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Swindon Borough Council

**Services Contract**

**Invitation to Tender for:**

**Domiciliary Care Providers – Framework**

**Reference Number: PG00047**

**ASC/**

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Revised 12 April 2016

**www.swindon.gov.uk**

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Section 1 - General Information

## Instructions to Tenderers

## 1 Statement Of Purpose

1.1 Swindon Borough Council (SBC), wishes providers to submit tenders for its requirements for a domiciliary care framework. We encourage those providers who can ensure quality, compliance and timeliness in delivery within the Borough of Swindon. The framework will provide a state of readiness to monitor compliance, continued care, commercial stability and a smooth and robust transition to the main/master domiciliary care provider(s), by autumn 2017.

1.2 Please note that this is a framework arrangement until the main/master provider(s) contracts have been advertised and let. The main/master provider(s) provision will be moving to a two supplier provision (one lead provider for the North of Swindon and one lead provider for the South of Swindon) to allow us more control, influence and innovation within the delivery of this service as well as enabling us to develop the contract from a task and time hours purchased to an outcomes and risk shared model. The suppliers are also able to bid for a third lot, which incorporates all of Swindon.

1.3 Once the main/master domiciliary care provider(s) contract is awarded they will take on all new packages of care. Until the main/master contract is awarded packages will be mini competed between the framework providers on a first come first serve basis moving forward until the main/master provider contract is in place. The mini competition will not involve any further qualitative checks and will be awarded to the first provider who confirms they have availability.

1.4 Any packages provided under the framework arrangements will stay in place until such time as they come to their “natural end” (i.e. there will be no transfer of services to a new Provider).

1.5 This contract will be a multi supplier framework agreement and will be for an initial period of two years with the option to extend for two further periods at one-year each, subject to provider’s compliance and performance through contract monitoring and longevity of packages.

1.6 Companies are now being formally invited to meet these requirements and the purpose of this document is to provide the necessary information to enable Tenderers to submit a response.

1.7 All potential respondents receiving this Request for Prices (“Request”) are herein referred to as “Tenderer”.

## 2 Procurement Policy

2.1 It is SBC policy to reduce current and future business costs wherever possible. The cost benefits of any project must be economically justifiable after the objectives for Products/Services have been met. Individual Tenderers’ overall operations will be considered in determining which response is the most appropriate for SBC needs. Tenderers are therefore encouraged to submit the full range of value added services that they can offer within their tender response.

## 3 Liability

3.1 SBC shall incur no obligation or liability whatsoever to anyone by issuing the Request or action by any party relative hereto.

## 4 Notification Of Intent

4.1 On or before **7th April 2017** each Tenderer receiving this Request must notify the **Contracts Team c/o** **Tracy Gagetta** (see 7.1 for details) by e-mail, of its intention to submit a Response. If you do not wish to tender, please ensure that all documents are returned, providing details of the reasons for not submitting a proposal.

## 5 Terms Of Validity

5.1 The Tenderer is required to keep tenders valid for acceptance for a period of 120 days from the closing date of receipt of tenders. All prices to remain firm for the period of the contract.

## 6 Questions/Clarification

6.1 Persons proposing to submit a tender are advised first to read the documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their tender is accepted. Where the word “shall” is used this is mandatory, where the word “should” is used this is to be regarded as desirable. In the event that a Tenderer is unable to fully comply this must be explicitly stated in the tender submitted.

6.2 The Tenderer should seek to clarify any points of doubt or difficulty before submitting a tender. For this purpose contact can be made, via email, to the named authorised officer only as detailed in 7 below. Clarification should be sought in accordance with the timescales detailed in 12.3 below. If it is decided to amend the Tender Documents, then all Tenderers will be notified accordingly.

6.3 SBC will answer all questions from Tenderers and to ensure a consistent interpretation of the Request, all clarification statements will be made available on the portal in spreadsheet format for all Providers to view after each question is asked and answered.

6.4 SBC shall not conduct 1 to 1 face to face meetings with potential Tenderers at any time during the period between issuing the Request and receiving the Response to the Request with the exception of inviting tenderers to *‘How to Meet Compliance’* workshops which would be advertised via the portal during the clarification period.

## 7 Swindon Borough Council Contact

7.1 Any questions, clarifications or other communication concerning this tender document must be directed via email to the following: (please note that this address is not the delivery address for the final tender response, see clause 12.1 for tender delivery address):

Contracts Team

c/o: Tracy Gagetta

Adult Social Service

Email: [contracts@swindon.gov.uk](mailto:contracts@swindon.gov.uk)

## 8 Conditions/Assumptions

8.1 The Tenderer is required to clearly explain any assumptions or conditions it imposes on or includes in its responses to the Request.

## 9 Tendering Procedure

9.1 The Tenderer is required to answer all questions of this ITT document; failure so to do may invalidate your tender.

9.2 Many of the clauses of the specification require you to give a detailed response as indicated, clearly stating all of the relevant information you wish to be considered as part of the evaluation process and where applicable, you will be required to provide all appropriate supporting documentation when requested by the Contracts Team during the ‘preferred bidders’ stage as stated in 13.7. You are also requested to affirm either noted, compliant, partial compliant or non-compliant. In the case of partial or non-compliant the Tenderer must also state the reason.

9.3 From the completed tenders a short list of preferred Tenderers may be drawn up and those short listed may be invited to give the Authority a presentation or demonstration on their tender.

9.4 A Tenderer who submits a qualified tender shall be requested to withdraw the qualification without amendment to the tender sum otherwise the tender will be rejected if it is considered that such qualification affords the Tenderer an unfair advantage over other Tenderers.

9.5 Any costs incurred by the Tenderer in responding to this request or in support of activities associated with the response to this Request, are to be borne by the Tenderer and are not reimbursable by SBC.

9.6 Where the Tenderer is proposing to subcontract any part of the service to be provided, this must be clearly stated in all cases. The Tenderer will be expected to manage and control any sub-contractor services included in their proposal and provide evidence of how they intend to control the sub-contractor(s). This is particularly relevant to performance of and controlling confidentiality from subcontractors.

9.7 SBC logo, trademarks and other identifying marks are proprietary and may not be incorporated in Tenderers response without SBC written permission.

9.8 Only information provided as a direct response to the tender will be evaluated. Information and detail including marketing material, which forms part of general company literature or promotional brochures etc; will not form part of the evaluation process unless specifically requested in this document.

## 10 Code Of Conduct

10.1 It is the objective of SBC to obtain the best goods and services possible by giving fair and impartial consideration to all Tenderers invited to submit a response.

10.2 Every potential Tenderer will be evaluated on a fair and equal basis. Tenderers will be given the same information and treated equally with respect to the selection process. The granting of any advantage to one while excluding others is not permitted.

10.3 Any Tenderer who directly or indirectly canvasses any member or Officer of the SBC concerning the award of the Contract, or who directly or indirectly obtains or attempts to obtain information from any such member or officer or staff member concerning any other tender or proposed tender will be disqualified.

## 11 Collusive Tendering

11.1 Any Tenderer who:

* fixes or adjusts the amount of their tender by or under or in accordance with any agreement or arrangement with any other person; or
* communicates to any person other than SBC the amount or approximate amount of the proposed tender except where the disclosure is made in confidence in order to obtain quotations for insurance necessary for the preparation of the tender; or
* enters into any agreement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted; or
* offers or agrees to pay or give, or does pay or gives, any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the services, any act or omission,

shall (without prejudice to any other civil remedies available to SBC and without prejudice to any criminal liability which such conduct by a Contractor may attract) be disqualified.

