Former Provider Employees

Annex D. List of Notified Sub-contractors

- Independent exercise instructors meeting the entry requirements to undertake Later Life Postural Stability Instructor training, or equivalent
- REPS Level 4 qualified Postural Stability Instructors



INSTRUCTIONS FOR TENDERING

**POCV 007 - Community Postural
Stability Instruction Pilot
Programme**

Shropshire Council Instructions for tendering

Contract Description:

Shropshire Council's Public Health is seeking to commission the delivery of a two and half year Community Postural Stability Instruction Pilot programme as part of a whole system approach to falls prevention across the local health economy to commence in Spring 2017. This will test and develop an effective sustainable model for the delivery of a single community-based postural stability programme to reduce the impact of falls and falls- related injuries. The provider will work in collaboration to:

- Create a cohort of independent exercise providers, qualified to deliver Postural Stability exercise as part of the local falls prevention infrastructure.
- Establish a delivery model for evidence-based community based exercise postural stability classes, enabling older people to be referred from local health services
- Deliver a two year programme of evidence-based falls prevention postural stability classes in key community locations across Shropshire

It is estimated that around 19,000 older people will fall in Shropshire each year and that around 3,800 of those will have injurious falls. One third of people aged over 60, and half of those aged over 80, are likely to fall at least once a year. The consequences can be life changing and life threatening – around 30% of older people who sustain a hip fracture die within a year.

Falls are not, however, an inevitable part of ageing. Falls prevention work seeks to prevent the first fall, prevent the next fall, prevent an injurious fall and reduce the severity of injuries from fall. Falls Prevention is a key work programme for Shropshire's Better Care Fund, Shropshire HWB Prevention Programmes, and the Community Fit Clinical Pathway for falls, fractures and frailty.

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1.0 Invitation to Tender

- 1.1** You are invited to tender for the provision of a Community Postural Stability Instruction Pilot Programme as detailed in the Tender Response Document. The contract will be for an initial period of **2 and a half years** commencing on the **15th May 2017**.
- 1.2** Tenders are to be submitted in accordance with the Terms and Conditions 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 Terms and Conditions 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

3.0 Preparation of Tenders

3.1 Completing the Tender Response Document

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

3.1.2 All documents requiring a signature must be signed;

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

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

3.2 Tender Preparation and Costs

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

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

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

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

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

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

the Tender documentation are correct at the time of submission.

- 3.2.7** The Tenderer is deemed to have made him/herself acquainted with the Council's requirements and tender accordingly. Should the Tenderer be in any doubt regarding the true meaning and intent of any element of the specification he is invited to have these fully resolved before submitting his Tender. No extras will be allowed for any loss or expense involved through any misunderstanding arising from his/her failure to comply with this requirement.
- 3.2.8** Any Tender error or discrepancy identified by the Council shall be drawn to the attention of the Tenderer who will be given the opportunity to correct, confirm or withdraw the Tender.
- 3.2.9** The Tender Documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Tender document other than on an In Confidence basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing the Tender.

3.3 Parent Company Guarantee

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

3.4 Warranty

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

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

4.0 Tender Submission

- 4.1** Tenders must be submitted strictly in accordance with the letter of instruction accompanying this Invitation to Tender. Tenders must be submitted by the deadline of **noon, 13th April 2017**.
- 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 Tender Evaluation

- 6.1 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.
- 6.2 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.

7.0 Clarifications

- 7.1** Tenderers are responsible for clarifying any aspects of the tendering process and/or the Invitation to Tender documents in the manner described below.
- 7.2** If you are unsure of any section and require further clarification, please contact via our Delta Tenderbox.
- 7.3** Where appropriate, the Authorised Officer named above may direct the Tenderer to other officers to deal with the matter.
- 7.4** All queries should be raised as soon as possible (in writing), in any event not later than **6th April 2017**.
- 7.5** 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.
- 7.6** 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.

8.0 Continuation of the Procurement Process

8.1 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.

8.2 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.

8.3 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.

9.0 Confidentiality

9.1 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.

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

9.3 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.

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

9.4.1 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;

9.4.2 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

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

- 9.5** Tenderers may disclose, distribute or pass this Invitation to tender to their professional advisors, sub-contractors or to another person provided that:
- 9.5.1** 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
 - 9.5.2** the Tenderer obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the Invitation to Tender; or
 - 9.5.3** 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
 - 9.5.4** the Tenderer is legally required to make such a disclosure.
- 9.6** 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.

9.7 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.

10.0 Freedom of Information

- 10.1** 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.
- 10.2** 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.
- 10.3** 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.

- 10.4** 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.
- 10.5** 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>

11.0 Disqualification

- 11.1** The Council reserves the right to reject or disqualify a Tenderer’s Tender submission where:
 - 11.1.1** 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
 - 11.1.2** The tenderer is guilty of serious or intentional or reckless misrepresentation in relation to its tender return and/or the procurement process.
 - 11.1.3** 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.
 - 11.1.4** 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.

11.2 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.

11.3 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.

12.0 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.

13.0 Award of Contract

13.1 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.

13.2 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.

13.3 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.

14.0 Value of Contract

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

15.0 Acceptance

15.1 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.

15.2 The Tender documentation including, the Terms and Conditions of Contract, the Tender Response document, these Instructions to Tender, together with the formal written acceptance by the Council will form a binding agreement between the Contractor and the Council.

15.3 The Tenderer shall be prepared to commence the provision of the supply and services on the start date of the contract/framework arrangement being **15th May 2017**.

16.0 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.

17.0 Liability of Council

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

17.2 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.

17.3 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.

17.4 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.

17.5 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.

18.0 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

19.0 **Declaration**

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

Signed (1) Status.....

Signed (2) Status.....

(For and on behalf of)

Date

Tender brief

Shropshire Community Postural Stability Instruction Pilot Programme

Background:

Falls are a major cause of disability and the leading cause of mortality resulting from injury in people aged over 75 years in the UK. Between 30% – 50% of people aged over 60 fall each year.

It is estimated that around 19,000 older people will fall in Shropshire each year and that around 3,800 of those will have injurious falls. One third of people aged over 60, and half of those aged over 80, are likely to fall at least once a year. Falls can result in fractures, particularly in those with osteoporosis. The consequences can be life changing and life threatening – around 30% of older people who sustain a hip fracture die within a year.

Falls are not, however, an inevitable part of ageing. Falls prevention work seeks to prevent the first fall, prevent the next fall, prevent an injurious fall and reduce the severity of injuries from falls. In so doing, it aims not only for better health and greater independence for older people, but also for:

- savings to the NHS (in ambulance call-outs, A&E attendance, hospital admissions, outpatient care, community care) and
- Savings to Adult Social Care (for example, after an osteoporotic fracture, 50% of patients can no longer live independently).

NICE guidelines CG161 (June 2013) recommends strength and balance training for older people living in the community with a history of recurrent falls and/or balance and gait deficit. A muscle-strengthening and balance programme should be offered.

A collaborative and whole system approach to prevention, response and treatment includes evidenced based strength and balance programmes for those at risk of falls.

Current position: There is a significant gap in therapeutic community based exercise for reducing risk of falls prevention. Research evidence makes clear that effective therapeutic exercise for falls prevention must be highly challenging, progressive and of sufficient “dose” (at least 50 hours), but ongoing exercise is necessary for a lasting effect to prevent falls¹.

The current Falls Prevention Service (SCHT) provides 1-13 weeks exercise programmes in 7 locations in Shropshire, (includes 1 session for assessments) but the lack of ‘follow-on’ or maintenance sessions results in service users having no opportunity to continue with specific falls prevention group exercise and continue or maintain the improvements made.

To reduce waiting list there is also a need to refer patients at lower risk to a community PSI programme thereby enabling the physiotherapist-led Falls Prevention Service (SCHT) to focus on those at higher risk or with more complex needs.

Following a stakeholder event in August 2016, a cohort of independent exercise instructors have submitted formal interest in becoming training Postural Stability Exercise Instructors (Laterlife training) and delivering the Community PSI programme.

Shropshire Council’s Public Health has supported the commissioning of Shropshire Community Health Trust’s falls prevention services on behalf of the Shropshire Clinical Commissioning Group. Shropshire Council’s Public Health is now seeking to commission the additional provision of a two and half year Community Postural Stability Pilot programme.

The piloting of a community –based Postural stability exercise programme will inform the future design of Shropshire’s falls prevention services.

Falls Prevention is a key work programme for Shropshire’s Better Care Fund, Shropshire HWB Prevention Programmes, and the Community Fit Clinical Pathway for falls, fractures and frailty.

Scope of work

1. Aims and objectives of pilot service

Aim:

- To test and develop an effective sustainable model for the delivery of a single community-based postural stability programme to reduce the impact of falls and falls- related injuries.
- To increase access to evidence-based falls prevention intervention in the community
- To reduce preventable falls and their impact on individuals, NHS services and Social Care resources.
- To inform future falls prevention commissioning decisions.

2. Purpose:

- To establish a delivery model for evidence-based community based exercise postural stability classes, enabling older people to be referred from local health services, particularly Shropshire Community Health Trust NHS falls prevention classes.
- To create a cohort of independent exercise providers, qualified to deliver Postural Stability exercise for falls prevention to older adults (LaterLife training) as part of the local falls prevention infrastructure.
- To deliver a two year programme of evidence-based falls prevention postural stability classes in at least 10 locations across Shropshire using the services of a cohort of qualified LaterLife PSI exercise instructors
- To establish a formal referral route so that the take-up of community PSI exercise becomes an integral part of the falls prevention pathway.
- To reduce the backlog of moderate risk falls prevention patients awaiting PSI (Assessed as level 1-3 on Falls Functional Grid).
- To provide open access to specific falls prevention exercise to older adults through self –referral, enabling more people to reduce their risk of falls through exercise to improve gait, balance and strength.
- Test the viability of client contributions to reduce costs through ‘social’ model for community PSI
- Support patients in taking responsibility for reducing their risk of falls through long-term adherence to improving and maintain gait, strength and balance
- Establish a clear patient journey from NHS services to community provision
- Promote social interaction, better mental wellbeing, reducing isolation.

3. Service description/pathway

Access to the service to be through:

- Referral from Shropshire Community Health Trust services, including SCHAT falls Prevention Team. Patients identified and screened for falls risk by Shropshire Community Health trust staff (e.g. Timed Up and Go score of 1-3) will be eligible. The provider will collaborate with Shropshire Community Health Trust and the commissioner in the development of a referral process. Additional sources of referral may be included during the pilot period.

- Self-referral. The provider will undertake local promotion and networking with community organisations to generate self-referrals.
- The provider will act as a single point of referral, and ensure that exercise programmes are established to meet the referral demand.

4. Scope of Work

A provider will coordinate and manage the delivery of the Community PSI programme in 10 or more locations, which can include those not being covered by SCHAT Falls Prevention Service. The provider will work alongside the Shropshire NHS falls and fracture services to ensure patients discharged from Shropshire NHS falls and fracture services at risk of a first fall or of further falls are given the opportunity to access falls exercise opportunities provision in the community

The target minimum number of classes to be delivered is 40, with each class being made up of 20 sessions of PSI or an equivalent number of sessions. The number and duration of classes may vary to meet local circumstances and costs, but the pilot seeks to optimise the number of classes and people accessing them within the available budget. The provider will create a financial model to deliver the optimal number of classes within funding available, working towards achieving the target number.

The programme will deliver postural stability exercise instruction classes for:

1. Over 60s assessed at level 1-3 on SCHAT's Physical Function Assessment Grid/Timed Up and Go including those:
 - Completing a SCHAT Falls Prevention programme requiring a 'follow-on' course.
 - Assessed by SCHAT Falls Prevention Programme as best suited to a community PSI class and not requiring their programme for Levels 3+-5.
 - Self-referrals

(It is anticipated that the majority of classes in the Community PSI programme will be at this level)

2. Over 60s assessed at level 3-5 on SCHAT's Stability Physical Function Assessment Grid/Timed Up and Go where the SCHAT Falls prevention Service does not have the capacity to deliver its 1-13 week programme.

In partnership with the commissioner the provider will establish their cohort of independent exercise instructors and manage their postural stability instructor training course (LaterLife training). The number of independent exercise instructors to be trained will be agreed with the commissioning but will not exceed 15.

The provider will contract with the cohort of independent instructors for the delivery of the Community PSI programme. NB The provider is not expected to employ individual instructors, but to contract them on a sessional basis. The provider will determine the full responsibilities of the independent instructor and may wish to delegate some local level responsibilities.

The provider will have responsibility for:

- Final recruitment of a cohort of independent exercise instructors (including, but not exclusive to those initially recruited by Help2Change following a stakeholder event on 31/08/16).
- A locally delivered Laterlife Postural Stability Instruction training course for the recruited cohort of exercise instructors (<http://www.laterlifetraining.co.uk>). This will be undertaken prior to the commencement of the Community PSI classes.
- Contractual arrangements with the cohort of independent exercise instructors for both PSI training and delivery of the programme of Community PSI classes.

- Provider responsibilities in operating a referral process with Shropshire Community Health Trust in compliance with necessary governance standards.
- The delivery of the PSI exercise programme.
- Organising appropriate venues and venue assessments
- Quality assurance using an agreed risk assessment methodology. The provider will ensure the required standards are maintained through on going quality monitoring of the exercise instructors delivering the PSI classes.
- Ensuring liability and insurance requirements are met.(Public Liability)
- Providing a central point for referrals (including self-referrals) and triage as required (as agreed with SCHAT Falls Prevention Service)
- Develop and promote direct access pathways / self-referral routes into PSI exercise classes and ‘follow - on’ activity in the community.
- Partnership/liaison with referring services, particularly the SCHAT Falls Prevention services staff
- Record keeping and performance management.
- Local promotion of classes for self-referral, including use of the Healthy Shropshire Directory
- Establishing the social component of the model (e.g. refreshment/dance/music)
- Implementing a system for managing patient contributions to offset costs.
- Monitoring Participant Feedback and Involvement
- Providing information to encourage and support home exercise and falls prevention, including participation in local or national relevant campaigns.
- Post intervention ‘follow up’ to be agreed with the commissioner.
- Provision of patient outcome information to referrers.
- Risk assessment for all aspects of the service.
- Coordinate the collection of outcome data and provide it to the commissioner in a written format on a quarterly and annual report basis(Years 1 and 2.5)
- Collaborative working with the commissioner and SCHAT falls prevention service to determine the locality of PSI classes. As a pilot to test the potential for community based PSI delivery for falls prevention to reduce the demand on health and social care services the provider will work collaboratively with the commissioner and local health services to amend and improve the delivery model and maximise it’s potential.

Qualified LLT PSI Falls Exercise Instructors contracted to the provider to deliver the programme must:

- ❖ Demonstrate understanding of the needs of older people in relation to falls prevention exercise and the barriers for older people to accessing it.
- ❖ Have demonstrable skills in engaging and working with older populations, particularly regarding the dignity and respect of adults.
- ❖ Undertake training and become qualified in LaterLife Postural stability Instruction exercise

- ❖ Operate to safeguarding and information governance protocols.
- ❖ Deliver the exercise classes in line with the provider's framework.
- ❖ Provide outcome data to the commissioner in a written format to include reduction in falls risk as measured by physical function scores and a measure of the impact on fear of falling for participants attending the sessions.

5. Population covered

Classes are to be delivered for adults over 60 years in communities within the local authority area of Shropshire County.

Classes to be delivered in key population areas to be agreed with the commissioner, but to include Oswestry, Ludlow, Shrewsbury, Bridgnorth, Whitchurch.

6. Any acceptance and exclusion criteria and thresholds

The service is open to over 60 years olds registered with a Shropshire GP practice, living in community dwellings.

Access to the service to be through referrals from Shropshire NHS services, especially Shropshire Community Health Trust, and falls prevention specialists, and self-referral.

6.1 Exclusion criteria:

- Care Home residents
- People who have cognitive problems and are unable to follow basic instructions,
- Some medical conditions identified on assessment whereby benefit from community falls prevention exercise interventions cannot be gained.

7. Interdependencies with other services

- Shropshire NHS services, especially Shropshire Community Health Trust, and falls prevention specialists.
- Referral process to be developed in agreement between Shropshire Community Health Trust, Public Health and the provider.
- Community engagement in each locality.

8. Outcome and performance measures

To include:

- Number of instructors completing PSI qualification and delivering the pilot programme
- Number of referrals to PSI (by referrer including Shropshire Community Health Trust services)
- Number of classes/session delivered
- Number of self-referrals made
- Numbers completing 12 weeks
- Number completing 20 weeks
- Numbers reducing falls risk (by Tinetti/TUAG score)
- Numbers reporting maintenance of evidence-based exercise at 3 months/6months
- Numbers reporting an injurious falls at 3month/6 months

Learning from the pilot to be shared with the commissioner will include

- Financial model to inform the future commissioning of falls prevention services
- Service user feedback

- Social modelling of PSI classes

9. Proposals

Tender proposals should include details of how they propose to deliver all elements of the service with specific regard how they propose to:

8.1 Proactively build and maintain relationships with all relevant organisations and individuals including:

- Independent exercise instructors
- NHS community health services (ensuring referral routes are in place)
- Individuals and communities
- Providers of transport services

8.2: Recruit, train, contract and coordinate exercise instructors to deliver the community PSI classes to meet local needs, including roles and responsibilities.

8.3: Ensure instructors have and maintain the skills, knowledge and experience required for their roles including processes for information governance.

8.4: Develop and deliver standardised high quality community PSI classes to meet local needs and reduce local NHS falls prevention service waiting lists.

Tender responses should include a delivery framework and a full financial breakdown of costs, making clear:

- the costs associated with each element of the pilot programme.
- a financial model to deliver the optimal number of classes within funding available.

Timescale

Tender response received	
Interviews /Tender accepted	
Preliminary meeting with H2C to review and finalise delivery elements/timescales	
Service commencement	
Quarterly progress review	
Summative meeting	

Budget

Total cost of development and delivery of the 2.5 year pilot service should be clearly indicated in the Tender Response and should not exceed £138k in total.

Contact Details

contact	
e-mail	
telephone	01743 454910
address	Help2Change Shropshire Council Longbow House, Longbow Close Shrewsbury, SY1 3GZ

Glossary:

SCHT: Shropshire Community Trust

PSI: Postural Stability Instruction.

LaterLife Training: www.laterlifetraining.co.uk

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Text highlighted in yellow is where details need to be inserted

Text highlighted in green are optional clauses which require consideration as to whether or not they should be retained.

SHROPSHIRE COUNCIL (1)

AS AUTHORITY

AND

[Insert Name] (2)

AS PROVIDER

Contract Reference: POCV 007

CONTRACT FOR THE
PROVISION OF PUBLIC HEALTH SERVICES
Shropshire Community Postural Stability
Instruction Pilot Programme

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SECTION A: THE PARTICULARS

This Contract is made on 2017

PARTIES

- (1) SHROPSHIRE COUNCIL of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND (the **Authority**); and
- (2) **[insert name of Provider]** of **[insert address]** (the **Provider**).

BACKGROUND

- (A) The Authority wishes to receive the delivery of a Community Postural Stability programme to complement existing similar services within its administrative as set out in further detail within the Specification to this Contract
- (B) The Provider has the skills, background and experience in providing the Services required by the Authority
- (C) The Parties have agreed for the Provider to provide the Services in accordance with the terms and conditions of this Contract.

IT IS AGREED

A1. CONTRACT

- A1.1. This Contract is comprised of:
- a) these Particulars (Section A);
 - b) the General Terms and Conditions (the 'General Conditions') in (Section B); and
 - c) the Special Terms and Conditions (the 'Special Conditions') in (Section C), where any such terms have been agreed,
- as completed and agreed by the Parties and as varied from time to time in accordance with clause A.B22 (*Variations*) of the General Conditions ("this Contract").

A2. INTERPRETATION

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

A3. COMMENCEMENT AND DURATION

- A3.1. This Contract shall take effect on the date it is executed by or on behalf of the Parties (the 'Commencement Date').
- A3.2. The Provider shall, subject to having satisfied the Conditions Precedent where applicable, provide the Services from **[insert date]** (the 'Service Commencement Date').
- A3.3. This Contract shall expire automatically on **[insert date]** (the 'Expiry Date'), unless it is extended or terminated earlier in accordance with the provisions of this Contract.

