Invitation to Tender

for

Mobile Lithotripsy Service

Project Ref: G/104/SU/17/SVR

Tender Process:

|  |  |  |  |
| --- | --- | --- | --- |
| Schedule I Open Tender Services | [ ]  | Schedule I Open Tender Goods | [ ]  |
| Schedule I Restricted Tender Services | [ ]  | Schedule I Restricted Tender Goods | [ ]  |
| Schedule I Dialogue Tender Services | [ ]  | Schedule I Dialogue Tender Goods | [ ]  |
| Below Threshold Tender Services | [ ]  | Below Threshold Tender Goods | [x]  |

Published: Thursday 11th May 2017

CLOSING DATE FOR RETURNS: Wednesday 7th June 2017 - 12.00pm

#### MASTER INDEX OF TENDER DOCUMENT

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Schedule B Invitation to Tender Pages 5-9

Schedule C Conditions of Tender (inc Award Criteria) Pages 10-22

Schedule D Specification Pages 23-27

Schedule E Specimen Contract Page 28

 (attached with general attachments

on the e-tendering portal)

Schedule F Mandatory Information Pages 29-32

 (for mandatory completion and return

on the e-tendering portal)

Schedule G Bidder Response Pages 33-40 (for mandatory completion and return

on the e-tendering portal)

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on the e-tendering portal)

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on the e-tendering portal)

Schedule J Certificate of Non-Canvassing (for mandatory completion and return

on the e-tendering portal)

Appendix 1 Data Processing Agreement

 (to be completed once contract awarded)

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| SCHEDULE ABACKGROUND TO TENDER OPPORTUNITY |

BACKGROUND TO THIS OPPORTUNITY

There is a requirement to provide a Mobile Lithotripsy Service at the Countess of Chester Hospital NHS Foundation Trust (COCH). The service is for the provision of a mobile service delivering extracorporeal shockwave lithotripsy and extracorporeal shockwave treatment.

Lithotripsy is a treatment typically using ultrasound shockwaves, by which a kidney stone or other calculus is broken into small particles that can be passed out by the body. Extracorporeal shock wave lithotripsy (ESWL) is a procedure that uses high energy shock waves to break down kidney stones into small crystals. Extra corporeal shockwave treatment (ESWT) is a procedure where shock waves are passed through the skin to the injured part of the body using a special device.

The current service that is provided within the Countess of Chester’s urology department provides 1 session per month, with the option of a second session if required, within 1 month normally 10-12 patients are treated per session.

BACKGROUND TO THE COUNTESS OF CHESTER HOSPITAL NHS FOUNDATION TRUST & COMMERCIAL PROCUREMENT SERVICE.

The Countess of Chester Hospital NHS Foundation Trust is comprised of a 600 bed acute general hospital located on the outskirts of the City of Chester, an 86 bed community based hospital located in Ellesmere Port and a shared service Microbiology Laboratory in Wirral.

The Trust also hosts a Commercial Procurement Service which not only undertakes its own commercial activity but seeks to act to the wider public sector to promote and develop smaller innovative businesses and ideas. Further information can be obtained from the website www.coch-cps.co.uk

HOW THIS PROCESS WILL WORK.

Open Procedure [x]

Following the receipt of your bid and the final deadline passes, your bid will be opened by the assessment panel. Where prerequisites have been applied, these will be assessed as the first stage of the evaluation. Failure to meet any prerequisite will result in your bid being immediately rejected. Upon satisfying all prerequisites your bid will be qualitatively assessed using the award criteria laid out in in the Conditions of Tender. If an e-Auction is applicable the Authority will contact you and offer the appropriate training and preparation. Following the conclusion of the evaluation you will be issued notification of either being successful or unsuccessful. This will be accompanied by a debrief letter advising you of your scores and if appropriate the scores of the winning bid, along with narrative as to how the scores were applied and what the characteristics and relative advantages of the winning bid were. A 10 day standstill period will follow prior to concluding the contract which will be formed upon the exchange and signing of contracts

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| SCHEDULE BINVITATION TO TENDER |

# INVITATION TO TENDER

This contract is to provide a Mobile Lithotripsy Service as laid out in the specification below.

The Trust envisages a contract for the period of 1 year with the option to extend for a further 12 months.

Timeline

|  |  |
| --- | --- |
| Task | Date Scheduled |
| Invitation to Tender (ITT) Published | 11th May  |
| Site Visit | 24th May |
| Clarification questions deadline | 5th June |
| Tender Return Date | 7th June - 12.00pm |
| Evaluation of Tender | W/C 12th June |
| Inform Unsuccessful/Successful Bidders | W/C 19th June |
| Contract Award | 1st August  |
| Contract Start Date | 1st September  |

Timelines are: anticipated commencement of service September 2017. Please note the timeline is indicative and may change dependant on the tender process

1. Bidders/Tenderers

In this ITT the terms “Bidder(s)” and “Tenderer(s)” are used interchangeably to indicate an organisation that is participating in this tender process. The term “supplier” refers to a successful applicant following the procurement.

The terms bid and tender are similarly used interchangeably.

1. Contracting Authorities

The Countess of Chester Hospital NHS Foundation Trust, hereafter referred to as the "Authority", invites competitively tendered offers in accordance with the attached Tender Documents as attached in the e-tendering portal for the provision of the Mobile Lithotripsy Service.

1. **Acceptance of bids**

The Authority does not bind itself to accept the lowest or any offer and reserves the right to accept an offer either in whole or in part each item being for this purpose treated as offered separately.

Tenderers are advised to read this Invitation to Tender and all supporting documentation very carefully to ensure they are familiar with the nature and extent of the obligations to be accepted by them if their Tender is successful.

1. Clarification Questions from Bidders

Any questions which the Bidder wishes to raise in relation to this Tender should be made via the e-sourcing portal messaging system. Questions provided in other formats will not be considered or answered.

The last date for the submission of Clarification Questions is 5 June 12.00pm

The Authority is under no obligation to respond to any question received after this time and date. However, the Authority reserves the right to respond to any questions received after this deadline at its absolute discretion

Should a Tenderer be in any doubt as to the interpretation of any or all parts of the Tender document, commercial queries, technical/clinical queries prior to the submission of Tenders, these should also be directed via submission of written questions through the e tendering portal. The Authority will refer the query to the relevant person for resolution, and will communicate the decision to the Tenderer in writing via e tendering portal.

**Clarification questions received by any other method may constitute canvassing as defined in this ITT. Organisations participating in a bid submission are therefore strongly advised to ensure that any communication with the Countess of Chester Hospital NHS Foundation Trust and/or its employees about or related to this procurement process is submitted through the Bravo e tendering portal only, as failure to do so may result in their bid submission being disqualified.**

Bidders are reminded that their questions, and Authority’s response, will normally be circulated to all Bidders in an anonymous form, in order to treat all Bidders fairly. This will be provided in digest form, periodically updated and uploaded to the portal for all Bidders to view who have registered for the procurement. Provision will be made for Bidders to request clarification in confidence, but in responding to such requests the authority will reserve the right to act in what it considers a fair manner and in the best interests of the procurement, which may include uploading to the portal and/or circulating the response to all Bidders.

1. Clarification Questions from the Authority

The Authority reserves the right to require Bidders to clarify their bid submissions. Any such request will be made via the e-tendering portal to the Bidder’s nominated representative. The Authority will retain a general discretion in relation to this procurement process, at any stage of this procurement process, to seek clarification from any Bidder in relation to any aspect of the bid submission.

It is likely that any response to a clarification question will be required within two working days of request. Failure to respond adequately or in a timely manner to clarification questions may result in a potential Bidder not being considered further in the procurement.

The Authority may contact (or may require the Bidder to contact on its behalf) any of the customers, subcontractors or consortium members to whom information relates in a response or bid, to ask that they testify that information supplied is accurate and true.

## The Authority reserves the right to seek third party independent advice or assistance to validate information submitted by a Bidder and/or to assist in the bid evaluation process.

## The Authority reserves the right to conduct site visits and/or audits at any time during this procurement process.

1. Return of Bids

Tenderers must return bids via the web site www.nhssourcing.co.uk; hard copies will not be accepted. It is the sole responsibility of the Tenderer to ensure their offer is received in due time and date. Tenders received after the due date cannot normally be accepted

The Authority intends to award the contract to the Bidder(s) who submit(s) the most economically advantageous bid(s) as determined by applying the evaluation criteria set out in this ITT.  However, the Authority reserves the right not to award all or any of the business to most economically advantageous bid(s) or to any bidder. The Authority also reserves the right to award the business to more than one bidder.

The Authoritydoes not bind itself to accept the lowest or any offer and reserves the right to accept an offer either in whole or in part, The Authority reserves the right to award Contracts for the supply of the services described above and arising out of this procurement process to more than one supplier.

1. **The closing date for the return of Tenders is 7 June, 12.00pm**

Failure to return a completed ITT by the closing date specified will entitle The Authority to disqualify the relevant Bidder from participating in this procurement.

Those Bidders deciding not to tender should use the “Decline to Respond” function on the Trust e-procurement portal, and provide a reason for this decision.