## 12 Receipt of Tender and Timescales

* 1. Responses must be submitted on paper and USB, to

**Swindon Borough Council,**

**Law and Democratic Services,**

**Civic Offices,**

**Euclid Street,**

**Swindon,**

**SN1 2JH**

and returned in a plain envelope, using the address label enclosed. Please be advised that USB’s submitted to the Authority as a tender copy cannot be returned to the Provider and will be destroyed by the Authorities’ appropriate department. The envelope shall, **under no circumstances**, bear any name or mark indicating the name of the sender. In particular the practice of incorporating the name of the Tenderer by way of advertisement in the franking of the envelope violates this rule. The Tenderer should also ensure that any carrier (Royal Mail/Couriers etc.) engaged to deliver a tender does not violate this rule by identifying the Tenderer as the sender. **MARKED TENDERS WILL BE REJECTED**.

12.2 Responses must be sealed. The paper copy should be signed and if discrepancies between the paper copy and USB copy are found, the paper will be considered as the only response document. Response packages must be marked confidential - to be opened only by an authorised representative of SBC.

12.3 Tender documents, completed in full, shall be received no later than **1200hrs UK Local Time on Wednesday 28Th April 2017**. Documentation not returned by the due date and time will be excluded from evaluation.

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| --- | --- |
| Closing Date for Tender Clarifications | 18/04/17 at 12.00 noon |
| Tender return by | 28/04/17 at 12:00 noon |
| Evaluate Tender | 02/05/17 to 08/05/17 |
| Preferred Bidder Status validation | 09/05/17 to 15/05/17 |
| Issue reject/accept letters (standstill period) | 19/05/17 to 29/05/17 |
| Award and seal contract | 30/05/17 to 21/06/17 |
| Implement Contract by | 01/07/17 |

12.4 No tender shall be considered if it reaches SBC premises, as detailed in 12.3, after the time specified, unless the closing date has formally been extended in writing.

12.5 Response openings will be conducted privately. All materials submitted in response to this Request will become SBC property and may be retained by SBC.

12.6 Specifications, data, documentation or other technical or business information (“information”) furnished or disclosed to the Tenderer hereunder shall be deemed SBC property.

## Scope of Evaluation

13.1 The evaluation process will seek to appoint a Contractor(s) who can demonstrate the required skills, qualities, technical ability and capacity, commercial stability and experience to ensure successful performance of the Contract.

13.2 **Selection Criteria**

This stage concerns the evaluation of the information provided by tenderers in in response to the Tender Questionnaire (Section 4). This evaluation concentrates on economic and financial standing and technical and professional ability and will evaluated as follows:

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| **SUPPLIER SELECTION QUESTIONNAIRE**  **EVALUATION MODEL** | |
| a) Selection Questionnaire Mandatory ‘pass/fail’ sections - A Tenderer must achieve a pass  for **all** of the parts set out in 13.3.2 | |
| **13.3.2 Mandatory Pass/Fail Selection Criteria** | |
| **Questionnaire Section 4 Reference** | **Mandatory Requirements to pass** |
| General | Questionnaire response in the correct format |
| General | Questionnaire response received on time |
| General | All Sections fully completed |
| Section 2 – 2.2 – Terms and Conditions | Tenderer accepts the Terms & Conditions |
| Section 4  1 – Supplier Information | All responses to part 1 (Supplier Information) must be completed in full and answer Yes/No where applicable |
| Section 4  2 - Grounds for Mandatory Exclusion | All responses to part 2 (Grounds for mandatory exclusion) answered ‘No’ subject to any self-cleaning provisions set out in this document |
| Section 4  3 – Grounds for discretionary exclusion – Part 1 | All Section 3 answered No’ subject to any self-cleaning provisions set out in this document |
| Section 4  4 – Grounds for discretionary exclusion – Part 2 | All Section 4 answered No’ subject to any self-cleaning provisions set out in this document |
| Section 4  5.1 - Economic and Financial Standing | All Section 5 provide One of the requested financial reports to demonstrate your economic/financial standing; |
| Section 4  5.2 - Economic and Financial Standing | Provider financial criteria includes a positive net worth of last year end accounts. The provider is expected to return a financial self-assessment annually to the Contracts Team which will be developed over the course of the first year of contract between SBC and the Providers accredited. |
| Section 4  6 – Technical and Professional Ability | Must provide details of at least one similar relevant contract or provide satisfactory response to 6.5 setting out why you cannot provide an example and evidence that the required technical expertise and human resource and experience exist in your company |
| Section 4  7 – Pricing | Provider confirms that they will provide domiciliary care at the stated rate |
| Section 4  8 – A – Questionnaire | All questions must be answered with a maximum of 500 words each with Tenderers scoring a minimum of three out of five for all parts in order to pass |
| Section 4  8– B - 1 - Insurance | Self-certifying ‘Yes’ commitment to meet the minimum Insurance requirements |
| Section 4  8-C-1 &2 - Equality Legislation | Self-certifying ‘No’ Automatic Pass  If answering ‘Yes’ you may be excluded if you are unable to demonstrate to the *Authorities* satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring. |
| Section 4  8-D-1 Environmental Management | Self-certifying ‘No’ Automatic Pass  If answering ‘Yes’ please note the *Authorities* will not select bidder(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the *authority*  is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches |
| Section 4  8-D–2 Environmental Management | Self-certifying ‘Yes’ Automatic Pass  If answering ‘No’ then please confirm that relevant procedures will be in place to perform this contract should you be successful. |
| Section 4  8-E-1 Health and Safety | Self-certifying ‘Yes’ your organisation has a Health and Safety Policy that complies with current legislative requirements |
| Section 4  8-E-2 Health and Safety | Self-certifying ‘No’ your organisation or any of its Directors or Executive Officer’s been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years.  If answering ‘Yes’ the authority will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the authority’s satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches. |
| Section 4  8-E-3 Health and Safety | Self-certifying ‘Yes’, if you use sub-contractors, you have processes in place to check whether any of the above circumstances apply to these other organisations. |
| Section 4  8-F Clinical Quality Commission | Self-certifying ‘Yes’ your organisation is registered with CQC and has been inspected, is awaiting inspection report and/or awaiting inspection if newly registered provider. |

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| **13.3.3 Technical & Professional Ability. Tenderers must score a minimum of three out of five for all parts of Section 13.3.3 in order to pass. Limit of words 500 per answer.** | |
| **Questionnaire Section 8A. 1-5 Reference No.** | **Supplier Response**  **Marking criteria scoring 0 - 5** |
| Your company has a business continuity plan which show that the company has plans for situations such as loss of buildings/ loss of data / loss of key equipment/ loss of key personnel and staff | The Tenderer must obtain a minimum score of 3 for this section |
| Your company has appropriate staffing levels where there are at least 7 care workers to each manager  Number of managers:  Number of care workers: | The Tenderer must obtain a minimum score of 3 for this section |
| The staff in your company are All trained within 30-days of employment with induction on basic home care skills and a further 12-weeks training period to include MCA/DoLS, medication, diversity, moving and repositioning of service user and dementia awareness.  Provide evidence of your training plans and staff involved | The Tenderer must obtain a minimum score of 3 for this section |
| Explain your complaints procedure. How many complaints did you receive in the last 12 months? More than 3 complaints will receive a scoring of 2 or less depending on circumstances | The Tenderer must obtain a minimum score of 3 for this section |
| Provide evidence of how many safeguarding reports have been raised in the last year – and how many were upheld. More than 3 upheld safeguarding decisions will receive a scoring of 2 or less depending on circumstances | The Tenderer must obtain a minimum score of 3 for this section |

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| **13.3.4 Scoring Table/Matrix** | |
| **Section 13.3.3 Technical & Professional Ability will be evaluated using the following scoring mechanism. To pass, the Provider will need to score a three and above on all the questions.** | |
| **Score** | **Marking Guidelines** |
| 0 | Question is not answered or the response is completely unacceptable.  i.e. does not meet the minimum requirement or they have completely missed the point of the question. |
| 1 | Very poor response and not acceptable – fails to meet minimum requirement/standard; requires major revision to make it acceptable.  Only partially answers requirement, with major deficiencies and little relevant detail proposed. |
| 2 | Poor response only partially satisfying requirement/standard, with deficiencies apparent.  Some useful evidence provided but response falls well short of minimum requirements. |
| 3 | Response is acceptable and meets minimum requirement but remains basic and could have been expanded upon.  Response is sufficient but does not inspire.  Good probability of success, weaknesses can be readily corrected. |
| 4 | Response meets our expected requirement/standard and exceeds minimum expectations, including a level of detail, which adds value to the bid.  No significant weakness noted. |
| 5 | Excellent response.  Comprehensive and useful. No weakness noted.  The response includes a full description of techniques and measurements to be employed. |

**13.4 The Selection**

Tenderers who are successful will be put onto a framework contract where the Authority will not guarantee value or volume of work during the duration of the framework contract.