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- A3.4. It is agreed between the Parties that the Authority may extend this Contract at the expiry of the Initial Term for a further period of 6 months from the Initial Expiry Date (Extension Period).
- A3.5. If the Authority decides that it wishes to extend this Contract after the expiry of the Initial Term it shall notify the Provider in writing at least 6 months in advance of the expiry date of the Initial Term and shall advise the Provider of the intended duration of the Extension Period.
- A3.6. If the Authority decides that it does not wish to extend this Contract after the Initial Term or (where this Contract has been continued by an Extension Period) at the end of any subsequent Extension Period then this Contract shall terminate on the Initial Expiry Date or the last date of any Extension Period (whichever is the later) and the provisions of B33 (Consequences of Expiry or Termination) shall apply.
- A3.7. For the avoidance of doubt:
a) the terms of this Contract shall continue in full force and effect to any Extension Period and any reference to "contract period" shall include an Extension Period; and
b) the total duration of this Contract (including all permitted Extension Periods) shall not exceed 3 years from the Service Commencement Date

A4. REPRESENTATIVES

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

Name: [REDACTED]
Title: Director of Public Health
Contact Details: Public Health Department, Shirehall, Abbey Foregate,
Shrewsbury, SY2 6ND.
Telephone: 01743 253934.
Email: [REDACTED]

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

Name: [insert name]
Title: [insert title]
Contact Details: [insert]

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

A5. NOTICES

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

- A5.2. Notices:

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

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

- a) For the Authority: Shropshire Council

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Address: Shirehall, Abbey Foregate
Shrewsbury
Shropshire
SY2 6ND.

For the attention of: [redacted]
Tel: 01743 253934.
Email: [redacted]

b) For the Provider:
Address: [to be completed]
For the attention of: [to be completed]
Tel: [to be completed]

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

A6. ENTIRE CONTRACT

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

A7. COUNTERPARTS

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

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

**SIGNED by and on behalf of
the AUTHORITY**

[redacted]
Name

.....
Signature – Director of Public Health

.....
Date

[redacted]
Name

.....
Signature – Director of Help2Change

.....
Date

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SIGNED by [Insert Authorised
Signatory's Name]
for and on behalf of
the PROVIDER

.....
Signature

.....
Title

.....
Date

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SECTION B: GENERAL TERMS AND CONDITIONS

B1. SERVICES

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

B2. WITHHOLDING AND/OR DISCONTINUATION OF SERVICE

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

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

B3. SERVICE AND QUALITY OUTCOMES INDICATORS

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

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- e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE where applicable to the Service; and
- f) comply with the Quality Outcomes Indicators set out in Appendix C (*Quality Outcomes Indicators*).

B4. SERVICE USER INVOLVEMENT

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

B5. EQUITY OF ACCESS, EQUALITY AND NO DISCRIMINATION

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

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

- B5.4. As soon as reasonably practicable following any reasonable request from the Authority, the Provider must provide the Authority with a plan detailing how it will comply with its obligations under clause B5.3.

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- B5.5 The Provider and any Sub-Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by Equality and Human Rights Commission, which give practical guidance to Local Authorities on the elimination of discrimination.
- B5.6 In the event of any finding of unlawful discrimination being made against the Provider and any Sub-Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equality and Human Rights Commission over the same period, the Provider and any Sub-Contractor shall inform the Authority of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- B5.7 The Provider and any Sub-Contractor employed by the Provider will provide a copy of its policies to the Authority at any time upon request. In addition, the Authority may reasonably request other information from time to time for the purpose of assessing the Provider's compliance with the above conditions.
- B5.8. The Provider must provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments) whether by provision of a translation service or referral to an appropriate service provider.
- B5.9. The Provider must provide to the Authority as soon as reasonably practicable, any information that the Authority reasonably requires to:
- a) monitor the equity of access to the Services; and
 - b) fulfil their obligations under the Law.
- B5.10. In performing its obligations under this Contract, the Provider shall and shall ensure that each of its sub-contractors shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015

B6. MANAGING ACTIVITY

- B6.1. The Provider must manage Activity in accordance with any activity planning assumptions and any caseloads set out in a Service Specification and must comply with all reasonable requests of the Authority to assist it with understanding and managing the levels of Activity for the Services.

B7. STAFF

- B7.1. At all times, the Provider must ensure that:
- a) each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - b) there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification;
 - c) where applicable, Staff are registered with the appropriate professional regulatory body; and
 - d) Staff are aware of and respect equality and human rights of colleagues and Service Users.
 - e) it can provide a clear DBS Certificate (Standard, Enhanced or Enhanced and DBS Barred List at the Provider's discretion) for each of the Staff engaged in the Services
- B7.2. If requested by the Authority, the Provider shall as soon as practicable and by no later than 20 Business Days following receipt of that request, provide the Authority with evidence of the Provider's compliance with clause B7.1.

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- B7.3. The Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:
- a) proper and sufficient continuous professional and personal development, training and instruction; and
 - b) full and detailed appraisal (in terms of performance and on-going education and training),
- each in accordance with Good Practice and the standards of any applicable relevant professional body.
- B7.4. Not Used
- B7.5. The Provider must carry out Staff surveys in relation to the Services at intervals and in the form set out in Appendix D (*Service User, and Staff Surveys*) or as otherwise agreed in writing from time to time.
- B7.6. Subject to clause B7.7, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation, complete:
- a) the Employment Checks; and
 - b) such other checks as required by the DBS.
- B7.7. Subject to clause B7.8, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Authority.
- B7.8. Where clause B7.7 applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
- a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and
 - b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and
 - c) the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Contract; and
 - d) any other reasonable requirement of the Authority.
- B7.9. Where the Authority has notified the Provider that it intends to tender or retender any of the Services, the Provider must on written request of the Authority and in any event within 20 Business Days of that request (unless otherwise agreed in writing), provide the Authority with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE.
- B7.10. The Provider must comply and must ensure that any Sub-Contractor will comply with their respective obligations under TUPE [and COSOP] in relation to any persons who transfer to the employment of the Provider or that Sub-Contractor by operation of TUPE [and/or COSOP] as a result of this Contract or any Sub-Contract, and that the Provider or the relevant Sub-Contractor (as appropriate) will ensure a smooth transfer of those persons to its employment.

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- B7.11. The Provider shall indemnify and keep indemnified the Authority and any Successor Provider against any Losses incurred by the Authority and/or the Successor Provider in connection with any claim or demand by any transferring employee under TUPE including but not limited to:
- B7.11.1 any failure by the Provider and/or any Sub-Contractor to comply with its obligations under TUPE [and/or COSOP] in connection with any relevant transfer under TUPE [and/or COSOP];
 - B7.11.2 any claim by any person that any proposed or actual substantial change by the Provider and/or any Sub-Contractor to that person's working conditions or any proposed measures on the part of the Provider and/or any Sub-Contractor are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE [and/or COSOP] to the Provider and/or Sub-Contractor; and/or
 - B7.11.3 any claim by any person in relation to any breach of contract arising from any proposed measures on the part of the Provider and/or any Sub-Contractor, whether that claim arises before or after the date of any relevant transfer under TUPE [and/or COSOP] to the Provider and/or Sub-Contractor.
- B7.12 The Provider must indemnify and keep indemnified the Authority and any Successor Provider against any Losses in respect of any inaccuracy in or omission from the information provided under clause B7.9 above
- B7.12. The Parties agree that in addition to this clause B7. the provisions of Section C1 (TUPE) and C2 (Pensions) shall apply to any Relevant Transfer of staff under this Contract

B8. CHARGES AND PAYMENT

- B8.1. Subject to any provision of this Contract to the contrary (including without limitation those relating to withholding and/or retention), in consideration for the provision of the Services in accordance with the terms of this Contract, the Authority shall pay the Provider the Charges.
- B8.2. The Parties shall to the extent reasonably practicable agree the Charges in a transparent and equitable manner and the Charges shall be set out at Appendix E (*Charges*).
- B8.3. The Provider shall invoice the Authority in arrears for payment of the Charges monthly (or such other frequency agreed between the Parties in writing) which the Authority shall pay within 30 days of receipt. . In the event of late payment, interest thereon shall be charged at the Default Interest Rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after Judgment.
- B8.4. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- B8.5. In its performance of this Contract the Provider shall not provide or offer to a Service User any services for which any charges would be payable by the Service User (other than in accordance with this Contract, the Law and/or Guidance).

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- B8.6. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause B8:
- a) the contesting Party shall within 5 Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested;
 - b) any uncontested amount shall be paid in accordance with this Contract.
- B8.7. If a Party contests a payment under clause B8.6 and the Parties have not resolved the matter within 20 Business Days of the date of notification under clause B8.6, the contesting Party may refer the matter to dispute resolution under clause ~~A.B30A-B30-B.30~~ and following the resolution of any dispute referred to dispute resolution, where applicable the relevant party shall pay any amount agreed or determined to be payable in accordance with clause B8.3.
- B8.8. Subject to any express provision of this Contract to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under this Contract, to receive interest at the Default Interest Rate on any payment not made from the day after the date on which payment was due up to and including the date of payment.
- B8.9. Each Party may retain or set off any sums owed to the other Party which have fallen due and payable against any sum due to the other Party under this Contract or any other agreement between the Parties.
- B8.10. This Contract is contingent upon the Authority receiving adequate funding from central government to enable it to commission the Services and the Authority can in no way warrant represent or guarantee the continuation of such funding throughout the duration of the term of this Contract. In the event that central government withdraws or reduces funding the Authority may at any time either terminate or modify (as is appropriate and reasonable subject to any funding constraints placed upon it) the Services commissioned by this Contract by serving reasonable written notice on the Provider. Where notice to terminate this Contract is given pursuant to this clause B8.10, this Contract will terminate on the date specified in the notice.

B9. SERVICE IMPROVEMENTS AND BEST VALUE DUTY

- B9.1. The Provider must to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty.
- B9.2. In addition to the Provider's obligations under clause B9.1, where reasonably requested by the Authority, the Provider at its own cost shall participate in any relevant Best Value Duty reviews and/or benchmarking exercises (including without limitation providing information for such purposes) conducted by the Authority and shall assist the Authority with the preparation of any Best Value performance plans.
- B9.3. During the term of this Contract at the reasonable request of the Authority, the Provider must:
- a) demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness and the Parties may agree a continuous improvement plan for this purpose;
 - b) implement such improvements; and
 - c) where practicable following implementation of such improvements decrease the price to be paid by the Authority for the Services.

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B9.4. If requested by the Authority, the Provider must identify the improvements that have taken place in accordance with clause B9.3, by reference to any reasonable measurable criteria notified to the Provider by the Authority.

B10. SAFEGUARDING VULNERABLE ADULTS

B10.1. The Provider shall adopt Safeguarding Policies and such policies shall comply with the Authority's safeguarding policy as amended from time to time and may be appended at Appendix F (*Safeguarding Policies*) and the requirements of Keeping Adults Safe in Shropshire Board.

B10.2. At the reasonable written request of the Authority and by no later than 10 Business Days following receipt of such request, the Provider must provide evidence to the Authority that it is addressing any safeguarding concerns.

B10.3. If requested by the Authority, the Provider shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.

B10.4. The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

B10.5. The Provider must fulfil its commitment to safeguard and promote the welfare of vulnerable adults and shall have the following in place:

- a) clear priorities for safeguarding and protecting vulnerable adults explicitly stated in strategic policy documents and Safeguarding Policies;
- b) a clear commitment by the Provider's senior management to the importance of safeguarding and protecting vulnerable adults
- c) a clear line of accountability within the Provider's organisation for overseeing safeguarding and protecting vulnerable adults and that roles and accountability for taking action and reporting internally and in accordance with the Authority's Multi Agency Adult Protection Policy and Procedure are properly defined and understood by those involved
- d) recruitment and human resources management procedures to take account of the need to safeguard and protect vulnerable adults including safe recruitment policies and practices and enhanced DBS checks for all Staff including agency staff students and volunteers working with vulnerable adults.
- e) procedures for instigating the Authority's Multi Agency Adult Protection Policy and for dealing with allegations of abuse against members of Staff and volunteers.
- f) arrangements to ensure that all Staff receive supervision and undertake training in respect of safeguarding in order to equip them to carry out their safeguarding responsibilities effectively. Refresher training must be provided at regular intervals and all Staff including temporary Staff and volunteers who work with vulnerable adults must be made aware of the organisations arrangements for protecting vulnerable adults.
- g) policies to safeguard and protect vulnerable adults and procedures that are in accordance with the Authority's Multi Agency Protection Policy.
- h) 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.

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- i) a culture of listening to and engaging in dialogue with vulnerable adults in ways appropriate to their understanding and seeking their views and taking account of those views both in individual decisions and the establishment or development of services.
 - j) ensuring appropriate whistle blowing procedures are in place and there is a culture that enables issues about safeguarding and protecting vulnerable adults to be raised. A copy of the Authority's Speaking Up About Wrongdoing "Whistleblowing" Policy can be found on the Authority's website at www.shropshire.gov.uk.
- B10.6. The Provider shall ensure that all policies required by the Authority are implemented in respect of the Services.
- B10.7. Where the Service or activity being undertaken in this Contract is a Regulated Activity the Provider shall:
- a) comply with the requirements of clause B7.6; and
 - b) monitor the level and validity of the checks under this clause B10.7 for each member of the Provider's Staff.
- B10.8. The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of a Service or activity that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- B10.9. The Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause have been met.
- B10.10. The Provider shall refer information about any person carrying out the Services or the activity to the DBS where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, or vulnerable adults.
- B10.11. The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

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B11. INCIDENTS REQUIRING REPORTING

- B11.1. The Provider shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.
- B11.2. If the Provider gives a notification to any Regulatory Body under clause B11.1 which directly or indirectly concerns any Service User, the Provider must send a copy of it to the Authority within 5 Business Days or within the timescale set out in Appendix G (*Incidents Requiring Reporting Procedure*).
- B11.3. The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Provider and the Authority and set out in Appendix G (*Incidents Requiring Reporting Procedure*).
- B11.4. Subject to the Law, the Authority shall have complete discretion to use the information provided by the Provider under this clause B11.1 and Appendix G (*Incidents Requiring Reporting Procedure*).

B12. CONSENT

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

B13. SERVICE USER HEALTH RECORDS

- B13.1. The Provider must create, maintain, store and retain Service User health records for all Service Users. The Provider must retain Service User health records for the periods of time required by Law and securely destroy them thereafter in accordance with any applicable Guidance.
- B13.2. The Provider must:
- a) use Service User health records solely for the execution of the Provider's obligations under this Contract; and
 - b) give each Service User full and accurate information regarding his/her treatment and Services received.
- B13.3. Not Used
- B13.4. Subject to Guidance and where appropriate, the Service User health records should include the Service User's verified NHS number.
- B13.5. Where relevant and subject to compliance with the Law, the Provider shall at the reasonable request of the Authority promptly transfer or deliver a copy of the Service User health Record held by the Provider for any Service User for which the Authority is responsible to a third party provider of healthcare or social care services designated by the Authority.
- B13.6. The Provider undertakes to:
- a) implement and maintain security standards, processes, procedures, practice and controls to the same standard which they apply to personal confidential identifiable data and in accordance with the 'Community Health Provider' NHS Information Governance Toolkit standards to a minimum of Level 2 compliance for its 'organisation type' (as defined in the HSCIC IG Toolkit User Guide – Organisation Types);
 - b) . The Provider shall provide assurance that good information governance practices are being maintained and must demonstrate, and will allow the Authority to audit, that the Provider (and all Sub-contractors processing Service User information) meets or exceeds the NHS Information Governance Toolkit standards required for its organisation type.

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

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

and

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

B14. INFORMATION

- B14.1. The Provider must provide the Authority the information specified in Appendix H (*Information Provision*) to measure the quality, quantity or otherwise of the Services.
- B14.2. The Provider must deliver the information required under clause B14.1 in the format, manner, frequency and timescales specified in Appendix H (*Information Provision*) and must ensure that the information is accurate and complete.
- B14.3. If the Provider fails to comply with any of the obligations in this clause B14 and/or Appendix H (*Information Provision*), the Authority may (without prejudice to any other rights it may have under this Contract) exercise any consequence for failing to satisfy the relevant obligation specified in Appendix H (*Information Provision*).
- B14.4. In addition to the information required under clause B14.1, the Authority may request from the Provider any other information it reasonably requires in relation to this Contract and the Provider must deliver such requested information in a timely manner.

B15. EQUIPMENT

- B15.1. The Provider must provide and maintain at its own cost (unless otherwise agreed in writing) all Equipment necessary for the supply of the Services in accordance with any required Consents and must ensure that all Equipment is fit for the purpose of providing the applicable Services.

B16. TRANSFER OF AND DISCHARGE FROM CARE OBLIGATIONS

- B16.1. The Provider must comply with any Transfer of and Discharge from Care Protocols agreed by the Parties set out in Appendix I (*Transfer of and Discharge from Care Protocols*).

B17. COMPLAINTS

- B17.1. The Provider must at all times comply with the relevant regulations for complaints relating to the provision of the Services
- B17.2. In addition to the requirements of clause B17.1 the Provider shall operate a complaints procedure in respect of the Services to deal with any complaint received about the standard of services or the manner in which any Services have been supplied or work has been performed or any other matter connected with the performance of the Provider's obligations under this Contract ("the Complaints Procedure"). For the avoidance of doubt any complaint or issue that the Authority has in respect of the Provider's performance of this Contract shall be dealt with in accordance with the remainder of this Contract.

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- B17.3. The Provider's Complaints Procedure shall comply with applicable Law and the requirements of any regulatory body to which the Provider is subject or which are applicable to the Service being provided (including any change in such requirements) and shall meet the following minimum standards:
- a) is easy for complainants to access and understand
 - b) clearly sets out time limits for responding to complaints and keeping the complainant and the Authority informed of progress;
 - c) provides confidential record keeping to protect employees under this Contract and the complainant
 - d) provides information to the Provider's management so that services can be improved
 - e) provides effective and suitable remedies
 - f) is regularly monitored and audited and which takes account of complainant and Authority feedback
- B17.4. The Provider shall inform any users of the Services provided under this Contract of the existence of the complaints procedure and how to access it and will make its Complaints Procedure available on request.
- B17.5. The Provider shall investigate and deal with any complaints it receives about the Services, whether direct from the public or Services Users, or referred to it by the Authority, in accordance with its published Complaints Procedure. The Provider shall within 10 Working Days (and in so doing, shall) ensure that:
- a) it promptly, and within a maximum of 10 days of receiving the complaint, notifies the complainant that it is dealing with the complaint
 - b) under no circumstances is a complaint investigated by a member of its staff employed under this Contract who may be part of the complaint.
 - c) someone who is independent of the matter complained of carries out the investigation
 - d) the complainant is made aware that they are entitled to have the complaint investigated by the Authority if they are not satisfied with either the process of investigation or finding of the Provider's investigations
 - e) it deals with the complaint fully, expeditiously and fairly and shall use its reasonable endeavours to resolve the complaint within 28 Working Days of receiving the complaint
 - f) where a complaint is received by the Provider relating to the policy or decisions of the Authority rather than the Provider's delivery of its obligations under this Contract, the Provider shall promptly, and within two Working Days, refer the complaint to the Authority for investigation.
- B17.6. The Provider shall ensure that all its employees and persons employed under this Contract are made aware of its Complaints Procedure and shall designate one employee (who shall be identified to the Authority) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint
- B17.7. The Provider shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the Authority within 5 Working Days of being requested or at 12 monthly intervals in any event.
- B17.8. Where the Authority is investigating a complaint the Provider is required to participate fully in all investigations within the timescales requested by the Authority.
- B17.9. The Provider should note that if a complaint is made to the Authority 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 Authority requires the Provider to fully to co-operate in such investigation. If the Authority is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Provider the Provider shall indemnify the Authority in respect of the costs arising from such maladministration or injustice.
- B17.10. In addition to the above, If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under this Contract, then the Authority may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Provider, and any Regulatory Body. Without prejudice to any other rights the Authority may have under this Contract, the Authority may, in its sole discretion, uphold the complaint and take any action specified in clause B28 (*Default and Failure to Supply*).

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B18. SERVICE REVIEW

- B18.1. The Provider must each quarter of this Contract deliver to the Authority a Service Quality Performance Report against the factors set out in Appendix J (*Service Quality Performance Report*).
- B18.2. The Provider must submit each Service Quality Performance Report in the form and manner specified in Appendix J (*Service Quality Performance Report*).

B19. REVIEW MEETINGS

- B19.1. The Parties must review and discuss Service Quality Performance Reports and monitor performance of the Contract and consider any other matters reasonably required by either Party at Review Meetings which should be held in the form and intervals set out in Appendix K (*Details of Review Meetings*).
- B19.2. Notwithstanding clause B19.1, if either the Authority or the Provider:
- a) reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution; or
 - b) considers that a JI Report requires consideration sooner than the next scheduled Review Meeting,
- that Party may by notice require that a Review Meeting be held as soon as practicable and in any event within 5 Business Days following that notice.
- B19.3. In the event that a Review Meeting reveals that the Provider is not, in the reasonable opinion of the Authority, satisfactorily performing or meeting its obligations under this Contract the Authority may take such action as it considers appropriate further to the provisions of clause 28 (*Defaults and Failure to Supply*)

B20. CO-OPERATION

- B20.1. The Parties must at all times act in good faith towards each other.
- B20.2. The Provider must co-operate fully and liaise appropriately with:
- a) the Authority;
 - b) any third party provider who the Service User may be transferred to or from the Provider;
 - c) any third party provider which may be providing care to the Service User at the same time as the Provider's provision of the relevant Services to the Service User; and
 - d) primary, secondary and social care services,
- in order to:
- e) ensure that a consistently high standard of care for the Service User is at all times maintained;
 - f) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;
 - g) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Authority's or members of the public.