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| SCHEDULE CCONDITIONS OF TENDER& Award Criteria |

CONDITIONS OF TENDER

1. Information and Confidentiality

* 1. This ITT is intended for the exclusive use of the Bidder and is provided on the express understanding that this ITT and the information contained in it or, provided in connection with it, will be regarded and treated as strictly confidential. This ITT and all related materials may not be reproduced in whole or in part nor furnished to any persons other than the bidder, save for the purpose of:
* taking legal or other advice in connection with completing the ITT; and/or
* obtaining input from relevant organisations relevant to the Bidder’s response to the ITT; and/or
* obtaining input from any other parties who the Bidder demonstrates will provide information relevant to the ITT response but subject always to the prior written consent of the Authority to such disclosure (which they may withhold in their absolute discretion).

In each of the above cases, the Bidder must obtain confidentiality undertakings from any such parties prior to disclosure of at least equivalent strength to those set out above.

Upon written request from Authority, the bidder shall promptly provide evidence to the Authority that such undertakings have been provided to the Bidder.

1.2 The Bidder must ensure that, to the best of its knowledge and belief, the information contained in its completed ITT is accurate and contains no material misrepresentation.

1.3 This invitation and its accompanying documents shall remain the property of the Authority and must be returned on demand.

1.4 Any notice to a Tenderer required under these Conditions to be given in writing, shall be deemed to be duly served at the time of actual delivery if delivered to a physical address, or at the time of posting on the e-sourcing portal if communicated via the e-sourcing portal to the Bidder’s nominated representative, or at the time of delivery in ordinary course of post if posted in a prepaid envelope addressed to the Tenderer by name, to the Tenderer's last known place of abode or business or, in the case of a company, the registered office of the company.

1.5 Estimated quantities, where inserted in the Invitation to Tender document, shall indicate only the probable requirements for the period referred to and the Contracting Authority shall not be bound to order such quantities.

1. Freedom of Information and other information disclosures

2.1 The Authority is committed to open government and meeting legal responsibilities under the Freedom of Information Act 2000 (FOIA). Accordingly, any information created by or submitted to the Authority (including the information contained in the PQQ and ITT and the submissions received from Bidders in response) may need to be disclosed by the Authority in response to a request for information.

2.2 The Authority may also decide to include certain information in their relevant publication scheme maintained under the FOIA. In making a submission, each bidder therefore acknowledges and accepts that the information contained therein may be disclosed under the FOIA.

2.3 Bidders must clearly identify any information supplied in response to the Tender, which they consider to be confidential or commercially sensitive and attach a brief statement of reasons why such information should be so treated and for what time period.

2.4 However, Bidders should be aware that even where a Bidder has indicated that information is commercially sensitive, the Authority is responsible for determining at their absolute discretion whether such information is exempt from disclosure under the FOIA, or must be disclosed in response to a request for information.

2.6 Bidders should also note that the receipt by the Authority of any information marked “confidential” or equivalent does not mean that the Authority accepts any duty of confidence by virtue of that marking, and the Authority has the final decision regarding the disclosure of any such information in response to a Request for Information.

2.7 In making a submission in response to this Tender, each Bidder acknowledges that the Authority may be obliged under the FOIA to disclose any information provided to it:

* Without consulting the Bidder; or
* Following consultation with the Bidder and having taken its views into account.

2.8 Bidders acknowledge that the Authority may be subject to the Environmental Information Regulations 2004 (EIR) and shall assist and co-operate with the Authority (at the Bidder’s expense) to enable the Authority to comply with its information disclosure requirements contained in this legislation.

2.9 Bidders should be aware of the Authorities obligations and responsibilities under the EIR to disclose, on request, recorded information held by the Authority. Information provided by Bidders in connection with this procurement process, or any contract that may be awarded as a result of this process, may therefore have to be disclosed by the Authority in response to such a request, unless the Authority decides that one of the statutory exemptions under the EIR applies.

 The Authority shall be responsible for determining, at its absolute discretion, whether the information submitted by a Bidder is exempt from disclosure in accordance with the provisions of the EIR.

* 1. Bidders acknowledge that the Authority and/or its members may be subject to the Government’s public sector purchasing transparency requirements and that Authority and/or its members may be required to publish on a Government on line portal or otherwise details of this procurement process, including but not limited to the process documentation and the contract awarded.

3. Prices

3.1 Prices in the Price Schedule (Schedule H) must remain open for acceptance until 90 days from the closing date for the receipt of Tenders.

3.2 Prices on the schedule must be firm (i.e. not subject to variation) for the period of 2 years. Any amendments to the fixed period will be rejected.

3.3 Where a fixed price period ends and triggers a contract extension option, price variations must be accompanied by evidence to justify the change in price. Reference to standard inflationary indexes is not acceptable. It is expected that successful suppliers will mitigate any price increases through structured business development and efficiency planning.

3.4 Where the accumulated costs materially exceed the advertised contract value (as published in the award notice, the authority reserves the right to terminate and re-tender the contract.

3.5 Where prices exceed that of the allocated budget for the project, the authority reserves the right to terminate the procurement or seek clarification from bidders to submit a secondary pricing schedule.

3.6 Where a reverse (transformation or price only) e-auction is being used as an award decision mechanism, prices submitted will be used as the starting position of your bid. You are advised to prepare a range of scenarios with an absolute end position. If you submit a price which is unsustainable you will still be contractually obliged to supply at this price until the fixed period ends. Prices submitted in Schedule G are considered your first offer and can be accepted as such.

4. Tender Documentation and Submission

4.1 Tenders must be for the supply of the whole of the specification upon the terms and conditions of the contract. Tenders for part or parts only of the specification or for different standards or frequencies or made subject to alternative terms or conditions may be rejected.

* + 1. The offer should be strictly in accordance with the specification. Alternatives may be offered but all differences between such items and the Specification must be indicated in detail in the Bidder Response and Price Schedule.
	1. Tenders must comprise:
		1. the Bidder Response
		2. the Price Schedule
		3. the Additional Information Schedule

4.3.4 the Form of Offer

4.3.5 the Certificate of Non-Canvassing

4.4 The Form of Offer must be signed by an authorised signatory, scanned and uploaded into the e tendering portal where indicated.: In the case of a partnership, by a partner for and on behalf of the firm; in the case of a limited company, by an officer duly authorised, the designation of the officer being stated. Any signature included in the Tender will be deemed to be from an authorised person.

4.5 The Tender must be completed in full. Any Tender may be rejected which:

 4.5.1 contains gaps, omissions or obvious errors; or

 4.5.2 contains amendments which have not been initialled by the authorised signatory; or

 5.5.3 is received after the closing time.

4.6 For help in completing the Tender compliantly with the requirements of this ITT please contact the Authority via the e-tendering portal messaging facility.

4.7 Offers must be written in English and submitted via the Authority tender website at www.nhssourcing.co.uk

4.8 The Authority may, at its own absolute discretion extend the closing date and time specified above without request. Any extension granted will apply to all Tenderers.

5. Rebates/Commissions

5.1 In any application of rebates and commissions, Tenderers will be treated fairly and equitably within their markets. Furthermore, agreement will be reached between both parties on the process for relating payments to contractual activity.

5.2 Any rebate fee or commission applicable to this Tender opportunity will be described in the specification (Schedule D)

5.3 Any applicable rebate fee is intended to resource the running of the contract and further promote its use.

6. Award Criteria

6.1 The Contract will be awarded on the basis of the most economically advantageous offer which is judged on the following:

|  |  |
| --- | --- |
| Criteria | Weighting (%) |
| Technical Specification | 50% |
| Price | 50% |

6.1.1 Sub Criteria

The sub criteria are denoted against each area within the bidder response schedule.

|  |  |  |
| --- | --- | --- |
| Criteria | Weighting | Page Limit |
| **Lithotripter Device Information** | **17%** | **6** |
| **Cleaning Procedures** | **10%** | **4** |
| **Audit of Performance** | **5%** | **4** |
| **Staff Qualifications** | **5%** | **2** |
| **Maintenance of Lithotripter Device** | **5%** | **2** |
| **Cancellation of Treatments** | **3%** | **2** |
| **Health and Safety**  | **5%** | **2** |
| Technical Total | 50% |
| Commercial Pricing | 50% |
| Total | 100% |

6.1.2. Scoring methodology: non-price

 This methodology is for information only and will be used solely by the Authority for the evaluation of the tender returns. This methodology will apply where qualitative information is provided.

A score of 0 no confidence may lead to exclusion on the grounds of non-conformance with specification.

|  |  |
| --- | --- |
| Rate | Qualifier |
| 0 | No confidence  |
| 1 | Serious concerns |
| 2 | Concerns, Some Confidence |
| 3 | Acceptable, Confident |
| 4 | Exceptionally Confident |

6.1.3 Scoring methodology: price

 Prices will be assessed using the standard differential method:

($ \frac{Lowest Bid Price}{Bid Price} )×Criteria \%=Final Score$

6.1.4 Clinical table-top trials [ ]  (only applicable to the Tender if this box is checked)

Clinical table-top trials will be used to asses a products quality against its described characteristics in the bidder’s response documents as highlighted in the award sub-criteria. Table-top trials are intended to be used to asses products with minimum disruption to our clinicians and patients and as such will not be trialed in a live clinical environment. All bidders are required to submit any products related to this Tender as requested by the Authority within the timescales advised by the Authority. Failure to provide adequate trial material will result in receiving a Zero in the appropriate award section of the evaluation.

