**Invitation to Tender (ITT)**

**For**

**Additional Adults Care at Home & Community-based Re-ablement**

|  |  |  |
| --- | --- | --- |
| **Lot No.** | **Service Category** | **Tenders Due** |
| 1 | Additional Adults Care at Home - North | **14/01/2021** |
| 2 | Additional Adults Care at Home - South | **14/01/2021** |
| 3 | Community-based Re-ablement | **14/01/2021** |

**PLEASE READ THESE INSTRUCTIONS CAREFULLY BEFORE PREPARING YOUR SUBMISSION**

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**Section 1 – Invitation to Tender (ITT)**

# DETAILS OF THE PROJECT

## Introduction

By a Contract Notice placed in the Official Journal of the European Union (OJEU), London Borough of Southwark (the Council) is inviting expressions of interest from suitably qualified and experienced providers (the Provider) to enter into a Contract for Additional Adults Care at Home (the Project) to support Southwark Council’s current core providers, and/or; inviting expressions of interest from suitably qualified and experienced providers (the Provider) to enter into a Contract for Community-based Re-ablement (the Project). Selected providers will support Southwark Council in accordance with the **Service Specifications** set out in **Appendix B** of this Invitation to Tender (ITT).

The Council is undertaking this procurement under the Restricted Procedure set out in the EU Directive 2014/24/EU, as implemented by the UK Public Contracts Regulations 2015 (SI 2015 No 2) (the EU Regulations) and as further detailed in this Invitation to Tender (the Invitation Document).

**Additional Adults Care at Home**

The Additional Adults Care at Home service provision will be split across two lots to support its current Care at Home provision: Lot 1 Additional Adults Care at Home – North, and; Lot 2 Additional Adults Care at Home - South). Lot 1 will comprise of an additional three (3) care at home contracts. Lot 2 will comprise of an additional two (2) care at home contracts. This will secure an equitable number of providers (7) in both the north (4 core providers and 3 additional providers) and south (5 core providers and 2 additional providers) of the borough. The lots and their respective areas are set out in Table 1 below.

Table 1: Lot areas

|  |  |  |
| --- | --- | --- |
| **Lot 1** | **North** | **Borough, Walworth, Bermondsey and Rotherhithe** |
| **Lot 2** | **South** | **Peckham, Camberwell and Dulwich** |

It is the intention of the council to maintain 7 providers for each lot for the duration of the contract. Therefore, should the number of providers decrease below 7 for any reason during the contract period, the council reserve the right to award a contract to the next highest-ranked unsuccessful tenderer for that specific lot, provided they have successfully passed the necessary thresholds at the tender process.

Should it arise that no unsuccessful providers (as described above) remain for the lot in question, the council reserve the right to approach the next highest-ranked unsuccessful tenderer for the alternative lot (e.g. Additional Adults Care at Home - South) and so on, provided they have passed the necessary thresholds, and vice versa.

In the event that the council should exercise either of these options, the newly accepted tenderer will be awarded a contract on the basis of its tendered rates, which will be subject to uplift in line with any increase(s) to the London Living Wage plus an additional 37% increase of the LLW difference for “on costs”.

Contracts will be awarded to the successful Tenderers and it is anticipated that the Contract will commence by **01 July 2021** and will continue for a period of two years with an option to extend for a further two years (1+1).

**Community-based Re-ablement**

The Community-based Re-ablement service provision (Lot 3) will comprise of a single provider, who will deliver services across the whole of the borough.

A contract will be awarded to the successful Tenderer and it is anticipated that the contract will commence by **01 October 2021** and will continue for a period of three years with an option to extend for a further two years (1+1).

**Selection Process**

Interested parties in either Project are required to complete and return a Selection Questionnaire (SQ) to the Council. As part of the SQ process applicants are required to satisfy minimum standards of financial standing and probity and to demonstrate their technical capacity and experience. Applicants who satisfied those minimum standards are then evaluated in accordance with the selection criteria set out in the SQ. The Council does not warrant the fitness of any Applicant to carry out the Project.

The council will shortlist 10 applicants for Lot 1 and Lot 2 and shortlist 6 applicants for Lot 3.

If shortlisted, in accordance with the Restricted Procedure, the Council will invite shortlisted applicants (each a Tenderer) to submit a Tender for the delivery of the Project (the Tender).

The Council gives notice that this Invitation Document is set out as a general outline only for the guidance of intended Tenderers and does not constitute, nor constitute any part of, an offer or contract.

## Definitions Except where defined below, defined terms shall have the same meaning as set out in clause 1 of the Conditions of Contract (contained in Appendix C this Tender pack).

The terms defined below shall have the following meanings:

**Selection Questionnaire (SQ)**: means the stage to be completed prior to the ITT Stage, covering basic supplier information, exclusionary and selection questions (see Appendix A(b)).

**ITT**: means this Invitation to Tender.

**Tender Documents**: means the following list of documents:

**Section 1** – Invitation to Tender

**Section 2** – Conditions of Tendering

**Section 3** – Evaluation Criteria

**Section 4** – Social Value Portal Instructions for Lot 3 - Community-based Re-ablement only (Appendix H)

**Section 5** – Fairer Future Procurement Framework (FFPF)

**Section 6** – Form of Tender

**Section 7** – Certificate of Non-Collusion

**Section 8** – Offences Certificate

**Section 9** – Parent Company Guarantee Undertaking (if applicable)

**Section 10** – Confidentiality Undertaking

**Section 11** – Collaboration Agreement

**Appendix A** – Supplier Selection Guidance

**Appendix A(b)** – Standard Selection Questionnaire

**Appendix B(1)**  – Service Specification (Additional Adults Care at Home)

**Appendix B(2)** – Service Specification (Community-based Re-ablement)

**Appendix C(1)** – Draft Conditions of Contract (Additional Adults Care at Home)

**Appendix C(2)** – Draft Conditions of Contract (Community-based Re-ablement)

**Appendix D** – Price Schedule

**Appendix E** – Guidance and Response Document

**Appendix F** – Method Statement Response Template (Care at Home)

**Appendix G** – Method Statement Response Template (Re-ablement)

**Appendix H** – Social Value Portal documents

**Tender**: shall mean that document contained in Schedule 3 of the Conditions of Contract (Appendix C), comprising the offer submitted by the Tenderer to provide the Service incorporating, for the avoidance of doubt, but without limitation, the Tenderer's Form of Tender, Price Schedule, Method Statement Response/Delivery Proposals, supporting documents and any post-tender clarifications.

**Tenderer**: means those organisations invited to submit a Tender in response to this ITT.

**ProContract / e-Procurement Portal**: means the ProContract system used by the Council to conduct the Procurement. The e-procurement portal and all documentation can be accessed via <https://procontract.due-north.com>.

All Communication, including tender responses and clarification questions shall be sent through the Council’s e-procurement portal. Tender responses shall be submitted no later than **3pm** on **14th January 2021.**

# GENERAL REQUIREMENTS

## Service Objectives – Additional Adults Care at Home

The primary objective aims of the Additional Adults Care at Home service are as follows:

* To ensure that in delivering care the social, cultural and religious needs of service users are properly taken into account.
* To contribute to reducing the number of emergency admissions to hospital.
* To work effectively in a vital day-to-day role alongside other health and social care agencies within the context of an individual’s overall care and health.
* As part of their daily work to promote and maintain the health and well being of the local population.
* To ensure that the investment made positively adds social value to the local population in Southwark.
* Contribute to the achievement of the NHS outcomes framework.

## Service Objectives – Community-based Re-ablement

The primary objective aims of the Community-based Re-ablement service are as follows:

* To enable service users who have care and support needs at the point of admission to live as independently as possible within their own home, maximizing independence, self-care and wellbeing
* To enable service users to develop and achieve skills which may have been lost through a period of crisis or ill health
* To provide a safe and encouraging service which builds confidence in service users and optimises strengths.
* To enable service users to maintain their own networks of support within the community
* To ensure effective working with the Councils ‘in house’ therapy team so that the appropriate blend of staffing resources can be applied to support improved outcomes for service users
* To work effectively with the broader range of intermediate care services within Southwark – including those provided by Guys and St Thomas Trust.
* To ensure timely discharge from acute (hospital) care supporting service users to return to their homes and where possible avoid readmission to hospital care
* To ensure that service users can remain in the place of their choice for as long as possible, reducing, for example admission to bed based care.
* To ensure the effective management of available resources including working with others to reduce the service users on-going need for care and support and effectively managing an individuals length of stay within the re-ablement service., ensuring their transition to reduced and or alternative service provision where this is required.in a timely way.
* Outcomes may be ‘change’ based i.e. supporting service users to improve independence and self-care or be those of ‘maintenance’ through which interventions are designed to prevent further deterioration and further requirement for long-term home care.
* To work within the principle of least intervention at least cost to achieve the required outcomes
* Working with others to support the service user to achieve their individual outcomes agreed at the point of admission, and in any subsequent review, as set out in their re-ablement Care and Support Plan
* Where following a period of re-ablement on-going care and support is required for individual services users to work with others to ensure that services users have informed choices about how this might be met.
* The Community-based Re-ablement service will be for a period of up to six weeks, although many people will be discharged from the service earlier and in some cases after a short period of time.

## Policy and Service Development

The providers will maintain clear policies, procedures and guidance for all staff on safety precautions. An essential list of policies can be found within the appendices of the Service Specifications. Providers will ensure that all staff members are familiar with the guidelines and their application in the work situation. The policies cited in the appendices of the Service Specification are not exhaustive, and will need to adapt to changes in future legislation.

## Eligible Organisations

Suitably experienced Tenderers who are able to provide the services as per the Service Specification (Appendix B) of this ITT are invited to submit responses.

## The Contract

A Contract resulting from this ITT will be subject to the Terms and Conditions together with any schedules and appendices substantially in the form included at Appendix C (the “Conditions of Contract”). The Contract sets out the terms and conditions between the Council and the successful Tenderer for the provision of the service. The successful Tenderer will be required to deliver the service to the Council in line with the terms and conditions as set out in the Conditions of Contract throughout the duration of the contract.