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B21. WARRANTIES AND REPRESENTATIONS

B21.1. The Provider warrants and represents that:

- a) It has full capacity and authority to enter into this Contract and all necessary Consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it or any of its assets;
- c) in entering this Contract it has not committed any Fraud;
- d) all reasonably material information supplied by it to the Authority during the award procedure leading to the execution of this Contract is, to its reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Authority which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Contract;
- e) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract;
- f) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract;
- g) in the 3 years prior to the Commencement Date:
 - (i) It has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) It has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) It has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on going business concern or its ability to fulfil its obligations under this Contract; and
- h) No proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.
- i) the Provider warrants that the signing of this Contract on its behalf has been validly authorised and the obligations expressed as being assumed by the Provider under this Contract constitute valid legal and binding obligations of the Provider enforceable against the Provider in accordance with their terms.
- j) The Provider acknowledges and confirms that:
 - (i) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
 - (ii) it has received all information requested by it from the Authority pursuant to sub-clause B.21.1j(i) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
 - (iii) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to sub-clause B.21.1.j(ii);
 - (iv) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
 - (v) it has entered into this Contract in reliance on its own diligence

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(vi) as at the Commencement Date, the Provider warrants and represents that all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract AND shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services

(vii) The Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Provider in accordance with sub-clause B.21.1.j.(vi) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Provider could not reasonably have known that the information incorrect or misleading at the time such information was provided.

- k) The Provider agrees that where requested in writing during the term of this Contract it will ensure that an appropriately authorised representative of the Provider shall attend a Committee meeting of the Authority at its own cost upon being invited to do so by the Authority

B21.2. The Authority warrants and represents that:

- a) it has full power and authority to enter into this Contract and all necessary approvals and consents have been obtained and are in full force and effect;
- b) its execution of this Contract does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it;
- c) it has the right to permit disclosure and use of Confidential Information for the purpose of this Contract; and
- d) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Contract.

B21.3. The warranties set out in this clause B21 are given on the Commencement Date and repeated on every day during the term of this Contract.

B22. VARIATIONS

B22.1. This Contract may not be amended or varied other than in accordance with this clause B22.

B22.2. Either Party may from time to time during the term of this Contract, by written notice to the other Party, request a Variation. A Variation Notice must set out in as much detail as is reasonably practicable the proposed Variation(s).

B22.3. If a Variation Notice is issued, the Authority and the Provider must enter into good faith negotiations for a period of not more than 30 Business Days from the date of that notice (unless such period is extended by the Parties in writing) with a view to reaching agreement on the proposed Variation, including on any adjustment to the Charges that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree a proposed Variation within such time period (or extended time period), the proposed Variation shall be deemed withdrawn and the Parties shall continue to perform their obligations under this Contract.

B22.4. No Variation to this Contract will be valid or of any effect unless agreed in writing by the Authority Representative (or his nominee) and the Provider Representative (or his nominee) in accordance with clause A5 (*Notices*). All agreed Variations shall form an addendum to this Contract and shall be recorded in Appendix L (*Agreed Variations*).

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B23. ASSIGNMENT AND SUB-CONTRACTING

- B23.1. The Provider must not assign, delegate, transfer, sub-contract, charge or otherwise dispose of all or any of its rights or obligations under this Contract without the Authority in writing:
- a) consenting to the appointment of the Sub-contractor (such consent not to be unreasonably withheld or delayed); and
 - b) approving the Sub-contract arrangements (such approval not to be unreasonably withheld or delayed) which shall include the addition of any of the clauses in this Contract to the Sub-contract as the Authority may reasonably require
- B23.2. The Authority's consent to sub-contracting under clause B23.1 will not relieve the Provider of its liability to the Authority for the proper performance of any of its obligations under this Contract and the Provider shall be responsible for the acts, defaults or neglect of any Sub-contractor, or its employees or agents in all respects as if they were the acts, defaults or neglect of the Provider.
- B23.3. Any sub-contract submitted by the Provider to the Authority for approval of its terms, must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Contract to the extent practicable.
- B23.4. The Authority may assign, transfer, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the consent of the Provider.

B24. AUDIT AND INSPECTION

- B24.1. The Provider must comply with all reasonable written requests made by, the National Audit Office, any Authorised Person and the authorised representative of the Local HealthWatch for entry to the Provider's Premises and/or the premises of any Sub-contractor for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Provider may refuse such request to enter the Provider's Premises and/or the premises of any Sub-contractor where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User.
- B24.2. Subject to Law and notwithstanding clause B24.1, an Authorised Person may enter the Provider's Premises and/or the premises of any Sub-contractor without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Practice (also taking into consideration the nature of the Services and the effect of the visit on Service Users), the Provider must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.
- B24.3. Within 10 Business Days of the Authority's reasonable request, the Provider must send the Authority a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with the Law.
- B24.4. The Authority shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- B24.5. During any audit undertaken under clause B24.1 or B24.2, the Provider must provide the Authority with all reasonable co-operation and assistance in relation to that audit, including:
- a) all reasonable information requested within the scope of the audit;

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- b) reasonable access to the Provider's Premises and/or the premises of any Sub-contractor; and
- c) access to the Staff.

B25. INDEMNITIES

- B25.1. The Provider shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation, breach of its statutory duties or breach of an obligation under the DPA and GDPR and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with:
- (a) The performance, defective performance or otherwise of this Contract by the Provider or its Staff
 - (b) Any claim made against the Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the provision of the Services
 - (c) Any claim made against the Authority by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Provider or the Staff; and
 - (d) Any claim made against the Authority by a third party for death, personal injury or damage to property arising out of, or in connection with the delivery of the Services and performance of this Contract to the extent that the defective performance is attributable to the acts or omissions of the Provider or the Staff
- B25.2. The Authority shall indemnify the Provider against all reasonable claims, costs and expenses which the Provider may incur and which arise, directly from the Authority's breach of any of its obligations under this Contract or breach of statutory duty or breach of an obligation under the DPA.

B26. LIMITATION OF LIABILITY

- B26.1. Each Party must at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to be indemnified by or bring a claim against the other Party pursuant to this Contract
- B26.2. Nothing in this Contract will exclude or limit the liability of either Party for:
- a) death or personal injury caused by its negligence; or
 - b) fraud or fraudulent misrepresentation.

B27. INSURANCE

- B27.1. The Provider must at its own cost effect and maintain with a reputable insurance company the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Contract, including death or personal injury, loss of or damage to property or any other such loss. Such policies must include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- B27.2. the Provider shall ensure that all its professional consultants or Sub-Contractors (which for the purpose of this clause shall include all Postural Stability Instructors) involved in the provision of the Services hold and maintain equivalent policy cover which indemnifies the Provider and the Authority for negligent acts arising out of the performance of this Contract.

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- B27.3. The provision of any insurance or the amount or limit of cover will not relieve or limit the Provider's liabilities under this Contract.
- B27.5 The Provider shall hold and maintain the insurances required under this Contract for a minimum of 6 years following the expiration or earlier termination of this Contract
- B27.6 The Provider warrants that it has complied with this clause B27 and shall provide the Authority with certified copies of the relevant policy documents (including any warranties or exclusions) together with receipts or other evidence of payment of the latest premiums due under those policies prior to the commencement of this Contract and annually thereafter throughout the duration of this Contract.
- B27.7 The Provider shall:
- (a) do nothing to invalidate any insurance policy
 - (b) notify the Authority if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change
- B27.8 Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":
- B27.9 if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Provider shall immediately submit to the Authority:
- (i) details of the policy concerned; and
 - (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and
- B27.10 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Provider shall:
- (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
 - (ii) if the Provider is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

B28. DEFAULTS AND FAILURE TO SUPPLY

- B28.1. In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of this Contract by the Provider, then the Authority may, without prejudice to any other rights or remedies it may have under this Contract including under clause B29, consult with the Provider and then do any of the following:
- a) require the Provider to submit a performance improvement plan detailing why the material breach has occurred and how it will be remedied within 10 Business Days or such other period of time as the Authority may direct;
 - b) without terminating this Contract, suspend the affected Service in accordance with the process set out in clause B31;
 - c) without terminating the whole of this Contract, terminate this Contract in respect of the affected part of the Services only in accordance with clause B32 (whereupon a corresponding reduction in the Charges shall be made) and thereafter the Authority may supply or procure a third party to supply such part of the Services.
- B28.2. If the Authority exercises any of its rights under clause B28.1, the Provider must indemnify the Authority for any costs reasonably incurred (including reasonable professional costs and any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment

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

B29. CONTRACT MANAGEMENT

B29.1. If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Outcomes Indicator as set out in Appendix C (*Quality Outcomes Indicators*) and the Provider fails to meet the Quality Outcomes Indicator, the Authority may exercise the agreed consequence immediately and without issuing a Contract Query, irrespective of any other rights the Authority may have under this clause B29.

B29.2. The provisions of this clause B29 do not affect any other rights and obligations the Parties may have under this Contract.

B29.3. Clauses B29.19, B29.23, B29.24 and B29.26 will not apply if the Provider's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Authority.

Contract Query

B29.4. If the Authority has a Contract Query it may issue a Contract Query Notice to the Provider.

B29.5. If the Provider has a Contract Query it may issue a Contract Query Notice to the Authority.

Excusing Notice

B29.6. The Receiving Party may issue an Excusing Notice to the Issuing Party within 5 Business Days of the date of the Contract Query Notice.

B29.7. If the Issuing Party accepts the explanation set out in the Excusing Notice, it must withdraw the Contract Query Notice in writing within 10 Business Days following the date of the Contract Query Notice.

Contract Management Meeting

B29.8. Unless the Contract Query Notice has been withdrawn, the Authority and the Provider must meet to discuss the Contract Query and any related Excusing Notice within 10 Business Days following the date of the Contract Query Notice.

B29.9. At the Contract Management Meeting the Authority and the Provider must agree either:

- a) that the Contract Query Notice is withdrawn; or
- b) to implement an appropriate Remedial Action Plan; or
- c) to conduct a Joint Investigation.

B29.10. If a Joint Investigation is to be undertaken:

- a) the Authority and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 4 weeks) and the representatives from each Party to participate in the Joint Investigation.
- b) the Authority and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

Joint Investigation

B29.11. On completion of a Joint Investigation, the Authority and the Provider must produce and agree a JI Report. The JI Report must include (without limitation) a recommendation to be considered at the next Review Meeting that either:

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- a) the Contract Query be closed; or
- b) Remedial Action Plan be agreed and implemented.

B29.12. Either the Authority or the Provider may require a Review Meeting to be held at short notice in accordance with the provisions of this Contract to consider a JI Report.

Remedial Action Plan

B29.13. If a Remedial Action Plan is to be implemented, the Authority and the Provider must agree the contents of the Remedial Action Plan within:

- a) 5 Business Days following the Contract Management Meeting; or
- b) 5 Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause B29.11.

B29.14. The Remedial Action Plan must set out:

- a) milestones for performance to be remedied;
- b) the date by which each milestone must be completed; and
- c) subject to the maximum sums identified in clause B29.23, the consequences for failing to meet each milestone by the specified date.

B29.15. The Provider and the Authority must implement or meet the milestones applicable to it within the timescales set out in the Remedial Action Plan.

B29.16. The Authority and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Authority and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.

B29.17. If following implementation of a Remedial Action Plan:

- a) the matters that gave rise to the relevant Contract Query Notice have been resolved, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed;
- b) any matter that gave rise to the relevant Contract Query Notice remains in the reasonable opinion of the Authority or the Provider unresolved, either may issue a further Contract Query Notice in respect of that matter.

Withholding Payment for Failure to Agree Remedial Action Plan

B29.18. If the Authority and the Provider cannot agree a Remedial Action Plan within the relevant period specified in clause B29.13, they must jointly notify the Boards of Directors of both the Provider and the Authority.

B29.19. If, 10 Business Days after notifying the Boards of Directors, the Authority and the Provider still cannot agree a Remedial Action Plan, the Authority may withhold up to 2% of the monthly sums payable by it under clause B8 (Charges and Payment) for each further month the Remedial Action Plan is not agreed.

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- B29.20. The Authority must pay the Provider any sums withheld under clause B29.19 within 10 Business Days of receiving the Provider's agreement to the Remedial Action Plan. Unless clause B29.25 applies, those sums are to be paid without interest.

Exception Reports

- B29.21. If a Party breaches a Remedial Action Plan and does not remedy the breach within 5 Business Days of its occurrence, the Provider or the Authority (as the case may be) may issue a First Exception Report to that Party's chief executive and/or Board of Directors. If the Party in breach is the Provider, the Authority may withhold payment from the Provider in accordance with clause B29.23.

- B29.22. If following issue of the First Exception Report, the breach of the Remedial Action Plan is not rectified within the timescales indicated in the First Exception Report, the Authority or the Provider (as the case may be) may issue a Second Exception Report to:

- a) the relevant Party's chief executive and/or Board of Directors; and/or;
- b) any applicable Regulatory Body,

in order that each of them may take whatever steps they think appropriate.

Withholding of Payment at First Exception Report for Breach of Remedial Action Plan

- B29.23. If the Provider breaches a Remedial Action Plan:
- a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority under clause B8 (Charges and Payment), from the date of issuing the First Exception Report and for each month the Provider's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority under clause B8 (Charges and Payment) in relation to each Remedial Action Plan;
 - b) the Authority must pay the Provider any sums withheld under clause B29.23(a) within 10 Business Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to clause B29.25, no interest will be payable on those sums.

Retention of Sums Withheld at Second Exception Report for Breach of Remedial Action Plan

- B29.24. If the Provider is in breach of a Remedial Action Plan the Authority may, when issuing any Second Exception Report retain permanently any sums withheld under clause B29.23.

Unjustified Withholding or Retention of Payment

- B29.25. If the Authority withholds sums under clause B29.19 or clause B29.23 or retain sums under clause B29.24, and within 20 Business Days of the date of that withholding or retention (as the case may be) the Provider produces evidence satisfactory to the Authority that the relevant sums were withheld or retained unjustifiably, the Authority must pay those sums to the Provider within 10 Business Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld or retained. If the Authority does not accept the Provider's evidence the Provider may refer the matter to Dispute Resolution.

Retention of Sums Withheld on Expiry or Termination of this Contract

- B29.26. If the Provider does not agree a Remedial Action Plan:
- a) within 6 months following the expiry of the relevant time period set out in clause B29.13; or

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b) before the Expiry Date or earlier termination of this Contract,

whichever is the earlier, the Authority may retain permanently any sums withheld under clause B29.19.

B29.27. If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Authority may retain permanently any sums withheld under clause B29.23.

B30. DISPUTE RESOLUTION

B30.1. If the Parties are in Dispute, they must seek in good faith to resolve the Dispute following the process set out in Appendix M (*Dispute Resolution*), unless the Parties agree and set out an alternative dispute resolution process in the Special Conditions in which case the process in the Special Conditions will prevail.

B31. SUSPENSION AND CONSEQUENCES OF SUSPENSION

B31.1. A suspension event shall have occurred if:

- a) the Authority reasonably considers that a breach by the Provider of any obligation under this Contract:
 - (i) may create an immediate and serious threat to the health or safety of any Service User; or
 - (ii) may result in a material interruption in the provision of any one or more of the Services; or
- b) clause B31.1 does not apply, but the Authority, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of a Service or Services; or
- c) the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any Consent,

(each a ***Suspension Event***).

B31.2. Where a Suspension Event occurs the Authority:

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

B31.3. During the suspension of any Service under clause B31.2, the Provider must comply with any steps the Authority reasonably specifies in order to remedy the Suspension Event, including where the Authority's decision to suspend pursuant to clause B31.2 has been referred to dispute resolution under clause B30 (*Dispute Resolution*).

B31.4. During the suspension of any Service under clause B31.2, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

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- a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause B31.2; and/or
 - b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with clause B31.5.
- B31.5. The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Service.
- B31.6. Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Authority in respect of any Losses directly and reasonably incurred by the Authority in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service).
- B31.7. Following suspension of a Service the Provider must at the reasonable request of the Authority and for a reasonable period:
- a) co-operate fully with the Authority and any Successor Provider of the suspended Service in order to ensure continuity and a smooth transfer of the suspended Service and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Authority or members of the public; and
 - b) at the cost of the Provider:
 - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Service by an alternative Successor Provider; and
 - (ii) deliver to the Authority all materials, papers, documents and operating manuals owned by the Authority and used by the Provider in the provision of the suspended Service.
- B31.8. As part of its compliance with clause B31.7 the Provider may be required by the Authority to agree a transition plan with the Authority and/or any alternative Successor Provider.
- B31.9. If it is determined, pursuant to clause B30 (*Dispute Resolution*), that the Authority acted unreasonably in suspending a Service, the Authority must indemnify the Provider in respect of any Loss directly and reasonably incurred by the Provider in respect of that suspension.
- B31.10. Not Used.

B32. TERMINATION

- B32.1. Either Party may voluntarily terminate this Contract or any Service by giving the other Party not less than 3 months' written notice at any time after the Service Commencement Date.
- B32.2. The Authority may terminate this Contract in whole or part with immediate effect by written notice to the Provider if:
- a) the Provider is in persistent or repetitive breach of the Quality Outcomes Indicators;
 - b) the Provider is in persistent breach of its obligations under this Contract;
 - c) the Provider:
 - (i) fails to obtain any Consent;
 - (ii) loses any Consent; or

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(iii) has any Consent varied or restricted,

the effect of which might reasonably be considered by the Authority to have a material adverse effect on the provision of the Services;

- d) the Provider has breached the terms of clause B39 (*Prohibited Acts*);
- e) any of the Provider's necessary registrations are cancelled by a Regulatory Body as applicable;
- f) the Provider materially breaches its obligations in clause B37 (*Data Protection*);
- g) two or more Second Exception Reports are issued to the Provider under clause B29.22 (*Contract Management*) within any rolling 6 month period which are not disputed by the Provider, or if disputed, are upheld under Dispute Resolution;
- h) the Provider breaches the terms of clause B23 (*Assignment and Sub-contracting*);
- i) a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- j) the Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- k) the Provider has breached any of its obligations under this Contract and that breach materially and adversely affects the provision of the Services in accordance with this Contract, and the Provider has not remedied that breach within 30 Business Days following receipt of notice from the Authority identifying the breach.
- l) [the NHS Business Services Authority has notified the Authority that the Provider or any Sub-Contractor has, in the opinion of the NHS Business Services Authority, failed in any material respect to comply with its obligations in relation to the NHS Pension Scheme (including those under any Direction Letter);]

Drafting note: To be used where Section C.2(B) applies

B32.3. Either Party may terminate this Contract or any Service by written notice, with immediate effect, if and to the extent that the Authority or the Provider suffers an event of Force Majeure and such event of Force Majeure persists for more than 30 Business Days without the Parties agreeing alternative arrangements.

B32.4. The Provider may terminate this Contract or any Service with immediate effect by written notice to the Authority if the Authority is in material breach of any obligation under this Contract provided that if the breach is capable of remedy, the Provider may only terminate this Contract under this clause B32.4 if the Authority has failed to remedy such breach within 30 Business Days of receipt of notice from the Provider to do so.

B33. CONSEQUENCE OF EXPIRY OR TERMINATION

B33.1. Expiry or termination of this Contract, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.

B33.2. On the expiry or termination of this Contract or termination of any Service for any reason the Authority, the Provider, and if appropriate any successor provider, will agree a Succession Plan and the Parties will comply with the provisions of the Succession Plan.

B33.3. On the expiry or termination of this Contract or termination of any Service the Provider must co-operate fully with the Authority to migrate the Services in an orderly manner to the successor provider.

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- B33.4. In the event of termination or expiry of this Contract, the Provider must cease to use the Authority's Confidential Information and on the earlier of the receipt of the Authority's written instructions or 12 months after the date of expiry or termination, return all copies of the Confidential Information to the Authority.
- B33.5. If, as a result of termination of this Contract or of any Service in accordance with this Contract (except any termination under clauses B32.4, B32.3 or if the Authority terminates under clause B32.1 (*Termination*), the Authority procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Provider for providing the same Service, then the Authority, acting reasonably, will be entitled to recover from the Provider (in addition to any other sums payable by the Provider to the Authority in respect of that termination) the excess cost and all reasonable related professional and administration costs it incurs (in each case) for a period of 6 months following termination.
- B33.6. The provisions of clauses B7 (*Staff*), B8 (*Charges and Payment*), B11 (*Incidents Requiring Reporting*), B13 (*Service User Health Records*), B14 (*Information*), B23 (*Assignment and Sub-contracting*), B24 (*Audit and Inspection*), B33 (*Consequence of Expiry or Termination*), B36 (*Confidentiality*) and B38 (*Freedom of Information and Transparency*) Section C (TUPE) will survive termination or expiry of this Contract.