6.1.5 Clinical trials [ ]  (only applicable to the Tender if this box is checked)

The Authority wishes to conduct a clinical trial of the products being offered as part of this Tender to satisfy itself that they are clinically acceptable to use within our own environment and are fully compatible with other Trust assets in use. To minimise any disruption to our patients and clinical staff, we will only undertake a full clinical trial of the bidder which has been ranked first following the application of the full award criteria.

Where a bidder has ranked first and there is a consensus from the Authority that the goods offered are not acceptable and pose a risk to our patients and/or clinicians, the bidders offer will be rejected. Prior to any rejection the Authority will liaise with the bidder’s representatives and ensure adequate recourse is given that no misrepresentation of the goods on offer has been construed by the Authority, and that the bidder will be given adequate feedback to assist it in its future product development.

* 1. The Authority is not bound to accept the lowest or any offer.

6.3 Following the Tender evaluation all bidders will be notified of the outcome. This notification will be accompanied by a debrief letter. No further debrief will be given outside of the information contained within this letter.

7. TUPE [ ]  (only applicable to the Tender if this box is checked)

7.1 The attention of Tenderers is drawn to the provisions of the European Acquired Rights Directive EC77/187 and TUPE (Transfer of Undertakings Protection of Employment Regulations). TUPE may apply to the transfer of the Contract from the present supplier to the new one, giving the present supplier’s staff (and possibly also staff employed by any present sub-contractors) the right to transfer to the employment of the successful Tenderer on the same terms and conditions. The above does not apply to the self-employed.

7.2 Tenderers are advised to form their own view on whether TUPE applies, obtaining their own legal advice as necessary.

* + 1. To assist in this process the Authority is seeking workforce details from the present supplier(s). The Authority provides no warranty as to the accuracy of any such information supplied and accepts no liability for any inaccuracies that is contained within it or for any omissions from such information. Tenderers must form their own view and make their own enquiries as to whether TUPE will apply and as to the workforce implications if it does.

This information will be supplied to Tenderers on request on the basis that it is treated as strictly confidential; that it is not disclosed except to such people within the Tenderer’s organisation, and to such extent, as is strictly necessary for the preparation of the tender; and that it is not used for any other purpose. By requesting this information from the Authority a Tenderer will be deemed to have agreed to abide by these obligations of confidentiality.

7.4 The successful supplier will be required to indemnify the Authority against all possible claims under TUPE.

7.5 It is a further requirement that the successful supplier will pass on all details of their own workforce towards the end of the Contract period so that this information can be passed to other bona fide suppliers to enable them to assess their obligations under TUPE in the event of a subsequent transfer occasioned by a future tender process.

8. Canvassing

8.1 Each organisation forming part of a bid submission must not canvass, solicit or offer any gift or consideration whatsoever as an inducement or reward to any officer (or their partner) or employee (or their partner) of the Authority, or to any officer (or their partner) or employee (or their partner) of any Authority member organisation or to a person (or their partner) acting as an adviser to in connection with the selection of Bidders in relation to this procurement. Without limitation to the generality of the above obligation, any organisation that:

* directly or indirectly attempts to obtain information from any member, employee, agent or contractor of the Authority concerning the process leading to the award of the contract (save as expressly provided for in the MOI, PQQ or ITT; or
* directly or indirectly attempts to contact any member, employee, agent or contractor of the Authority concerning the process leading to the award of the contract (save as expressly provided for in the MOI, PQQ or ITT; or
* directly or indirectly attempts to influence any member, employee, agent or contractor of the Authority concerning the conduct of the process leading to the award of the contract, or the structure of the procurement process, or the structure of the contractual opportunity, save where this occurs in a manner provided for in the MOI, PQQ or ITT;
* directly or indirectly canvasses any member, employee, agent or contractor of the Authority concerning the process leading to the award of the contract (save as expressly provided for in the MOI, PQQ or ITT;

may be disqualified from the procurement process by the Authority in their absolute discretion. Where any organisation forming part of a bid submission is disqualified the entire bid submission shall be disqualified.

9. Collusive Tendering

9.1 Any organisation forming part of a bid submission must neither disclose to, nor discuss with any other potential Bidder, or Bidder (whether directly or indirectly), any aspect of any response to any procurement documents (including the PQQ and ITT). Without limitation to the generality of the above obligation, any organisation that:

* fixes or adjusts the price included in its response to the ITT by or in accordance with any agreement or arrangement with any other bidder; or
* communicates to any person other than Authority the price or approximate price to be included in its response to the ITT or information that would enable the price or approximate price to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the response to the ITT or for the purposes of obtaining insurance or for the purposes of obtaining any necessary security); or
* enters into any agreement or arrangement with any other potential bidder that has the effect of prohibiting or excluding that potential bidder from submitting a response to the PQQ or ITT or as to the price to be included in any response to be submitted; or
* offers or agrees to pay or give or does pay or give 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 any act or omission in relation to any other response to the PQQ or ITT or proposed response to the PQQ or ITT;

may be disqualified from the procurement process by the Authority in their absolute discretion. Where any organisation forming part of a bid submission is disqualified the entire bid submission shall be disqualified.

10. Guarantees

10.1 If the successful Tenderer is a subsidiary Company within the meaning of S1159 of the Companies Act 2006 (as amended) it shall also provide to the Authority within 28 days receipt of written acceptance of the Tender a Guarantee by its holding Company (as defined by the Companies Act 2006) to secure the due performance by the successful Tenderer of its obligations to the Contracting Authority

10.2 If the successful Tenderer shall fail to provide the Guarantee within the period specified in 10.1 above, the Authority shall by written notice to the Tenderer be entitled to treat such failure as putting an end to the Contract between the Authority and the Tenderer, and the Tenderer, shall thereupon be liable to pay to the Authority damages, for such failure of such sum as shall be equivalent to the difference between the total whole term contract price of the contract with the successful tenderer and the total whole term contract price of the contract offered by the second placed Tender received by the Authority which at the date such notice is given is still open for acceptance by the Authority.

11. The Contract Terms and Conditions

11.1 This procurement exercise concerns the conclusion of a Contract under which either a sole or a number of successful Tenderers will be appointed (as denoted in the opportunity listing or OJEU notice) to supply the offering as described in Schedule D the specification, to the Authority on the terms agreed. A copy of the specimen Contract including the contract terms and conditions can be found in the general attachments on the e-tendering portal.

11.2 Upon concluding the procurement process the signed acceptance of the specimen contract shall be issued to the successful bidder. This will form the contract.

12 Disclaimer

The information contained in this ITT is presented in good faith and does not purport to be comprehensive or to have been independently verified.

Neither the Authority, or any of its members, nor any of their advisers accept any responsibility or liability in relation to its accuracy or completeness or any other information which has been, or which is subsequently, made available to any bidder, any relevant organisation, bidder guarantors, their financiers or any of their advisers, orally or in writing or in whatever media.

Interested parties and their advisers must therefore take their own steps to verify the accuracy of any information that they consider relevant, but are not entitled to rely on any statement or representation made by the Authority, or any of its members or any of their advisers.

Nothing in this ITT is, nor shall be relied upon as, a promise or representation as to any decision by the Authority in relation to this procurement. No person has been authorised by the Authority, or their advisers or consultants to give any information or make any representation not contained in the MOI or the PQQ or the ITT and, if given or made, any such information or representation may not be relied upon as having been so authorised.

Nothing in the MOI, PQQ or the ITT or any other pre-contractual documentation shall constitute the basis of an express or implied contract that may be concluded in relation to this procurement exercise, nor shall such documentation / information be used in construing any such contract. Each Bidder must rely on the terms and conditions contained in any contract when, and if, finally executed, subject to such limitations and restrictions that may be specified in such contract. No such contract will contain any representation or warranty in respect of the MOI, the PQQ or the ITT or other pre-contract documentation.

The Authority, accept no liability for any loss, liability, cost or expense (including legal expenses) incurred by any Bidder in preparing for or participating in this tender process, howsoever arising (whether under contract, tort or under any statutory provision or otherwise) including under any implied contract between Authority and any Bidder arising by virtue of this tender process.

In this paragraph 19, references to the MOI and the PQQ and the ITT include all information contained in these documents and any other information (whether written, oral or in machine-readable form) or opinions made available by or on behalf of the Authority or any of its advisers or consultants in connection with the MOI, the PQQ or any other pre-contract document.

Each Bidder’s acceptance of delivery of a PQQ response constitutes its agreement to, and acceptance of, the terms set out in this ITT.

The Authority reserve the right to change the basis of, or the procedures (including the timetable) relating to, the procurement process, to reject any, or all, of the PQQ submissions and ITT bids, not to invite a Potential Bidder to proceed further, not to furnish a potential Bidder with additional information nor otherwise to negotiate with a potential Bidder in respect of the procurement.

The Authority shall not be obliged to appoint any of the Bidders and reserves the right not to proceed with the procurement, or any part thereof, at any time.

## 13  Bidder changes

Bidders are subject to an on-going obligation to notify the Authority of any material changes in their identity, financial or other circumstances. This includes, but is not limited to, changes to the identity of partner organisations or sub-contractors or the ownership or financial or other circumstances thereof and solvency of the Bidder. The Authority should be notified of any material change as soon as it becomes apparent.