### Rules that apply to this Procurement

This Procurement is for Social Care services and as such falls under the ‘Light Touch Regime’ described in [Schedule 3](https://uk.practicallaw.thomsonreuters.com/8-601-2385?originationContext=document&transitionType=PLDocumentLink&contextData=(sc.Default)) to the [Public Contracts Regulations 2015 (SI 2015/102)](https://uk.practicallaw.thomsonreuters.com/4-600-4052?originationContext=document&transitionType=PLDocumentLink&contextData=(sc.Default)) (“**Regulations**”). Accordingly the Council is only bound by those parts of the Regulations referred to therein and, to the extent that it follows any other part of the Regulations, it does so entirely voluntarily.

## Contract Award

A contract will be awarded on the basis of the MEAT (“Most Economically Advantageous Tender”) and shall take both price and non-financial factors into account. For Additional Adults Care at Home, successful tenderers shall be awarded a contract based on an evaluation of tenders giving a quality criteria of 30% weighting and a price criteria of 70% weighting. For Community-based Re-ablement, the successful tender shall be awarded a contract based on an evaluation of tenders giving a quality criteria of 70% weighting and a price criteria of 30% weighting.

## Information Provided

The Council has made every effort to ensure the completeness and accuracy of information provided to Tenderers but do not warrant any such information. Tenderers will be deemed to have satisfied themselves as to the accuracy and completeness of such information before submitting their Tenders.

**Section 2 – Conditions of Tendering**

# BASIS OF TENDERS

## Tenderers shortlisted at the SQ Stage are invited to submit a bid.

## Tenderers are able to bid for both lots, but if successful in both will only be awarded one lot. Therefore, tenderers are requested to state their preference at the SQ stage. The Council reserves the right to award according to business requirements, therefore Tenderers may not be awarded their first preference.

## Tenders shall be evaluated on their ITT submission in line with the guidance provided in these tender documents.

## Tenders should be prepared under the same headings and in the same sequence as set out in the Invitation Document.

## The successful Tenderers will need to agree to the final Conditions of Contract provided in Appendix C – Conditions of Contract (subject to any amendments proposed in their Tender and accepted by the Council).

## The composition of any pre-qualified Tenderer (including consortium members) shall not be changed except with the Council's prior written consent. Tenderers should also notify the Council of any changes to the identity of any significant subcontractor. The Council reserves the right to determine whether or not to continue with the assessment of a Tenderer's Tender, whether or not to allow a Tenderer to continue to participate in the procurement process and/or whether or not to enter into any agreement in respect of the project with a Tenderer where there has been a change (direct or indirect) in the composition or ownership of that Tenderer or a change in the principal relationships between the Tenderer's consortium members. If there has been a change to a Tenderer's consortium members, or a change to the identity of a significant subcontractor which the Council reasonably believes could impact on the delivery of the Project, the Council reserves the right (without being obliged) to request the Tenderer to complete a new SQ for assessment in accordance with the criteria used for the Tenderer's original SQ.

## Tenderers are required to inform the Council immediately of any changes to the information provided in their response to the SQ and Tender (including but not limited to information concerning members and structure of any consortium). Any new information that is provided to the Council in accordance with this requirement may be evaluated by the Council in accordance with the same assessment criteria used to evaluate the original responses to the SQ or Tender stage as appropriate. The Council reserves the right to withdraw the qualification of a Tenderer at any time following the assessment of new information where the conclusion of such assessment is that; had the Council been aware of the new information at the time of evaluating the Tenderer's initial response to the SQ or Tender the Tenderer would not have been successfully pre-qualified or been shortlisted.

# SUMMARY OF STAGES OF TENDER PROCEDURE

The ITT process shall follow these stages:

## The SQ Stage: The SQ Stage is a selection process where tenderers are shortlisted in accordance with their respective capabilities, capacity and experience to perform the contract.

## Submission of Tenders: Following completion of the SQ stage, the Council will invite shortlisted Tenderers to submit a Tender for the delivery of the Project.

## Assessment of Tenders: The Council will assess the financial, commercial and qualitative elements of the Tenders received and identify the most economically advantageous tenderer in accordance with the award criteria set out in Section 3 of this Invitation Document.

## Award: The Council will need to obtain formal approval from either the relevant Cabinet Member or Cabinet before awarding the Contracts. Tenderers should note that the Council reserves the right at its absolute discretion to award or not award contracts as it sees fit.

## Notification of decision: Tenderers will be notified of the outcome of the Tender evaluation in accordance with Regulation 86 of the EU Regulations. Following notification of the outcome the Council will observe a mandatory 10 day standstill period in accordance with Regulation 87 of the Regulations and the Council’s mandatory 5 day call in period.

## Enter into Contract: Following the successful completion of the standstill period without any formal legal challenges being raised, the Council will establish Contracts with the successful Tenderers.

## In regard to the tender process, the Council reserves the right at any time at its absolute discretion:

### to make whatever changes it sees fit to the content, process, timing and structure of the tender process and to issue amendments or modifications to this Invitation Document; and

### to accept or not accept any Tenders submitted pursuant to the Invitation Document; and

### not to award a Contract and to withdraw from, suspend or terminate the procurement procedure, any part of the procurement procedure and/or this Invitation Document and to procure a Contract with a provider by any alternative means within the legal requirements which the Council is subject to (including by way of undertaking a new procurement process).

### to reject the winning Tenderer's Tender and go to the next best Tenderer if the successful Tenderer makes any changes post award decision.

## The fact that a Tenderer has been invited to submit a Tender does not necessarily mean that it has satisfied the Council regarding any matters raised in the SQ previously submitted. The Council makes no representation regarding any Tenderer's financial stability, technical competence or ability in any way to carry out the Project.

# INFORMATION, COSTS AND EXPENSES

## Tenderers are responsible for obtaining all information necessary for the preparation of their Tenders. All costs, expenses and liabilities incurred by any Tenderer in connection with the preparation and submission of a Tender, or in Clarification or Negotiation with the Council, and in providing any other information reasonably required by the Council to enable a detailed evaluation of their Tender, and in the case of acceptance of a Tender by the Council all cost, expenses and liabilities in connection with the execution of all and any contract documents, are to be borne by that Tenderer. Neither the Council nor any of its representatives (including its officers, members, employees and advisors) shall, under any circumstances, be liable in any way to any Tenderer for any costs, expenses or losses incurred by any Tenderer or other person in relation to their participation in this procurement or otherwise.

## Tenderers shall ensure that they are fully familiar and have satisfied themselves as to the nature, extent and character of the Service and use of any location(s) (if applicable), the extent of the premises, employees, materials, equipment and machinery which may be required, and any other matter which may affect the obligations to be performed by them if their tender is accepted including, where relevant, the Council’s Constitution which may be inspected on the Council’s website at:

[www.southwark.gov.uk/YourCouncil/HowTheCouncilWorks/councilconstitution.html](http://www.southwark.gov.uk/YourCouncil/HowTheCouncilWorks/councilconstitution.html)

and the Council’s Policies (which may be inspected on the Council’s website or requested from the Council).

## The Council in no way warrants the information given to Tenderers by the Council and Tenderers must satisfy themselves of the accuracy of any information provided by the Council. Save in the case of fraud, under no circumstances will the Council, its officers, members, employees, agents or advisers accept any responsibility or liability whatsoever for any loss or damage of whatever kind and howsoever caused arising from or in consequence of the use by Tenderers of such information.

## Tenderers should note that:

### any information provided by or on behalf of the Council including, without limitation, the particulars of their properties are a general outline, for the guidance of the Tenderers and do not constitute the whole or any part of an offer or contract; and

### neither the Council nor their professional advisers guarantee the accuracy of any description, dimensions, references to condition, necessary permissions for use and occupation and other details forming part of or appended to this Invitation Document and Tenderers must not rely on them as statements of fact or representations and must satisfy themselves as to their accuracy; and

### neither the Council nor their professional advisers will be liable, in negligence or otherwise, for any loss arising from the use of the relevant information.

### all descriptions, dimensions, references to condition and necessary permissions for use and occupation, and other details are given without responsibility and any Tenderer should not rely on them as statements or representations of fact but must satisfy themselves by inspection or otherwise as to the correctness of each of them.

### the Council expects Tenderers’ to conduct their own due diligence and not totally rely on the information the council provides.

### Tenderers' attention is drawn to the Conditions of Contract set out in Appendix C of the Invitation Document. It is essential that Tenderers are completely familiar with the contents of the Conditions of Contract before compiling their Tenders. Tenderers considering entering into a contractual relationship with the Council should make their own enquires and investigations of the Council’s requirements beforehand. The subject matter of this Invitation Document shall only have contractual effect when it is contained in the express terms of an executed form of Contract or such other agreement properly entered into and executed by the Council.

# COMMUNICATIONS PROTOCOL

## All queries and other relevant permitted correspondence should be submitted via the messaging/clarification service on ProContract, Southwark Council’s e-procurement portal.

## Any communication or attempt to contact any other member of the Council's staff, officers, consultants or members may result in your organisation being disqualified from the procurement process and not considered further.

## Queries and Answers during the Tender Period.

### The Tenderer is requested to read the Tender Documents prior to submitting any query.

### Where Tenderers have a query they must submit the query via ProContract, Southwark Council’s e-procurement portal.

### All queries must be submitted through the portal at least five (5) working days before the final date for receipt of Tenders as detailed in Table 3 (or as subsequently advised by the Council).

### Tenderers must clearly indicate, when submitting a question, which (if any) part of their question they view as confidential and applicable only to the Tenderer submitting the question. If the Council does not agree that the question is confidential and applicable only to the Tenderer, the Tenderer will be given the right to withdraw the question without it being answered, and if the question is not withdrawn within 5 working days provide the response to all Tenderers.