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| **13.4.1 CRITERIA FOR MINI-BID** |
| Framework contract Providers will mini compete between the framework providers on a first come first serve basis moving forward until the main/master provider contract is in place or the contract completes. The mini competition will not involve any further qualitative checks and will be awarded to the first provider who confirms they have availability. |

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| **Award Evaluation Criteria** |

13.7 After the tender evaluation the Tenderers who pass the quality criteria and will be accepted onto the framework. To support the accreditation and finalise the evaluation process the Tenderer will be given 7 days to submit the information to validate its bid. Any delays in submitting this documentation will delay the contract award process and the issue of the contract award letter. Such information will include, but are not limited to, items such as proof of insurances and report and accounts as examples.

13.8 The Authority has the right to withdraw accreditation to the framework should the documentation not be submitted by the deadline or does not support statements made in the framework tender.

13.9 Failure to comply with the Authority’s requirements for these mandatory

sections **will** result in disqualification from the tender evaluation process.

## 14 Acceptance of Tender

14.1 SBC does not bind itself to accept the lowest or any tender. Power is reserved to accept a portion or portions of the tender. Tenderers will be notified of the outcome of their tender at the earliest possible opportunity and no useful purpose will be served by communication with SBC in the meantime, unless invited to do so.

## 15 Post Tender Clarification

15.1 SBC reserves the right to short-list one or more Tenderers for the purpose of discussing possible refinements to technical or contractual terms, which may in turn require adjustments to your tender. This process, if used, will be carried out under strict guidelines and will not put any Tenderer, whether short-listed or not, at a disadvantage.

## 16 Tender Compliance

16.1 Tenders must be based upon the Conditions set out in the documents, otherwise they may be rejected, technically, commercially or both on the grounds of non-compliance.

Section 2 - General Conditions of Contract

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| --- | --- |
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**OPERATIVE PROVISIONS:**

**Part 1 - Preliminary**

**1. Definitions and Interpretations**

1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

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| **“1999 Act”** | means the Local Government Act 1999 |
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| **“Agreement”** | means the framework agreement between the Authority and the Provider consisting of these clauses and any attached Schedules, the Invitation to Tender, the Tender, the Individual Service Contract [and any other documents (or parts thereof) specified by the Authority]. |
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| **“Annual Service Plan”** | means a written statement containing the Provider’s proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice |
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| **“Annual Service Report”** | means a written report provided to the Authority to the reasonable satisfaction of the Authority |
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| **“Approval” and “Approved”** | means the written consent of the Contract Manager. |
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| **“Authority”** | means Swindon Borough Council, its successors and assigns. |
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| **“Authority Property”** | means any property, other than real property, issued or made available to the Provider by the Authority in connection with the Agreement |
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| **“Best Value Duty”** | means the duty imposed on the Authority by Part 1 of the 1999 Act and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act. |
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| **“Code”** | means Code of Practice for Employment published by the Commission for Racial Equality as published from time to time or any code which may replace it. |
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| **“Commencement Date”** | means the 1 day of July 2017 |
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| **“Commercially Sensitive Information”** | means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information: |
|  | (a) which is provided by the Provider to the Authority in confidence for the period set out in that Schedule; and/or |
|  | (b) that constitutes a trade secret. |
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| **“Commercially Sensitive Information Schedule”** | means the Schedule containing a list of the Commercially Sensitive Information. |
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| **“Confidential Information”** | means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the DPA and the Commercially Sensitive Information. |
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| **“Contract Manager”** | means the person for the time being appointed by the Authority as being authorised to administer the Agreement on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf. |
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| **“Contracting Authority”** | means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority. |
| **Care Plan** | means the written plan issued by the Authority which includes the Service User’s assessed needs. |
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| **CQC** | means Care Quality Commission or successor body. |
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| **“Customer Satisfaction Survey”** | means a customer satisfaction survey, the purpose of which shall include:  (a) assessing the level of satisfaction among users of Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services;  (b) assisting in the preparation of the Provider’s Annual Service Report and Annual Service Plan; |
|  |  |
| **“Customer Satisfaction Survey Date”** | means 1 April in each year of the Term. |
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| **“Data Protection Officer”** | means the officer of the Authority holding the post of “Data Protection Officer”, or such other person as the Authority may elect |
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| **“Default”** | means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other. |
| **“Disclosure and**  **Barring Service”** | means the service established under the Protection of Freedoms Act 2012 for carrying out checks of a person`s suitability of working with children or vulnerable adults |
| **“DPA”** | means the Data Protection Act 1998 as amended |
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| **“Environmental Information Regulations”** | means the Environmental Information Regulations 2004. |
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| **“Expiry Date”** | means the 30 day of June 2019 or such other date where the Agreement is terminated or there is an Extension |
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| **“Extension”** | means the extension of the duration of the Agreement in accordance with clause 2.2. |
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| **“FOIA”** | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation. |
|  |  |
| **“Force Majeure”** | means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster but does not include any industrial action occurring within the Provider’s organisation or any sub-contractor’s organisation |
|  |  |
| **“General Change in Law”** | means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services. |
|  |  |
| **“Information”** | has the meaning given under section 84 of the FOIA. |
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| **“Initial Term”** | means the period from the Commencement Date to the Expiry Date or such earlier date of termination or partial termination of the Agreement in accordance with clause 2.1 of the Agreement. |
|  |  |
| **“Individual Service Contract” or “ISC”** | The individual agreement made on behalf of the Service User incorporating the terms of this Agreement and being in the form set out in Schedule C annexed |
|  |  |
| **“Intellectual Property Rights”** | means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
|  |  |
| **“Invitation to Tender”** | means an invitation for Contractors to bid for the Services required by the Authority. |
|  |  |
| **“Key Personnel”** | means those persons named in the Specification as being key personnel. |
|  |  |
| **“Law”** | means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply. |
|  |  |
| **“Local Commissioner”** | means the Local Commissioner/Ombudsman as appointed by the Commissioner for Local Administration in England or any successor body |
|  |  |
|  |  |
|  |  |
| **“Month”** | means calendar month. |
|  |  |
| **“Party”** | means a party to the Agreement and “Parties” shall be construed accordingly. |
|  |  |
| **“Premises”** | means the location where the Services are to be performed, as specified in the Specification. |
|  |  |
| **“Price”** | means the price exclusive of any applicable Tax, payable to the Provider by the Authority under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Provider of its obligations under the Agreement including Individual Service Contract but before taking into account the effect of any adjustment of price in accordance with clause 24. |
|  |  |
| **“Pricing Schedule”** | means Schedule B annexed containing details of the Price. |
|  |  |
| **“Provider”** | means the Firm, Company or other organisation performing the services. |
|  |  |
| **“Provider’s Representative”** | means the individual from time-to-time authorised to act on behalf of the Provider for the purposes of the Agreement. |
|  |  |
| **“Public Contracts Directive”** | means Public Contracts Directive 2014/24/EU |
| **“Quality Standards”** | means the quality standards relating to the Services published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, with which a skilled and experienced operator engaged in the same type of industry or business as the Provider’s would reasonably and ordinarily be expected to comply as supplemented by the Specification. |
|  |  |
| **“Replacement Provider”** | means any third party appointed by the Authority from time to time, to provide any services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by the Authority internally and/or by any third party. |
|  |  |
| **“Request for Information”** | shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations. |
| **Review of Need Meeting** | means a meeting between the Authority, Provider and Service User or Service User’s Representative to review the services to the Service User. |
| **“Schedule”** | means a schedule attached to the Agreement. |
|  |  |
| **“Services”** | means the services to be provided as specified in the Specification. |
|  |  |
| **“Services Improvement Notice”** | means a written notice stating the nature and timing of changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires |
|  |  |
| **“Specification”** | means the description of the Services to be provided under the Agreement and attached as the Specification Schedule. |
|  |  |
| **“Service User”** | means the person who has been approved by the Authority as eligible to receive the Services and who has been named in an Individual Service Contract. |
| **“Service User’s Plan”**  **“Service User’s Representative** | means the written plan issued by the Provider which includes tasks to be performed based on the Service User’s Care Plan.  means the person chosen by the Service User to act for him or her. |
| **“Specification Schedule”** | means Schedule A annexed containing details of the Specification. |
|  |  |
| **“Specific Change in Law”** | means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services. |
|  |  |
| **“Staff”** | means all persons employed by the Provider to perform the Agreement together with the Provider’s servants, agents, volunteers and sub-contractors used in the performance of the Agreement. |
|  |  |
| **“Subject Access Request”** | means a request made under section 7 of the DPA |
|  |  |
| **“Tax”** | means Value Added Tax or any tax of a similar nature which replaces it |
|  |  |
| **“Tender”** | means the Provider’s response to the Invitation to Tender (and any subsequent clarifications). |
|  |  |
| **“Term”** | means the period beginning on the Commencement Date and finishing on the Expiry Date |
|  |  |
| **“TUPE”** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended |
|  |  |
| **“Variation”** | means any addition to, or modification of, any provision of the Agreement |
|  |  |
| **“Working Day”** | means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London |