Failure to notify the Authority of any material changes or to comply with any of these provisions may lead to a Bidder being liable for disqualification from the procurement. The Authority reserves the right to refuse to allow such a change and to disqualify any Bidder from further participation in the procurement process. The Authority may take into account whether such change is material to the delivery of the contract.

### 14 Procurement Costs

Each Bidder will be responsible for its own costs and expenses (including legal costs and expenses) incurred throughout each stage of the procurement process. The Authority will not be responsible for any costs incurred by any Bidder or any other person through this process, including but not limited to any exit or de-commissioning costs.

The Authority will not be responsible for any costs and expenses (including legal costs and expenses) that result from delay to this procurement process or from the abandonment of this procurement process.

## 15 Publicity

No publicity regarding this procurement process or the award of any contract will be permitted unless and until the Authority has given express written consent to the relevant communication and has approved the detail of any such communication. Without prejudice to the generality of the foregoing, no statements shall be made to the media regarding the nature of any response to this PQQ or any ITT relating to this process, its contents, any on-going dialogue between the Authority and any Bidder or any proposals relating to it, without the prior written consent of the Authority

# 16 IPR

## All procurement documentation issued in connection with this procurement shall remain the property of the Authority and shall be used by the Bidder only for the purposes of this procurement.

##

## 17 Law and Jurisdiction

## Any dispute (including non-contractual disputes or claims) relating to this procurement shall be governed by and construed in accordance with the laws of England and Wales.

## The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this procurement (including non-contractual disputes or claims).

18 Prerequisites/Mandatory Requirements [x]  (only applicable to the tender if this box is checked, open procedure only and must be referenced in the OJEU notice)

Bids that fail to meet the minimum standard as denoted in Schedule F may be rejected. This includes those that are ineligible to tender on a ground specified in regulation 23 of the Public Contract Regulations (2006 as amended). Bidders that fail to satisfy the Authority of meeting the minimum standards set out both economically and technically will be deemed ineligible and not have their bid further assessed.

It is recommended the bidders asses Appendix 1 and satisfy themselves of their own compliance before completing the bidder response and pricing schedules.

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| SCHEDULE DSPECIFICATION |

Clinical requirement

The specification is for the provision of a mobile service delivering extracorporeal shockwave lithotripsy (ESWL) and extracorporeal shockwave treatment (ESWT), the service should be equipped with both x-ray and ultrasound localisation. The service will operate from The Countess of Chester Hospital NHS Foundation Trust within the Urology department in treatment room UR 07 (the named room may be subject to change, dependant on availability). A drawing has shown below of the layout of the treatment room.

If you would like to take the opportunity to view the treatment room then please get in touch via the e-tendering portal by no later than Monday 22nd May 12 noon to confirm your attendance and make arrangements. The site visit will take place on Wednesday 24th May from 1.00-2.00pm.

Clinical service

The requirements of the service are:

|  |  |  |  |
| --- | --- | --- | --- |
| Desired day of session | Times | Quantity of Patients per session | Sessions per year |
| First Thursday of Month | 8am to 5pm | 10 | 18 |

(please refer to the commercial schedule for the breakdown of ESWT and ESWL)

*The current service provides a minimum of 1 session per month, with the option of a second session in the month if require. normally treating 10-12 patients per session. (please note the sessions are indicative and subject to change, dependent on patient volumes)*

The equipment must be ready to start with the first patient at the appointed time

If a breakdown during a session leads to a list/part list being cancelled then the contractor will conclude the list on the next available day at no charge.

The service is required to be carried out in line with all Implied terms, including but not limited to: Ionising Radiation Regulations 1999.

Equipment

It is the responsibility of the contractor to ensure that the Lithotripter and associated equipment including tractor/trailer unit fully complies with the Health and Safety at Work Act and all other relevant legislation.  The contractor must also ensure that the equipment is regularly maintained as per the manufacturer’s recommendations.

Offerors should ensure that all X-ray equipment is tested in line with the Regulations contained within the Ionising Radiation Regulations 1999 (IRR99) and IPEM Report 91 “Recommended Standards for the Routine Performance Testing of Diagnostic X-ray Imaging Systems” and that records of such testing are made available to the Trusts on request.

Sundries

To ensure the patient is comfortable during procedure the trust will provide the required linen and gowns for patients, there is no need for the supplier to provide this during procedure.

Patient Records

The supplier is expected to complete a record of key clinical information within the ‘Treatment Record’ which is then filed in patients’ hospital case notes.

This section refers to the Data Processing Agreement which has been included within Appendix 1. This will be completed and returned to the Information Governance Manager after contract award.

Infection Control

Standard precautions for preventing infections will be used by all health care practitioners to the care of all hospital patients all the time. (The Trusts standard for infection control is as uploaded onto the Bravo tender portal.)

The Trust’s infection prevention and control assurance framework is based on the criteria contained within the Health and Social Care Act (2008) – code of practice on the prevention and control of infections and related guidance and is governed by the Infection Control Committee.

Any equipment used must withstand solutions containing 1,000 ppm average chlorine as routine, (particularly the bed the patient lies on or up to 20,000 ppm average chlorine). If the lithotripsy equipment (specifically) is unable to withstand contact with such solutions, then it must be clear (within the response to the Infection Control Question, contained within Schedule G what equivalent alternative can meet the same standards of cleaning/disinfection.

Staffing requirements

The contractor is required to provide suitably trained and qualified radiographers to work in conjunction with the hospitals’ medical staff.  The radiographers will be expected to work without the supervision of a hospital urologist unless this is clinically requested. NB: The Trusts’ preference is for Senior Radiographers Grade E1 minimum equivalent to a Band 6, Senior Radiographer within the NHS Pay Scales.

It is expected that the two radiographers allocated to this contract should attend a minimum of 80% of the sessions, unless on sickness or holiday leave.

The Countess of Chester expect one radiographer to attend each session.  If for any reason this is not possible, agreement must be reached in advance.

The radiographer/s are expected to be smartly dressed, and carry identification/name badge.

Should the successful Tenderer wish to send staff in training to any of the sessions, this must be agreed in advance and that person must be an additional member of the team rather than a replacement.

A list of HPC registration numbers and signature bank for all Radiographers operating the service should be made available to the Trust on request.

Quality Requirements

The trusts would expect a minimum of 80% success rate for the first time treatments for patients.

The contractor will provide an audit of performance, the results must be provided on a monthly basis and show evidence of the clinical effectiveness of the treatments carried out.

The contractor must be prepared to give a formal presentation of results to consultants/urologists on an annual basis if requested.

Safety Requirements

The Irma regulations need to be followed with regard to this service.

Local rules for operation to be submitted from companies designated RPA.

The Lithotripter must not to exceed 4000 shockwaves

The contractor will be the lead radiation employer under IRR 99 for the work with the X-ray equipment used in this procedure and shall undertake the prior radiation risk assessment (at no additional cost to the trust), and keep this assessment under review.  A copy will be provided to the Trusts.  In addition they will provide an adequate set of radiation local rules covering the work and make these available to all staff (both the contractor’s and the Trusts’) involved in the procedures.

The contractor must work with the Countess of Chester to ensure that an agreed set of procedures as required under the ionising Radiation (Medical Exposure) Regulations 2000 (IRMER) are in place.

The contractor should carry out regular patient radiation dose audit as required by IRR99 and IRMER(at no additional cost to the Trust and provide the results and suggested Diagnostic Reference levels for this work to the Contract Manager (To be named in the subsequent contract).

IRP and Confidentiality

 In all case records (films, optical disks etc) will become the property of the trusts. Your attention is drawn to conditions 20 and 21 NHS Conditions of Contract for the supply of services, regarding confidentiality and data protection.

The successful tenderer will be required to work with the Trust in the compilation of the Data Sharing Agreement. (as contained within the Tender document)

|  |
| --- |
| SCHEDULE ESPECIMEN CONTRACT(The contract terms and conditions are attached within the qualification envelope please confirm if you accept/decline)  |

|  |
| --- |
| SCHEDULE FMANDATORY INFORMATIONfor mandatory completion and returnPlease complete within the qualifications envelope on the e-tendering portal. |

MANDATORY REQUIREMENTS (IN/OUT)

If a Tenderer scores ‘OUT’ in one or more of the criteria in this section they will be excluded from further stages of the evaluation.

The Authority may deem it appropriate to validate your response in meeting the mandatory requirements by requesting and evaluating documentation to support your responses.

STANDARD QUESTIONNAIRE EXCLUSION CRITERIA (IN/OUT)

The exclusion criteria will be scored as follows:

|  |  |
| --- | --- |
| Tenderer confirms that they comply with all of the requirements included in the Exclusion Criteria section | IN |
| Tenderer has not confirmed that they comply with all of the requirements included in the Exclusion Criteria section | OUT |

TENDERER’S ECONOMIC AND FINANCIAL VIABILITY (IN/OUT)

Tenderers are required to upload a copy of their Dun & Bradstreet (D&B) Comprehensive Report (or equivalent) which includes the rating for financial strength and risk of business failure. This is a mandatory requirement. Tenderers may be charged a fee by Dun and Bradstreet (or equivalent) for obtaining this report.