B34. BUSINESS CONTINUITY

- B34.1. Not Used
- B34.2. Not Used

B35. COUNTER-FRAUD AND SECURITY MANAGEMENT

- B35.1. The Provider must put in place and maintain appropriate counter fraud and security management arrangements.
- B35.2. The Provider must take all reasonable steps, in accordance with good industry practice, to prevent Fraud by Staff and the Provider in connection with the receipt of monies from the Authority.
- B35.3. The Provider must notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- B35.4. If the Provider or its Staff commits Fraud in relation to this or any other contract with the Authority, the Authority may terminate this Contract by written notice to the Provider with immediate effect (and terminate any other contract the Provider has with the Authority) and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services for the remainder of the term of this Contract had it not been terminated.

B36. CONFIDENTIALITY

- B36.1. Other than as allowed in this Contract, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.
- B36.2. Subject to Clauses B36.3 and B36.4, the Receiving Party agrees:
- a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Contract;
 - b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
 - c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

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- B36.3. The Receiving Party may disclose the Disclosing Party's Confidential Information:
- a) in connection with any dispute resolution under clause B30 (*Dispute Resolution*);
 - b) in connection with any litigation between the Parties;
 - c) to comply with the Law;
 - d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause B36.2;
 - e) to comply with a regulatory bodies request.
- B36.4. The obligations in clause B36.1 and clause B36.2 will not apply to any Confidential Information which:
- a) is in or comes into the public domain other than by breach of this Contract;
 - b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
 - c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- B36.5. The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this clause B36.
- B36.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause B36 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause B36.
- B36.7. This clause B36 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- B36.8. The obligations in clause B36.1 and clause B36.2B shall not apply where the Confidential Information is related to an item of business at a board meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is related to an executive decision of the Authority and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

B37. DATA PROTECTION

- B37.1. The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- B37.2. To the extent that the Provider is acting as a Data Processor on behalf of the Authority, the Provider shall, in particular, but without limitation:
- a) only process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instruction given by the Authority under this Contract;

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- b) put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements in clause Error! Reference source not found.~~Error! Reference source not found.~~^{B37.3} below, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction;
- c) take reasonable steps to ensure the reliability of Staff who will have access to such Personal Data, and ensure that such Staff are properly trained in protecting Personal Data;
- d) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;
- e) promptly notify the Authority of any requests for disclosure of or access to the Personal Data;
- f) Promptly notify the Authority of any breach of the security measures required to be put in place pursuant to this clause B37;
- g) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

B37.3. To the extent that any Authority data is held and/or processed by the Provider, the Provider shall supply that Authority data to the Authority as requested by the Authority.

B37.4. The Provider and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law.

Data Security

B37.5 Subject to clauses B37.6. to B37.10., the Provider shall be liable to the Authority for loss or corruption of any Authority Data, if and to the extent that such loss or corruption results from an act or omission of the Provider or from any default of the Provider.

B37.6 In the event of loss or corruption of Authority Data resulting from an act or omission of the Provider or a default of the Provider, the Provider shall return such data and software to a fully operational state as soon as is reasonably practicable thereafter. The Provider shall promptly notify the Authority (via the Authority's ICT Helpdesk) within one (1) Business Day if at any time the Provider becomes aware, suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, and inform the Authority of the remedial action the Provider proposes to take.

B37.7 If the Provider fails to comply with clause B37.6, and within any reasonable period notified to the Provider, the Provider fails to take any remedial action in respect of its breach of clause B37.6 as required by the Authority, the Authority may itself restore or procure the restoration of Authority Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so including the restoration of the Authority Data

Audit

B37.8 For the duration of this Contract and for a period of 6 years after the Expiry Date or date of termination if earlier, the Authority may conduct or be subject to an audit for the following purposes:

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- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all suppliers (including Sub-Contractors) of the Services at the level of detail agreed in Appendix E (Charges);
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any Service Users;
- (c) to review the Provider's compliance with the DPA GDPR, the FOIA, in accordance with this clause B37 (Data Protection) and clause B38 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Provider in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) for the purposes of the Local Government Finance Act 1982 (and any other Law relating to the inspection, examination and auditing of the Authority's accounts);
- (h) to carry out an examination pursuant to the Authority's Best Value Duty;
- (i) to verify the accuracy and completeness of the reports delivered or required by this Contract.

B37.9 Except where an audit is imposed on the Authority by a regulatory body or further audits are required as a result of any non-compliance by the Provider with their obligations under this Contract, the Authority may not conduct an audit under this clause B37 more than twice in any calendar year.

B37.10 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services

B37.11 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

(a) all information requested by the above persons within the permitted scope of the audit, to include examining such documents as reasonably required which are owned, held or otherwise within the control of the Provider and any Sub-Contractor and may require the Provider and any Sub-Contractor to produce such oral or written explanations as the Authority or relevant regulatory body considers necessary;

(b) reasonable access to any sites controlled by the Provider and to any equipment (including, but not limited to, any software, IT systems, materials, data or information stored on, accessed by or used to operate the equipment) used (whether exclusively or non-exclusively) in the performance of the Services; and

(c) access to the Provider's Staff

B37.12 The Authority shall endeavour to (but is not obliged to) provide at least 5 Business Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit

B37.13 For the purposes of this clause B37 any reference to the Authority carrying out an audit shall include the ability for that audit to be carried out by the District Auditor, the Authority's internal auditor or any external auditor appointed by the Authority.

B37.14 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

B37.15 If an audit identifies that:

(a) the Provider has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a Remedial Action Plan. If the Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Provider's costs, then the Remedial Action Plan shall include a requirement for the provision of all such information;

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(b) the Authority has overpaid any Charges, the Provider shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Provider fails to make this payment; and

(c) the Authority has underpaid any Charges, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Provider in relation to invoicing within 20 days;

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DATA AND INFORMATION

B37.16 The Provider acknowledges that the Authority's Data is the property of the Authority and the Authority reserves all IPRs which may, at any time, subsist in the Authority's Data. To the extent that any IPRs in any of the Authority's Data vest in the Provider by operation of law, such IPRs shall be assigned by the Provider to the Authority by operation of this clause 26 immediately upon the creation of such Authority's Data.

B37.17 The Provider shall:

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

B37.18 The Authority hereby grants to the Provider, for the Term, a non-exclusive, non-transferable, royalty-free licence to use the Authority's Data solely for the purpose of meeting, and to the extent necessary to meet, its obligations under this Contract. The Provider shall not:

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

B37.19 To the extent that any Authority Data is held or processed by the Provider, the Provider shall supply such Authority Data to the Authority as may be requested by the Authority from time to time in the format specified by the Authority.

B37.20 On receipt or creation by the Provider of any Authority Data and during any collection, processing, storage and transmission by the Provider of any Authority Data, the Provider shall take, and shall procure that each of the Provider's Personnel shall take, all precautions necessary to preserve the security and integrity of the Authority's Data and to prevent any corruption or loss of the Authority's Data.

B37.21 The Provider acknowledges that the Authority is under transparency obligations stemming from the DCLG Code of Practice on Data transparency and the Provider shall assist the Authority in complying with its obligations in respect of data transparency.

B38. FREEDOM OF INFORMATION AND TRANSPARENCY

B38.1. Where the Parties are both Public Authorities within the meaning of the FOIA, the Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

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- B38.2. If the Provider is not a Public Authority, the Provider acknowledges that the Authority is subject to the requirements of the FOIA and will assist and co-operate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees and shall procure that all its sub-contractors agree:
- a) that this Contract and any other recorded information held by the Provider on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA;
 - b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Authority;
 - c) that if the Provider receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Authority) and will promptly (and in any event within 2 Business Days) transfer the request to the Authority;
 - d) that the Authority, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
 - e) to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Authority within 5 Business Days of such request and without charge.
- B38.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.
- B38.4. Notwithstanding any other provision of this Contract, the Provider hereby consents to the publication of this Contract in its entirety including from time to time agreed changes to this Contract subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- B38.5. In preparing a copy of this Contract for publication pursuant to clause B38.4 the Authority may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Authority's absolute discretion.
- B38.6. The Provider must assist and co-operate with the Authority to enable the Authority to publish this Contract.
- B38.7. In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Authority will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to this Contract. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.
- B38.8. The Authority shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA or any other law, of any information (including exempt information) whether relating to this Contract or otherwise relating to any other party.

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- B38.9. The Provider shall ensure that all Information required to be produced or maintained under the terms of this Contract, or by law or professional practice or in relation to the Contract is retained for disclosure for at least the duration of the Contract plus one year together with such other time period as required by the Contract, law or practice and shall permit the Authority to inspect such records as requested from time to time.
- B38.10 The Provider shall notify the Authority of any Commercially Sensitive Information provided to the Authority together with details of the reasons for its sensitivity and the Provider acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Authority may be obliged to disclose such information.
- B38.11 Provide, at the Provider's expense, all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- B38.12 The Provider acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:
- B38.12.1** in certain circumstances without consulting the Provider; or
B38.12.2 following consultation with the Provider and having taken their views into account;

provided always that where sub-clause B38.12.1 above applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- B38.13 The Provider shall ensure that all Information required to be produced or maintained under the terms of this Contract, or by law or professional practice or in relation to the Contract is retained for disclosure for at least the duration of the Contract plus one year together with such other time period as required by the Contract, law or practice and shall permit the Authority to inspect such records as requested from time to time.
- B38.14 The Authority shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other law, of any information (including Exempt Information) whether relating to this Contract or otherwise relating to any other party.

B38. PROHIBITED ACTS

- B38.12. Neither Party shall do any of the following:
- a) offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Contract or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the other Party; and
 - b) in connection with this Contract, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,
- (together "**Prohibited Acts**").

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- B39.2 The Provider:
- a) shall not, and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act
 - b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract
 - c) shall notify the Authority immediately if any breach of this clause B39 is suspected or known. Where such notification has been given to the Authority, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Contract.
- B39.3. If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Contract, the non-defaulting Party shall be entitled:
- a) to exercise its right to terminate under clause B32.2 (*Termination*) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
 - b) to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
 - c) to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.
- B39.4. Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.
- B39.5. The Provider must have in place an anti-bribery policy for the purposes of preventing any of its Staff from committing a prohibited act under the Bribery Act 2010. Such policy must be disclosed to the Authority within 5 Business Days of the Authority requesting it and enforced by the Provider where applicable.
- B39.6. Should the Provider become aware of or suspect any breach of this clause B38, it will notify the Authority immediately. Following such notification, the Provider must respond promptly and fully to any enquiries of the Authority, co-operate with any investigation undertaken by the Authority and allow the Authority to audit any books, records and other relevant documentation.
- B39.7 The Provider shall, within 10 Working Days of a request from the Authority, certify to the Authority in writing (such certification to be signed by an authorised officer of the Provider) the Provider's compliance with this clause B39.
- B39.8 Despite clause B30 (Dispute Resolution), any dispute relating to:
- a) the interpretation of this clause B39; or
 - b) the amount or value of any gift, consideration or commission
- Shall be determined by the Authority and its decision shall be final and conclusive

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B39.9 Any termination under this clause B39 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority

B40. FORCE MAJEURE

B40.1. Where a Party is (or claims to be) affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Contract as soon as practicable and use its reasonable efforts to remedy its failure to perform its obligations under this Contract.

B40.2. Subject to clause B40.1, the Party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Contract to the extent that because of the event of Force Majeure it is not able to perform its obligations under this Contract.

B40.3. In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:

- a) promptly give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract;
- c) use reasonable endeavours to carry out its obligations under this Contract in any way that is reasonably practicable; and
- d) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

B40.3. A Party cannot claim relief as a result of an event of Force Majeure, if the event of Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant event of Force Majeure.

B40.4. The Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.

B40.4. As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Good Practice.

B40.5. The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

B40.5. The Authority shall not be entitled to exercise its rights to withholdings and/or deduction of payments under this Contract, to the extent that the circumstances giving rise to such rights arise as a result of an event of Force Majeure.

B40.6. The Authority may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 25 Business Days.

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B41. THIRD PARTY RIGHTS

B41.1. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

B42. CAPACITY

B42.1. Without prejudice to the contractual rights and/or remedies of the Provider expressly set out in this Contract, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon the Authority or in any way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability on the part of the Authority under this Contract (howsoever arising) in any capacity other than as contracting counterparty.

B43. SEVERABILITY

B43.1. If any provision or part of any provision of this Contract is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Contract and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Contract.

B44. WAIVER

B44.1. Any relaxation or delay by either Party in exercising any right under this Contract will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

B45. PUBLICITY

B45.1. Without prejudice to clause B38 (*Freedom of Information and Transparency*), except with the written consent of the Authority, (such consent not to be unreasonably withheld or delayed), the Provider must not make any press announcements in relation to this Contract in any way.

B45.2. The Provider must take all reasonable steps to ensure the observance of the provisions of clause B45.1 by all its staff, servants, agents, consultants and sub-contractors.

B46. EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

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

B47. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT REGULATIONS 2006 (TUPE))

The Parties agree that the provisions of Section C (TUPE) shall apply to any Relevant Transfer of Staff under this Contract

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B48 INTELLECTUAL PROPERTY

B48.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Provider or any employee, agent or sub-contractor of the Provider:

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

B48.2 The provisions of clause B48.1 shall not override any pre-existing binding contractual terms with agents or Sub-Contractors in respect of Intellectual Property which reserve rights of ownership to the agent or Sub-Contractor which the Provider entered into prior to the Commencement Date and which were within the knowledge of the Authority at the Commencement Date.

B48.3 The Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

B48.4 This provision shall survive the expiration or termination of the Contract

B49. GOVERNING LAW AND JURISDICTION

B49.1. This Contract will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.

B49.2. Subject to the provisions of clause B30 (Dispute Resolution), the Parties agree that the courts of England have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract.

APPENDIX A

SERVICE SPECIFICATIONS

Service Specification No.	POCV 007
Service	Shropshire Community Postural Stability Instruction Pilot Programme
Authority Lead	[REDACTED]
Provider Lead	[REDACTED]
Period	Initial Term: 2 years, 6 months with an option to extend for a further 6 months
Date of Review	TBC upon award of Contract

1. Population Needs

1.1 National/local context and evidence base

Background:

Falls are a major cause of disability and the leading cause of mortality resulting from injury in people aged over 75 years in the UK. Between 30% – 50% of people aged over 60 fall each year.

It is estimated that around 19,000 older people will fall in Shropshire each year and that around 3,800 of those will have injurious falls. One third of people aged over 60, and half of those aged over 80, are likely to fall at least once a year. Falls can result in fractures, particularly in those with osteoporosis. The consequences can be life changing and life threatening – around 30% of older people who sustain a hip fracture die within a year.

Falls are not, however, an inevitable part of ageing. Falls prevention work seeks to prevent the first fall, prevent the next fall, prevent an injurious fall and reduce the severity of injuries from falls. In so doing, it aims not only for better health and greater independence for older people, but also for:

- savings to the NHS (in ambulance call-outs, A&E attendance, hospital admissions, outpatient care, community care) and
- Savings to Adult Social Care (for example, after an osteoporotic fracture, 50% of patients can no longer live independently).

NICE guidelines CG161 (June 2013) recommends strength and balance training for older people living in the community with a history of recurrent falls and/or balance and gait deficit. A muscle-strengthening and balance programme should be offered.

A collaborative and whole system approach to prevention, response and treatment includes evidenced based strength and balance programmes for those at risk of falls.

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Current position: There is a significant gap in therapeutic community based exercise for reducing risk of falls prevention. Research evidence makes clear that effective therapeutic exercise for falls prevention must be highly challenging, progressive and of sufficient “dose” (at least 50 hours), but ongoing exercise is necessary for a lasting effect to prevent falls¹.

The current Falls Prevention Service (SCHT) provides 1-13 weeks exercise programmes in 7 locations in Shropshire, (includes 1 session for assessments) but the lack of ‘follow-on’ or maintenance sessions results in service users having no opportunity to continue with specific falls prevention group exercise and continue or maintain the improvements made.

To reduce waiting list there is also a need to refer patients at lower risk to a community PSI programme thereby enabling the physiotherapist-led Falls Prevention Service (SCHT) to focus on those at higher risk or with more complex needs.

Following a stakeholder event in August 2016, a cohort of independent exercise instructors have submitted formal interest in becoming training Postural Stability Exercise Instructors (Laterlife training) and delivering the Community PSI programme.

The Authority’s Public Health service has supported the commissioning of Shropshire Community Health Trust’s falls prevention services on behalf of the Shropshire Clinical Commissioning Group. The Authority’s Public Health service is now seeking to commission the additional provision of a two and half year Community Postural Stability Pilot programme.

The piloting of a community –based Postural stability exercise programme will inform the future design of Shropshire’s falls prevention services.

Falls Prevention is a key work programme for Shropshire’s Better Care Fund, Shropshire HWB Prevention Programmes, and the Community Fit Clinical Pathway for falls, fractures and frailty.

2. Key Service Outcomes

2.1 Insert any locally agreed outcomes and quality requirements which are NOT Quality Outcomes Indicators which should be set out in Appendix C (*Quality Outcomes Indicators*)

2.1.1 Outcome and performance measures

To include:

- Number of instructors completing PSI qualification and delivering the pilot programme
- Number of referrals to PSI (by referrer including SCHT services)
- Number of classes/session delivered
- Number of self-referrals made
- Numbers completing 12 weeks
- Number completing 20 weeks

¹

[prevent falls in older adults: an update meta-analysis and best practice recommendations](#)

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- Numbers reducing falls risk (by Tinnetti/TUAG score)
- Numbers reporting maintenance of evidence-based exercise at 3 months/6months
- Numbers reporting an injurious falls at 3month/6 months

Learning from the pilot to be shared with the commissioner will include

- Financial model to inform the future commissioning of falls prevention services
- Service user feedback

The Provider is required to:

2.1.2 Proactively build and maintain relationships with all relevant organisations and individuals including:

- Independent exercise instructors
- NHS community health services (ensuring referral routes are in place)
- Individuals and communities
- Providers of transport services

2.1.3: Recruit, train, contract and coordinate exercise instructors to deliver the community PSI classes to meet local needs, including roles and responsibilities.

2.1.4: Ensure instructors have and maintain the skills, knowledge and experience required for their roles including processes for information governance.

2.1.5: Develop and deliver standardised high quality community PSI classes to meet local needs and reduce local NHS falls prevention service waiting lists.

3. Scope

3.1 Aims and objectives of service

- To test and develop an effective sustainable model for the delivery of a single community-based postural stability programme to reduce the impact of falls and falls- related injuries.
- To increase access to evidence-based falls prevention intervention in the community
- To reduce preventable falls and their impact on individuals, NHS services and Social Care resources.
- To inform future falls prevention commissioning decisions.

Scope of Work

The Provider will coordinate and manage the delivery of the Community PSI programme in 10 or more locations, which can include those not being covered by SCHAT Falls Prevention Service. The

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Provider will work alongside the Shropshire NHS falls and fracture services to ensure patients discharged from Shropshire NHS falls and fracture services at risk of a first fall or of further falls are given the opportunity to access falls exercise opportunities provision in the community

The target minimum number of classes to be delivered is 40, with each class being made up of 20 sessions of PSI or an equivalent number of sessions. The number and duration of classes may vary to meet local circumstances and costs, but the pilot seeks to optimise the number of classes and people accessing them within the available budget. The Provider will create a financial model to deliver the optimal number of classes within the funding available, working towards achieving the target number.

The programme will deliver postural stability exercise instruction classes for:

1. Over 60s assessed at level 1-3 on SCHAT's Physical Function Assessment Grid/Timed Up and Go including those:
 - Completing a SCHAT Falls Prevention programme requiring a 'follow-on' course.
 - Assessed by SCHAT Falls Prevention Programme as best suited to a community PSI class and not requiring their programme for Levels 3+-5.
 - Self-referrals

(It is anticipated that the majority of classes in the Community PSI programme will be at this level)

2. Over 60s assessed at level 3-5 on SCHAT's Stability Physical Function Assessment Grid/Timed Up and Go where the SCHAT Falls prevention Service does not have the capacity to deliver its 1-13 week programme.

In partnership with the Authority, the Provider will establish their cohort of independent exercise instructors and manage their postural stability instructor training course (LaterLife training). The number of independent exercise instructors to be trained will be agreed with the Authority but will not exceed 15.

The Provider will contract with the cohort of independent instructors for the delivery of the Community PSI programme. The Provider is not expected to employ individual instructors, but to contract them on a sessional basis. The Provider will determine the full responsibilities of the independent instructor and may wish to delegate some local level responsibilities.

The Provider will have responsibility for:

- Final recruitment of a cohort of independent exercise instructors (including, but not exclusive to those initially recruited by Help2Change following a stakeholder event on 31/08/16). All those recruited for the Community PSI programme must meet the entry requirements for the LaterLife PSI course and deliver an exercise class component of the Community PSI programme
- A locally delivered Level 4 Laterlife Postural Stability Instruction training course for the recruited cohort of exercise instructors (<http://www.laterlifetraining.co.uk>). This will be undertaken prior to the commencement of the Community PSI classes. The Provider will be responsible for all arrangements with the training provider, Later Life training.