1.2 **Interpretation**

In the Agreement except where the context otherwise requires:

1. the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
3. words importing the masculine include the feminine and the neuter;
4. reference to a clause is a reference to the whole of that clause unless stated otherwise;
5. references 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 enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
6. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
8. headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

**2 Term**

2.1 The Agreement shall take effect on the Commencement Date and shall expire automatically on the Expiry Date unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.

2.2 The Authority may seek to extend the duration of the Agreement in accordance with clause 55. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) until the expiry of the period specified in accordance with clause 55.

**3 Authority’s Obligations**

3.1 Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Provider.

**4 Entire Agreement**

4.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

4.3 In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, [Tender] [and other documents referred to or attached to the Agreement], the conflict shall be resolved in accordance with the following order of precedence:

(a) the body of the Agreement shall prevail over;

(b) the Schedules;

(c) the Invitation to Tender;

(d) the Tender

(e) any other document referred to in the Agreement.

Unless expressly agreed, a document varied pursuant to clause 50 shall not take higher precedence than specified here.

4.4 The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

4.5 Without prejudice to any other term of this Agreement no omission from, addition to, or Variation of these terms and conditions shall be valid or of any effect unless it is agreed in writing and signed by the Authority’s Representative.

**5 Scope of Agreement**

5.1 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Authority and the Provider as defined by the Partnership Act 1890.

5.2 In carrying out its obligations under the Agreement, the Provider shall be acting as principal and not as the agent of the Authority and the Provider shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Authority.

**6 Notices**

6.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

6.2 Any notice or other communication, which is to be given by either Party to the other shall be given by letter (sent by hand or post), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given:

(a) in the case of a letter 2 Working Days after the day on which the letter was posted; or

(b) in the case of a letter delivered by hand, electronic mail or facsimile transmission:

(i) where it is delivered or transmitted on a Working Day before 16:00 hours, on that day

(ii) in any other case, on the first Working Day after the day on which it is delivered or transmitted; or

(c) such sooner time where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

6.3 For the purposes of clause 6.2, the address of each Party shall be:

(a) For the Authority:

|  |  |
| --- | --- |
| For the attention of | Joy Kennard  Head of Commissioning, Adults Services |
| Address | Swindon Borough Council |
|  | Wat Tyler West 2nd Floor |
|  | Beckhampton Street |
| Postcode | Swindon  SN1 2JP |
| Tel | 01793 463169 |
| Fax |  |
| Email | jkennard@swindon.gov.uk |
|  |  |

1. For the Provider:

|  |  |
| --- | --- |
| For the attention of |  |
| Address |  |
|  |  |
|  |  |
| Postcode |  |
| Tel |  |
| Fax |  |
| Email |  |

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

**7 Authorised Representatives**

7.1 The Contract Manager shall be as defined in clause 6.3(a). The Provider will be notified in writing if there is a change to the person who is its Contract Manager.

7.2 The Provider's Representative shall be as defined in the clause 6.3(b) and who shall have the power on behalf of the Provider in connection with any matter relating to the performance of the Agreement. The Provider shall notify the Authority’s Representative in writing if there is a change in the person who is the Contractors Representative.

7.3 The Contract Manager and the Provider's Representative will hold quarterly review meetings to monitor the Provider's performance under the Agreement.

7.4 The Authority reserves the right to change the Contractors Representative at any time by giving notice as per clause 6.

**8 Mistakes in Information**

* 1. The Provider shall be responsible for the accuracy of all documentation and information supplied to the Authority by the Provider in connection with the provision of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

**9 Conflicts of Interest**

9.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or such persons and the duties owed to the Authority under the provisions of the Agreement. The Provider will disclose to the Authority full particulars of any such conflict of interest, which may arise.

* 1. The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination or expiry.

**10 Fraud**

* 1. The Provider shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Provider (including its shareholders, members, directors) and/or any of the Provider’s suppliers, in connection with the receipt of monies from the Authority. The Provider shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

**Part 2 – The Provision of the Services**

**11 The Services**

11.1 The Provider shall provide the Services during the Term in accordance with the Authority’s requirements as set out in the Specification, the terms of the Agreement and the applicable Individual Service Contract.

11.2 For the avoidance of doubt this Agreement places no obligation on the Authority to purchase any of the Services from the Provider. The Authority will call off the Services from the Provider as and when required for an individual Service User. The Services will be provided on the basis of the Individual Service Contract which incorporates the terms and conditions of this Agreement.

11.3 The Provider shall at all times deliver the Services in accordance with the Law.

11.4 If the Authority informs the Provider that the Authority considers that any part of the Services do not meet the requirements of the Agreement or Individual Service Contract or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Authority, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Authority.

11.5 Timely provision of the Services shall be of the essence of the Agreement,including in relation to commencing the provision of the Services within the time agreed or on a specified date.

11.6 Without prejudice to any other rights and remedies the Authority may have pursuant to the Agreement, the Provider shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Provider’s delay in the performance of its obligations under the Agreement and which delay the Provider has failed to remedy following reasonable notice from the Authority.

**12 Standards and Requirements of the Services**

12.1 When Services are provided by the Provider then the Provider is required to meet the applicable quality standards set out in the Individual Service Contract incorporating the terms of this Agreement, and the Care Plan, and all applicable Department of Health Guidance and legislation.

12.2 The Provider shall ensure that the Services comply with any special conditions imposed on the registration of the Provider by CQC or its successor bodies subject to formal notice of any temporary dispensation.

12.3 The Authority and the Provider shall act reasonably, in good faith and without unreasonable delay in all matters associated with this Agreement for each Individual Service Contract.