### The query and response will be posted on ProContract, Southwark Council’s e-procurement Portal. The Tenderer will receive notification by email via ProContract that the query list has been updated, and the query and response document will be uploaded on the portal for all Tenderers to view.

### The Tenderer is advised to check their ‘spam’/’junk mail/quarantined’ inbox for correspondence from ProContract, Southwark Council’s e-procurement portal, to ensure that all emails are received.

# SUBMISSION OF TENDERS

## The final date for receipt of Tenders is by 15:00 on the date detailed in Table 3 (or such later date as the Council may subsequently advise).

## All entries in the tender must be written in ink or typed in English, and must be clearly referenced according to the heading and number for each of the question.

## Tenders should be submitted in Arial, font size 11.

## Tenderers should not cross reference any questions i.e. ‘see answer to question x in question x’. If Tenderers only respond with a cross-reference to a question they will receive a score of 0 for that question; where Tenderers include a cross-reference as part of their response they will also not be awarded any marks for that part.

## Unless otherwise specified, Tenderers MUST keep their responses within the specified word limits. Any words appearing after the relevant word limit has been reached, will NOT be evaluated.

## All sums in the Price schedule shall be stated in pounds sterling (£).

## The Price Schedule must be provided in exactly the same format as provided, unless otherwise stated.

## Tenderers should read all the documents forming this Invitation Document carefully and ensure that they submit the mandatory documents detailed in Table 2 in the manner described in condition 7 of Section 2 (this document) and by the date and time stated in Table 3 (or such other date notified by the Council).

## Tenderers should include in their Tenders all information required by the Invitation Document and all costs necessary to undertake the Project safely and in compliance with all statutory provisions and other rules or regulations relating to the Service Agreement.

## No unauthorised alteration or addition (save for the inclusion of the relevant information) should be made to the Form of Tender or any other part of the Invitation Documents. Tenders must not be qualified in any way apart from as allowed under the Invitation Document and must be submitted strictly in accordance with the Invitation Document, including these Instructions. Tenders must not be accompanied by any covering letter or any statement that could be construed as rendering the Tenders equivocal and/or placing it on a different footing from other Tenders.

Table 2: Mandatory Documents to be submitted:

|  |  |  |
| --- | --- | --- |
| **Tender Documents to be completed and returned** | | |
| 1 | **Completed Method Statement Responses** | **(Appendix F and/or G)** |
| 2 | **Completed Pricing Schedule** | **(Appendix D)** |
| 3 | **Social Value Portal Documents** – to be returned via the Social Value Portal (*Community-based Reablement only)* | **(Appendix H)** |
| 4 | **Fairer Future Procurement Framework (FFPF)** – completed and signed | **Section 5** |
| 5 | **Form of Tender** – completed and signed | **Section 6** |
| 6 | **Certificate of Non-Collusion, Non-Canvassing Certificate** **and Conflict of Interest Certificate** - completed and signed | **Section 7** |
| 7 | **Offences Certificate -** completed and signed | **Section 8** |
| 8 | **Parent Company Guarantee Undertaking** – completed and signed *(If applicable)* | **Section 9** |
| 9 | **Confidentiality Undertaking** – completed and signed | **Section 10** |
| 10 | **Collaboration Agreement** – completed and signed (*Additional Adults Care at Home only)* | **Section 11** |
| **Supporting documents to be supplied by the Tenderer** | | |
| 11 | Such further details or information reasonably requested by the Council. | |

## The Council reserves the right, at its sole discretion, to supplement this Invitation Document at any time throughout this process in order to identify and define the means best suited to satisfy its needs in relation to the Project.

## The Form of Tender must be signed:

a) where the Tenderer is an individual, by that individual;

b) where the Tenderer is a partnership, by 2 authorised partners;

c) where the Tenderer is a company, by 2 directors, or by a director and the secretary of the company, such persons being authorised for that purpose;

## Tenderers shall produce forthwith on the request of the Council documentary evidence of any authorisation referred to in 7.12.

## The Tender must be uploaded onto ProContract, Southwark Council’s e-procurement portal, by the time and date detailed in Table 3.

## Each file must be uploaded separately. The Tender Pricing Schedule (Appendix D) must be uploaded in Excel (unprotected cells), do not use PDF files. Folders cannot be uploaded. Other documents can be uploaded in Excel/Word/PDF. All signed documents must be with manual signatures and scanned in a PDF format. Zip files may be uploaded.

## Please allow ample time to upload your documents as the tender will close at 15:00 precisely on the Tender Deadline date stated in Table 3. The Council reserve the right to reject any Tenders received after 15:00 on the date for the Tender Deadline detailed in Table 3.

## The uploaded documents must have each page numbered consecutively with a footer using the using the following format – Attachment [A-Z] page [number] of [total page number] the question number and the name of the Tenderer]. Each attachment shall contain a contents list for that volume on the immediate inside the cover. Any drawings or diagrams included within the Tender shall be numbered.

## The Tenderer must keep its Tender valid for acceptance 180 days from the tender return date set out in Table 3 (or such other deadline as the Council may notify to Tenderers). If the Council has not accepted the tender within this period it shall remain in force without variation. The Tenderer may at any time after this 180 day period however give notice in writing to the Council to accept their Tender. Such notice must be sent via the Council’s e-procurement portal, ProContract.

## Following the service of such a notice, the Council will have 14 days, not including the day of service, within which it may accept the Tender. If it does not do so within that time then the Tender will be deemed to be withdrawn. The Tenderer shall not withdraw their Tender except in the manner provided in this paragraph.

## Tenderers may decline to tender, and if they choose not to tender, they should notify the Council promptly through ProContract, the e-procurement portal, giving reasons.

## As detailed in condition 3 of Section 2 (this document) if at any time during the tender period there are any material changes to the information provided by Tenderers in their response to the Standard Selection Questionnaire or the Tender, they must advise the Council promptly through ProContract, the e-procurement portal, giving reasons.

Table 3: Indicative Procurement Timetable

|  |  |
| --- | --- |
| **Activity** | **Date** |
| SQ submission deadline (by 15:00) | 05/11/2020 |
| Invitation to tender | 09/12/2020 |
| Clarification questions closing date (by 15:00) | 07/01/2021 |
| Closing date for receipt of tenders (by 15:00) | 14/01/2021 |
| *Clarification Meetings/Presentations (tbc)* | w/c 08/02/2021 |
| Completion of evaluation of tenders | 19/02/2021 |
| **Lot 1 and Lot 2 - Adults Care at Home timetable cont.** | |
| Internal governance period | 22/02/2021 – 04/05/2021 |
| Debrief Notice and Standstill Period | 06/05/2021 – 17/05/2021 |
| Contract award | 18/05/2021 |
| Mobilisation / TUPE Consultation period (if applicable) | 19/05/2021 – 30/06/2021 |
| Contract start | 01/07/2021 |
| Contract initial end date | 30/06/2023 |
| Contract completion date with extensions | 30/06/2025 |
| **Lot 3 – Community-based Re-ablement timetable cont.** | |
| Internal governance period | 22/02/2021 – 24/06/2021 |
| Debrief Notice and Standstill Period | 28/06/2021 – 07/07/2021 |
| Contract award | 08/07/2021 |
| Mobilisation / TUPE Consultation period (if applicable) | 09/07/2021 – 30/09/2021 |
| Contract start | 01/10/2021 |
| Contract initial end date | 30/09/2024 |
| Contract completion date with extensions | 30/09/2026 |

The above timetable is indicative only and subject to variation by the Council. Tenderers will be informed of any significant changes.

# EVALUATION OF TENDERS

## Evaluation Process

This is a Tender conducted under the Light Touch Regime (LTR); tenderers are first required to complete a standard selection questionnaire (SQ) as part of their tender submission. Tenderers must complete all questions set out in the SQ using the accompanying Supplier Guidance (Appendix A), from which Tenderers will be shortlisted and invited to submit a tender for the project.

## Standard Selection Questionnaire (SQ)

There are two parts to this section. The first part of this section is for General Information about your organisation and contains practical, general and relevant contact information for your organisation. It will not be evaluated, but it is important that the Council has a full picture and therefore failure to provide relevant details could result in your organisations tender being rejected.

The second part of this section is the Selection Questions in regards to the Suitability, Eligibility and Capability to participate in the tender process. Companies must provide the information requested and failure to provide this information will result in the tender being rejected. This section will be scored (see Appendix A) - Supplier Guidance) and Tenderers will be shortlisted for the ITT Stage based on the scores received.

Tenderers are able to bid for both lots, but if successful in both will only be awarded one lot. Therefore, tenderers are requested to state their preference at the SQ stage. The Council reserves the right to award according to business requirements, therefore Tenderers may not be awarded their first preference.

## ITT Quality Evaluation

The ITT quality evaluation will consist of method statements, which will be scored by an evaluation panel, which will consist of Council Staff and where possible Service Users. Tenderers shall respond to each of the method statements as set out in Appendix F and G of the Method Statement Response Template. The evaluation panel appointed for this procurement will meet to agree a consensus score for each of the method statements. The moderation of scores shall give regard to any variance in the scores between the evaluators following any clarification obtained from the Tenderer. Where a consensus score cannot be agreed for a method statement response, an average score will be taken for each Tenderer, for that particular method statement response.

Provided against each of the method statements are the marks allocated to that question and also any limitation to the length of response required. Tenderers are to use font style Arial, size 11 point, providing a response within the stipulated word limits. Tenderers may make use of supporting documents (appendices to questions etc.) only where truly relevant and appropriate. Any appendix that is judged to be essentially the continuation of a question, and therefore a circumvention of the word limit, will be rejected and ignored. Any information given outside the stated parameters will not be considered in the evaluation.

## ITT Price Evaluation

Tenderers are required to complete a Price Schedule (Appendix D) as per stated guidelines.

The scoring methodology for the Price Evaluation is set out in detail in Section 3 (Evaluation Criteria).