The report will be used by the Trust to determine whether there is any evidence indicating a moderate or high risk to the Trust that the Tenderer will be unable to provide the services required over the period of the contract.

If any Tenderer is assessed as moderate or high risk, the Trust reserves the right to eliminate the Tenderer from further stages of the procurement process. Economic and financial standing will be scored as follows:

|  |  |
| --- | --- |
| Report shows that the organisation is stable with a low or very low risk of failure. | IN |
| Responses show that the organisation has some instability with a moderate or high risk of failure. | OUT |

INSURANCE (IN/OUT)

The successful supplier is required, prior to the commencement date of the Contract, to put in place and maintain in force at its own cost with a reputable commercial insurer, a minimum of £5,000,000 level of insurance protection in respect of employer’s liability, public liability and professional indemnity.

This question will be scored as follows:

|  |  |
| --- | --- |
| The Tenderer has confirmed that they will, prior to the commencement date of the Contract, put in place and maintain in force at its own cost with a reputable commercial insurer, a minimum of £5,000,000 level of insurance protection in respect of employer’s liability, public liability and professional indemnity. | IN |
| The Tenderer has not confirmed that they will, prior to the commencement date of the Contract, put in place and maintain in force at its own cost with a reputable commercial insurer, a minimum of £5,000,000 level of insurance protection in respect of employer’s liability, public liability and professional indemnity. | OUT |

CONFLICTS OF INTEREST (IN/OUT)

A Conflict of Interest is where a person who is involved in the procurement has or may be perceived to have a personal interest in ensuring that a particular supplier is successful. Actual, potential or perceived conflicts of interest must be declared by a person involved in a tender process.

Are you (your organisation) or any Consortium/JV member/sub-contractor aware of any actual, potential or perceived conflicts of interest which may actually or apparently, compromise the conduct of this procurement?

This question will be scored as follows:

|  |  |
| --- | --- |
| The Tenderer does not have any actual, potential or perceived conflicts of interest which may actually or apparently, compromise the conduct of this procurementorThe Tenderer has declared an actual, potential or perceived conflict of interest but the Trust deems that the measures that they have implemented to mitigate against this are sufficient to ensure that it will not compromise the conduct of this procurement. | IN |
| The Tenderer has declared actual, potential or perceived conflicts of interest which may actually or apparently, compromise the conduct of this procurement | OUT |

Where there is any indication that a conflict of interest exists or may arise, then it shall be the responsibility of the Tenderer to inform the Trust, detailing the conflict in writing in the e tendering portal.

The Trust will be the final arbiter in cases of potential conflicts of interest. Failure to notify the Trust of any potential conflict of interest will invalidate any verbal or written agreement.

TERMS AND CONDITIONS (IN/OUT)

Any contract awarded will be governed by the NHS Terms and Conditions for the Provision of Goods and Services (Contract Version) (December 2016), a copy of which has been uploaded in the attachments area within the e-tendering portal for you to review.

 Please confirm that you accept these terms and conditions and will comply with them for the duration of the contract.

|  |  |
| --- | --- |
| Tenderer has confirmed that they accept these terms and conditions and will comply with them for the duration of the contract. | IN |
| Tenderer has not confirmed that they accept these terms and conditions and will comply with them for the duration of the contract. | OUT |

Tenderers who wish to propose additional clauses for inclusion in the contract which are specific to the provision of mobile lithotripsy service may do so but it is at the Authority’s absolute discretion whether they will consider incorporating these in an addition schedule within the contract. Any additional clauses that the Authority includes will be in addition to the NHS Terms and Conditions for the Provision of Goods and Services (Contract Version) (December 2016)

Proposing additional clauses does not negate the need to confirm acceptance of and compliance with the NHS terms and conditions; agreeing to the NHS terms remains a mandatory requirement of this tender.

M01 SPECIFICATION (IN/OUT)

Please confirm that you have the experience and capability to fully meet the specification of requirements detailed in Schedule D of the ITT (Specification of Requirements).

|  |  |
| --- | --- |
| Tenderer has confirmed that they can fully meet the specification  | IN |
| Tenderer hasn’t confirmed that they can fully meet the specification  | OUT |

|  |
| --- |
| SCHEDULE GBIDDER RESPONSE(for mandatory completion and return – please refer to the technical envelope, each question is attachable to the relative question in the technical envelope asked and requires a response) |

##### Weighted Questions

Lithotripter Device and Process Information 17%

Please provide a full specification/s of the mobile lithotripsy equipment that would be utilized in fulfilling the trusts requirement.

Please also include detail of your operating procedures for both ESWT and ESWL from the start of the procedure, through to returning the results.

Your response must be a maximum of 6 sides of A4 font size 11. Please upload a document with the filename: Company Name\_Q01 – within the technical envelope.

|  |  |  |
| --- | --- | --- |
| **Score** | **Points awarded** | **Guidance** |
| Excellent Confidence | 4 | The response provided exceeds expectations and provides full confidence that the lithotripsy equipment proposed would effectively meet the requirements of the Trust. The tenderer has robust processes for each element of the proposed service and would provide an efficient and high quality service to the patients and the Trust. |
| Acceptable Confident  | 3 | The response provided meets expectations and provides good confidence that the lithotripsy equipment proposed would effectively meet the trusts requirements. The tenderer has processes in place to cover all of the elements and the service proposed would be fit for purpose. |
| Concerns, Some Confidence | 2 | The response provided meets expectations and provides some confidence that the lithotripsy equipment and processes proposed would meet the requirements but there are minor weak areas or areas of concern. |
| Serious Concerns  | 1 | The response does not demonstrate that the lithotripsy equipment’s and/or the service proposed would effectively meet the requirements or any aspect of the response gives cause for major concern. |
| No Confidence | 0 | Any aspect of the response gives major cause for concern |

Cleaning Procedures and Infection Control – 10%

Please attach details of cleaning procedures undertaken on the equipment prior to each session and in between each patient and your approach to operational infection control, this should include – but not limited to:

* The products, and process that will be used to clean the machine before and after the procedure including information regarding disinfection and sterilisation of the equipment and between each patient, and your approach to operational infection control
* The products used to clean the consumables (in line with the specification)
* Detail on how you will work in line with the trusts standard for infection control

Your response must be a maximum of 4 sides of A4 font size 11. Please upload a document with the filename: Company Name\_Q02 – within the technical envelope.

|  |  |  |
| --- | --- | --- |
| Score | Points awarded | Scoring Guidance |
| Excellent Confidence | 4 | The response is comprehensive and exceeds expectations. Giving an excellent level of confidence that the tenderer is able to meet infection control requirements of the project to a high standard.  |
| Acceptable Confident  | 3 | The response is detailed and meets expectations. Giving an acceptable level of confidence that the tenderer is able to meet infection control requirements for the project to a good standard.  |
| Concerns, Some Confidence | 2 | The response gives some confidence the tenderer is able to meet the infection control requirements for the project but there are minor weak areas or cause for concern. |
| Serious Concerns  | 1 | The response gives a poor level of confidence that the tenderer has effectively planned the project and is capable of being able to meet the Health and Safety requirements.  |
| No Confidence | 0 | Any aspect of the response gives major cause for concern |

Audit of Performance - 5%

The contractor will provide an audit of performance, the results must be provided on a monthly basis and show evidence of the clinical effectiveness of the treatments carried out.  This would as a minimum include (but not limited to) details such as:

* Patient throughput
* Retreatment rate
* Time per procedure
* First time success rates

Please upload an example of the report that would be provided to fulfil the trusts audit requirements.

Your response must be a maximum of 4 sides of A4 font size 11. Please upload a document with the filename: Company Name\_Q03 – within the technical envelope

|  |  |  |
| --- | --- | --- |
| Score | Points awarded | Scoring Guidance |
| Excellent Confidence | 4 | The example is comprehensive and exceeds expectations. Giving an excellent level of confidence that the tenderer is able to meet the trusts audit requirements to a high standard.  |
| Acceptable Confident  | 3 | The example is detailed and meets expectations. Giving an acceptable level of confidence that the tenderer is able to meet the trusts audit requirements to a good standard.  |
| Concerns, Some Confidence | 2 | The example gives some confidence the tenderer is able to meet the trusts audit requirements but there are minor weak areas or cause for concern. |
| Serious Concerns  | 1 | The example gives a poor level of confidence that the tenderer can meet the trusts audit requirements.  |
| No Confidence | 0 | Any aspect of the response gives major cause for concern |

Staff Qualifications - 5%

Please provide details of the radiographers that you would use to deliver the mobile lithotripsy services under this contract. We advise that there are no more than 2 radiographers allocated to this contract, to ensure the patients have a consistent service.