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- Contractual arrangements with the cohort of independent exercise instructors for both PSI training and delivery of the programme of Community PSI classes.
- Provider responsibilities in operating a referral process with Shropshire Community Health Trust in compliance with necessary governance standards.
- The delivery of the PSI exercise programme.
- Organising appropriate venues and venue assessments
- Quality assurance using an agreed risk assessment methodology. The provider will ensure the required standards are maintained through on going quality monitoring of the exercise instructors delivering the PSI classes.
- Ensuring liability and insurance requirements are met.(Public Liability)
- Providing a central point for referrals (including self-referrals) and triage as required (as agreed with SCHAT Falls Prevention Service)
- Develop and promote direct access pathways / self-referral routes into PSI exercise classes and 'follow -on' activity in the community.
- Partnership/liaison with referring services, particularly the SCHAT Falls Prevention services staff
- Record keeping and performance management.
- Local promotion of classes for self-referral, including use of the Healthy Shropshire Directory
- Establishing the social component of the model (e.g. refreshment/dance/music)
- Implementing a system for managing patient contributions to offset costs.
- Monitoring Participant Feedback and Involvement
- Providing information to encourage and support home exercise and falls prevention, including participation in local or national relevant campaigns.
- Post intervention 'follow up' to be agreed with the commissioner.
- Provision of patient outcome information to referrers.
- Risk assessment for all aspects of the service.
- Coordinate the collection of outcome data and provide it to the commissioner in a written format on a quarterly and annual report basis(Years 1 and 2.5)
- Collaborative working with the Authority and SCHAT falls prevention service to determine the locality of PSI classes. As a pilot to test the potential for community based PSI delivery for falls prevention to reduce the demand on health and social care services the Provider will work collaboratively with the Authority and local health services to amend

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and improve the delivery model and maximise it's potential.

Qualified LLT PSI Falls Exercise Instructors contracted to the Provider to deliver the programme must:

- ❖ Demonstrate understanding of the needs of older people in relation to falls prevention exercise and the barriers for older people to accessing it.
- ❖ Have demonstrable skills in engaging and working with older populations, particularly regarding the dignity and respect of adults.
- ❖ Undertake training and become qualified in LaterLife Postural stability Instruction exercise
- ❖ Operate to safeguarding and information governance protocols.
- ❖ Deliver the exercise classes in line with the Provider's framework.
- ❖ Provide outcome data to the commissioner in a written format to include reduction in falls risk as measured by physical function scores and a measure of the impact on fear of falling for participants attending the sessions.

Purpose:

- To establish a delivery model for evidence-based community based exercise postural stability classes, enabling older people to be referred from local health services, particularly SCHAT NHS falls prevention classes.
- To create a cohort of independent exercise providers, qualified to deliver Postural Stability exercise for falls prevention to older adults (LaterLife training) as part of the local falls prevention infrastructure.
- To deliver a two year programme of evidence-based falls prevention postural stability classes in at least 10 locations across the administrative area of the Authority using the services of a cohort of qualified LaterLife PSI exercise instructors
- To establish a formal referral route so that the take-up of community PSI exercise becomes an integral part of the falls prevention pathway.
- To reduce the backlog of moderate risk falls prevention patients awaiting PSI (Assessed as level 1-3 on Falls Functional Grid).
- To provide open access to specific falls prevention exercise to older adults through self – referral, enabling more people to reduce their risk of falls through exercise to improve gait, balance and strength.
- Test the viability of client contributions to reduce costs through 'social' model for community PSI
- Support patients in taking responsibility for reducing their risk of falls through long-term adherence to improving and maintain gait, strength and balance
- Establish a clear patient journey from NHS services to community provision
- Promote social interaction, better mental wellbeing, reducing isolation.

3.2 Service description/pathway

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Access to the Service to be through:

- Referral from SCHAT services, including SCHAT falls Prevention Team. Patients identified and screened for falls risk by SCHAT staff (e.g. Timed Up and Go score of 1-3) will be eligible. The Provider will collaborate with SCHAT and the Authority in the development of a referral process. Additional sources of referral may be included during the term of this Contract.
- Self-referral. The Provider will undertake local promotion and networking with community organisations to generate self-referrals.
- The provider will act as a single point of referral, and ensure that exercise programmes are established to meet the referral demand.

3.3 Population covered

Classes are to be delivered for adults over 60 years in communities within the administrative area of Shropshire Council.

Classes to be delivered in key population areas to be agreed with the Authority, but to include Oswestry, Ludlow, Shrewsbury, Bridgnorth, Whitchurch.

3.4 Any acceptance and exclusion criteria and thresholds

The Service is open to over 60 years olds registered with a Shropshire GP practice, living in community dwellings.

Access to the Service to be through referrals from Shropshire NHS services, especially SCHAT, and falls prevention specialists, and self-referral.

3.4.1 Exclusion criteria:

- Care Home residents
- People who have cognitive problems and are unable to follow basic instructions,
- Some medical conditions identified on assessment whereby benefit from community falls prevention exercise interventions cannot be gained.

3.5 Interdependencies with other services

- Shropshire NHS services, especially SCHAT, and falls prevention specialists.
- Referral process to be developed in agreement between SCHAT, The Authority's Public Health service and the Provider.
- Community engagement in each locality.

3.6 Any activity planning assumptions

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The Provider must ensure that each Postural Stability Exercise Instructor completes the Laterlife Training Instruction course and has in place appropriate Public Liability Insurance Cover prior to the commencement of any Postural Stability classes undertaken as part of the delivery of the Services

4. Applicable Service Standards

4.1 Applicable national standards eg NICE

NICE guidelines CG161 (June 2013) recommends strength and balance training for older people living in the community with a history of recurrent falls and/or balance and gait deficit. A muscle-strengthening and balance programme should be offered

4.2 Applicable local standards

5. Location of Provider Premises

The Provider's Premises are located at:

N/A

6. Required Insurances: Public Liability Insurance Cover, Employment Liability Insurance Cover,

6.1 If required, insert types of insurances and levels of cover required

Public Liability Insurance: Minimum Indemnity Cover of £5 million pounds for any one event
Employers Liability Insurance Cover: Minimum Indemnity Cover of £5 million pounds for any one event

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APPENDIX B: CONDITIONS PRECEDENT

1. The Provider must provide the Authority with a copy of the following documents within 60 days (unless otherwise stated) of the Service Commencement Date:
 - a) Provider's and where applicable, sub-contractor's and Postural Stability Exercise Instructors registration with appropriate Regulatory Body (where applicable) and where the Provider must be so registered under the Law
 - b) Copies of all sub-contracts entered into by the Provider with respect to the delivery of the Services including the contracts held with Postural Stability Exercise Instructors
 - c) Evidence of the Required Insurances held by the Provider
 - d) Evidence of the Public Liability Insurances (with a minimum indemnity cover of £5 million for any one event) held by each of the Postural Stability Exercise Instructors 30 days prior to the first date that each of the Postural Stability Exercise Instructors intends to commence delivery of the Postural Stability classes upon completion of their Laterlife training
 - e) [a copy of the/each Direction Letter]
 - f) [Local Government Pension Scheme Admission Agreement]
 - g) Provide assurance to the Authority that good information governance practices are being maintained and the Provider must demonstrate, and will allow the Authority to audit, that it meets or exceeds the NHS Information Governance Toolkit standards required for their organisation type.

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APPENDIX C: QUALITY OUTCOMES INDICATORS

Quality Indicators	Outcomes	Threshold	Method of Measurement	Consequence of breach	Report due
Service User Experience			Survey/questionnaires	Review	6 monthly Quarterly report
PSI Instructor Satisfaction Survey			Questionnaires		
Access		Tbd in Yr 2 following Y1 review	Prompt access to PSI class following referral	Review	Quarterly report
Removing barriers		Tbd in Yr 2 following Y1 review	Implementation of referral pathways	Review/action plan	Quarterly report
Outcomes		Tbd in Yr 2 following Y1 review	Set activity outcomes	Review/action plan	Annual report
Quality of life			QoL questions included service follow up questionnaires/surveys	review	Annual report

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APPENDIX D: SERVICE USER, CARER AND STAFF SURVEYS

Form	Frequency	Reporting Process
Service user satisfaction questionnaire/survey	By classes, following service user's completion of a class of PSI sessions	6 monthly report
Follow up survey	at 3 and 6 months following completion of a class	Annual report

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APPENDIX E: CHARGES

For the Initial Term, a maximum payment of £138,000 (One Hundred and Thirty Eight Thousand Pounds) shall be paid to the Provider for the delivery of the Service as follows:

[Breakdown of the payments to be made to the Provider and payment intervals TBC upon award of contract]

[Please list the price(s) for the Services]

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APPENDIX F: SAFEGUARDING POLICIES

[Please append safeguarding vulnerable adults policy of Provider]

To be inserted by the Provider upon award of Contract

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APPENDIX G: INCIDENTS REQUIRING REPORTING PROCEDURE

The Provider must ensure that procedures are in place for reporting, investigating and learning from Serious Untoward Incidents and Patient Safety Incidents.

The Provider must provide a copy of its incident reporting procedure or describe comprehensively the system that is in place for dealing with Serious Untoward Incidents and Participant Safety incidents.

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APPENDIX H: INFORMATION PROVISION

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<i>Activity</i>				
<u>Activity Performance Indicators</u>	<u>Threshold</u>	<u>Method of measurement</u>	<u>Consequence of breach</u>	<u>Report Due</u>
<u>Number of instructors completing PSI qualification</u>		<u>Training body certification</u>	<u>Performance notice</u>	<u>Quarterly progress report and annual End of Year report</u>
<u>Number of instructors delivering the Psi programme</u>	<u>90%</u>	<u>Sub-contract</u>		
<u>Number of referrals from health services</u>	<u>Yr2 target to be set on Yr 1 figures</u>	<u>Recorded by class/instructor</u>		
<u>Number of self-referrals</u>	<u>Yr2 target to be set on Yr 1 figures</u>	<u>Recorded by class/instructor</u>		
<u>Number of participants assessed at baseline for risk of falls</u>		<u>Tinnetti/Time Up and Go scores (as per PSI training)</u>		
<u>Numbers completing 12 weeks Psi sessions</u>	<u>Yr2 target to be set on Yr 1 figures</u>	<u>Recorded by class/instructor</u>		
<u>Number completing 20 weeks</u>	<u>Yr2 target to be set on Yr 1 figures</u>	<u>Recorded by class/instructor</u>		
<u>Numbers assessed as reducing falls risk (by Tinnetti/TUAG score)</u>	<u>Yr2 target to be set on Yr 1 figures</u>	<u>End of intervention assessment</u>		
<u>Numbers/percentage reporting maintenance of evidence-based exercise at 3 months/6months</u>	<u>Yr2 target to be set on Yr 1 figures</u>	<u>Survey /questionnaire</u>		
<u>Open book accounting to demonstrate true costs and income generated as learning form the pilot</u>	<u>None</u>	<u>6 month report/end of year report</u>		
<u>Progress reports</u>	<u>Quarterly reports</u>	<u>Quarterly progress meetings with commissioner End of year report</u>		

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APPENDIX I: TRANSFER OF AND DISCHARGE FROM CARE PROTOCOLS

End of intervention requirements;

End of intervention activity	Method of measurement	Report due
Participants to be provided with end of intervention postural stability assessment results	End of intervention questionnaire	Quarterly
Participant to be provided with Home exercise information (on-line, printed)	End of intervention questionnaire	Quarterly
Participants to be signposted to local 'follow-on activities'	End of intervention questionnaire	Quarterly

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APPENDIX J: SERVICE QUALITY PERFORMANCE REPORT

The Provider will agree Quality Assurance procedures as identified in Later Life Postural Stability Instruction training.

This will include Service User feedback (service users satisfaction)

Any issues identified should be raised with the Authority as they are identified along with an action plan to resolve.

A quarterly summary of activity should be provided to the Authority

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APPENDIX K: DETAILS OF REVIEW MEETINGS

There will be monthly meeting to review progress with the Authority in the first quarter of the contract.

There will be Quarterly meetings to review the delivery of the contract between the Provider and the Authority, with representation from the SCHAT Falls Prevention service as deemed appropriate by the Authority.

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APPENDIX M: DISPUTE RESOLUTION

Part 1 of Appendix M – Dispute Resolution Process

1. ESCALATED NEGOTIATION

1.1 Except to the extent that any injunction is sought relating to a matter arising out of clause B36 (Confidentiality), if any Dispute arises out of or in connection with this Contract, the Parties must first attempt to settle it by either of them making a written negotiation offer to the other, and during the 15 Business Days following receipt of the first such offer (the “Negotiation Period”) each of the Parties shall negotiate in good faith and be represented:

1.1.1 for the first 10 Business Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter that led to the Dispute and has authority to settle the Dispute; and

1.1.2 for the last 5 Business Days, by its chief executive, director, or board member who has authority to settle the Dispute, provided that no Party in Dispute where practicable shall be represented by the same individual under paragraphs 1.1.1 and 1.1.2.

2. MEDIATION

2.1 If the Parties are unable to settle the Dispute by negotiation, they must within 5 Business Days after the end of the Negotiation Period submit the Dispute to mediation by CEDR or other independent body or organisation agreed between the Parties and set out in Part 2 of this Appendix M.

2.2 The Parties will keep confidential and not use for any collateral or ulterior purpose all information, whether given orally, in writing or otherwise, arising out of or in connection with any mediation, including the fact of any settlement and its terms, save for the fact that the mediation is to take place or has taken place.

2.3 All information, whether oral, in writing or otherwise, arising out of or in connection with any mediation will be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever.

3. EXPERT DETERMINATION

3.1 If the Parties are unable to settle the Dispute through mediation, then either Party may give written notice to the other Party within 10 Business Days of closure of the failed mediation of its intention to refer the Dispute to expert determination. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.

3.2 If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing his readiness and willingness to embark upon the expert determination, then that person shall be appointed as the Expert.

3.3 Where the Parties have not agreed upon an expert, or where that person has not confirmed his willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.

3.4 The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Business Days of the appointment of the Expert a statement of its case including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.

3.5 The Party not serving the Expert Determination Notice must reply to the Expert and the other Party within 5 Business Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.

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

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Part 2 of Appendix M - Nominated Mediation Body

N/A

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Part 3 of Appendix M - Recorded Dispute Resolutions

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APPENDIX N: SUCCESSION PLAN

TBC upon award of contract

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APPENDIX O: DEFINITIONS AND INTERPRETATION

1. The headings in this Contract shall not affect its interpretation.
2. References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
3. References to a statutory provision shall include any subordinate legislation made from time to time under that provision.
4. References to Sections, clauses and Appendices are to the Sections, clauses and Appendices of this Contract, unless expressly stated otherwise.
5. References to anybody, organisation or office shall include reference to its applicable successor from time to time.
6. Any references to this Contract or any other documents includes reference to this Contract or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time.
7. Use of the singular includes the plural and vice versa.
8. Words importing any gender include every gender
9. The headings to the clauses, schedules and paragraphs of this Contract are not to affect the interpretation
10. Where the word 'including' is used in this Contract, it shall be understood as meaning 'including without limitation'
11. A reference to writing or written includes faxes but not e-mail, unless otherwise specifically agreed.
12. The following terms shall have the following meanings:

Activity means any levels of services and/or Service User flows set out in a Service Specification

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

Authority Representative means the person identified in clause A4.1 or their replacement

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

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

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

Carer means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage

CEDR means the Centre for Effective Dispute Resolution

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

Commencement Date means the date identified in clause A3.1.

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

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

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

Consents means:

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

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

Contract Query means:

- (i) a query on the part of the Authority in relation to the performance or non-performance by the Provider of any obligation on its part under this Contract; or
- (ii) a query on the part of the Provider in relation to the performance or non-performance by the Authority of any obligation on its part under this Contract,

as appropriate

Contract Query Notice means a notice setting out in reasonable detail the nature of a Contract Query

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

COSOP means Cabinet Office Statement of Practice

Data Processor has the meaning set out in the DPA

Data Subject has the meaning set out in the DPA

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

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

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

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

Disclosing Party means the Party disclosing Confidential Information

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

DPA means the Data Protection Act 1998

Employment Checks means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks

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

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

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

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

Excusing Notice means a notice setting out in reasonable detail the Receiving Party's reasons for believing that a Contract Query is unfounded, or that the matters giving rise to the Contract Query are:

- (i) due wholly or partly to an act or omission by the Issuing Party; or
- (ii) a direct result of the Receiving Party following the instructions of the Issuing Party; or
- (iii) due to circumstances beyond the Receiving Party's reasonable control but which do not constitute an event of Force Majeure

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

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

Expiry Date means either:

- a) the date set out in clause A3.3; or
 - b) the last date of the Extension Period;
- whichever occurs soonest

Extension Period means an additional period of up to 6calendar months following the expiry of the Initial Term

First Exception Report means a report issued in accordance with clause B29.21 (*Contract Management*) notifying the relevant Party's chief executive and/or Board of Directors of that Party's breach of a Remedial Action Plan and failure to remedy that breach

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

Force Majeure means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of

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terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

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

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

GDPR means the General Data Protection Regulations which shall be in force in the UK with effect from 25th May 2018

General Conditions has the meaning given to it in clause A1

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

Guidance means any applicable local authority, health or social care guidance, direction or determination which the Authority and/or the Provider have a duty to have regard

Immediate Action Plan means a plan setting out immediate actions to be undertaken by the Provider to protect the safety of Services to Service Users, the public and/or Staff

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

Initial Term means the term commencing on the Commencement Date and expiring on the Initial Expiry Date

Initial Expiry Date means the last date of the Initial Term

Issuing Party means the Party which has issued a Contract Query Notice

JI Report means a report detailing the findings and outcomes of a Joint Investigation

Joint Investigation means an investigation by the Issuing party and the Receiving Party into the matters referred to in a Contract Query Notice

LaterLife Training: www.laterlifetraining.co.uk

Law means:

- (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
 - (ii) any enforceable EU right within the meaning of Section 2(1) of the European Communities Act 1972;
 - (iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
 - (iv) National Standards;
 - (v) Guidance; and
 - (vi) any applicable industry code
- in each case in force in England and Wales

Legal Guardian means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs

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

Local Healthwatch means the local independent consumer champion for health and social care in England

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

NICE means National Institute for Health and Clinical Excellence being the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body)

National Standards means those standards applicable to the Provider under the Law and/or Guidance as amended from time to time

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

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

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

Personal Data has the meaning set out in the DPA

Prohibited Acts has the meaning given to it in clause B38.12 (*Prohibited Acts*)

Provider Representative means the person identified in clause A4.2 or their replacement

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

PSI: means Postural Stability Instruction.

Public Authority means as defined in section 3 of the FOIA

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

Receiving Party means the Party which has received a Contract Query Notice or Confidential Information as applicable

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

Regulated Provider is as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006

Relevant Transfer means a relevant transfer for the purposes of TUPE

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

Required Insurances means the types of policy or policies providing levels of cover as specified in the Service Specification(s)

Review Meeting means a meeting to be held in accordance with clause B19 (*Review Meetings*) or as otherwise requested in accordance with clause B19.2 (*Review Meetings*)

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

SCHT: means the Shropshire Community Trust

Second Exception Report means a report issued in accordance with clause B29.22 (*Contract Management*) notifying the recipients of a breach of a Remedial Action Plan and the continuing failure to remedy that breach

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

Service Commencement Date means the date set out in clause A3.2.

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

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

Service Quality Performance Report means a report as described in Appendix J (*Service Quality Performance Report*)

Services means the services (and any part or parts of those services) described in each of, or, as the context admits, all of the Service Specifications, and/or as otherwise provided or to be provided by the Provider under and in accordance with this Contract

Special Conditions has the meaning given to it in clause A1

Staff means all persons employed by the Provider to perform its obligations under this Contract together with the Provider's servants, agents, suppliers and Sub-contractors used in the performance of its obligations under this Contract and for the avoidance of doubt includes all self-employed Postural Stability Exercise Instructors utilised by the Provider to provide the Services

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

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

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

Sub-contractor means any third party appointed by the Provider and approved by the Authority (to include Postural Stability Instructors) under clause B23 (*Assignment and Sub-contracting*) to deliver or assist with the delivery of part of the Services as defined in a Service Specification

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

Successor Provider means any provider to whom a member of Staff is transferred pursuant to TUPE in relation to the Services immediately on termination or expiry of this Contract

Tender means the tender dated [.....] submitted by the Provider and accepted by the Authority [annexed to this Contract in Appendix [...]]

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Transfer of and Discharge from Care Protocols means the protocols set out in Appendix I (*Transfer and Discharge from Care Protocols*)

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006

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

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

Variation Notice means a notice to vary a provision or part of a provision of this Contract issued under clause B22.2 (*Variations*).

SECTION C
SPECIAL TERMS AND CONDITIONS

Section C.1 EMPLOYMENT PROVISIONS

Unless otherwise stated in each Section, in Sections C.1 to C2(A), the following definitions shall apply:

COSOP: means the Cabinet Office Statement of Practice Staff Transfers in the Public Sector January 2000;

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

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

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from the 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;

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- (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 [and/or COSOP];

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 D to whom Transferring Authority Employees and/or Transferring Former Provider Employees will transfer on a Relevant Transfer Date;

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

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

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

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

Replacement Services: any services which are the same as or substantially similar to the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of Partial Termination of this Contract, 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;

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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 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 Contract, is attached at Annex B.