## Evaluation Panel

The Evaluation Panel will evaluate the tenders received to establish the most economically advantageous tender (MEAT) to the Council in terms of the criteria set out at Section 3 (Evaluation Criteria). That assessment will be made on the basis of Tenderer responses to this ITT.

The Evaluation Panel will consist of:

* operational officers
* an officer from commissioning

Tenderers are required to submit responses to method statements demonstrating how specific elements of the service, as defined in the Service Specification and Conditions of Contract, will be delivered. The method statements will make up 30% of the Quality Evaluation Score for Additional Adults Care at Home and 60% for Community-based Re-ablement.

Tenderers are required to submit a response to all questions in each method statement using the space provided in Appendix F and/or G. Failure to do this may result in a response not being taken into account.

## Clarification Interviews and Presentations *(subject to confirmation)*

## As part of the evaluation, the selected Tenderers scoring the highest from each of the Lots as set out in Section 3 Evaluation Criteria, shall make available key members of their delivery team responsible for the provision of the Contract to demonstrate their understanding and approach by attending a clarification interview and giving a presentation of no longer 30 minutes. Presentation topics will include, but not be limited to:

* Service Delivery – Overview on the services you provide and how you ensure your services are personalised and provide choice.
* Service Outcomes – How the service will be responsive to those with complex needs.
* Workforce - How you will provide leadership to ensure service outcomes are optimally delivered through staff managing and rostering, recruitment and retention.

The presentation will not be scored, however; the scores attained in the written submission may be moderated.

## Presentations and interviews will take place w/c 08 February 2021. Tenderers will be informed of a day and time prior to this and will be expected to be available to attend over these two days. Tenderers are advised that these dates could be subject to change, but will be notified of any changes in advance.

## Final Scores

## Once the evaluations for each section have been completed, the Council will combine the quality and price scores to provide an overall score. The Tenderers with the highest scores will be selected to deliver the service via the proposed contract.

## Contract Award

## The Council will inform successful Tenderers of their Contract Award, and inform unsuccessful Tenderers of their scores and that of the winning Tenderer.

## Non-Consideration of Tenders

### The Council may, in its absolute discretion, refrain from considering Tenders if either:

#### the whole of the scope of the Service Specification and the Key Deliverables are not tendered for or there are omissions in the Tender;

#### it does not comply in any respect with the requirements of this Invitation Document; or

#### it contains any significant omissions or qualifications.

## Rejection of Tenders

### Any Tenders submitted by any Tenderer in respect of which the Tenderer does any of the following may not be considered for acceptance and may, accordingly, be rejected by the Council and the relevant Tenderer excluded from further participation:

#### submits any Tender~~s~~ or other supporting documents after the closing date and time; or

#### submits an abnormally low bid; or

#### fixes or adjusts the amount, prices, charges and rates shown:

a) by or in connection with any agreement or arrangement with any other person; or

b) by reference to any other Tenders; or

#### breaches the terms of:

a) the certificate of non-collusion, non-canvassing certificate and conflict of interest certificate; and/or;

b) the offences certificate.

#### communicates to any person other than the Council any information except in accordance with this Invitation Document; or

#### enters into any agreement or arrangement with any other person that such other person shall refrain from submitting a Tender or shall limit or restrict the amounts, prices, charges, and rates to be shown by any other Tenderer in its Tender~~s~~ and other documents; 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 in relation to any other Tenderer, or any other proposed Tender~~s~~, or other documents, any act or omission; or

#### fails to use the English language; or

#### fails to state monetary amounts in Pounds Sterling; or

#### fails to comply with these Instructions and/or the Negotiation Protocol; or

#### fails to provide any further information that the Council has requested at any point up to the entry into the Service Agreement either as part of this Invitation Document or at Contract award stage; or

#### if the Council becomes aware that the Tenderer did not qualify at the time their SQ or Tenderwere submitted or if it no longer qualifies at any point before the formal entry into the Contract.

## Such non-acceptance or rejection by the Council shall be without prejudice to any other civil remedies available to the Council in respect thereof or to any criminal liability that such conduct by a Tenderer may attract.

# ACCEPTANCE OF TENDER

## The Council is not bound to accept the lowest or any Tender and reserves to itself the right at its absolute discretion to accept or not accept any Tender.

## An acceptance of a Tender by the Council shall be issued to the successful Tenderers via the Council’s e-procurement portal, following which the Contract shall then be entered into and become binding. The Tenderer shall at the request of the Council execute and deliver to the Council the Contract, Bond and Parent Company Guarantee (where applicable).

## Nothing contained in these Conditions of Tendering or in any other communication between the Council and the Tenderer shall be taken as constituting a contract, agreement or representation between the Council and the Tenderer.

## The Council reserves the right:

### To cancel or withdraw from the procurement process at any time prior to the award of the Contract;

### To amend the terms and conditions of the procurement process and to amend any of the documents issued with the ITT, including without limitation, these Conditions of Tendering.

# CONFIDENTIALITY

## Tenderers must treat this Invitation Document (and all the documents forming part of or appended or scheduled to this Invitation Document) and all other information provided by or on behalf of the Council as private and confidential (and shall ensure that their employees, consultants, subcontractors, advisers, insurers and funders do the same). No Tenderer should disclose that it has been invited to submit a Tender or release details of this Invitation Document (and all the documents forming part of or appended or scheduled to this Invitation Document) other than on a strictly confidential basis and to the extent strictly necessary to such parties as the Tenderer needs to consult in order to submit a Tender.

## Tenderers shall not, without the prior written consent of the Council, at any time make use of such information for its own purposes or disclose such information to any person, except:

### where the disclosure is required by law or any court, regulatory or government authority competent to require the same; or

### to the extent where such information is brought within the public domain, otherwise than by the breach of this paragraph by the relevant Tenderer; or

### to the extent that the information becomes available to a party (on a non- confidential basis) otherwise than pursuant to this procurement process; or

### where such information is disclosed for the purposes of obtaining sign-off from insurers and legal advisers on the Service Agreement, or for obtaining sureties, guarantees or commitments from proposed subcontractors or suppliers and other information required to be submitted with their Tender.

## Tenderers shall not at any time release any information concerning the Invitation Document and/or their Tenders and/or any related documents and/or any negotiation and/or discussion with the Council in this connection for publication in the press or on radio, television, screen or any other medium.

## This Invitation Document is issued in confidence and remains the property of the Council. The copyright in this Invitation Document is vested in the Council and may not be reproduced, copied or stored on any medium without the prior consent of the Council except in relation to the preparation of Tenders.

## The Council may publish the amounts of all tenders and the name of the successful Tenderer, and to publish such other information regarding the Tenders as it may be required to publish in accordance with EU or other procurement rules or transparency requirements with which the Council must comply.

## The Council may provide Tenderers with a list of the other Tenderers and the tender scores. On this list the Tenderers will not be associated with their respective tender score.

# WARRANTIES

## In submitting a Tender, each Tenderer warrants, represents and undertakes to the Council that:

### it has not done any of the acts or matters referred to in paragraphs 8.9 (i) to (iii) (inclusive) of these Instructions and has complied in all respects with these Instructions; and

### all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Tenderer, its employees or agents in connection with or arising out of the Tender are true, complete and accurate in all respects; and

### it has made its own investigations and research and has satisfied itself in respect of all matters (whether actual or contingent) relating to the Tender documents and has not delivered their Tender and will not have entered into the Contract in reliance on any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council; and

### it has satisfied itself as to the correctness and sufficiency of the information it has inserted in the Viability Template and included in its Delivery Proposals; and

### it has full power and authority to enter into the Contract and undertake the Project and will if requested produce evidence of that to the Council; and

### it is of sound financial standing and its officers and employees are not aware of any circumstances (other than as may be disclosed in the audited accounts or other financial statements) which may adversely affect its financial standing in the future

### it has and will have sufficient premises, working capital, skilled personnel, vehicles, plant, goods and materials and other resources (if applicable) available to it to carry out the Project in accordance with the Contract; and

### it will obtain all necessary consents, licences and permissions to enable it to carry out the Project and will from time to time obtain and maintain all further and other necessary consents, licences and permissions to enable it to continue to do so; and

### it will not at any time claim or seek to enforce any lien, charge, or other encumbrances over property of whatever nature owned by the Council and that is for the time being in the possession of the Tenderer.

# CONFLICTS OF INTEREST

## The Council may exclude any Tenderer where there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

## Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Tenderer to inform the Council and provide details of the conflict. Please note that routine pre-market engagement carried out by the Council should not represent a conflict of interest for a Tenderer, provided that the engagement has been carried out in a transparent manner.

# DATA PROTECTION

## Tenderers shall at all times:

### comply with the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR);

### maintain the confidentiality of personal data to which they have authorised access pursuant to this Invitation Document;

### indemnify the Council and keep the Council indemnified against loss, destruction or procuring of data contrary to the GDPR by the Tenderer, its servants or agents;

### process any personal data supplied to the Tenderer by the Council only in accordance with the Council's written instructions; and

### comply with obligations equivalent to those imposed by a data controller by the GDPR.

# FREEDOM OF INFORMATION ACT

## Tenderers are to note that the Council is subject to the Freedom of Information Act 2000 (the FOIA) and Code of Practice, the Environmental Information Regulations 2004 (EIR), Aarhus Convention and Audit Commission Act 1998. Under the FOIA and EIR, members of the public or any interested party may make a request for information held by the Council at the time of the request.

## Following such request, the Council will consider the disclosure of any information, including price quotes, contained in Tenders both successful and unsuccessful, subject to the exemptions of the FOIA. Tenderers should be aware that attaching a blanket label of ‘private and confidential’, 'commercially confidential' or similar to Tenders may not exempt those Tenders from disclosure under the FOIA.