12.4 In addition to providing the Services in accordance with clause 12.1 the Provider shall comply with the following requirements: -

(i) The Care Plan can only be amended with the prior consent of the Service User or the Service User’s Representative and in consultation with the Contract Manager, except in the case of a temporary change of Care Plan to accommodate special or emergency events.

(ii) The Provider shall immediately notify the Authority’s Contract Manager and keep a record of the contact made in the event of any serious accident or change in the condition of the Service User that may be a cause for concern. This could include physical, emotional, financial, verbal or sexual abuse.

(iii) The Price shall include any travel costs incurred by the Provider unless otherwise expressed.

(iv) If the Service User is unable or does not wish to control their own financial affairs (pension book etc) arrangements should be made for a responsible person to do so on their behalf. Any financial transactions undertaken by the Provider on behalf of the Service User shall be recorded in writing and signed for and will include, as a minimum a list of all income/expenditure for the Service User.

(v) The Provider shall notify the Authority’s Contract Manager that the latest CQC report on the Services has been issued within 10 Working Days of receiving the said report.

1. The Provider shall supply the Authority with a copy of the current Certificate(s) of Registration upon request. In the event of a change of registered category of care provided as part of the Services, the Provider shall notify the Authority within 10 Working Days of receipt of a new Certificate(s) of Registration.

(vii) The Provider will ensure that a signed copy of the Individual Service Contract is retained with each Service User's records.

12.5 The Authority is responsible for providing the Provider with a detailed Care Plan of the Service User’s needs and any additional information required in order that the Provider can comply with the requirements of this Agreement. This Care Plan may be revised if necessary following a Review of Need Meeting as set out in clause 14.

12.6 The Authority shall make all reasonable efforts to ensure that the above information is available to the Provider prior to the Service User being placed. If a Care Plan is not available due to the Services being commenced in an emergency, then the minimum information required to ensure the care needs of the Service User are able to be met shall be initially supplied and following that the Care Plan will be supplied within 5 Working Days.

12.7 The Provider shall prepare and up date as necessary a Service User’s Plan. The Service User’s Plan shall be based on the Service User’s Care Plan.

12.8 The Provider shall allow access by the Contract Manager to the Provider's local office to view (and take copies of) each up to date Service Users Plan within 5 Working Days of a request from the Authority, except where an allegation or investigation/inquiry involving a specific Service User is involved, when immediate access shall be granted.

**13 Sufficiency of Information**

13.1 The Provider shall be deemed to have satisfied itself before submitting the Tender as to the accuracy and sufficiency of the rates, prices and discount structures stated by it in the Tender which shall (except insofar as it is otherwise provided in the Agreement) cover all its obligations in respect of the Service and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Tender.

**14. Review of Need**

14.1 A Review of Need Meeting shall be a meeting of the Parties, and must involve the Service User and/or the Service User’s Representative, to consider the needs of the Service User and shall take place annually, or at the reasonable request of any party and within three weeks of such request.

14.2 At a Review of Need Meeting the Parties, including the Service User or the Service User’s Representative, shall consider whether the ISC, the Care Plan and the Service User’s Plan are meeting the needs of the Service User. The Authority shall arrange for a written report to be made of every Review of Need Meeting which when agreed by all Parties, including the Service User or the Service User’s Representative, as a correct record, shall be distributed to all present at the Review of Need Meeting.

14.3 If it is identified that the Service User’s needs have changed and additional or reduced services are to be provided, then a new ISC shall be drawn up. If it is identified that the Service User’s needs have changed but not to an extent that a change in the amount of care delivered is required, then the Service User’s Plan shall be amended.

14.4 If the Provider is concerned that the behaviour of the Service User is in breach of the Provider’s code of conduct for Service Users, then the Provider must attempt to discuss the problem with the Service User and Service Users Representative with a view to a satisfactory conclusion being reached. Should a satisfactory conclusion not be reached, the Provider shall submit a report to the Authority’s Contract Manager who shall consult with the Provider on the most appropriate course of action to follow. The Provider has a duty to protect all Service Users. If this duty conflicts with this Agreement then the Provider shall notify the Authority’s Contract Manager and arrange a meeting within 1 Working Day with a view to resolve the issue, the resolution of which may result in an early termination of an ISC in accordance with clause 61.

14.5 If the Provider decides that the Service User’s conduct is such that the Service can no longer meet the Service User’s needs, and therefore the ISC must be terminated, the Provider must give 20 Working Days notice in writing to the Authority’s Contract Manager . The Authority’s Contract Manager, in conjunction with the Provider, the Service User, and if appropriate representatives of the Service User’s family or next of kin, shall agree a programme of action and the Authority shall use its reasonable endeavours to arrange for an alternative provider for the Service User as soon as possible before the end of the 20 day notice period.

14.6 If a Review of Need Meeting comes to a decision to discharge a Service User, and this is agreed with the Service User and the Authority’s Contract Manager, then the Service User shall be discharged after a period of time mutually agreed between the Parties, which shall be no later than 20 Working Days after the date of the Review of Need Meeting.

**15 Notification of Absence and Return**

15.1 The Provider shall notify the Contract Manager by telephone or email within 1 Working Day: -

1. of the death of any Service User; or

(ii) if any Service User permanently leaves the Service for any reason; or

(iii) if any Service User should become absent from their home because of admission to hospital; or

(iv) if any Service User becomes absent from their home (for any other reason apart from admission to hospital) and the absence is unplanned; or

(v) if any Service User becomes absent from their home, and the absence is planned for a holiday or visit to relatives;

(vi) if the Service is resumed to a Service User following a period of absence.

15.2 When the period of the Service User’s absence from the Service has reached four weeks the Provider shall notify the Contract Manager. Upon the giving of this notification, the Authority and the Provider shall review the Service User’s situation, and if appropriate convene a Review of Need Meeting.

15.3 The Provider shall ensure that the Service User’s scheduled service including times is kept available for the Service User during hospitalisation or a temporary absence from the Service.

**16 Quality and Standards**

16.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Provider shall agree the relevant standard of Services with the Contract Manager prior to execution, and shall execute the Agreement with reasonable care and skill and in accordance with best industry practice.

16.2 The introduction of new methods or systems, which impinge on the provision of the Services shall be subject to prior Approval in writing by the Contract Manager.

16.3 The signing by the Contract Manager (or their representative) of time sheets or other similar documents shall not be construed as implying the Provider’s compliance with the Agreement.

16.4 Where an appropriate European or British Standard or Code of Practice issued by the European Commission or British Standards Institution is current at the Commencement Date of this Agreement or of any tender relating to this Agreement, all goods, services and materials supplied shall be at least in accordance with that Standard in the absence of any direction to the contrary.

**17 Non Exclusivity**

17.1 This Agreement shall be awarded on a non-exclusive basis and the Authority reserves the right to seek to purchase any or all Services from other sources.

17.2 Where the Authority has provided information regarding data, volumes or forecast quantities, then the Authority does not guarantee any specific quantity unless otherwise stated within the Specification.

**18 Key Personnel**

18.1 Any changes to Key Personnel shall be notified to the Authority in writing as soon as is reasonably practicable.

18.2 Any replacements to the Key Personnel shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

19 Not used

20 Not used

21 Not used

**22 Sub-Contracting for the Delivery of the Services**

22.1 Where the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

**23 Offers of Employment**

23.1 For the duration of the Agreement and for a period of 12 months thereafter the Provider shall not employ or offer employment to any of the Authority’s staff who have been associated with the procurement and/or the contract management of the Services without the Authority’s prior Approval.

**Part 3 – Payment and Price**

**24 Price**

24.1In consideration of the performance of the Provider’s obligations under the Agreement by the Provider, the Authority shall pay the Price in accordance with clause 25.