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

Transferring 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 Contract to whom the Employment Regulations will apply on the Service Transfer Date whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the 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

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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

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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 Contract;
- (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 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 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,

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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 Contract. 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 Contract 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 Contract or otherwise) resulting in the Services being undertaken by a Replacement Provider and/or a Replacement Sub-

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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 Authority 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 Council relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring 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 Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

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(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 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

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(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 Authority 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 Council 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

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by HMRC or other statutory Council relates to financial obligations arising after the Service Transfer Date;

(g) a failure of the Replacement Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring 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 Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Section C.2 Pensions

Section C.2 (A) - Local Authority Pension Scheme

1. Definitions and Interpretation:

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

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

Administering Authority: means Shropshire Council

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

(a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or

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

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

Eligible Employees:

(a) the Transferring Authority Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or

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(b) the Transferring Former Provider Employees who are former employees of the Authority and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services.

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

LGPS: Local Government Pension Scheme

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

2. PENSIONS

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

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

3. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

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

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

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

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

3.5 The Provider shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority and where such benefits are of a discretionary nature they shall be awarded on the basis of the

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Authority's written policy in relation to such benefits at the time of the Effective Date. The Provider shall be responsible for meeting all costs associated with the award of such benefits.

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

4 PROVIDER CEASES TO BE AN ADMISSION BODY

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

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

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

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

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

5. PROVIDER PENSION SCHEME

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

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

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

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

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

(a) if the Provider Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Provider or relevant Sub-Contractor. The replacement scheme must comply with this Clause 5 (Provider Pension Scheme); and

(b) where the Provider Pension Scheme has not been established at the Effective Date or Cessation Date (as the case may be), the Eligible Employees shall be provided with benefits in respect of death-in-service which are no less favourable than the death-in-service benefits provided by the Legacy Scheme immediately before the Effective Date or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Provider Pension Scheme; and

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

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

6. TRANSFER TO ANOTHER EMPLOYER

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

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

7. CLAIMS FROM ELIGIBLE EMPLOYEES OR TRADE UNIONS

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

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

8. PENSIONS EXIT PROVISIONS

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

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

Section C.2 (B) NHS Pension Scheme

1. Definitions

- 1.1 Terms not defined at the end of this Schedule or in the Definitions clause of Section C1 are to be interpreted in accordance with the Definitions and Interpretation section of this Contract.

2. Pension Protection For Eligible Employees

2.1 Continued membership of the NHS Pension Scheme

- 2.1.1 In accordance with New Fair Deal, the Provider and/or each Sub-Contractor to which the employment of any Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHS Pension Scheme, must on or before the Transfer Date, each secure a Direction Letter to enable the Eligible Employees to retain either continuous active membership of or eligibility for, the NHS Pension Scheme, for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.1.2 Without prejudice to Appendix B (*Conditions Precedent*), the Provider must supply to the Authority at least **[28 days]²** before the Transfer Date a complete copy of each Direction Letter.
- 2.1.3 The Provider (or its Sub-Contractor if relevant) will comply with the terms of the Direction Letter (including any terms which change as a result of changes in legislation) in respect of the Eligible Employees until the day before the Exit Transfer Date for so long as they are employed on the delivery of the Services.
- 2.1.4 Where any member of Staff omitted from the Direction Letter supplied in accordance with paragraph 2.1.2 above is subsequently found to be an Eligible Employee, the Provider (or its Sub-Contractor if relevant) will ensure that that person is treated as an Eligible Employee from the Transfer Date so that their Pension Benefits and Premature Retirement Rights are not adversely affected.

[DRAFTING NOTE: The Paragraph below, 2.2 (Broadly Comparable Pension Benefits) will not be relevant and may be deleted where the Provider and/or any relevant Sub-Contractor(s) either participate automatically in the NHS Pension Scheme or have each secured a Direction Letter in respect of all Eligible Employees by the time the Contract is entered into. If the Provider is not automatically an employer in the NHS Pension Scheme, it is anticipated that Direction Letter(s) will be secured in the vast majority of cases.]

2.2 Broadly Comparable Pension Benefits

- 2.2.1 If the Authority in its sole discretion (having considered the exceptional cases provided for in New Fair Deal for Staff Pensions) agrees that the Provider (or any Sub-Contractor) need not provide the Eligible Employees with access to the NHS Pension Scheme, the Provider (or any Sub-Contractor) must ensure that, with effect from the Transfer Date until the day before the Exit Transfer Date, the Eligible

² 28 days is a suggested timescale. Please select a timescale which is in accordance with the circumstances of your particular Contract.

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Employees are offered access to a scheme under which the Pension Benefits are Broadly Comparable to those provided under the NHS Pension Scheme.

- 2.2.2 The Provider must supply to the Authority details of its (or its Sub-Contractor's) Broadly Comparable scheme and provide a full copy of the valid certificate of Broad Comparability covering all Eligible Employees, as soon as it is able to do so and in any event no later than [28] days³ before the Transfer Date.

2.3 Transfer Option

As soon as reasonably practicable and in any event no later than [20 Business Days]⁴ after the Transfer Date, the Provider must provide the Eligible Employees with the Transfer Option, where the former provider offered, or the Provider offers, a Broadly Comparable scheme.

2.4 Calculation of Transfer Amount⁵

- 2.4.1 The Authority will use reasonable endeavours to procure that [20 Business Days]⁶ after the Transfer Option Deadline, the Transfer Amount is calculated by the Former Provider's Actuary⁷ on the following basis and notified to the Provider along with any appropriate underlying methodology.

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

2.4.1.1.1 the part of the Transfer Amount which relates to benefits accrued in that Broadly Comparable scheme other than those in sub-paragraph 2.4.1.1.2 below must be aligned to the funding requirements of that scheme; and

2.4.1.1.2 the part of the Transfer Amount which relates to benefits accrued in the NHS Pension Scheme (having been previously bulk transferred into the former provider's Broadly Comparable scheme), must be aligned to whichever of (a) the funding requirements of the Former Provider's Broadly Comparable scheme; or (b) the principles⁸ under which the former provider's Broadly Comparable scheme received a bulk transfer payment from the NHS Pension Scheme (together with any shortfall payment)⁹, gives the higher figure,

³ Again, 28 days is a suggested timescale. Please select a timescale which is in accordance with the circumstances of your particular Contract.

⁴ This is a suggested timescale bearing in mind that the whole process for the bulk transfer should take no more than 6 months.

⁵ In accordance with B.4 of New Fair Deal for Staff Pensions, the terms of the bulk transfer should be determined by the former provider's Actuary at the outset of the procurement process.

⁶ This is a suggested timescale. It is not unreasonable if all the data is available and agreed well in advance of the Transfer Date.

⁷ If the former provider is an NHS Employer within the meaning of the NHS Pension Scheme Regulations, the former provider's Actuary will be the NHS Pension Scheme Actuary (currently the Government Actuary's Department).

⁸ The principles should be set out in a formal bulk transfer note issued on behalf of the NHS Pension Scheme. Where a shortfall applied, further principles should be set out in a separate note that is subject to the terms of the contract for services with the former provider.

⁹ B8 to B14 inclusive of New Fair Deal for Staff Pensions which deal with price adjustments/shortfall requirements are relevant here and are discussed in Section 2. of Stage 2 of the guidance issued in February 2014 by the Department of Health in respect of the impact of New Fair Deal for Staff Pensions on NHS Pension Scheme participation.

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

2.4.1.2 If the Former Provider offers the NHS Pension Scheme to Eligible Employees, the Transfer Amount will be calculated by the NHS Pension Scheme's Actuary on the basis applicable for bulk transfer terms from the NHS Pension Scheme set by the Department of Health from time to time¹⁰.

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

2.5 **Payment of Transfer Amount**

Subject to:

- 2.5.1 the period for acceptance of the Transfer Option having expired; and
- 2.5.2 the Provider having (and/or having procured that any relevant Sub-Contractor has) provided the trustees or managers of the Former Provider's pension scheme (or NHS Business Services Authority, as appropriate) with completed and signed forms of consent in a form acceptable to the Former Provider's pension scheme from each Eligible Employee in respect of the Transfer Option; and
- 2.5.3 if relevant, the issue of a contracting-out certificate in respect of the Provider's (or any Sub-Contractor's) Broadly Comparable scheme which covers the employment of the Eligible Employees; and
- 2.5.4 the calculation of the Transfer Amount in accordance with Paragraph **Error! Reference source not found.** (*Calculation of Transfer Amount*); and
- 2.5.5 the trustees or managers of the Provider's (or any Sub-Contractor's) Broadly Comparable scheme (or NHS Business Services Authority, as appropriate) having confirmed in writing to the trustees or managers of the Former Provider's pension scheme (or NHS Business Services Authority, as appropriate) that they are ready, willing and able to receive the Transfer Amount and the bank details of where the Transfer Amount should be sent, and not having revoked that confirmation,

the Authority will use reasonable endeavours to procure that the Former Provider's pension scheme (or the NHS Pension Scheme, as appropriate) will, on or before the Payment Date, transfer to the Provider's (or Sub-Contractor's) Broadly Comparable scheme (or NHS Pension Scheme) the Transfer Amount in cash, together with any cash or other assets which are referable to additional voluntary contributions (if any) paid by the Eligible Employees which do not give rise to salary-related benefits.

2.6 **Credit for Transfer Amount**

Subject to prior receipt of the Transfer Amount (and any shortfall payable),¹¹ by the trustees or managers of the Provider's (or Sub-Contractor's) Broadly Comparable scheme (or NHS

¹⁰ Commissioners should obtain a signed note from the NHS Pension Scheme Actuary during the procurement specifying the bulk transfer terms that apply.

¹¹ In terms of shortfalls, please see section 2 of Stage 2 of the guidance issued in February 2014 by the Department of Health in respect of the impact of New Fair Deal for Staff Pensions on NHS Pension Scheme participation.

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Business Services, as appropriate), the Provider must procure that year-for-year day-for-day service credits are granted in the Provider's (or Sub-Contractor's) Broadly Comparable scheme (or NHS Pension Scheme), or an actuarial equivalent agreed by the Authority's Actuary (and NHS Pension Scheme Actuary) in accordance with New Fair Deal for Staff Pensions as a suitable reflection of the differences in benefit structure between the NHS Pension Scheme and the Provider's (or Sub-Contractor's) pension scheme.

3. Premature Retirement Rights

3.1 From the Transfer Date until the day before the Exit Transfer Date, the Provider must provide (and/or must ensure that any relevant Sub-Contractor must provide) Premature Retirement Rights in respect of the Eligible Employees that are the same as the benefits they would have received had they remained employees of an NHS Body or other employer which participates automatically in the NHS Pension Scheme.

4. Cancellation of any Direction Letter(s) and Right of Set-Off

4.1 If the Authority is entitled to terminate this Contract under Clause B32. (*Termination*); the Authority may in its sole discretion instead of exercising its right under clause B32.2 l) (*Termination*;) permit the Provider (or the relevant Sub-Contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority.

4.2 If the Authority is notified by NHS Business Services Authority of any NHS Pension Scheme Arrears, the Authority will be entitled to deduct all or part of those arrears from any amount due to be paid by that Authority to the Provider having given the Provider 5 Business Days' notice of its intention to do so, and to pay any sum deducted to NHS Business Services Authority in full or partial settlement of the NHS Pension Scheme Arrears. This set-off right is in addition to and not instead of the Authority's right to terminate the Contract under clause B32.2 l) (*Termination*).

5. Compensation

5.1 If the Provider (or any Sub-Contractor) is unable to provide the Eligible Employees with either:

- 5.1.1 membership of the NHS Pension Scheme (having used its best endeavours to secure a Direction Letter); or
- 5.1.2 a Broadly Comparable scheme,

the Authority may in its sole discretion permit the Provider to (or procure that the relevant Sub-Contractor) compensate the Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Provider (or Sub-Contractor as relevant) having consulted with a view to reaching agreement any recognised trade union or, in the absence of such body, the Eligible Employees. The Provider must (or must procure that the relevant Sub-Contractor) meet the costs of the Authority in determining whether the level of compensation offered is reasonable in the circumstances.

5.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract under clause B32.2 l) (*Termination*).

6 Provider Indemnities Regarding Pension Benefits and Premature Retirement Rights

6.1 The Provider must indemnify and keep indemnified the Authority and any Replacement Provider against all Losses arising out of any claim by any Eligible Employee that the provision of (or failure to provide) Pension Benefits and Premature Retirement Rights from the Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

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- 6.2 The Provider must indemnify and keep indemnified the Authority, NHS Business Services Authority and any Replacement Provider against all Losses arising out of the Provider (or its Sub-Contractor) allowing anyone who is not an Eligible Employee to join or claim membership of the NHS Pension Scheme at any time during the Contract Term.
- 6.3 The Provider must indemnify the Authority, NHS Business Services Authority and any Replacement Provider against all Losses arising out of its breach of this Section C.2 (B) and/or the terms of the Direction Letter.

7 Sub-contractors

- 7.1 If the Provider enters into a Sub-contract it will impose obligations on its Sub-Contractor in the same terms as those imposed on the Provider in relation to Pension Benefits and Premature Retirement Benefits by this Section C.2 (B), including requiring that:
- 7.1.1 If the Provider has secured a Direction Letter, the Sub-Contractor also secures a Direction Letter in respect of the Eligible Employees for their future service with the Sub-Contractor as a condition of being awarded the Sub-Contract; or
- 7.1.2 If the Provider has offered the Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHS Pension Scheme, the Sub-Contractor either secures a Direction Letter in respect of the Eligible Employees or provides Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHS Pension Scheme and in either case the option for Eligible Employees to transfer their accrued rights in the Provider's pension scheme into the Sub-Contractor's Broadly Comparable scheme (or where a Direction Letter is secured by the Sub-Contractor, the NHS Pension Scheme) on the basis set out in Paragraph 2.6 (*Credit for Transfer Amount*), except that the Provider or the Sub-Contractor as agreed between them, must make up any shortfall in the transfer amount received from the Provider's pension scheme.

8 Direct Enforceability by the Eligible Employees

- 8.1 Notwithstanding clause B 41. (*Third Party Rights*), the provisions of this Section C.2 (B) may be directly enforced by an Eligible Employee against the Provider and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 will apply to the extent necessary to ensure that any Eligible Employee will have the right to enforce any obligation owed to him or her by the Provider under this Schedule in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 8.2 Further, the Provider must ensure that the Contracts (Rights of Third Parties) Act 1999 will apply to any Sub-Contract to the extent necessary to ensure that any Eligible Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in his or her own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

9 Pensions on Transfer of Employment on Exit

- 9.1 In the event of any termination or expiry or partial termination or expiry of this Contract which results in a transfer of the Eligible Employees, the Provider must (and if offering a Broadly Comparable scheme, must use all reasonable efforts to procure that the trustees or managers of that pension scheme must):
- 9.1.1 not adversely affect pension rights accrued by the Eligible Employees in the period ending on the Exit Transfer Date;
- 9.1.2 within 30 Business Days of being requested to do so by the new provider, (or if the new provider is offering Eligible Employees access to the NHS Pension Scheme, by NHS Business Services Authority), provide a transfer amount calculated in accordance with Paragraph 2.4 (*Calculation of the Transfer Amount*); and

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9.1.3 do all acts and things, and provide all information and access to the Eligible Employees, as may in the reasonable opinion of the Commissioners be necessary or desirable and to enable the Authority and/or the new provider to achieve the objectives of New Fair Deal for Staff Pensions.

10. Definitions

10.1 In this section C2(B) the following definitions shall apply:

Actuary	a Fellow of the Institute and Faculty of Actuaries
Broadly Comparable	certified by an Actuary as satisfying the condition that there are no identifiable Eligible Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the NHS Pension Scheme assessed in accordance with Annex A of "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013
Contract Term	the period specified as such in Clause A3 (or where applicable that period as extended in accordance with the provisions of clause A3)
Direction Letter	a letter issued by the NHS Business Services Authority (on behalf of the Secretary of State pursuant to Section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967) to the Provider or a Sub-Contractor, setting out the terms on which the Provider or Sub-Contractor (as appropriate) is to be granted access to the NHS Pension Scheme in connection with this Contract or the relevant Sub-Contract (as appropriate)
Eligible Employee	<p>each of the Transferred Staff who immediately before the Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with either an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the former provider in the delivery of the Services</p> <p>For the avoidance of doubt a Staff member who is or is entitled to become a member of the NHS Pension Scheme as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHS Pension Scheme "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHS Pension Scheme) is not an Eligible Employee entitled to New Fair Deal for Staff Pensions protection under this Schedule</p>
Exit Transfer Date	the date on which the Eligible Employees transfer their employment to a new provider at the end of the Contract Term

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Losses	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses
New Fair Deal:	the revised pensions fair deal position set out in the HM Treasury guidance: " <i>Fair Deal for staff pensions: staff transfer from central government</i> " issued in October 2013;
NHS Body	has the meaning given to it in section 275 of the National Health Service Act 2006
NHS Business Services Authority	the Special Health Authority established under the NHS Business Services Authority (Establishment and Constitution Order) 2005 SI 2005/2414
NHS Pension Scheme	the National Health Service Pension Scheme for England and Wales, established under the Superannuation Act 1972, governed by subsequent regulations under that Act including the National Health Service Pension Scheme Regulations 1995 (SI 1995/300) and the National Health Service Pension Scheme Regulations 2008 (SI 2008/653)
NHS Pension Scheme Actuary	the Government Actuary's Department or any successor Actuary
NHS Pension Scheme Arrears	any failure on the part of the Provider or any Sub-Contractor to pay employer's or deduct and pay across employee's contributions to the NHS Pension Scheme or meet any other financial obligations under the NHS Pension Scheme or any Direction Letter in respect of the Eligible Employees
Payment Date	[20 Business Days] after the last of the conditions in Paragraph Error! Reference source not found. of this Section C.2 (B) (<i>Payment of Transfer Amount</i>) has been satisfied
Pension Benefits	any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme
Premature Retirement Rights	rights to which the Transferred Staff (had they remained in the employment of an NHS Body or other employer which participates automatically in the NHS Pension Scheme) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866), and Section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time

**2015/16
PUBLIC HEALTH SERVICES CONTRACT**

Transfer Amount	an amount paid in accordance with Paragraph 2.5 of this Section C.2 (B) (Payment of Transfer Amount) and calculated in accordance with the assumptions, principles and timing adjustment referred to in Paragraph <u>Error! Reference source not found.</u> Error! Reference source not found.2.4. of this Section C.2 (B) (<i>Calculation of Transfer Amount</i>) in relation to those Eligible Employees who have accrued defined benefit rights in the NHS Pension Scheme or former provider's Broadly Comparable scheme and elected to transfer them to the Provider's Broadly Comparable scheme under the Transfer Option
Transfer Date	the Transferred Staff's first day of employment with the Provider (or its Sub-Contractor)
Transfer Option	<p>an option given to each Eligible Employee with either:</p> <ul style="list-style-type: none">accrued rights in the NHS Pension Scheme; or) accrued rights in a Broadly Comparable scheme, <p>as at the Transfer Date, to transfer those rights to the Provider's (or its Sub-Contractor's) Broadly Comparable scheme or back into the NHS Pension Scheme (as appropriate), to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes)</p>
Transfer Option Deadline	the first Business Day to fall at least 3 months] ¹² after the notice detailing the Transfer Option has been sent to each Eligible Employee
Transferred Staff	those employees whose employment compulsorily transfers to the Provider or a Sub-Contractor by operation of the Employment Regulations, COSOP or for any other reason, as a result of the award of this Contract

¹² B.7 of New Fair Deal for Staff Pensions indicates that Eligible Employees should normally be given a 3 month period in which to exercise their Transfer Option.

**2015/16
PUBLIC HEALTH SERVICES CONTRACT**

Annex A.

Admission Agreement

Annex B. Transferring Authority Employees

There are no Transferring Authority Employees

Annex C. Transferring Former Provider Employees

Annex D. List of Notified Sub-contractors

- Independent exercise instructors meeting the entry requirements to undertake Later Life Postural Stability Instructor training, or equivalent
- REPS Level 4 qualified Postural Stability Instructors



Tender Response Document

POCV 007 - Community Postural Stability Instruction Pilot Programme

Name of TENDERING ORGANISATION
(please insert)

Energize Shropshire, Telford & Wrekin

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

Shropshire Council Tender Response Document

Contract Description/Specification:

Shropshire Council's Public Health is seeking to commission the delivery of a two and half year Community Postural Stability Instruction Pilot programme as part of a whole system approach to falls prevention across the local health economy to commence in Spring 2017. This will test and develop an effective sustainable model for the delivery of a single community-based postural stability programme to reduce the impact of falls and falls- related injuries. The provider will work in collaboration to:

- Create a cohort of independent exercise providers, qualified to deliver Postural Stability exercise as part of the local falls prevention infrastructure.
- Establish a delivery model for evidence-based community based exercise postural stability classes, enabling older people to be referred from local health services
- Deliver a two year programme of evidence-based falls prevention postural stability classes in key community locations across Shropshire

It is estimated that around 19,000 older people will fall in Shropshire each year and that around 3,800 of those will have injurious falls. One third of people aged over 60, and half of those aged over 80, are likely to fall at least once a year. The consequences can be life changing and life threatening – around 30% of older people who sustain a hip fracture die within a year.