## If a Tenderer considers that all or any part of its Tender and/or any specific information contained therein constitute a “trade secret”, or that the Tender or information is commercially sensitive information disclosure of which would be likely to prejudice the commercial interests of any party, believes that a duty of confidentiality applies or otherwise considers that such documents and/or information falls within any other exemption set out in the FOIA, the Tenderer should:

### attach information it considers to be commercially sensitive e.g. costing or trade secrets in a separate schedule marked ‘commercially sensitive information’ or ‘trade secret’ and include a time limit for the sensitivity of the information; and

### in respect of such schedule and/or specific information, identify the particular FOIA exemption that the Tenderer claims applies in the particular circumstances. Tenderers should do so in full knowledge of the relevant terms of the Lord Chancellor’s Code of Practice (the Code) under Section 45 of the FOIA, giving advice to public authorities on the handling of requests under the FOIA. This will enable Tenderers to make such claims based on reasons that address the requirements of the Code. Further information about the FOIA and a copy of the Code is available from the Department of Constitutional Affairs’ website at:

[https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of- practice-request-handling-foia.pdf](https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-%09practice-request-handling-foia.pdf)

## Tenderers should be aware that, even when they have scheduled or identified relevant documents and/or information and claimed exemption pursuant to this paragraph 14 of these Instructions, the Council will have complete discretion in deciding whether such documents and/or information should be disclosed under the FOIA.

## The Council shall not be liable for any loss or other detriment caused by the disclosure of any information.

# TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE") AND PENSIONS

## Tenderers are strongly advised to take their own legal advice about the applicability or otherwise of the Regulations to this Tender.

## TUPE information can be accessed by completing the document Section 10 – Confidentiality Undertaking. All tenderers are required to complete a TUPE Confidentiality Agreement in order for the TUPE information to be released to them. Tenderers are advised to complete and return the Confidentiality Undertaking via the messaging centre of ProContract as a matter of urgency to allow themselves sufficient time to review the information. This information must be treated on a confidential basis and is released to the Tenderer on the understanding that they will not copy or use the material except for the purposes of preparing a bid and that the Tenderer will return it and any copies of it should they be unsuccessful in this competitive process.

## The TUPE Information – has been obtained from the providers presently undertaking this service. Whilst the Council has obtained this information in good faith, the Council gives no guarantee or assurance as to the accuracy of this information and cannot be held responsible for errors or omissions contained therein. It remains the Tenderers’ responsibility to ensure that their submissions take full account of all the relevant circumstances. Where the existing provider has indicated that TUPE is not applicable, this information has been indicated.

# SMALL BUSINESS ENTERPRISE AND EMPLOYMENT ACT 2015

## Tenderers are to note that the Council is subject to the Small Business Enterprise and Employment Act 2015 (SBEEA). Under SBEEA, the Government's Mystery Shopper service is empowered to investigate concerns raised on the Mystery Shopper website about public sector procurement exercises. Contracting authorities are required to assist all investigations and to provide relevant information and/or documents within 30 calendar days of a formal notice. This may require the Council to disclose any information contained in any Tenders submitted by Tenderers.

## By submitting a Tender, the Tenderer acknowledges and agrees that the Council has complete discretion in deciding whether such documents and/or information should be disclosed under SBEEA (even where Tenderers have identified certain information in their submissions as confidential) and the Tenderer agrees to waive any contractual or other confidentiality rights and obligations associated with the disclosure of information under SBEEA.

**Section 3 – Evaluation Criteria**

The evaluation for this tender will be based on the initial assessment and evaluation of the Selection Questionnaire (SQ). Shortlisted Tenderers will go on to the quality and price evaluation stage, with quality contributing to 30% of the final score and price contributing to 70% of the final score for Additional Adults Care at Home, and with quality contributing to 70% (60% method statements and 10% social value portal submission) of the final score and price contributing to 30% of the final score for Community-based Re-ablement.

**Quality Evaluation**

Step 1: The Council’s evaluation panel will score your response to each Method Statement question (see Appendices F and G – Method Statements) with a mark from 0-5, using the table below as guidance.

|  |  |  |
| --- | --- | --- |
| **Assessment** | **Score** | **Criteria for Awarding Score** |
| Excellent response | 5 | A response which shows how the service can comprehensively be taken to the next level in terms of exceeding our requirements as detailed in the tender documents and service specification and/or offering significant added value to the Council’s overall strategic requirements and objectives. |
| Very Good response | 4 | A response which shows that the Tenderer demonstrates an understanding of our requirements as detailed in the tender documents and service specification and has a credible methodology to deliver the service alongside a clear process and plan to deliver additional benefits and deliver value. |
| Good response | 3 | A response which shows that the Tenderer demonstrates an understanding of our requirements as detailed in the tender documents and service specification has a credible methodology to deliver the service and could evolve into additional benefits. |
| Satisfactory response | 2 | A response which is capable of meeting our requirements as detailed in the tender documents and service specification but is unlikely to go beyond this. |
| Unsatisfactory response | 1 | Although the Tenderer does demonstrate an understanding of our requirements as detailed in the tender documents and service specification there are some major risks or omissions in relation to the proposed solution to deliver the service and we would not be confident of our requirements being met. |
| Cannot be scored | 0 | No information provided or incapable of being taken forward either because the Tenderer does not demonstrate an understanding of our requirements as detailed in the tender documents and service specification or because the solution is incapable of meeting our requirements. |

Step 2: A moderation process will be conducted to ensure that there is a fair consensus score across all members of the evaluation panel. The moderation process will ensure that scores have consistently been applied.

Step 3: The highest-scoring bidders from each lot (five from Lots 1 & 2, and; three from Lot 3) will be invited to a Clarification Interview/Presentation which will not be marked but may result in the moderated score being amended up or down.

Step 4: The consensus score of the evaluation panel will then be divided by the maximum score available (5) to the evaluator, and then multiplied by the sub-weightings shown in the Method Statement. This will give your final score for that question.

An example of this process is set out as follows:

|  |  |  |
| --- | --- | --- |
| **#** | **QUESTION X** | **SUB-WEIGHTING** |
| **QX.** | Set out your approach to deliver this service | 10 |

Quality weightings formula: x

**Example marking for Question X for Additional Adults Care at Home:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **TENDERER** | **CONSENSUS SCORE** | **MAXIMUM SCORE AVAILABLE** | **MAXIMUM SUB-WEIGHTED SCORE FOR QX** | **CALCULATION** | **MARK AWARDED** |
| Tenderer  1 | 3 | 5 | 10 | x | 1.8 |
| Tenderer  2 | 2 | 5 | 10 | x | 1.2 |
| Tenderer  3 | 4 | 5 | 10 | x | 2.4 |

**Example marking for Question X for Community-based Re-ablement:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **TENDERER** | **CONSENSUS SCORE** | **MAXIMUM SCORE AVAILABLE** | **MAXIMUM SUB-WEIGHTED SCORE FOR QX** | **CALCULATION** | **MARK AWARDED** |
| Tenderer  1 | 3 | 5 | 10 | x | 4.2 |
| Tenderer  2 | 2 | 5 | 10 | x | 2.8 |
| Tenderer  3 | 4 | 5 | 10 | x | 5.6 |

Step 5: A final quality score will then be achieved by adding all the weighted scores together.

**Note: For Lot 3**, the Social Value Portal (SVP) score will also count to the final quality score at Step 5. Bidders are required to complete the SVP submission on the SVP portal by 3pm on 14 January 2021.

**Price Evaluation**

For Additional Adults Care at Home, the price evaluation has a total weighting of 70%. Tenderers are required to complete Appendix D – Price Schedule. There will be a floor rate of **£17.30** per hour and a ceiling rate of **£18.10** per hour.

For Community-based Re-ablement, the price evaluation has a total weighting of 30%. Tenderers are required to complete Appendix D – Price Schedule. There will be a floor rate of **£18.00** per hour and a ceiling rate of **£19.50** per hour.

Any bid received with a price outside of the floor and ceiling rates will not be considered.

The price provided by Tenderers shall be fixed for the duration of the Contract, however the price will be adjusted to accommodate any increases to the London Living Wage (LLW). Any increment to the LLW will be increased by a further 37% to accommodate increases to its related “on costs”.

The lowest rate will be awarded a score of 100. All other bids will be scored using the formula:

Bid’s Score = 100 x (lowest acceptable rate)

Example:

Bid A £**29**/hour

Bid B £**32**/hour

Bid C £**35**/hour

The score for each bid is:

Bid A = 100 x 29/**29** = 100

Bid B = 100 x 29/**32** = 90.63

Bid C = 100 x 29/**35** = 82.86

The scores will be rounded up to two decimal places then converted to the weighted scores attributable for that cost element as shown below:

Example scores for Additional Adults Care at Home:

Bid A = score of 100 x 70% (Hourly Rate weighting) = 70.00 (weighted score).

Bid B = score of 90.6 x 70% (Hourly Rate weighting) = 63.42 (weighted score).

Bid C = score of 82.8 x 70% (Hourly Rate weighting) = 57.96 (weighted score).

Example scores for Community-based Re-ablement:

Bid A = score of 100 x 30% (Hourly Rate weighting) = 30.00 (weighted score).

Bid B = score of 90.6 x 30% (Hourly Rate weighting) = 27.18 (weighted score).

Bid C = score of 82.8 x 30% (Hourly Rate weighting) = 24.84 (weighted score).

**In both examples, the Bid that scored the highest in the price evaluation is Bid A.**

**Section 4 – Social Value Portal**

**COMMUNITY-BASED RE-ABLEMENT ONLY**

*Please refer to Appendix H – Social Value Portal Return and Guidance documents*

**Section 5 – Fairer Future Procurement Framework (FFPF)**

**Fairer Future Procurement Framework**

As part of the council’s Fairer Future Procurement Framework, any organisation bidding for contracts of £100k or more shall confirm that they have or will receive the following if they are successfully awarded a contract. Full details of the FFPF and policy can be found at:

<https://www.southwark.gov.uk/business/procurement/policy-and-guidance-for-procurement>

The Contractor shall, prior to commencement of the contract:

1. Complete the Mayor’s Good Work Standard Foundation Test (and are encouraged to seek accreditation levels later).
2. Commit to signing Unison’s End Violence at Work Charter.
3. Have a clear policy on a zero-tolerance approach to all forms of discrimination, harassment and bullying at work. Contractor’s employees can also raise concerns through the council’s whistleblowing policy.