24.2 In the event that the cost to the Provider of performing its obligations under the Agreement increases or decreases as a result of a change of Law, the provisions of clause 29 shall apply.

24.3 The Authority shall pay the Provider, on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Agreement.

24.4 Prices shall be fixed for 9-months until 31 March 2018 with any agreed written price changes in effect from 1 April 2019 and annually on 1 April thereafter. Any price increase shall not be greater than the Retail Price Index (excluding mortgages. This will be negotiated through a Providers forum and the Authority will agree one hourly rate for all.

**25 Payment and Tax**

25.1 The Authority shall pay the undisputed sums due to the Provider in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.

25.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice. Any copy invoices requested by the Authority are to be provided by the Provider free of charge.

25.3 Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.

25.4 The Authority may reduce payment in respect of any Services, which the Provider has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

25.5 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Agreement under clause 62.3 for failure to pay undisputed charges.

25.6 The Provider shall pay all the invoices of its sub-contractors within 30 days of receipt and shall ensure that the same timescale for payment is passed down its supply chain

**26 Recovery of Sums Due**

26.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Agreement or under any other agreement or contract with the Authority.

26.2 Any overpayment by the Authority to the Provider, whether of the Price or Tax, shall be a sum of money recoverable by the Authority from the Provider pursuant to clause 26.1 above.

26.3 The Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.

**27 Price Adjustment on Extension**

27.1 In the event of an Extension being considered by the Authority pursuant to clause 55, the Authority will (as part of such consideration) review the Price with the Provider in accordance with 24.4.

27.2 If a Price variation is agreed with the Authority as part of its consideration relating to an Extension, the revised Price will take effect from the first day of any Extension of the Term pursuant to clause 55.

**28 Currency**

28.1 Any requirement of Law to account for the Services in any currency (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Provider at nil charge to the Authority.

28.2 The Authority shall provide all reasonable assistance to facilitate compliance by the Provider under clause 28.1.

**29 Change of Law**

29.1 The Provider shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Provider as the result of:

1. a General Change in Law; or
2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

29.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 29.1) or during any Extension agreed pursuant to clause 27, the Provider shall notify the Authority of the likely effects of that change, including:

1. whether any change is required to the Services, the Price or the Agreement; and
2. whether any relief from compliance with the Provider’s obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

29.3 As soon as practicable after any notification in accordance with clause 29.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Provider can mitigate the effect of the Specific Change of Law, including:

(a) providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;

(b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Provider before it occurred;

(c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

(d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

29.4 Any increase in the Price or relief from the Provider’s obligations agreed by the Parties pursuant to this clause 29 shall be implemented in accordance with clause 50.

**Part 4 - Statutory Obligations, Codes of Practice and Regulations**

**30 Prevention of Corruption**

30.1 The Authority may terminate this Agreement and recover all its loss if the Provider, its employees or anyone acting on the Provider's behalf do any of the following things:

(a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Provider does not know what has been done); or

(b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or

(c) commit any fraud in connection with this or any other Authority contract whether alone or in conjunction with Authority Members, contractors or employees.

30.2 Any clause limiting the Provider's liability shall not apply to this clause.

**31 Discrimination**

31.1 The Provider must:

(a) operate an equal opportunities policy for as long as this Agreement is in force; and

(b) provide the Authority with a copy of any such policy at the Authority’s request

* 1. The Provider must use all reasonable endeavours to make sure that

its equal opportunities policy complies with all statutory obligations as

regards discrimination on the grounds of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion or sexual orientation in relation to:

* 1. decisions made by it in the recruitment, training or

promotion of Staff employed or to be employed in the

provision of the Services;

(b) the provision of the Services; and

(c) the carrying out of its obligations under this Agreement.

* 1. In providing the Services, the Provider must observe as far as

possible the Code and the Human Rights Act 1998

* 1. The Provider must provide the Authority with such information as it

may reasonably require in order for the Authority to assess the Provider’s compliance with the Code.

31.5 If any Court or Tribunal, or the Commission for Racial Equality (or any body which may replace the Commission) makes a finding that the Provider has unlawfully discriminated against any person in the provision of the Services then the Provider must:

(a) take all necessary steps to make sure that the unlawful discrimination does not happen again; and

(b) notify the Authority in writing of the finding and the steps taken to prevent its re-occurrence.

**32 The Contracts (Rights of Third Parties) Act 1999**

32.1 Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement and for the avoidance of doubt the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

**33 Environmental, Social and Labour Requirements**

33.1 In performance of their obligations under the Agreement the Provider shall comply with applicable obligations in the field of environmental, social and labour law, collective agreements and the international environmental social and labour law provisions listed in Annex X of the Public Contracts Directive

**34 Health and Safety**

34.1 The Provider shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Authority’s Premises and which may affect the Provider in the performance of the Agreement.

34.2 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Agreement.

34.3 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

**35**  **Disclosure and Barring Service**

35.1 The Provider shall procure that in respect of all potential Staff who will be undertaking a regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012 and in any regulations or guidance made thereunder, before the member of Staff begins to perform any of the Services:

(a)      each member of Staff is questioned as to whether he or she has any convictions or cautions; and

(b)      the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in respect of each member of Staff and the results of such checks are notified to the Authority.  The check for each member of Staff shall include:

(i)      a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children including any new list replacing the same in accordance with the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012); and/or

(ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act) including any new list replacing the same in accordance with the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

35.2    The Provider shall procure that no person who discloses any convictions or cautions, or who is found to have any convictions or cautions or other disclosed information following the results of a Disclosure and Barring Service check, is employed or engaged by the Provider or on the Provider’s behalf without Approval where that conviction or other disclosed information is incompatible with the type of work being undertaken by the member of Staff in providing the Services.

35.3 The Provider must provide the Authority with written confirmation that a Disclosure and Barring Service check has been completed and that this has not revealed any matter affecting the suitability of the person to work with children or vulnerable adults as referred to in clause 35.2.

35.4     The Provider shall procure that the Authority is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or caution or whose previous convictions become known to the Provider or in respect of which information relating to other disclosed information that may affect their suitability to work with children or vulnerable adults becomes known to the Provider. It is the responsibility of the Provider to obtain any necessary consent to disclose such evidence to the Authority.

35.5 For the avoidance of doubt the provisions of this clause also apply to the Provider`s use of any volunteers in the performance of the Services

**36 TUPE**

36.1 The Authority considers that it is unlikely that the provisions of TUPE would apply on commencement of this Agreement. However the Council urges providers and tenderers to give the issue of TUPE appropriate consideration and to make their own determination.

36.2 During the period of six months preceding the expiry of the Agreement or after the Authority has given notice to terminate the Agreement or the Provider stops trading, and within 20 working days of being so requested by the Authority, the Provider shall fully and accurately disclose to the Authority for the purposes of TUPE all information relating to its employees engaged in providing Services under the Agreement, in particular, but not necessarily restricted to, the following:

(a) the total number of Staff whose employment with the Provider is liable to be terminated at the expiry of this Agreement but for any operation of law; and

(b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and

(c) full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or about where that information can be found; and

(d) details of pensions entitlements, if any; and

(e) job titles of the members of Staff affected and the qualifications required for each position.

36.3 The Provider shall permit the Authority to use the information for the purposes of TUPE and of re-tendering. The Provider will co-operate with the re-tendering of the Agreement by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.

36.4 The Provider agrees to indemnify the Authority fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 36.2.

36.4 The Provider agrees to indemnify the Authority from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Agreement is terminated and/or transferred to any third party (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

36.5 In the event that the information provided by the Provider in accordance with Clause 36.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Authority of the inaccuracies and provide the amended information.

36.6 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after its termination.