Your response should include, but not be limited to:

* The roles and responsibilities of each member of staff that would be working on the contract
* The relevant qualifications (including proof of professional competencies)
* Training and relevant experience of the staff members (including infection control, manual handling)
* Full DBS status
* Confirmation that consultants have up to date professional registration and have regular appraisals and re-validation process

Your response must be a maximum of 4 sides of A4 font size 11. Please upload a document with the filename: Company Name\_Q04 within the technical envelope

|  |  |  |
| --- | --- | --- |
| Score | Points awarded | Scoring Guidance |
| Excellent Confidence | 4 | The response is comprehensive and exceeds expectations. Giving an excellent level of confidence that the tenderer will fulfil the staffing requirements of this service to a high standard.  |
| Acceptable Confident  | 3 | The response is detailed and meets expectations. Giving an acceptable level of confidence that the tenderer is able to meet the requirements for the project to a good standard.  |
| Concerns, Some Confidence | 2 | The response gives some confidence the tenderer is able to meet the staffing requirements for the project but there are minor weak areas or cause for concern. |
| Serious Concerns  | 1 | The response gives a poor level of confidence that the tenderer has effectively planned the project and is capable of being able to meet the staffing requirements.  |
| No Confidence | 0 | Any aspect of the response gives major cause for concern |

Maintenance of Lithotripter Equipment - 5%

It is the contractor's responsibility to ensure that the Lithotripter and associated equipment including tractor/trailer unit is regularly maintained as per the manufacturer’s recommendations. Please detail how you will meet the trusts requirements including but limited to:

* Your maintenance of the lithotripter equipment (including how often is will be serviced)
* Levels of cover available such as; bronze, silver gold and what each cover includes

Your response must be a maximum of 4 sides of A4 font size 11. Please upload a document with the filename: Company Name\_Q05 – within the technical envelope

|  |  |  |
| --- | --- | --- |
| Score | Points awarded | Scoring Guidance |
| Excellent Confidence | 4 | The response is comprehensive and exceeds expectations. Giving an excellent level of confidence that the tenderer is able to meet the requirements of the maintenance of the lithotripter and trailer unit to a high standard.  |
| Acceptable Confident  | 3 | The response is detailed and meets expectations. Giving an acceptable level of confidence that the tenderer is able to meet the requirements for the project to a good standard.  |
| Concerns, Some Confidence | 2 | The response gives some confidence the tenderer is able to meet the Health and Safety requirements for the project but there are minor weak areas or cause for concern. |
| Serious Concerns  | 1 | The response gives a poor level of confidence that the tenderer has effectively planned the project and is capable of being able to meet the health and safety requirements.  |
| No Confidence | 0 | Any aspect of the response gives major cause for concern |

Cancellation of Treatments – 3%

In the event of a cancellation of an appointment slot, how would you work with the trust to mitigate the fee being charged?

Your response must be a maximum of 2 sides of A4 font size 11. Please upload a document with the filename: Company Name\_Q06 – within the technical envelope

|  |  |  |
| --- | --- | --- |
| Score | Points awarded | Scoring Guidance |
| Excellent Confidence | 4 | The Tender’s response is comprehensive and exceeds expectations. Giving exceptional suggestion/s for improvement/s/added value with means of easily quantifying any benefit/s. |
| Acceptable Confident  | 3 | The Tenders response is detailed. Giving acceptable suggestion/s for improvement/s/added value with means of quantifying any benefit/s.  |
| Concerns, Some Confidence | 2 | The Tenders response offers some suggestion/s for improvement/s/added value but there are minor weak areas or cause for concern. |
| Serious Concerns  | 1 | The Tenders response gives a poor level of confidence that the tender can apply improvement/s/add additional value. |
| No Confidence | 0 | Any aspect of the response gives major cause for concern |

Health and Safety – 5%

As stated within the specification, the dosage must not exceed 4000 shockwaves, please provide an explanation of how your dosage levels fit within low, medium and high risks and include an example of a risk assessment that would be used on-going.

Your response must be a maximum of 2 sides of A4 font size 11. Please upload a document with the filename: Company Name\_Q07 – within the technical envelope

|  |  |  |
| --- | --- | --- |
| Score | Points awarded | Scoring Guidance |
| Excellent Confidence | 4 | The response is comprehensive and exceeds expectations. Giving an excellent level of confidence that the tenderer is able to meet the health and safety requirements.  |
| Acceptable Confident  | 3 | The response is detailed and meets expectations. Giving an acceptable level of confidence that the tenderer is able to meet the health and safety requirements to a good standard.  |
| Concerns, Some Confidence | 2 | The response gives some confidence the tenderer is able to meet the health and safety requirements for the project but there are minor weak areas or cause for concern. |
| Serious Concerns  | 1 | The response gives a poor level of confidence that the tenderer has effectively planned the project and is capable of being able to meet the health and safety requirements.  |
| No Confidence | 0 | Any aspect of the response gives major cause for concern |

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| SCHEDULE HPRICE SCHEDULEfor mandatory completion and returnPlease insert your pricing within the e-tendering portal under the commercial envelope. It is important to ensure all of your prices submitted are inclusive of VAT. |

##### PRICE SCHEDULE

The current service provides a minimum of 1 session per month, with the option of a second session in the month if require, normally 10-12 patients are treated per session.

Please insert your pricing within the e-tendering portal under the commercial envelope. It is important to ensure all of your prices submitted are exclusive of VAT.



###### APPENDIX 1

DATA PROCESSING AGREEMENT

(for mandatory completion and return – please refer to the qualifications envelope)



|  |
| --- |
| **DATA PROCESSING AGREEMENT** |
| Between |
| (1) COUNTESS OF CHESTER NHS FOUNDATION TRUST  |
| and |
| (2) [◆ ] |

|  |  |
| --- | --- |
| Document Reference | xxxx |
| Date of Issue  | xxxx 2017 |
| Date of Next Review  | xxxx 2017 |
| Date of Last Review  | xxxx 2017 |
| Version | xxxx |

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SCHEDULE 2 17

THIS AGREEMENT is made as a deed on 2015

BETWEEN:

1. COUNTESS OF CHESTER HOSPITAL NHS FOUNDATION TRUST whose headquarters are at Countess of Chester Health Park, Liverpool Road, Chester, CH2 1UL(Controller); and

(2) [INSERT NAME OF PARTY] [of/a company incorporated in [England and Wales] under number [*insert registered number*] whose registered office is at] [*insert address*] (Processor),

(each of the Controller and Processor being a Party and together the Controller and Processor are the Parties).

BACKGROUND

(A) The Controller is an NHS Foundation Trust which controls personal data including the data set out in Schedule 1.

 (B) The Controller processes the personal data in accordance with the registered purposes set out in the Trust’s Data Protection Register Entry Details (registration number Z6903413) (the Data Protection Register Entry Details).

(C) Under the overarching agreement/contract, the Processor undertakes functions which complement those of the Controller.

(D) The Processor has agreed to process the Personal Data on the terms set out below.

THE PARTIES AGREE:

DEFINITIONS and interpretations

* 1. In this agreement, unless otherwise provided:

Agreement Date means the date of this Agreement;

Commercially Sensitive Information**:** the information listed in schedule 3 comprising the information of a commercially sensitive nature relating to the Processor, its intellectual property rights or its business or which the Processor has indicated in writing to the Trust that, if disclosed by the Trust, would cause the Processor significant commercial disadvantage or material financial loss.

**Confidential Information** means:

(a) all Data;

(b) the semantic content of all Data

c) any other information of a confidential nature and identified by the Trust as such at the time of disclosure or within 14 days of the date of disclosure means personal data controlled by the Controller including the data set out in Schedule 1;

**Data Protection Notice** means the Controller's data protection notice set out in the Schedule;

**Data Security Obligations** means the Processor's obligations in relation to data security set out in Schedule 1;

**DPA** means the Data Protection Act 1998;

Environmental Information Regulations**:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA**:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure** has the meaning given in clause 18;

 Information**:** has the meaning given under section 84 of FOIA.

Purpose means to deliver a Mobile Lithotripsy Service

Request for Information**:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations

**Security Measures** means the measures to be taken by the Processor to protect the Data against unauthorised processing and accidental loss or damage, as set out in Schedule 1;

**Services** means the services to be carried out hereunder by the Processor;

[**Sub-processors** means approved persons who may carry out Services on the Processor's behalf [as listed in the Schedule[[1]](#footnote-1)]];

**Year** means a year of operation of this agreement beginning on the Effective Date or an anniversary thereof and ending 12 months thereafter.

* 1. Unless the context otherwise requires:
		1. **data controller**, **data processor**, **data subject**, **personal data** and **processing** have the meanings given in the DPA;
		2. each gender includes the others;
		3. the singular includes the plural and vice versa;
		4. references to this agreement include its Schedule;
		5. references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
		6. clause headings do not affect their interpretation;
		7. general words are not limited by example; and
		8. references to legislation include any modification or re-enactment thereof. In the case of conflict or ambiguity:
			1. between any provision contained in the body of this Agreement and any provision contained in the Schedules or appendices, the provision in the body of this Agreement shall take precedence;
			2. between the terms of any accompanying invoice or other documents annexed to this Agreement and any provision contained in the schedules or appendices, the provision contained in the schedules or appendices shall take precedence; and
			3. advising in connection with the subject of this agreement between any of the provisions of this Agreement and the provisions of any overarching contract/agreement, the provisions of this Agreement shall prevail.

TERM

This agreement will begin on [the Effective Date] [*insert other date*] and continue [until [*insert date*]] [until the Services are completed in accordance with the overarching agreement] [[2]](#footnote-2), unless earlier terminated under clause 15.