Contractors will:

1. Voluntarily report and publish its gender pay gap information (if there are more than 50 employees but under 250 employees), unless doing so would lead to the disclosure of pay information on individuals. Contractors with more than 250 employees are also requested to develop action plans to reduce any gap and tackle diversity and inclusion challenges throughout all levels and areas of their organisation.
2. Voluntarily report and publish its ethnicity pay gap information, (if there are more than 50 employees) where data allows for statistical significance. Contractors with more than 250 employees are also requested to develop action plans to reduce any gap and tackle diversity and inclusion challenges throughout all levels and areas of their organisation.
3. Comply with any reasonable request from the Council to provide action plans around undertaking any organisational and supply chain changes to address issues where legislation does not directly apply.
4. The Contractor shall commit to trade union recognition or a timetable to work towards recognition where this does not already exist and work with relevant trade union/s and have agreed collective consultation and bargaining arrangements if requested by the workforce.
5. Provide all workers, free of charge, with all equipment necessary to provide the contract works, including safety equipment and any required uniform.

They will also be encouraged to:

1. Work towards accreditation under the London Healthy Workplace Award.
2. *(For construction contracts only*) Be encouraged to adopt and demonstrate appropriate Fair Work practices as set out in the Unite Construction Charter within their organisation and their supply chain.

We confirm that we have read the above and will comply with paragraphs 1-8

Company name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Section 6 – Form of Tender**

**FORM OF TENDER**

**To: The Mayor and Burgesses of the London Borough of Southwark**

**The Project: [to be inserted]**

**I/We** ............................................................................................……......................……….

of:..........................................……………........................………...........................................

…………………………………………………………………………......................…………….

……………………………………………………………………………......................……….....

Having examined and understood the Tender Documents issued in connection with the Project, offer to carry out *[the Service]* *[the Lot selected* below*]* in accordance with the Tender Documents for the *[sum of / rates specified in the Pricing Schedule]*:

£………………………....................(*add words*)*……*……………………..……........................

……………………………………………........…………………………………...........................

A detailed breakdown of that sum is included in Appendix D – Pricing Schedule.

In consideration of being invited to submit this tender, we agree that the offer set out in this Form of Tender is an unconditional and irrevocable offer by us which is capable of being accepted by you. Unless and until a formal binding agreement is executed, this Tender together with your written acceptance shall constitute a binding contract between us.

I/We agree that this Tender shall remain open to be accepted by the Authority and will only be withdrawn as detailed in paragraph 7.18 of the Conditions of Tendering.

I/We warrant and undertake to you in the terms set out in the Conditions of Tendering.

I/We agree that the insertion by me/us of any conditions qualifying this Tender or any unauthorised alteration to the Tender documents will not bind the Authority and may cause our Tender to be rejected.

In this Form of Tender words and expressions shall have the same meanings as are assigned to them in the Conditions of Contract.

I/We understand that you are not bound to accept the lowest or any tender you may receive.

Please indicate if currently, or within the last three years, you have, or have been, a party to any scheme or arrangement under which a blacklist (as defined by the Employment Relations Act 1999 (Blacklists) Regulations 2010) operates:

* YES
* NO

Any Tenderer that answers “Yes” must provide in a separate Appendix a summary of the circumstances and any remedial action that has taken place to effectively “self clean” the situation referred to in that paragraph to the satisfaction of the Authority. The Tenderer shall, as a minimum, prove that it has:

* Paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
* Clarified the facts and circumstances in a comprehensive manner by actively collaborating with investigating authorities; and
* Taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Tenderer shall be evaluated by the Authority taking into account the gravity and particular circumstances of the offence or misconduct. If such evidence is considered by the Authority (whose decision shall be final) as sufficient, the Tenderer concerned shall be allowed to continue in the procurement process. Where the measures are considered by the Authority to be insufficient, the Tenderer shall be given a statement of the reasons for that decision.

Dated:.........................................................................................................................................

***Where the Tenderer is a company:***

|  |  |
| --- | --- |
| Signature (1) | (Position) |
| Signature (2) | (Position) |
| for and on behalf of Company Name and registered office address | |

***Where the Tenderer is a partnership:***

|  |  |
| --- | --- |
| Signature (1) | Authorised Partner |
| Signature (2) | Authorised Partner |
| for and on behalf of Partnership Name and address: | |

***Where the Tenderer is an individual:***

|  |
| --- |
| Signature |
| Name and address: |

**Section 7 – Certificate of Non-Collusion**

**CERTIFICATE OF NON-COLLUSION, NON-CANVASSING CERTIFICATE AND CONFLICT OF INTEREST CERTIFICATE**

**To The London Borough of Southwark (“the Authority”)**

**TENDER FOR [to be inserted]**

**Non-collusion:**

We agree that the essence of selective tendering is that the Authority shall receive bona fide competitive tenders from all firms tendering. In recognition of this principle, we certify that this is a bona fide tender, intended to be competitive, and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not done and we undertake that we will not do at any time before the returnable date for this tender any of the following acts:-

1. Communicate to a person other than the person calling for these tenders the amount, or approximate amount of the proposed tender.

2. Enter into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted.

3. Offer or pay or give or agree to pay or give any sum or money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the work any act or things of the sort described above.

4. ***[Choose one option and delete as appropriate]***

(a) We further confirm that we have not conducted behaviour that is anti-competitive or restrictive within the meaning of the Competition Act 1998 (or equivalent nation legislation in the Member State in which we are registered)

**OR**

(b) We confirm that we have been found by a court, tribunal or competent body to have been party or guilty of behaviour that is anti-competitive or restrictive within the meaning of the Competition Act 1998 (or equivalent nation legislation in the Member State in which we are registered) and set out brief details below:

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and we confirm that we have taken steps to ensure that this conduct is not repeated and are prepared to demonstrate to your satisfaction that this is the case. We warrant and undertake that we have not nor will we conduct any anti-competitive behaviour in this procurement.

5. We warrant and undertake that we have not nor will we conduct any anti-competitive behaviour during this procurement.

6. We understand that in this Certificate the word ‘person’ includes any persons and any body or association, corporate or unincorporated and ‘any agreement or arrangement’ includes any such transaction, formal or informal and whether legally binding or not.

**Non-canvassing:**

We hereby certify that we have not canvassed or solicited any officer or employee of the Authority in connection with the award of the contract and that no person employed by us or action on our behalf has done any such act.

We hereby further undertake that we will not in the future canvass or solicit any officer or employee of the Authority in connection with the award of the contract and that no person employed by us or acting on our behalf will do any such act.

**Conflict of interest statement:**

The Authority must ensure that it does not contravene Schedule 1, Part 1 of the Housing Act 1996, i.e. the Authority may not make a payment or grant a benefit to a Committee or Board Member, Officer or Employee of the Authority save and except in certain specified circumstances. The Authority therefore requires tenderers to answer the following questions:

1. Has any Director, Partner or Associate been an employee of the Authority within the last five years?

YES/NO (If yes please give details)

2. Please state if any Director, Partner or Associate has a relative(s) who is an officer or an employee of the Authority at a senior level or is a Cabinet Member or Councillor of Authority.

YES/NO (If yes please give details)

3. Please state if any Directors, Partners or Associates of your firm have any involvement in other firms who provide or have provided services to the Authority.

YES/NO (If yes please give details)

4. Is any Director, Partner or Manager an existing Resident or Leaseholder of the Authority.

YES/NO (If yes please give details)

Signed…………………………………………………………………………………………….

Name……………………………………………………………………………………………..

Position in Organisation *(i.e. Director or Partner)*……………………………………….......

For and behalf of………………………………………………………………………………..

…………………………………………………………………………………………………….

Address: *(In the case of a Limited Company, the Registered Office)*

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Date………………………………………………………………………………………………

**Section 8 – Offences Certificate**

**OFFENCES CERTIFICATE**

**To The London Borough of Southwark (‘the Authority’)**

**TENDER FOR [to be inserted]**

OPTION A:

We ***[ ]***do hereby certify that we (nor a member of our administrative, management or supervisory body or a person who has powers of representation, decision or control over us) have not been convicted of any offence referred to in Regulation 57 of the Public Contracts Regulations 2015, within the last 5 years, namely:

1. conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Authority Framework Decision 2008/841/JHA on the fight against organise crime;
2. corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906, where the offence relates to active corruption;
3. the common law offence of bribery;
4. bribery within the meaning of section 1, 2 or 6 of the Bribery Act 2010, or section 113 of the Representation of the People Act 1983;
5. where the offence relates to fraud affecting the European Communities' financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities:-
6. the common law offence of cheating the Revenue;
7. the common law offence of conspiracy to defraud;
8. fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;
9. fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;
10. fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;
11. an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;
12. destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;
13. fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or
14. the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles to use in fraud within the meaning of section 7 of that Act;
15. any offence listed –
16. in section 41 of the Counter Terrorism Act 2008; or
17. in Schedule 2 to that Act where the court has determined that there is a terrorist connection.
18. any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f);
19. money laundering within the meaning of section 340(11) and 415 of the Proceeds of Crime Act 2002;
20. an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996;
21. an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;
22. an offence under section 59A of the Sexual Offences Act 2003;
23. an offence under section 71 of the Coroners and Justice Act 2009;
24. an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994;
25. an offence under section 2 or 4 of the Modern Slavery Act 2015
26. any other offence within the meaning of Article 57(1) of the Public Contracts Directive:
27. as defined by the law of any jurisdiction outside England and Wales and Nothern Ireland; or
28. Created, after the day on which the Public Contracts Regulations were made, in the law of England and Wales or Northern Ireland.

We do hereby further undertake that we will notify the Authority if we are convicted of any such offence during the procurement procedure.