Falls are not, however, an inevitable part of ageing. Falls prevention work seeks to prevent the first fall, prevent the next fall, prevent an injurious fall and reduce the severity of injuries from fall. Falls Prevention is a key work programme for Shropshire's Better Care Fund, Shropshire HWB Prevention Programmes, and the Community Fit Clinical Pathway for falls, fractures and frailty.

Instructions for the completion of this document

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

Contents

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A2	Non-Canvassing Certificate	8
A3	Non-Collusive Tendering Certificate	9
A4	Declaration of Connection with Officers or Elected Members of the Council	10
You must sign all 4 certificates in sections A1 to A4		
B Part 1	Supplier Information– For information only	13
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Evaluation Criteria

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

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

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

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

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

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

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

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

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

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

Award Criteria – Weighted Marked Questions

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

Section / Question No.	Award Criteria	Weighting / Max Marks Available
Value for Money (30% / 429 marks)		
Section C / Q 1	Value for Money	42.9 / 429 marks
Total for value for money		max marks
Quality (70% / 1000 marks)		
Section A Outcomes		20% / 200 marks
Section C / Q 2.1	Experience of Delivery	10 / 100 max marks
Section C / Q 2.2	Service Model of Delivery	10 / 100 max marks
Section B Ability to Deliver		30% / 300 marks
Section C / Q 2.3	Quality Assurance	7.5 / 75 max marks
Section C / Q 2.4	Working in Collaboration	7.5 / 75 max marks
Section C / Q 2.5	Service Specification	15 / 150 max marks
Section C Workforce		10% / 100 marks
Section C / Q 2.6	Recruitment and Selection	4 / 40 max marks
Section C / Q 2.7	Organisational Structures	2 / 20 max marks
Section C / Q 2.8	Information Governance	4 / 40 max marks
Section D Locality and Access		20% / 200 marks
Section C / Q 2.9	Referrals	8 / 80 max marks
Section C / Q 2.10	Added Value	4 / 40 max marks
Section C / Q 2.11	Managing Complaints	4 / 40 max marks
Section C / Q 2.12	Needs of Service Users	4 / 40 max marks
Section E Partnership Working		20% / 200 marks
Section C / Q 2.13	Stakeholder Organisations	16 / 160 max marks
Section C / Q 2.14	Social Value	4 / 40 max marks
Total for quality		100 / 1000 max marks

Value for Money and Quality Questions Scoring Scheme

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

Assessment	Mark	Interpretation
-------------------	-------------	-----------------------

Excellent	10	<i>Exceeds the requirement. Exceptional demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	9	
Good	8	<i>Satisfies the requirement with minor additional benefits Above average demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	7	
Acceptable	6	<i>Satisfies the requirement. Demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures, with evidence to support the response.</i>
	5	
Minor Reservations	4	<i>Satisfies the requirement with minor reservations Some minor reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with limited evidence to support the response.</i>
	3	
Serious Reservations	2	<i>Satisfies the requirement with major reservations. Considerable reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>
	1	
Unacceptable	0	<i>Does not meet the requirement Does not comply and/or insufficient information provided to demonstrate how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>

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



Section A: 1. Form of Tender

Form of Tender

Shropshire Council

Tender for Community Postural Stability Instruction Pilot Programme

We confirm that this, our tender, represents an offer to Shropshire Council that if accepted in whole, or in part, will create a binding contract for the Community Postural Stability Instruction Pilot Programme at the prices and terms agreed and subject to the terms of the invitation to tender documentation and the General Terms and Conditions, copies of which we have received.

Signed  Name.. 

Date24 March 2017.....

DesignationSenior Business Manager.....

Company.....Energize Shropshire, Telford & Wrekin.....

Address ...Guildhall, Frankwell Quay, Shrewsbury, Shropshire,.....
.....
.....

..... Post CodeSY3 8HQ.....

Tel No 01743 297191..... Fax NoN/A.....

E-mail address ... 

Web addresswww.energizestw.org.uk.....

Section A:
2. Non – Canvassing Certificate

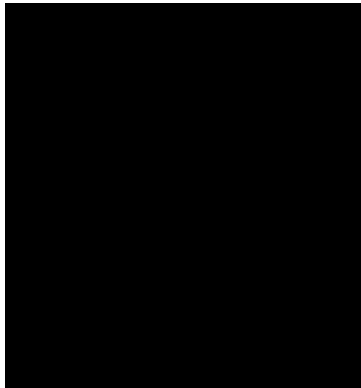
Non-Canvassing Certificate

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

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

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

Signed (1)



Status.....Senior Business Manager.....

Signed (2)

Status...Chief Executive Officer.....

(For and on behalf ofEnergize Shropshire, Telford & Wrekin.....)

Date ...24 March 2017.....

Non-collusive Tendering Certificate

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

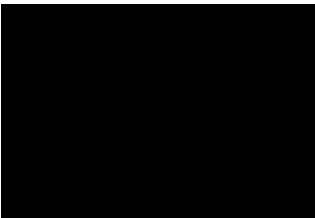
The essence of selective tendering is that the Council shall receive bona fide competitive Tenders from all persons tendering. In recognition of this principle:

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

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

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

Signed (1)  Status.....24 March 2017.....

 Status...24 March 2017.....

(For and on behalf ofEnergize Shropshire, Telford & Wrekin.....)

Date24 March 2017.....

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

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

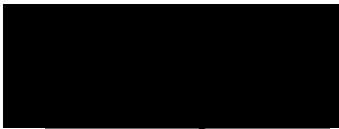
Yes / No

If yes, please give details:

Name	Relationship

Please note:

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

Signed (1)  Status.....Senior Business Manager.....

Signed (2)  Status.....Chief Executive Officer.....

(For and on behalf ofEnergize Shropshire, Telford & Wrekin.....)

Date24 March 2017.....

SECTION B

Standard Selection Questionnaire

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

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

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

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

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

Supplier Selection Questions: Part 3

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

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

Consequences of misrepresentation

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

Notes for completion

1. The “authority” means the contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite suitable candidates to participate in this procurement process.
2. “You” / “Your” refers to the potential supplier completing this standard Selection Questionnaire i.e. the legal entity responsible for the information provided. The term “potential supplier” is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 (referred to as the “regulations”) and could be a registered company; the lead contact for a group of economic operators; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.
3. Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state ‘N/A’. Should you need to provide additional information in response to the questions, please submit a clearly identified annex.
4. The authority recognises that arrangements set out in section 1.2 of the standard Selection Questionnaire, in relation to a group of economic operators (for example, a consortium) and/or use of sub-contractors, may be subject to change and will, therefore, not be finalised until a later date. The lead contact should notify the authority immediately of any change in the proposed arrangements and ensure a completed Part 1 and Part 2 is submitted for any new organisation relied on to meet the selection criteria. The authority will make a revised assessment of the submission based on the updated information.
5. For Part 1 and Part 2 every organisation that is being relied on to meet the selection must complete and submit the self-declaration.
6. **Note for Contracting Authorities: The following paragraph is optional for inclusion if a decision has been made to request a self-declaration of the exclusion grounds from sub-contractors. All sub-contractors are required to complete Part 1 and Part 2¹.**
7. For answers to Part 3 - If you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration.

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

¹ See PCR 2015 regulations 71 (8)-(9)

Part 1: Potential supplier Information

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

Section 1	Potential supplier information	
Question number	Question	Response
1.1(a)	Full name of the potential supplier submitting the information	Energize Shropshire, Telford & Wrekin
1.1(b) – (i)	Registered office address (if applicable)	Guildhall Frankwell Quay Shrewsbury Shropshire SY3 8HQ
1.1(b) – (ii)	Registered website address (if applicable)	www.energizestw.org.uk
1.1(c)	Trading status a) public limited company b) limited company c) limited liability partnership d) other partnership e) sole trader f) third sector g) other (please specify your trading status)	a) Public limited company (also with charitable status)
1.1(d)	Date of registration in country of origin	
1.1(e)	Company registration number (if applicable)	8066413
1.1(f)	Charity registration number (if applicable)	1147861
1.1(g)	Head office DUNS number (if applicable)	
1.1(h)	Registered VAT number	263868856
1.1(i) - (i)	If applicable, is your organisation registered with the appropriate professional or trade register(s) in the member state where it is established?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input type="checkbox"/>
1.1(i) - (ii)	If you responded yes to 1.1(i) - (i), please provide the relevant details, including the registration number(s).	

1.1(j) - (i)	Is it a legal requirement in the state where you are established for you to possess a particular authorisation, or be a member of a particular organisation in order to provide the services specified in this procurement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
1.1(j) - (ii)	If you responded yes to 1.1(j) - (i), please provide additional details of what is required and confirmation that you have complied with this.	
1.1(k)	Trading name(s) that will be used if successful in this procurement.	Energize Shropshire, Telford & Wrekin
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	a) VCSE
1.1(m)	Are you a Small, Medium or Micro Enterprise (SME) ₂ ?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
1.1(n)	Details of Persons of Significant Control (PSC), where appropriate: ³ - Name; - Date of birth; - Nationality; - Country, state or part of the UK where the PSC usually lives; - Service address; - The date he or she became a PSC in relation to the company (for existing companies the 6 April 2016 should be used); - Which conditions for being a PSC are met; - Over 25% up to (and including) 50%, - More than 50% and less than 75%, - 75% or more. (Please enter N/A if not applicable)	N/A
1.1(o)	Details of immediate parent company: - Full name of the immediate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable) - Head office VAT number (if applicable) (Please enter N/A if not applicable)	N/A
1.1(p)	Details of ultimate parent company: - Full name of the ultimate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable) - Head office VAT number (if applicable) (Please enter N/A if not applicable)	N/A

Please note: A criminal record check for relevant convictions may be undertaken for the preferred suppliers and the persons of significant in control of them.

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

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

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

Section 1	Bidding Model	
Question number	Question	Response
1.2(a) - (i)	Are you bidding as the lead contact for a group of economic operators?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide details listed in questions 1.2(a) (ii), (a) (iii) and to 1.2(b) (i), (b) (ii), 1.3, Section 2 and 3. If no, and you are a supporting bidder please provide the name of your group at 1.2(a) (ii) for reference purposes, and complete 1.3, Section 2 and 3.
1.2(a) - (ii)	Name of group of economic operators (if applicable)	We are a sole bidder: Energize Shropshire, Telford & Wrekin
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.	

Contact details and declaration

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

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

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

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

I am aware of the consequences of serious misrepresentation.

Section 1	Contact details and declaration

Question Number	Question	Response
1.3(a)	Contact name	[REDACTED]
1.3(b)	Name of organisation	Energize Shropshire, Telford & Wrekin
1.3(c)	Role in organisation	Senior Business Manager
1.3(d)	Phone number	01743 297191
1.3(e)	E-mail address	[REDACTED]
1.3(f)	Postal address	Guildhall, Frankwell Quay, Shrewsbury, Shropshire, SY3 8HQ
1.3(g)	Signature (electronic is acceptable)	[REDACTED]
1.3(h)	Date	24 March 2017

Part 2: Exclusion Grounds

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

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

	<p>the reasons for conviction, Identity of who has been convicted If the relevant documentation is available electronically please provide the web address, issuing authority, precise reference of the documents.</p>	
2.2	<p>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)</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
2.3(a)	<p>Regulation 57(3) Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions?</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
2.3(b)	<p>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.</p>	N/A

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

Section 3	Grounds for discretionary exclusion	
Question number	Question	Response
	<p>Regulation 57 (8) The detailed grounds for discretionary exclusion of an organisation are set out on this webpage (see link on page 11), which should be referred to before completing these questions.</p> <p>Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation.</p>	
3.1(a)	Breach of environmental obligations?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(b)	Breach of social obligations?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(c)	Breach of labour law obligations?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(d)	Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(e)	Guilty of grave professional misconduct?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(f)	Entered into agreements with other economic operators aimed at distorting competition?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(g)	Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(h)	Been involved in the preparation of the procurement procedure?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(i)	Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2

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

Part 3: Selection Questions

Section 4	Economic and Financial Standing	
Question number	Question	Response
4.1	Are you able to provide a copy of your audited accounts for the last two years, if requested? If no, can you provide one of the following: answer with Y/N in the relevant box.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	(a) A statement of the turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of Financial Position and Statement of Cash Flow for the most recent year of trading for this organisation.	Yes <input type="checkbox"/> No <input type="checkbox"/>
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	Yes <input type="checkbox"/> No <input type="checkbox"/>
	(c) Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	Yes <input type="checkbox"/> No <input type="checkbox"/>
4.2	Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering 'Yes' or 'No' that you meet the requirements set out.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

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

commercial info

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

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

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

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>
	N/A

Section 7	Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015	
	Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?	N/A <input type="checkbox"/>
	If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?	Yes <input type="checkbox"/> Please provide the relevant url to view the statement ...

		No <input type="checkbox"/> Please provide an explanation
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8. Additional Questions

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

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

8.2 – Compliance with equality legislation

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

	satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring.	
3.	If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A

8.3 – Environmental Management

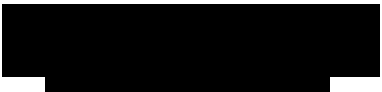
1.	<p>Has your organisation been convicted of breaching environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator or authority (including local authority)? If your answer to the this question is “Yes”, please provide details in a separate Appendix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

8.4 – Health & Safety

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

8.5 Safeguarding of adults and children

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

1	Do you have a Safeguarding Policy or statement for safeguarding adults?	Enclosed YES
2	For information: our requests for references will include a question relating to your organisation's record for safeguarding.	
3	<p>As a contractor providing a public service on behalf of a Shropshire Council, we expect that you will be familiar and committed to the local safeguarding procedures as prescribed by Shropshire Council's approach to adult protection http://www.shropshire.gov.uk/adultcarer.nsf/open/F54E8A80CF1343BC80257AAF0058F760</p> <p>I/We certify that I/We are familiar with and committed to deliver our service in compliance with local safeguarding processes.</p> <p></p> <p>Signed ... Status...Senior Business Manager..... (For and on behalf ofEnergize Shropshire, Telford & Wrekin.....)</p> <p>Date ...24 March 2017.....</p>	

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

✓ (box cannot be amended)

SECTION C – TENDER SCHEDULE

1.	Value for Money	
1.1	Please outline your financial model stating how it will deliver the optimal number of classes within the funding available.	42.9 / 429 max marks

2.	Tender Specification	
Section A Outcomes:		
2.1	What is your experience of delivering a programme of the type specified? Please submit documentary evidence of your organisation's ability to meet the policies and procedures outlined in the service specification?	10 / 100 max marks
2.2	What is the service model you would use to deliver the service specified? Please provide a pathway/process map for the model. If	10 / 100 max marks

	this a model that you have delivered previously and/or for which there is good evidence of effectiveness in delivering appropriate outcomes, please provide details of your supporting model.	
Section B Ability to Deliver:		
2.3	Please describe how you would quality assure the delivery of the programme. Please include health and safety and safeguarding measures.	7.5 / 75 max marks
2.4	Please state your experience of working within in collaboration (with health providers, community organisations and public health), the challenges this may present and how you might overcome them. What is your experience of working in partnership with other stakeholder organisations and client groups?	7.5 / 75 max marks
2.5	How will you ensure that the service you provide will be capable of meeting the aims and objectives set out in the service specification? Include in your answer information regarding: organisational/ management structure, timescales delivery plan, activity and outcome monitoring.	15 / 150 max marks
Section C Workforce:		
2.6	Please provide details of the proposed arrangements with community PSI instructors for the delivery of these services. Your response should include recruitment, selection, training and retention	4 / 40 max marks
2.7	Please provide detail of organisational structures and plans to coordinate exercise classes and support instructors working in the field including roles and responsibilities and service continuity.	2 / 20 max marks
2.8	Please describe how your organisation intends to meet the information governance requirements of this service including information technology and data protection. Please state what security measures will be in place for safeguarding data.	4 / 40 max marks
Section D Locality and Access:		
2.9	Please state how you intend to generate referrals and self-referrals to service across Shropshire and ensure your service effectively engages the target group.	8 / 80 max marks
2.10	Please explain how your organisation would provide 'added value' in terms of enhanced client experience. Please include details of proposals for establishing client satisfaction within your proposed service provision. Describe how you will obtain and make use of Service User's feedback to review and improve Service delivery	4 / 40 max marks
2.11	Please describe how your organisation will manage complaints, including policy, management response to complaints. Please demonstrate how your organisation will monitors its complaints and use the information for service improvement.	4 / 40 max marks
2.12	Please describe your understanding of any specific needs of the proposed service users, including safeguarding measures What challenges might this present and how you would address them?	4 / 40 max marks
Section E Partnership Working:		
2.13	Please state your organisation's plans for working in partnership with other stakeholder organisations working across health, social	16 / 160 max marks

	care, and third sector organisations in delivering the Shropshire Community Postural Stability Instruction Pilot Programme	
2.14	Please describe how your organisation will be supporting the local environmental, social and economic priorities through the delivery and include details of how service delivery will contribute to the economic growth plan	4 / 40 max marks



personal info

Energize Shropshire, Telford & Wrekin
Guildhall
Frankwell Quay
Shrewsbury
SY3 8 HQ

Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
Shropshire SY2 6ND

Emailed to: [REDACTED]

23rd May 2017

Dear Bidder

POCV 007 - COMMUNITY POSTURAL STABILITY INSTRUCTION PILOT PROGRAMME

SHROPSHIRE COUNCIL

SUBJECT TO CONTRACT

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

However, this letter is not, at this stage, a communication of Shropshire Council's formal acceptance of your bid. A mandatory "standstill" period is now in force; this period will end at midnight on 2nd June 2017.

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

This award notification is also subject to you now providing copies of your relevant insurance certificates together with confirmation from your insurance brokers that:-

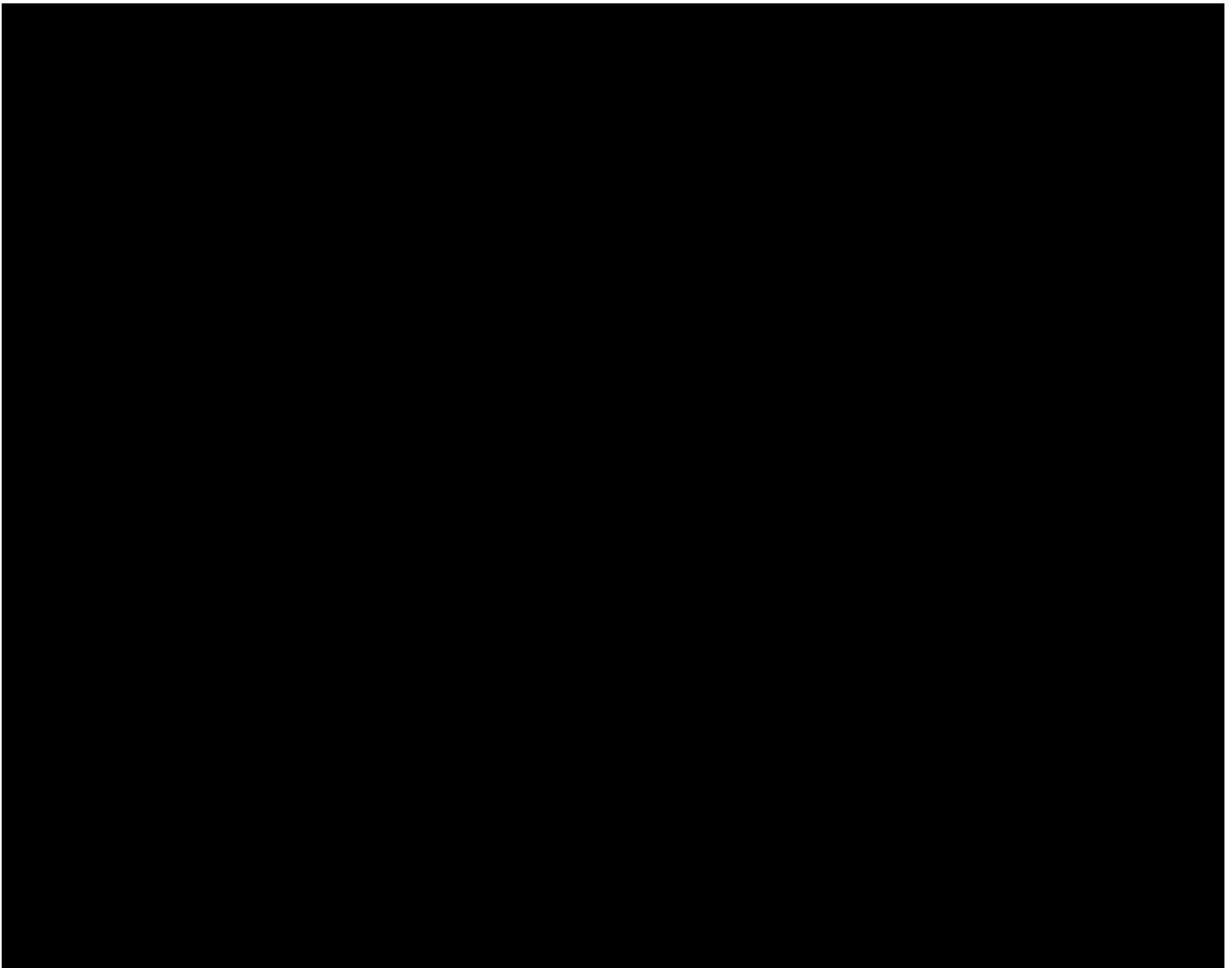
1. The insurance does not contain any exclusions, which would void the policy in relation to this contract.
2. Details within the insurance cover of any warranties, which need to be complied with to ensure that the cover remains in place.
3. Confirmation that there have be no erosion through claims made to the limits of indemnity.
4. Confirmation that all premiums due have been paid together with the date of renewal.