PURPOSE

* 1. In order to fulfil the Purpose, the following Data set out in Schedule 1 will be shared by the Controller with the Processor:
	2. It is agreed between the Parties that this agreement is supplemental to the terms of business agreed between the Processor and the Controller and any other agreement signed between the Parties relating to the Services to be provided by the third party to the Trust as set out in Schedule 1 to this agreement the terms of this agreement shall prevail.

SERVICES

* 1. The Processor will perform the Services:
		1. in accordance with this agreement (and in particular the timescales and service levels set out in Schedule 1) and the terms set out in the overarching agreement / contract; and
		2. to a standard equal to best practice among reputable providers of similar services.
	2. The Controller may at its sole discretion suspend any or all Services at any time on written notice to the Processor.

CONTROLLER'S OBLIGATIONS

* 1. The Controller will provide the Processor with the Data, Data Protection Notices and such instructions and other information as the Processor needs to perform the Services.
	2. Instructions given by the Controller will not contravene UK legislation.
	3. The Controller warrants that it has power to sign this agreement.

PROCESSOR'S OBLIGATIONS

* 1. The Processor will:
		1. process the Data and use the Data Protection Notices and other information supplied by the Controller solely to provide the Services under this agreement and in accordance with the Controller's written instructions;
		2. identify to the Controller a contact point within its organisation authorised to respond to enquiries concerning Processing of the Data, and will co-operate in good faith with the Controller concerning all such enquiries within a reasonable time;
		3. allow only the employees and Sub-processors listed in Schedule 1 to be involved in the discharge of the Processor’s obligations under this Agreement or otherwise to have access to the Data and ensure that such employees and Sub-processors are fully trained in UK data protection laws, the handling of personal data and the Processor’s obligations under this Agreement;
		4. comply with the Data Security Obligations and keep the Security Measures implemented at all times, and immediately notify the Controller of any breach of either;
		5. comply promptly with such additional instructions as the Controller may, from time to time, issue;
		6. not disclose the Data, Data Protection Notices or other information supplied by the Controller to any third party other than in accordance with the Controller's written instructions or as required by law;
		7. [not allow Data to be transferred out of the European Economic Area other than on the Controller's written instructions[[3]](#footnote-3);]
		8. promptly assist the Controller with requests from data subjects and other regulatory requirements;
		9. ensure that Data is accurately recorded, and if inaccurate is promptly amended;
		10. maintain suitable back-up facilities [to the minimum standard set out in the Security Measures[[4]](#footnote-4)] at no cost to the Controller;
		11. immediately forward to the Controller any communications required by it from data subjects, regulatory bodies and other third parties concerning the Data and not respond to or act on such communications without the Controller's prior agreement;
		12. in response to a written request from the Controller provide a copy of the Data in the format reasonably specified to the Controller;
		13. include the Data Protection Notice in any medium on which it receives or records Data from data subjects; and
		14. apply relevant regulations to the retention, storage and disposal of records, only keeping information for as long as necessary in relation to the original purpose(s) for which it was collected.
	2. The Processor warrants that it has power to sign this agreement.

MANAGEMENT OF THE AGREEMENT

* 1. In entering into this Agreement, the parties each acknowledge the nature of their duties in relation to the Purpose and the commensurate nature of their obligations in relation to Data expressed in this Agreement.
	2. Without prejudice to any other provision of this Agreement the parties aspiration is that this agreement is intended to support such policies as may exist and, accordingly, within the organisation of each party, this Agreement should be read in conjunction with the staff guidelines in place within each Party regarding the transfer of personal data.
	3. Without prejudice to each party’s duties under any provision of this Agreement, each party agrees to appoint a single point of contact (**SPOC**) who will endeavour to cooperate with their counterpart to achieve the purpose of this Agreement.

DATA

* 1. The Processor acknowledges that to the extent the Data records a film, sound recording of a database in the Data, cover all database rights in the data belong to the Controller. The Processor may use all such rights only under this agreement.
	2. The Controller grants the Processor a licence to copy and store the Data solely to the extent reasonably perform its obligations under, and for the term of, this Agreement.
	3. The Processor hereby assigns (and will ensure that its Sub-processors assign) to the Controller all future copyright in any amendments or additions to the Data created by the Processor in performing its obligations under this Agreement.

FORMAT AND FREQUENCY OF SHARING

* 1. The format in which the personal data will be shared is [◆ ].
	2. The frequency with which the personal data will be shared is [◆ ].

DATA SECURITY

* 1. The Processor shall comply with the Data Security Obligations set out in Schedule 1.
	2. The Processor shall ensure that the Data are kept and in an encrypted form, and shall use the best available security practices and systems applicable to the use of the Data to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Data.
		1. Where the Controller uses Security Measures in relation to the Services (wholly or in part), the Security Measures must, unless the Controller notifies the Processor otherwise, be kept confidential and not lent, shared, transferred or otherwise misused.
		2. If the Processor becomes aware of any misuse of any Data, or any security breach in connection with this Agreement that could compromise the security or integrity of the or otherwise adversely affect the Controller or any data subject or if the Processor learns or suspects that any Security Measure has been revealed to or obtained by any unauthorised person, the Processor shall, at the Processor's expense, promptly notify the Controller and fully co-operate with the Controller to remedy the issue as soon as reasonably practicable.
		3. The Processor agrees to co-operate with the Controller's reasonable security investigations.

AUDIT

* 1. To verify the Processor's compliance with this agreement, the Processor will allow the Controller and/or its agents access to any premises where Data is being processed. Such access will be during normal business hours and subject to not less than [three] Business Days' notice unless the Controller has a reasonable, objective belief that the Processor is in material breach of this agreement, in which case access will be granted at any [reasonable[[5]](#footnote-5)] time.
	2. The Processor will supply the Controller with such access, and such information in such format, as the Controller may request, and otherwise assist the Controller generally in verifying the Processor's compliance with this agreement. Such access may include access to:
		1. the Processor's employees (including its senior management, management supervising the day to day provision of the Services, information systems, risk and security staff);
		2. telephone and other records, documents and other information; and
		3. the systems (including back-up and disaster recovery systems) used (or which may be used) by the Processor to provide the Services.

PROCESSOR RESTRICTIONS

* 1. Without prejudice to clause 6 or the Controller’s intellectual property rights, the Third Party shall:
		1. limit access to the Data to the Processor employees so where applicable sub-contractors;
		2. only make copies of the Data to the extent reasonably necessary for the purpose of back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing;
		3. not use the Data for any purpose contrary to any law or regulation or any regulatory code, guidance or request;
		4. not extract, reutilise, use, exploit, distribute, disseminate, copy or store the Data for any purpose not expressly permitted by this Agreement;
		5. not copy, modify, decompile, reverse engineer or create derivative works from the Data, except to the extent permitted by any applicable law; and
		6. not do anything which may damage the reputation of the Controller.

ASSIGNMENT AND SUBCONTRACTING

* 1. The Processor shall not, without the Controller's prior written consent:
		1. assign its rights or obligations hereunder;
		2. appoint any Sub-Processor; and
		3. delegate the performance of its obligations other than to its employees or Sub-processors subject to clause 6.1.3.
	2. Consent may be subject to such terms as the Controller sees fit, and may be withdrawn if the Controller believes that Data security may be compromised for any reason.
	3. The Processor will ensure compliance by its employees and Sub-processors comply with the Processor's obligations hereunder. If the Controller so requests, this will be done by written agreement enforceable directly by the Controller.
	4. The Controller consents to the employees and the Sub-processors specified in Schedule 1 processing Data subject to this agreement.

INDEMNITY

The Processor shall indemnify the Controller against any costs, claims and proceedings, damages and other liabilities incurred by the Controller as a result of any breach of this agreement by the Processor or its agents.

TERMINATION

* 1. The Controller may terminate this agreement:
		1. for convenience on not less than [90[[6]](#footnote-6)] days' written notice to the Processor; or
		2. immediately if the Processor acts in relation to the Data or any other data in a way which does not comply with the spirit of the principles of the DPA.
		3. The Controller may terminate this agreement at any time if the other commits a material breach, or series of breaches resulting in a material breach, of the agreement and such breach is not remediable, or is not remedied within 10 days of written notice to do so;
		4. The Processor may terminate this agreement at any time if the other commits a material breach, or series of breaches resulting in a material breach, of the agreement and such breach is not remediable, or is not remedied within 90 days of written notice to do so;
	2. Either party may terminate this agreement at any time if:
		1. the other commits a material breach, or series of breaches resulting in a material breach, of the agreement and such breach is not remediable, or is not remedied within 15 days of written notice to do so;
		2. the Processor passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the Processor, or a winding-up order is made in relation to the other;
		3. a receiver or administrative receiver is appointed in relation to the Processor or any of its assets;
		4. the Processor compounds with, or applies for protection from, its creditors generally;
		5. the Processor takes or suffers any similar action in any jurisdiction;
		6. there is a material change in the management, ownership or control of the Processor; or
		7. the Processor is subject to an event of Force Majeure under clause 18.
	3. On termination:
		1. all rights granted to the Processor under this agreement will cease;
		2. the Processor will return to the Controller [as the Trust may request] all Data[, databases created from the Data,] and copies [thereof] [of each[[7]](#footnote-7)] and copies [thereof] [of each] which are or should be in its possession or control; and
		3. each party will return to the other or (at the other's request) destroy (and certify, in writing, destruction of) all property of the other which is or should be in its possession or control.
	4. Termination will be without prejudice to the accrued rights and liabilities of the Parties.
	5. Clauses 1, 4.1, 4.2, 5.2, 5.3, 6.1.1, 6.1.4 - 6.1.6, 6.1.10, 7, 8, 10, 13, 14, , 15.3, 16, 19.1, 19.2, 19.4 - 19.5 and 19.8 - 19.11 will survive termination of this agreement, however occurring.