We do hereby further certify that:

1. we are not in breach of our obligations relating to the payment or taxes or social security contributions, such breach having been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of any of the jurisdictions of the United Kingdom;
2. we are not in (and have not been in for the last 3 years) one of the situations referred to in Regulation 57(8) of the Public Contracts Regulations 2015;
3. we are not in breach of the requirements under Regulation 3(1) of the Employment Relations Act 1999 (Blacklisting) Regulations 2010;

Signed………………………………………………………………….......................…………..

Authorised Signatory

Name………………………………………………………….........................…………………..

Position in Organisation *(i.e. Director or Partner)*…….........................................................

For and on behalf of………………………………........................……………………………..

Address: *(In the case of a Limited Company, the Registered Office)*

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Date…………………………………………………….......................…………………...……..

OPTION B

We [ ] do hereby certify that we have been convicted of an offence referred to in Regulation 57 of the Public Contracts Regulations 2015 within the last 5 years, namely:

*Insert full details:*

AND/OR

We are in, or have been in within the last 3 years, one of the situations referred to in Regulation 57(8) of the Public Contracts Regulations 2015; namely:

*Insert full details:*

We certify that we have:-

1. paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
2. clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
3. taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The evidence of the measures we have taken to demonstrate our reliability are:

We do hereby further undertake that we will notify the Authority if we are convicted of any offence during the procurement procedure.

We do hereby further certify that:

1. we are not in breach of our obligations relating to the payment or taxes or social security contributions, such breach having been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of any of the jurisdictions of the United Kingdom;
2. we are not in breach of the requirements under Regulation 3(1) of the Employment Relations Act 1999 (Blacklisting) Regulations 2010;

Signed………………………………………………………………….......................…………..

Authorised Signatory

Name………………………………………………………….........................………………….

Position in Organisation *(i.e. Director or Partner)*……........................................................

For and on behalf of………………………………........................…………………………….

Address: *(In the case of a Limited Company, the Registered Office)*

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Date…………………………………………………….......................…………………...…….

**Section 9 – Parent Company Guarantee Undertaking**

**PARENT COMPANY GUARANTEE UNDERTAKING**

***to be completed and returned with the Form of Tender*** *(if applicable)*

**To the Mayor and Burgesses of the London Borough of Southwark**

We [ ] being the ultimate holding company of our subsidiary company [*Tenderer*] unconditionally and irrevocably undertake that if the Form of Tender submitted by [*Tenderer*] is accepted by you, we shall forthwith upon request properly execute and deliver to you a Deed of Guarantee and Indemnity in the Authority’s prescribed form, but subject to the insertion of such details and the making of such revisions as the Authority may reasonably require in the light of the terms and the nature and effect of the contract made by your acceptance.

Dated…………………………………………………………………………………………………….

The Common Seal of

[ ]

was hereunto affixed in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Section 10 – Confidentiality Undertaking**

**REQUEST FOR INFORMATION AND UNDERTAKING AS TO CONFIDENTIALITY IN RELATION TO THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006**

**To The London Borough of Southwark**

**TENDER FOR [to be inserted]**

We hereby request information relating to the terms and conditions of staff carrying out work being tendered and undertake in consideration of our participation in this tender process and the sum of one peppercorn receipt of which is hereby acknowledged:

1. to hold all information relating to staff that is disclosed to us in strict confidence, to use it only for preparing a tender for the above contract and not to disclose it to any agent, associated company, professional adviser or employee except where it is necessary for them to have such information to allow the tender to be prepared and who have signed an undertaking in the same terms;
2. to provide, with our Tender, information as to any measures we intend to take in respect of such staff should they be transferred to our employment by reason of the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
3. to comply with all consultation requirements detailed in the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Signed…………………………………………………………………………………...................

Name………………………………………………………………………….........................…..

Position in Organisation (i.e. Director or Partner)………………………………………………

For and behalf of…………………………………………………………………………………..

Address: *(In the case of a Limited Company, the Registered Office)*

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Date…………………………………………………………………….......................…………..

**Section 11 – Collaboration Agreement**

**ADDITIONAL ADULTS CARE AT HOME ONLY**

|  |  |
| --- | --- |
| **THIS AGREEMENT IS MADE ON 2020** | |
| **BETWEEN:** | |
| (1) | [ ] of [ ] (the **“Authority”**); |
|  |  |
| (2) | Each of the Collaboration Suppliers, who in each case have separately entered into a valid Accession Agreement in the form set out in Schedule 1.  [ ] a company incorporated in [ ] under registration number [ ], whose registered office is at [ ];  registered office is at [ |
|  |  |
|  |  |

**WHEREAS:**

1. The Authority wishes to procure good quality and committed home care providers with whom it can work in partnership to achieve the best possible outcomes for those who have statutory needs in line with the Care Act 2014.
2. The Authority and the Collaboration Suppliers have entered into the Contracts (defined below) **for the provision of care at home services.**
3. The Collaboration Suppliers now wish to provide for the ongoing cooperation of the Collaboration Suppliers in the provision of services under their respective Contracts to the Authority.

In consideration of the mutual covenants contained in the Contracts and this Agreement and intending to be legally bound, the parties agree as follows:

# DEFINITIONS AND INTERPRETATION

## As used in this Agreement, the capitalised expressions shall have the following meanings unless the context requires otherwise:

**“Accession Agreement”** means an agreement between the Authority and a Collaboration Supplier in the form set out in Schedule 1;

**“Agreement”** means this collaboration agreement, comprised of the Clauses and Schedules;

**Contract”** means each contract that is let by the Authority to one of the Collaboration Suppliers under the Authority’s Care at Home tender process;

**“CEDR”** means the Centre For Effective Dispute Resolution**;**

**“Collaboration Supplier”** means a supplier who has entered into this Agreement;

**“Confidential Information”** means the Authority Confidential Information and/or any Collaboration Supplier's Confidential Information;

**“Collaboration Activities”** means the activities set out in this Agreement where 2 or more Collaboration Suppliers work together to achieve common goals and outcomes consistent with the strategic aims and objectives of care at home;

**“Default”** means any breach of the obligations of any Collaboration Supplier or any default, act, omission, negligence or statement of any Collaboration Supplier, its employees, servants, agents or sub-­contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Collaboration Supplier is liable to the other parties;

**“Detailed Collaboration Plan”** has the meaning given to it in Clause 4.2;

**“Dispute Resolution Procedure”** means the procedure described in Clause 10;

**“Effective Date”** means the date of this agreement;

**“Force Majeure Event”** has the meaning given to it in Clause 12.1.1;

**“Local Care Network”** means the two geographical neighbourhoods (North and South Southwark) co-terminus to the GP practices and practice federations which will increasingly form the basis of integrated working across the health and social care economy

**“Mediator”** has the meaning given to it in Clause 10.3.1;

**“Outline Collaboration Plan”** has the meaning given to it in Clause 4.1;

**“Term”** has the meaning given to it in Clause 3.1; and

**"Working Day"** means every day, 365 days a year inclusive of weekends and public holidays in England and Wales.

## General

### As used in this Agreement:

1.2.1.1 the masculine includes the feminine and the neuter; and

1.2.1.2 the singular includes the plural and vice versa.

### A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re­-enactment thereof.

### Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

### References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.

### Except as otherwise expressly provided in this Agreement, all remedies available to any party under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

# ACCESSION

## The Authority may at any time agree with a supplier that it will become a Collaboration Supplier for the purposes of this Agreement through the conclusion of an Accession Agreement with fellow suppliers operating in the Local Care Network. Upon conclusion of an Accession Agreement, the Authority shall notify the existing Collaboration Supplier(s) of the addition of the new Collaboration Supplier to this Agreement.

## No Collaboration Supplier shall be entitled to object to the addition of a new Collaboration Supplier to this Agreement following the conclusion of an Accession Agreement between the Authority and that new Collaboration Supplier. The parties to this Agreement prior to the conclusion of an Accession Agreement shall remain bound by the terms of this Agreement following conclusion of the Accession Agreement and in addition, from the date on which the relevant Accession Agreement was concluded, the new Collaboration Supplier shall accede to this Agreement and shall have all of the rights and obligations of a Collaboration Supplier under this Agreement.

# TERM OF THE AGREEMENT

## This Agreement shall come into force on the Effective Date and, unless earlier terminated in accordance with Clause 11, shall expire six (6) months after the expiry or termination (however arising) of the exit period of the last Contract (the “Term”).

## A Collaboration Supplier’s duty to perform the Collaboration Activities shall continue until the end of the exit period of its own Contract.

# PROVISION OF THE COLLABORATION PLAN

## The Collaboration Suppliers shall, within three (3) months (or such longer period as notified by the Authority in writing) of the Effective Date, meet at the offices of the Authority to discuss and agree proposals for the Collaboration Activities they require from each other in order for these activities to be effective (the “Outline Collaboration Plan”).The Outline Collaboration Plan shall include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier’s respective Contract, by the Authority.

## Within twenty (20) Working Days (or such other period as agreed in writing by the Authority and the Collaboration Suppliers) of receipt of the proposals, the Authority shall prepare a plan for the Collaboration Activities (the “Detailed Collaboration Plan”). The Detailed Collaboration Plan shall include full details of the activities and interfaces that involve all of the Collaboration Suppliers to ensure the receipt of the services under each Collaboration Supplier’s respective Contract, by the Authority. The Detailed Collaboration Plan shall be based on the Outline Collaboration Plan and shall be submitted to the Collaboration Suppliers for approval.

## The Collaboration Suppliers shall provide such assistance as is required by the Authority in the preparation of the Collaboration Plan.

## The Collaboration Suppliers shall, within five (5) Working Days of receipt of the Detailed Collaboration Plan, either:

### approve the Detailed Collaboration Plan; or

### reject the Detailed Collaboration Plan, giving reasons for such rejection.

## The Collaboration Suppliers may reject the Detailed Collaboration Plan pursuant to Clause 4.4.2 only if it is not consistent with their Outline Collaboration Plan in that it imposes additional, more onerous, obligations on them.