**Part 5 - Protection of Information**

**37 Data Protection Act**

37.1 The Provider shall (and shall procure that any of its Staff involved in the provision of the Agreement) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

37.2 Notwithstanding the general obligation in clause 37.1, where the Provider is processing personal data (as defined by the DPA) as a data processor for the Authority (as defined by the DPA) the Provider shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

1. provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;
2. promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 37.2; and
3. ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority’s obligations under the DPA.

37.3 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

37.4 The Provider acknowledges that the Authority, as the data controller under the DPA, may receive a Subject Access Request and as such shall assist and co-operate (at the Provider’s expense) with the Data Protection Officer to enable the Authority to comply with the Subject Access Request.

37.5 The Provider shall and shall procure that its sub-contractors shall:

(a) transfer any Subject Access Request to the Authority as soon as practicable after receipt and in any event within 1 Working Day of receiving the request;

(b) provide the Data Protection Officer with a copy of all information required in respect of the Subject Access Request in its possession or power in the form that the Authority requires within 27 Calendar Days (or such other period as the Authority may specify) of the Authority requesting that information; and

(c) provide all necessary assistance as reasonably requested by the Data Protection Officer to enable the Authority to respond to a Subject Access Request within the timescale stipulated under the DPA.

37.6 Where a third party request for personal information from governmental and public bodies including but not limited to the Police or HM Revenue and Customs, is received, the Provider shall:

(a) transfer the request to the Data Protection Officer who will register the request and undertake the necessary checks to ensure the authenticity of the requester

(b) transfer the information requested to the Data Protection Officer within 3 Working Days of receiving the request

**38 Confidentiality**

38.1 Each Party:-

1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

38.2 The Provider shall ensure that Staff or its professional advisors or consultants are aware of the Provider’s confidentiality obligations under the Agreement. Additionally, where it is considered necessary in the opinion of the Authority, the Provider shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement.

38.3 The provisions of clauses 38.1 to 38.2 shall not apply to any Confidential Information received by one Party from the other:

(a) which is or becomes public knowledge (otherwise than by breach of this clause);

(b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) is independently developed without access to the Confidential Information; or

(e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 41.

38.4 Nothing in this clause shall prevent the Authority:

1. disclosing any Confidential Information for the purpose of:

(i) the examination and certification of the Authority’s accounts; or

(ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

(b) disclosing any Confidential Information obtained from the Provider:

(i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

(ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;

(c) provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

38.5 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

38.6 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act

38.7 Notwithstanding any other term of this Agreement, the Provider hereby gives its consent for the Authority to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the genera! public in whatever form the Authority decides.

**39 Security of Confidential Information**

39.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Provider undertakes to maintain security systems Approved by the Authority. Where necessary to prevent such access, the Authority may require the Provider to alter any security systems at any time during the Term at the Provider’s expense.

39.2 The Provider will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Provider’s obligations under clause 38. The Provider will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

**40 Authority Policies**

40.1 The Authority has a whistle blowing policy to encourage its employees and the public to bring into the open issues concerning dishonesty involving the Authority. The Provider shall ensure that its staff are made aware of this policy which is available on the Authority's website.

40.2 Where the Authority’s “Customer Services Charter” is applicable to the Services, the Provider shall use its best endeavours to ensure that the standards set out in the Charter are met.

40.3 Where the Provider has been appointed as agent for the Authority and under this Agreement is required to let contracts, the Provider shall comply with the Authority’s Standing Orders relating to Contracts (contained in Part 4 of the Authority’s Constitution).

**41 Freedom of Information**

41.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Provider’s expense) to enable the Authority to comply with these Information disclosure requirements.

41.2 The Provider shall and shall procure that its sub-contractors shall:

(a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

(b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

(c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

41.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

(a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

(b) is to be disclosed in response to a Request for Information, and in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

41.4 The Provider acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-

(a) without consulting with the Provider, or

(b) following consultation with the Provider and having taken its views into account.

41.5 The Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

41.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 41.4.

**42 Publicity, Media and Official Enquiries**

42.1 The Provider shall not make any press announcements or publicise the Agreement or any part thereof in any way, except with the Approval of the Contract Manager.

42.2 The Provider shall take all reasonable steps to ensure the observance of the provisions of clause 42.1 by their Staff.

42.3 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

**44 Intellectual Property Rights**

44.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

(a) furnished to or made available to the Provider by the Authority shall remain the property of the Authority;

(b) prepared by or for the Provider for use, or intended use, in relation to the performance of the Agreement shall belong to the Authority and the Provider shall not, and shall procure that the Provider’s employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Provider may obtain in performing the Agreement except information which is in the public domain.

44.2 The Provider shall procure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Provider or to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.

44.3 It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Provider shall during and after the Term on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

(a) designs furnished by the Authority;

(b) the use of data supplied by the Authority which is not required to be verified by the Provider under any provision of the Agreement.

44.4 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Provider. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Provider, provided always that the Provider:

(a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Authority; and

(c) shall not settle or compromise any claim without the Authority’s prior written consent (not to be unreasonably withheld or delayed).

44.5 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Provider is likely to be made, the Provider may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

(b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

44.6 At the termination of the Agreement the Provider shall immediately return to the Authority all materials, work or records held, including any back-up media.

**45 Copyright**

45.1 Copyright in the documents comprising the Agreement shall vest in the Authority but the Provider may obtain or make at their own expense any further copies required for use by them for performing the Agreement.

**46 Audit**

46.1 The Provider shall keep and maintain until six years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Provider shall on request afford the Authority or the Authority’s representatives such access to those records as may be required by the Authority in connection with the Agreement.

**47 Local Commissioner**

47.1 Where the Local Commissioner conducts an investigation into a complaint out of or in connection with the provision of the Services or any part of them, the Provider shall at its own cost:-

(a) provide any information requested by the Local Commissioner or by the Authority within the timescale allotted; and

(b) attend any meetings with the Local Commissioner and/or the Authority as required for the purposes of the investigation; and

(c) promptly allow access to and investigation of any relevant documents and data and if requested provide copies; and

(d) permit the Local Commissioner and/or the Authority to interview any members of its Staff in connection with the investigation; and

(e) arrange for relevant members of its Staff to appear as witnesses in any ensuing legal proceedings or internal proceedings of the Authority; and

(f) co-operate fully and promptly in every way required by the Local Commissioner during the course of the investigation; and

(g) at the request of the Authority, issue a suitable apology to the complainant.

47.2 The Authority and the Provider agree that the Authority shall take action in response:-

(a) to reports of the Local Commissioner in respect of the Services which conclude that injustice has been caused to a person aggrieved in consequence of maladministration, such action to be commensurate with the findings of such reports; or

(b) if, following a report referred to in clause 47.2(a), recommendations are made by the Local Commissioner, to comply with such recommendations.

47.3 The Provider shall be liable for and shall fully and promptly indemnify the Authority against all costs, expenses and losses properly incurred or suffered arising, be it directly or indirectly, out of or in connection with the compliance with, or the implementation of any actions in response to, a report of, or recommendations by, the Local Commissioner pursuant to clause 47.2 to the extent that the said costs, expenses and losses are due to the Provider's failure (through act or omission) to exercise the level of skill, care and diligence which would be reasonably expected from an efficient and effective Provider of the Services.

**Part 6 – Control of the Agreement**

**48 Assignment and Sub-Contracting**

48.1 The Provider shall not assign, sub-contract or in any other way dispose of the Agreement or any part of it without prior Approval. Sub-contracting any part of the Agreement shall not relieve the Provider of any obligation or duty attributable to the Provider under the Agreement.

48.2 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

**49 Waiver**

49.1 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

49.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 6.

49.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

**50 Variation of the Services**

50.1 The Authority reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever.

50.2 Any such Variation shall be communicated in writing by the Contract Manager to the Provider’s Representative in accordance with the notice provisions of clause 6. All Variations shall be in the form of an addendum to the Agreement.