FREEDOM OF INFORMATION

* 1. The Processor acknowledges that the Controller is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and co-operate with the Controller to enable the Controller to comply with these Information disclosure requirements.
	2. The Processor shall and shall procure that where any sub-processors has been appointed its sub-processors shall:
		1. transfer any Request for Information to Controller as soon as practicable after receipt and in any event within three days of receiving a Request for Information;
		2. provide the Controller with a copy of all Information in its possession or power in the form that the Controller requires within seven days (or such other period as the Controller may specify) of the Controller requesting that Information; and
		3. provide all necessary assistance as reasonably requested by the Controller to enable the Controller to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
	3. The Controller shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
		1. is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations;
		2. is to be disclosed in response to a Request for Information.
	4. In no event shall the Processor respond directly to a Request for Information unless expressly authorised to do so by the Controller.
	5. The Processor acknowledges that the Controller may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004) (the **Code**), be obliged under FOIA or the Environmental Information Regulations to disclose Information:
		1. without consulting with the Processor, or
		2. following consultation with the Processor and having taken its views into account.

provided always that where clause 16.5.1 applies the Controller shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Processor advanced notice, or failing that, to draw the disclosure to the Processor's attention after any such disclosure.

* 1. The Processor shall ensure that all Information arising in the Term of this Agreement or relating to the agreement and relating to the performance of this Agreement or the Data is retained for disclosure and shall permit the Controller to inspect such records as requested from time to time.
	2. The Processor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Controller may nevertheless be obliged to disclose Confidential Information in accordance with clause 16.4.

CONFIDENTIALITY

* 1. Neither party will, without the other's prior written consent, disclose Confidential Information (other than under clause 16 and 18.3).
	2. Neither party will use the other's Confidential Information except as required to perform this agreement.
	3. Disclosure of Confidential Information may be made to a party's officers, employees, professional advisers and consultants and other agents, in each case on condition that the party disclosing is responsible for compliance with the obligations of confidence hereunder.
	4. Confidential Information does not include information which:
		1. is or becomes public other than by breach of this agreement;
		2. was before this agreement, or becomes known to the other party without breach of confidence;
		3. is independently developed by the other party without using information supplied by the first party; or
		4. is required to be disclosed by law or regulatory Controller.
	5. Not copy or otherwise record the Information except as strictly necessary for the Purpose (and any such copies and records shall be the property of the Trust).
	6. This clause 17 will remain in force for a period of [[five] years from the Effective Date] [[two] years from termination of this agreement[[8]](#footnote-8)].

FORCE MAJEURE

* 1. Force Majeure means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations hereunder. Inability to pay is not Force Majeure.
	2. A party will not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
		1. promptly notifies the other of the Force Majeure event and its expected duration; and
		2. uses reasonable endeavours to minimise the effects of that event.
	3. If, due to Force Majeure, a party:
		1. is or will be unable to perform a material obligation; or
		2. is delayed in or prevented from performing its obligations for a [continuous period of more than [continuous period of more than [30] days] [total in any Year of more than [90] days], [the other party may, within [30] days, terminate this agreement on [30] days' written notice] [the Parties will, within [30[[9]](#footnote-9)].

GENERAL

Time

Unless stated otherwise, time is not of the essence of any date or period herein.

Relationship

The Parties are independent entities, and not partners, employer and employee, or in any other relationship to each other.

Variation

Variations to this agreement will have effect when produced in writing and executed by both parties.

Severability

The unenforceability of any part of this agreement will not affect the enforceability of any other part.

Notices[[10]](#footnote-10)

Notices under this agreement will be in writing and sent to the persons and addresses set out in clause 20.5.2.

They may be given, and will be deemed received:

* + - 1. by first-class post: two Business Days after posting;
			2. by airmail: seven Business Days after posting;
			3. by hand: on delivery;
			4. by facsimile: on receipt of a successful transmission report from the correct number; and
			5. by email: on receipt of a delivery or read return mail from the correct address.
		1. The Trusts details are as follows:

|  |  |
| --- | --- |
| Address:  | Countess of Chester Hospital NHS Foundation Trust Countess of Chester Health Park Liverpool RoadCheshireCW2 1UL |
| Email:  | coch.igenquiries@nhs.net |
| Attention:  | Information Governance Manager |

* + 1. the Third Parties details are as follows:

|  |  |
| --- | --- |
| Address: |  |
| Email:  |  |
| Attention: |  |

Waiver

No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

Further assurance

The Parties will do all further acts and execute all further documents necessary to give effect to this agreement.

Rights of third parties

This agreement is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

Entire agreement

This agreement is the entire agreement between the Parties in relation to its subject. No other terms apply save for documents as specified in clause 1.2.8.3. Such documents to be subject to the provisions of clause 1.2.8.

Succession

This agreement will bind and benefit each party's successors and personal representatives.

Governing Law & Jurisdiction

* + 1. This agreement will be governed by the law of England and Wales.
		2. Disputes will be submitted to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1

The Data [*insert details*] (as supplied or amended from time to time by the Trust).

The Services [*Insert details; include service standards/levels, time for performance, acceptable fault tolerances, whether and in what amounts service credits are to apply for failure by the Third Party to meet which obligations, etc*].

Sub-Contractors The Trust agrees that the Third Party may use the following subcontractors in its performance of the Services: [*insert names, details, data, activities*].

Data Security Obligations [*these should include:*

* treating Data as private and confidential;
* minimising disclosure of Data to third parties;
* restricting access to Data to a "need to know" basis with suitable controls;
* copying, reproducing and distributing Data only so far as extent necessary to perform the Services; and
* maintaining suitable back-ups of Data against damage or loss].

Data Protection Notice [*insert the data protection notice that the Processor is to use for the performance of the Services*].

Security Measures The processor shall and shall ensure that its employees and any subcontractors appointed in accordance with clause 13.1:

(a) keep the Information separate from all documents and other records of the third party;

(b) keep in place and maintain appropriate technical, operational and organisational measures to protect the Information against accidental or unlawful destruction, accidental loss, theft, alteration, corruption, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the Processing and the nature of the Information to be protected including, where applicable, NHS Connecting for Health information governance requirements;

(c) ensure that all employees and sub-contractors are appropriately trained in data protection and confidentiality requirements;

(d) complete an annual Information Governance Toolkit assessment and share the outcome of such assessment with the Trust. Where partial or non-compliance is revealed, the third party will take appropriate measures to ensure future compliance and, where requested, the third party will provide evidence to the Trust of these measures; and

(e) maintain appropriate back-up systems and facilities.

SCHEDULE 2

**COMMERCIALLY SENSITIVE INFORMATION**

IN WITNESS WHEREOF the Parties have caused this agreement to be executed as a deed on the day of 20

This Agreement should only be signed by the Parties Caldicott / Deputy Caldicott Guardian, Senior Information Risk Owner (SIRO), Chief Executive or another Board Level / Appropriate Senior Manager.

EXECUTED AS A DEED by

|  |  |
| --- | --- |
| **Organisation:** | Countess of Chester Hospital NHS Foundation Trust  |
| **Name:** | Ian Harvey  |
| **Position:** | Medical Director, Caldicott Guardian  |
| **Signed:** |  |
| **Date:** |  |

|  |  |
| --- | --- |
| **Organisation:** | (TO BE CONFIRMED) |
| **Name:** |  |
| **Position:** |  |
| **Signed:** |  |
| **Date:** |  |

1. Only include if acceptable to the Trust. [↑](#footnote-ref-1)
2. Trust to consider and delete as appropriate [↑](#footnote-ref-2)
3. Include if any data will be transferred outside the EEA. [↑](#footnote-ref-3)
4. Include this level of detail if appropriate. [↑](#footnote-ref-4)
5. Trust to consider if the Trust wish to offer this leeway to the Third Party. [↑](#footnote-ref-5)
6. Please advise what timescale is acceptable to the trust and consider that this may vary depending on the contract entered into. Also consider impact of any Frame Work Agreements or SLA’s in place. [↑](#footnote-ref-6)
7. Trust to determine what is acceptable on the specific circumstances of the contract to be entered into and the nature of the Third Party. [↑](#footnote-ref-7)
8. Trust to consider the appropriate timescale based on the nature of the Third Party and Information Sharing [↑](#footnote-ref-8)
9. Trust to consider the appropriate timescale based on the nature of the Third Party and Information Sharing. Trust to consider that this may vary depending on the contract entered into. Also consider impact of any Frame Work Agreements or SLA’s in place [↑](#footnote-ref-9)
10. Are the notice provisions and specifically electronic service acceptable to the Trust? [↑](#footnote-ref-10)