## If the parties fail to agree the Detailed Collaboration Plan in accordance with Clause 4.4, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

# COLLABORATION ACTIVITIES

## The Collaboration Suppliers shall perform the Collaboration Activities and all other obligations of this Agreement in accordance with the Detailed Collaboration Plan.

## The Collaboration Suppliers shall provide all additional cooperation and assistance as is reasonably required by the Authority to ensure the continuous delivery of the services under the Contract(s).

## The Collaboration Suppliers shall procure that their respective sub-contractors provide all cooperation and assistance as set out in the Detailed Collaboration Plan.

## The Collaboration Suppliers shall review the Detailed Collaboration Plan on a regular basis and shall meet to discuss the Detailed Collaboration Plan no less than six monthly (“Collaboration Review Meeting”). No later than ten (10) Working Days prior to each Collaboration Review Meeting each Collaboration Supplier shall:

### provide a summary of the progress made with respect to the Detailed Collaboration Plan; and

### provide a summary of any suggested amendments or recommendations to the Detailed Collaboration Plan and the reasons for suggesting those amendments.

## The Collaboration Suppliers shall agree a summary report within twenty (20) Working Days following each Collaboration Review Meeting which shall be provided to the Authority with any recommendations for amendments to the Detailed Collaboration Plan.

## The Authority shall at its sole discretion accept such amendments to the Detailed Collaboration Plan and shall notify the Collaboration Suppliers of any such changes. Following such written notice from the Authority, the Collaboration Suppliers shall comply with the updated Detailed Collaboration Plan.

# REQUIRED BEHAVIOURS

## In order to ensure the effective delivery of the Contracts, the Collaboration Suppliers shall act in the following way:

### collaborate and co-operate with one another in pursuit of the key objectives for the care at home project. The Collaboration Suppliers shall use problem-solving methods that promote a co-operative atmosphere;

### communicate openly about major concerns, issues or opportunities relating to the care at home project. The Collaboration Suppliers should focus on the solution to a problem or issue rather than seeking to blame the Authority or the other Collaboration Suppliers;

### learn, develop and seek to achieve the key objectives of the care at home project. Share information and experience to learn from each other, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;

### adopt a positive outlook. Behave in a positive, proactive manner and make a commitment to mutual success in their relationships with the Authority, NHS bodies and the other Collaboration Suppliers;

### provision of joint training: the Collaboration Suppliers shall seek to arrange joint training (where this is relevant) of their employees/other parties, drawing upon the partnerships and opportunities identified in the Workforce appendix of the Service Specification of the Contract.

# CONFIDENTIALITY

## Each Collaboration Supplier warrants that:

### any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Agreement;

### any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of the other party;

### it shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by its employees, servants, agents or sub-contractors; and

### neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, shall use the Confidential Information for the solicitation of business from the other or from the other party's servants or consultants or otherwise.

## The provisions of Clause 7.1 shall not apply to any information which:

### is or becomes public knowledge other than by breach of this Clause 7; or

### is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or

### is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

### is independently developed without access to the Confidential Information; or

### is required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction.

## The Authority’s rights, obligations and liabilities in relation to using and disclosing any Collaboration Supplier’s Confidential Information provided under this Agreement and the Collaboration Supplier’s right, obligations and liabilities in relation to using and disclosing any of the Authority’s Confidential Information provided under this Agreement, shall be as set out in the Contract.

# WARRANTIES

## Each Collaboration Supplier warrant and represent that:

### it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Collaboration Supplier; and

### its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 8) in accordance with its own established internal procedures.

## Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

# LIMITATION OF LIABILITY

## None of the parties exclude or limit their liability for death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

## Nothing in this Agreement shall exclude or limit the liability of any party in respect of fraud or fraudulent misrepresentation.

# DISPUTE RESOLUTION PROCEDURE

## All disputes between any of the parties arising out of or relating to this Agreement shall be referred, by any party involved in the dispute, to the representatives of the parties specified in the Detailed Collaboration Plan.

## If the dispute cannot be resolved by the parties' representatives nominated under Clause 10.1 within a maximum of five (5) Working Days (or such other time as otherwise agreed in writing by the parties) after it has been referred to them under Clause 10.1, then except where a party seeks urgent injunctive relief, the parties shall refer it to mediation pursuant to the procedure set out in Clause 10.3 unless the Authority considers (acting reasonably and considering any objections to mediation raised by the other parties) that the dispute is not suitable for resolution by mediation.

## The procedure for mediation and consequential provisions relating to mediation are as follows:

### a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to the parties that he is unable or unwilling to act, apply to the CEDR to appoint a Mediator;

### the parties shall within ten (10) Working Days of the appointment of the Mediator meet with them in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;

### unless otherwise agreed by the parties in writing, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

### if the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives;

### failing agreement, any of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the parties; and

### if the parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

## The parties must continue to perform their respective obligations under this Agreement and under their respective Contracts pending the resolution of a dispute.

# TERMINATION AND CONSEQUENCES OF TERMINATION

## Termination

### The Authority has the right to terminate this Agreement at any time by notice in writing to the Collaboration Suppliers whenever the Authority has the right to terminate a Collaboration Supplier’s Contract.

### Failure by any of the Collaboration Suppliers to comply with their obligations under this Agreement shall constitute a Default under their Contract. In this case, the Authority also has the right to terminate by notice in writing the participation of any Collaboration Supplier to this Agreement and sever its name from the list of Collaboration Suppliers, so that this Agreement will continue to operate between the Authority and the remaining Collaboration Suppliers.

## Consequences of Termination

### Subject to any other right or remedy of the parties, the Collaboration Suppliers and the Authority shall continue to comply with their respective obligations under the Contracts following the termination (however arising) of this Agreement:

### Except as expressly provided in this Agreement, termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement.

# GENERAL PROVISIONS

## Force Majeure

### For the purposes of this Agreement, the expression “Force Majeure Event” shall mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to any party, the party's personnel or any other failure of a sub-contractor.

### Subject to the remaining provisions of this Clause 12.1, any party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

### A party cannot claim relief if the Force Majeure Event or its level of exposure to such event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

### The affected party shall immediately give the other parties written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected party, and any action the affected party proposes to take to mitigate its effect.

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

## Assignment and Subcontracting

### Subject to Clause 12.2.2 and 12.2.3, the Collaboration Suppliers shall not assign, transfer, novate, sub-license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage hereof without the consent of the Authority first being obtained in writing.

### Any sub-contractors identified in the Detailed Collaboration Plan are permitted to perform those elements identified in the Detailed Collaboration Plan to be performed by such sub-contractors.

### If a Contract terminates for whatever reason the relevant Collaboration Supplier shall, at the request of the Authority, novate its rights and obligations under this Agreement to a new supplier. The parties shall enter into such agreement and/or deed as may reasonably be required to give effect to such novation.

## Notices

### Any notices given under or in relation to this Agreement shall be deemed to have been properly delivered if sent by recorded or registered post or by fax and shall be deemed for the purposes of this Agreement to have been given or made at the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.

### For the purposes of Clause 12.3.1, the address of each of the parties shall be those specified in the Detailed Collaboration Plan.

## Entire Agreement

### This Agreement, together with the documents and agreements referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties in relation to such matters.

### Each of the parties acknowledges and agrees that in entering into this Agreement and the documents and agreements referred to in it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to each party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

### Nothing in this Clause 12.4 shall operate to exclude any liability for fraud.

## Rights of Third Parties

### Nothing in this Agreement shall be deemed to grant any right or benefit to any person other than the parties or their respective successors in title or assignees, or entitle a third party to enforce any provision hereof and the parties do not intend that any term of this Agreement should be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

## Severability

### If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the parties shall immediately commence good faith negotiations to remedy that invalidity.

## Variations

### No purported amendment or variation of this Agreement or any provision of this Agreement shall be effective unless it is made in writing by the parties.

## No waiver

### The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

## Governing Law and Jurisdiction

### This Agreement shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

**EXECUTED AND DELIVERED** as an agreement by the parties or their duly authorised attorneys the day and year first above written.

**FOR AND ON BEHALF OF THE AUTHORITY**

Signed by:

Full name (capitals):



Position:

Date:

FOR AND ON **BEHALF** OF [ ]

Signed by:



Full name (capitals):

Position:

Date:

FOR AND ON **BEHALF** OF [ ]

Signed by:



Full name (capitals):

Position:

Date:

**SCHEDULE 1: PRO-FORMA ACCESSION AGREEMENT**

This Accession Agreement is made on 20[ ]

Between

(1) [ ] of [ ] (the “Authority”);

(2) [ ] a company incorporated in [ ] under registration number [ ], whose registered office is at [ ]; (the “Supplier”).

1. **Background**
   1. On [INSERT DATE] the Authority entered into a collaboration agreement with [INSERT NAME] (the “Collaboration Agreement”).
   2. The Authority and the Supplier have agreed that the Supplier shall become a party to the Collaboration Agreement as a Collaboration Supplier.
2. **Accession**
   1. The Authority agrees that, in entering into this Accession Agreement, the Supplier shall become a Collaboration Supplier under the Collaboration Agreement in accordance with clause 2 of that agreement.
   2. The Supplier agrees that, in entering into this Accession Agreement, it will have all of the rights and obligations of a Collaboration Supplier under the Collaboration Agreement in accordance with clause 2 of that agreement.
3. **Governing Law**
   1. This Accession Agreement shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

EXECUTED AND DELIVERED as an agreement by the parties or their duly authorised attorneys the day and year first above written.

FOR AND ON BEHALF OF THE AUTHORITY

Signed by: ………………………………………………………………………

Full name (capitals): ………………………………………………………………………

Position: ………………………………………………………………………

Date: ………………………………………………………………………

FOR AND ON BEHALF OF [ ]

Signed by: ………………………………………………………………………

Full name (capitals): ………………………………………………………………………

Position: ………………………………………………………………………

Date: ……………………………………………………………………