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

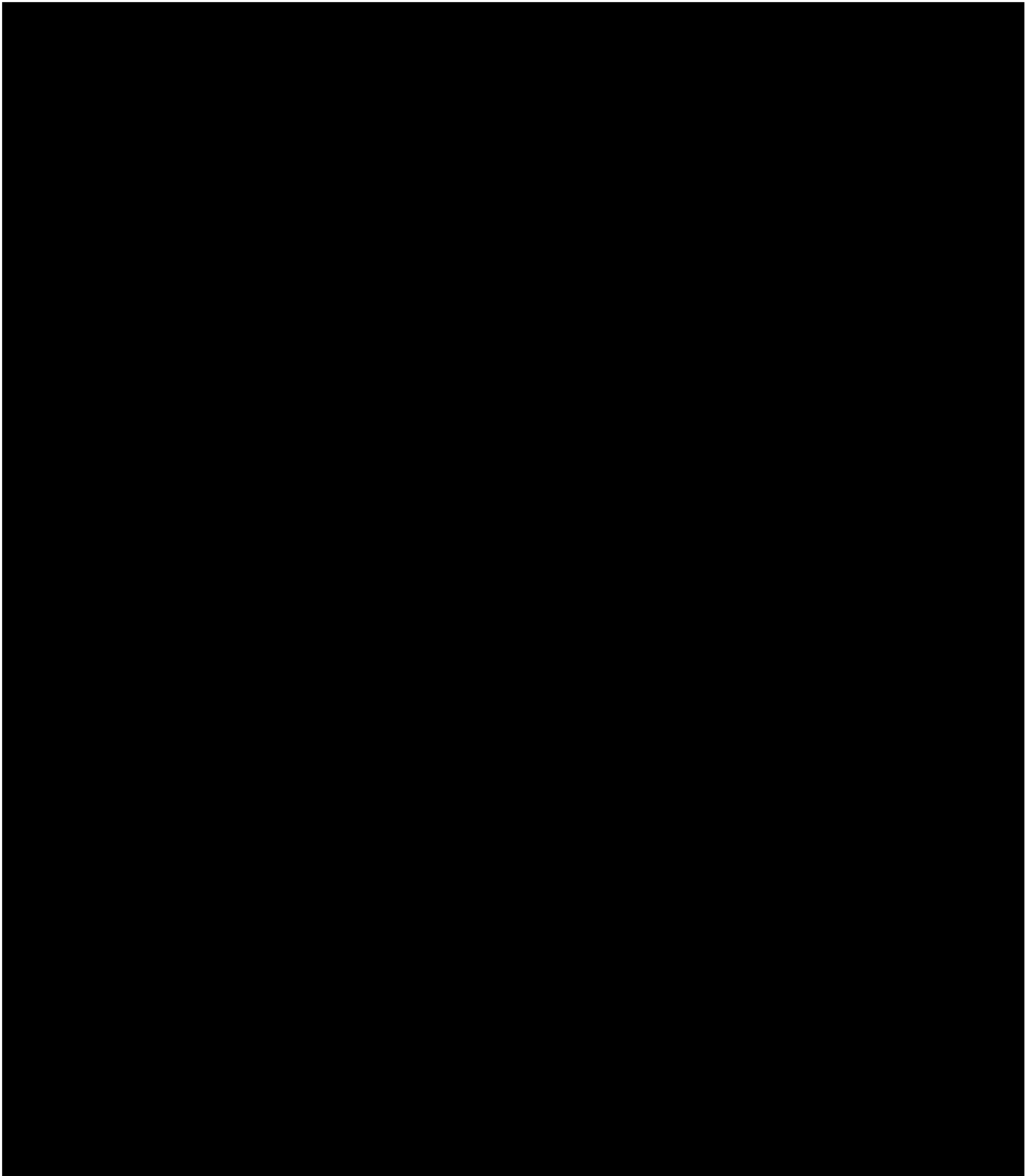
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Criteria	Your Weighted Score	Winning Tenderer's Total Weighted Marks	Your Rank (out of all 3 tenders received)
Value for Money	■	■	■
Quality	■	■	■
Overall	■	■	■

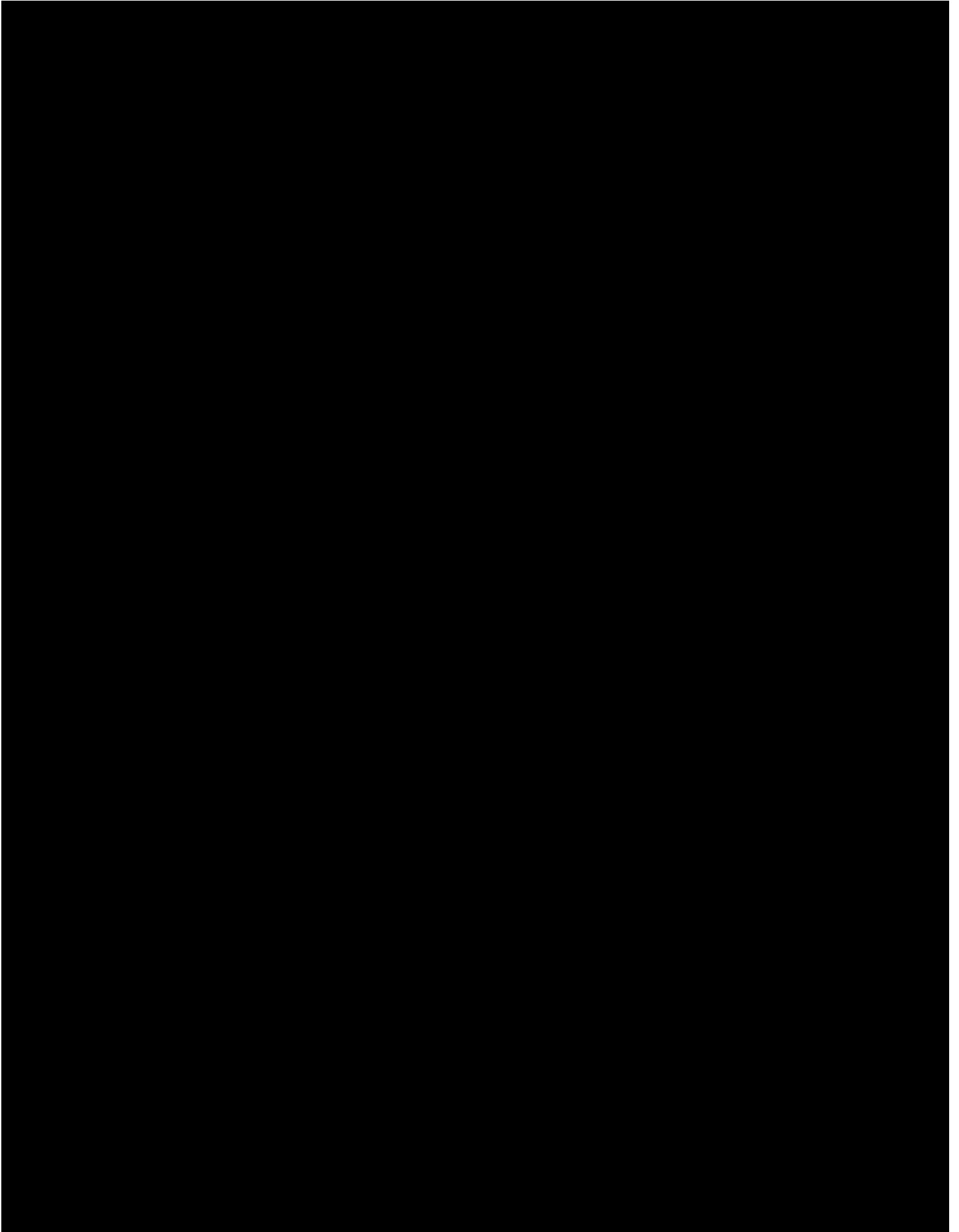
For your further information we would confirm that your quality submission was scored against the published 0-10 scoring scheme and the stated award criteria and received the marks as set out on the table overleaf. We have also included some commentary to the marks:



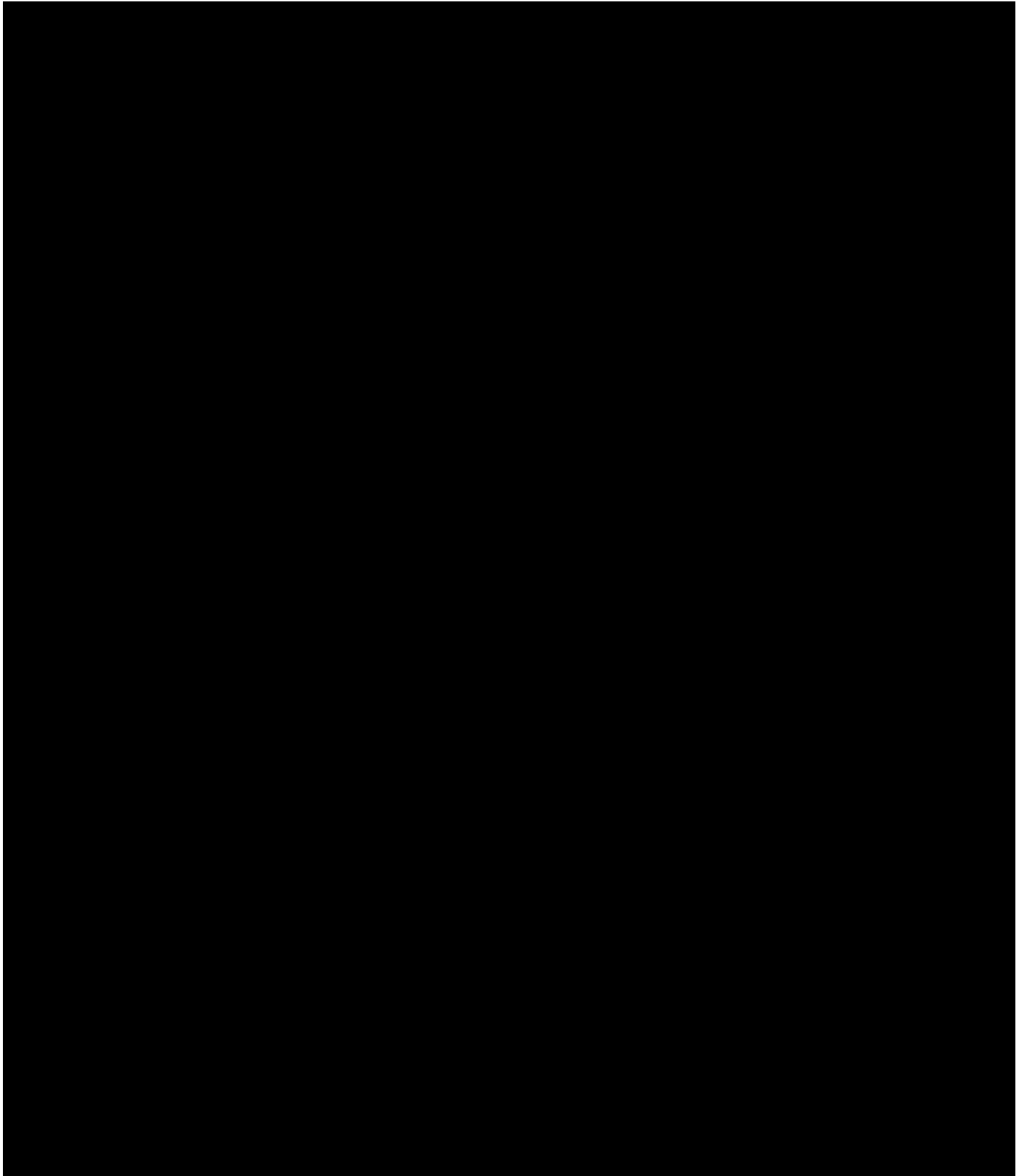
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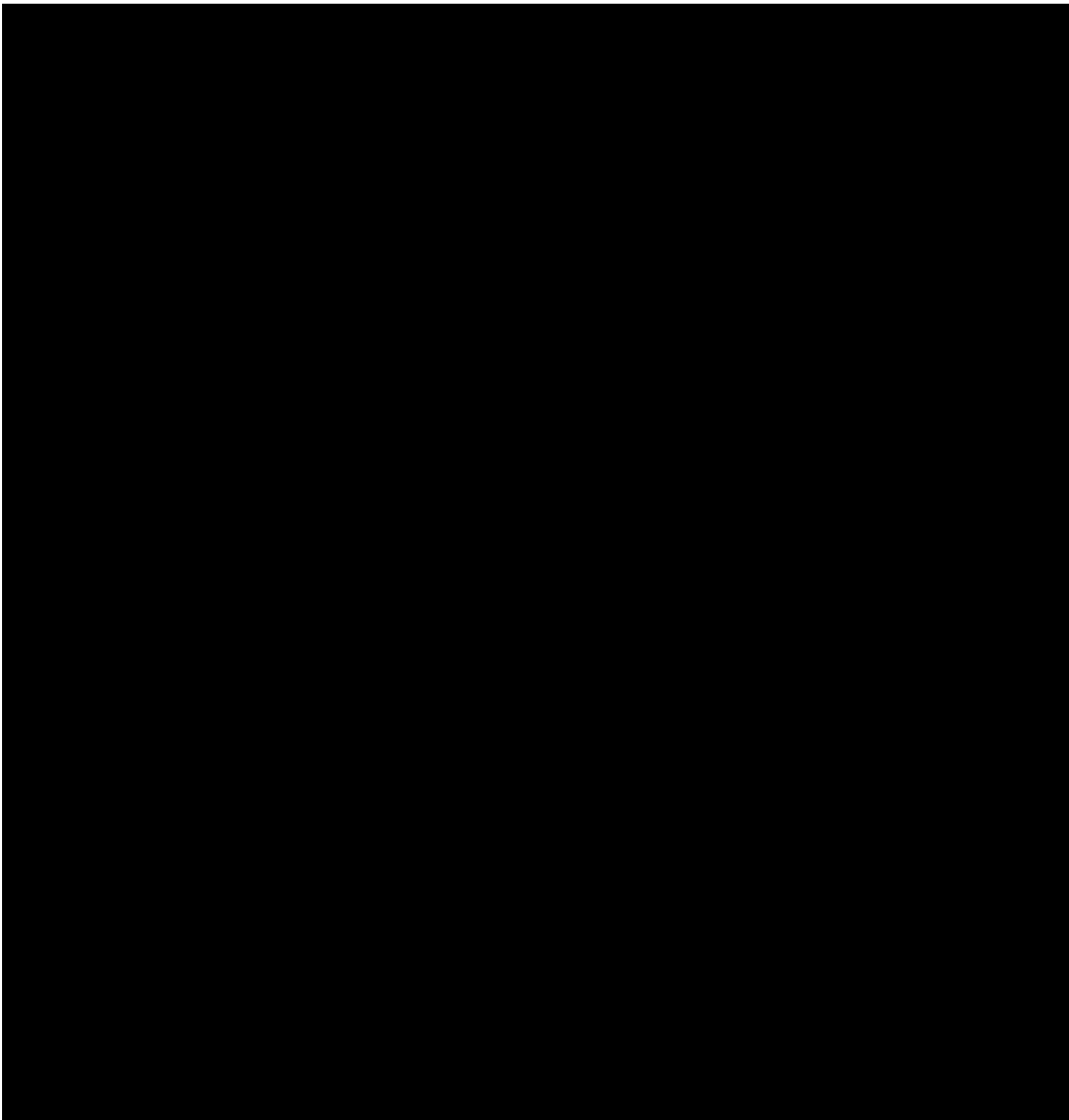
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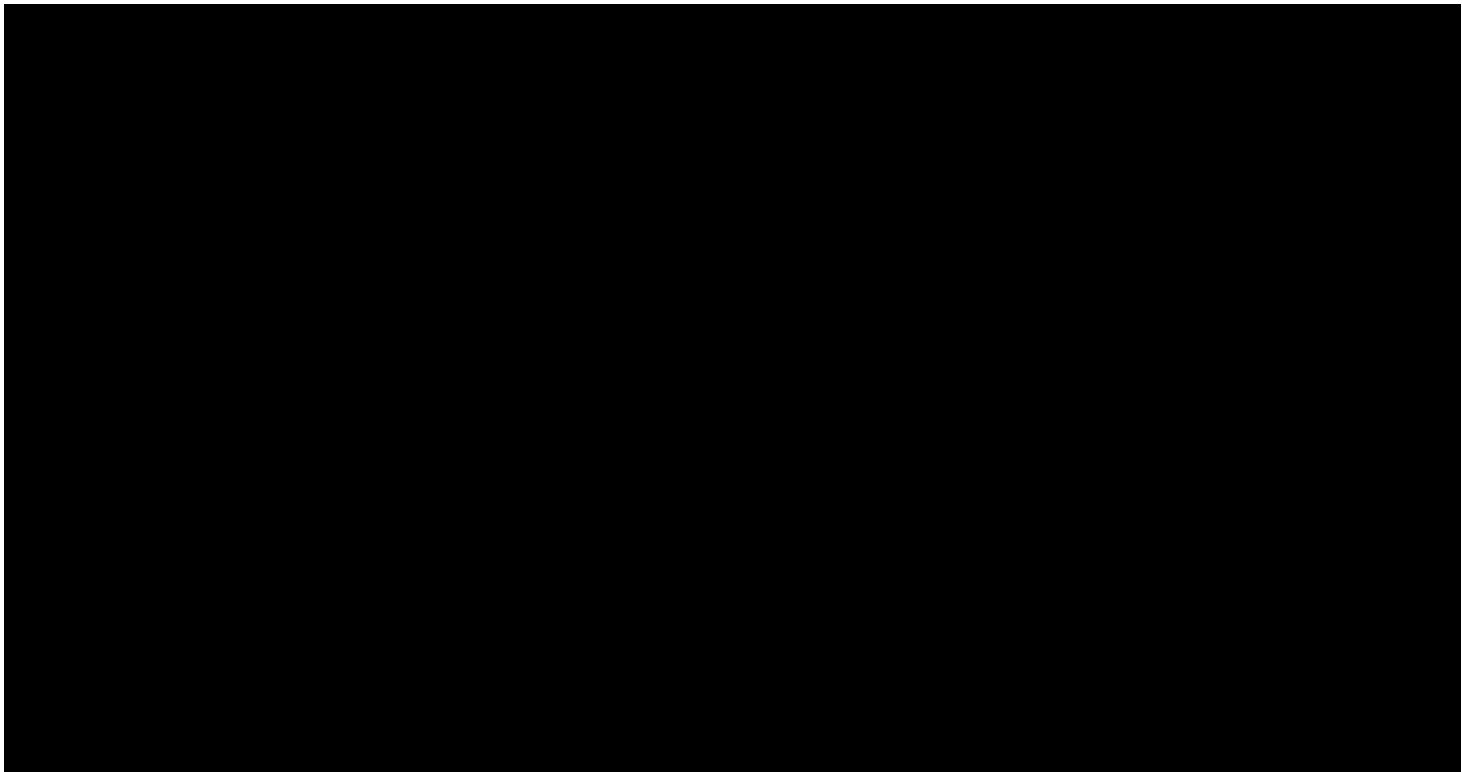
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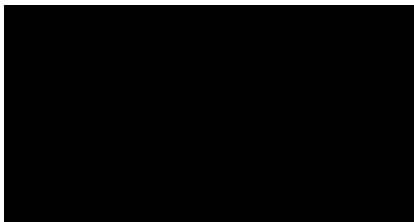


commercial & personal info

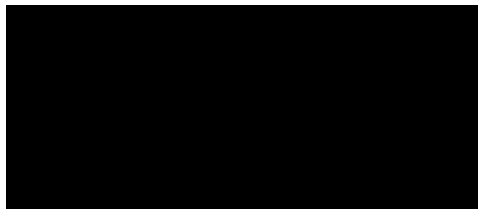


We will be in touch with you again at the end of the standstill period.

Yours faithfully



Director of Help2Change



Director of Public Health