50.3 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Provider and agreed in writing with Authority and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 72.

50.4 The Provider shall provide such information as may be reasonably required to enable such varied price to be calculated.

**51 Severability**

51.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

51.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

**52 Remedies in the Event of Inadequate Performance**

52.1 Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Agreement, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, they may uphold the complaint, and/or take further action in accordance with the provisions of clause 61 of the Agreement.

52.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Agreement by the Provider, or the Provider’s performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then the Authority may, without prejudice to its rights under clause 61 of the Agreement, do any of the following:

(a) make such deduction from the Price to be paid to the Provider as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Provider shall have failed to provide or performed inadequately;

(b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Authority that the Provider will be able to perform such part of the Services in accordance with the Agreement;

(c) without terminating the whole of the Agreement, terminate theAgreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or

(d) terminate, in accordance with clause 61, the whole of the Agreement.

52.3 The Authority may charge to the Provider any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Provider for such part of the relevant Services.

* 1. If the Provider fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

52.5 In the event that:

(a) the Provider fails to comply with clause 52.4. above and the failure, is materially adverse to the commercial interests of the Authority or prevent the Authority from discharging a statutory duty; or

(b) the Provider persistently fails to comply with clause 52.4 above,

the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

52.6 The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Provider.

**53 Remedies Cumulative**

53.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**54 Monitoring of Performance**

54.1 The Provider shall comply with the monitoring arrangements set out in Specification including, but not limited to, providing such data and information as the Provider may be required to produce under the Agreement.

**55 Possible Extension of Term**

55.1 The Authority shall be entitled by written notice to the Provider given not less than two Months prior to the last day of the Term to extend the Agreement for a further period of up to two years. The provisions in this Agreement will apply throughout any such extended period.

**56Novation**

56.1 The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority, private sector body or any other body established under statute (“Transferee”) provided that any such assignment, novation or other disposal shall not increase the burden of the Provider’s obligations under this Agreement.

56.2 The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Provider, which relates to the performance of the Agreement by the Provider. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

**Part 7 - Liabilities**

**57 Indemnity and Insurance**

57.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods and Services Act 1982.

57.2 The Provider shall take out and maintain with a reputable insurance company, and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain with a reputable insurance company, employers liability and public liability insurance in a minimum amount of five million pounds (£5,000,000) for each and every claim, act or occurrence or series of acts, claims or occurrences. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

57.3 The Provider shall fully and promptly indemnify the Authority against all direct losses, injury, damages, costs, expenses, liabilities, claims or proceedings incurred by the Authority as a result of any act, default or negligence by the Provider or any of its employees in carrying out its obligations under this Agreement except and to the extent that it is due to the act, default or negligence of the Authority or any of its employees in the course of their employment.

57.4 Where the Provider is required to come onto premises owned by the Authority, the Provider shall not do or omit to do anything that could cause any insurance policy on or in relation to the Authority’s premises to become wholly or partly void or voidable, or do or omit anything by which additional insurance premiums may become payable.

57.5 Subject always to clause 57.1, in no event shall either Party be liable to the other for:

(a) loss of profits, business, revenue or goodwill and/ or

(b) indirect or consequential loss or damage.

57.6 The Provider shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premia due under those policies.

57.7 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by this Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

57.8 The requirement to effect insurance by the Provider under clause 57.2 shall not in any way be deemed to amend or restrict the liability of the Provider arising under clause 57.1.

58 Not used

**59 Warranties and Representations**

59.1 The Provider warrants and represents that:

(a) the Provider has the 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 perform the Agreement and that the Agreement is executed by a duly authorised representative of the Provider;

(b) the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to best industry practice;

(c) all obligations of the Provider pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

(d) the Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

**Part 8 – Default, Disruption and Termination**

**60 Termination on Change of Control and Insolvency**

60.1 The Authority may terminate the Agreement by notice in writing with immediate effect where:

(a) the Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or

(b) the Provider is an individual or a firm and a petition is presented for the Provider’s bankruptcy, or a criminal bankruptcy order is made against the Provider or any partner in the firm, or the Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Provider’s or firm’s affairs; or

(c) the Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

(d) where the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) any similar event occurs under the law of any other jurisdiction.

60.2 The Authority may only exercise its right under clause 60.1(a) within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Provider shall notify the Contract Manager immediately when any change of control occurs.

60.3 If the Provider, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Authority shall be entitled to terminate the Agreement by notice to the Provider or the Provider’s Representative with immediate effect.

**61 Termination on Default**

61.1 The Authority may terminate the Agreement, or terminate the provision of the Individual Service Contract by written notice to the Provider or the Provider’s Representative with immediate effect if the Provider commits a Default and if:

(a) the Provider has not remedied the Default to the satisfaction of the Authority within twenty Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not, in the opinion of the Authority, capable of remedy; or

(c) the Default is a fundamental breach of the Agreement.

61.2 In the event that through any Default of the Provider, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Provider.

**62 Break**

62.1 The Authority shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement or an Individual Service Contract at any time by giving three Months’ written notice to the Provider.

**63 Termination under Public Contracts Directive**

63.1 The Authority shall be entitled by notice having immediate effect if any

of the following grounds apply:-

(a) Where the Agreement has been subject to a substantial modification that constitutes a new contract award

(b) Where it is discovered after contract award that the Provider should have been excluded on mandatory exclusion grounds

(c) Where the Court of Justice of the European Union has declared a serious infringement by the Authority meaning that the Agreement should not have been awarded by the Authority to the Provider

**64 Consequences of Termination**

64.1 Where the Authority terminates the Agreement under clause 61, or terminates an Individual Service Provider under that clause, and then makes other arrangements for the provision of Services, the Authority shall be entitled to recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Initial Term or any Extension. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 61, no further payments shall be payable by the Authority to the Provider until the Authority has established the final cost of making those other arrangements.

64.2 Where the Authority terminates the Agreement under clause 62, the Authority shall indemnify the Provider against any commitments, liabilities or expenditure, which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Agreement, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under clause 62.

64.3 The Authority shall not be liable under clause 64.2 to pay any sum which:

(a) was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

when added to any sums paid or due to the Provider under the Agreement, exceeds the total sum that would have been payable to the Provider if the Agreement had not been terminated prior to the expiry of the Initial Term.

64.4 For the avoidance of doubt an Individual Service Contract terminates forthwith on the date of the Service User`s death or the date the Service User permanently moves out of their residence for any reason.

**65 Business Continuity and Disruption**

65.1 The Provider shall have business continuity plan to ensure the continuation of delivery of the Services in the event of serious disruption to either the Authority’s or the Provider’s supplier’s premises and/or working arrangements. The plan should focus upon the continuation of delivery of the Services and communication with users of the Services and the Authority. The plan should detail the resources available to the branch from other sources in the company.

65.2 Any significant changes to the Business Continuity plan shall be notified to the Authority’s Representative as per clause 7.

65.3 The Provider shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

65.4 The Provider shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

65.5 In the event of industrial action by the Staff or the Provider’s suppliers the Provider shall seek Approval of its proposals for the continuance of the Provider’s performance of the Services in accordance with its obligations under the Agreement.

65.6 If the Provider’s proposals referred to in clause 65.5 are considered insufficient or unacceptable by the Authority, then the Agreement may be terminated by the Authority by notice in writing with immediate effect.

65.7 If the Provider is temporarily unable to fulfil the requirements of the Agreement owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be Approved by the Authority. In addition, the Authority will reimburse any reasonable additional expense incurred by the Provider in fulfilling the provisions of the Agreement as a result of such disruption.

**66 Recovery upon Termination**

66.1 Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Provider and the Authority accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

66.2 At the Expiry Date (and howsoever arising) the Provider shall forthwith deliver to the Authority upon request all the Authority’s Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Authority may recover possession thereof and the Provider grants licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or sub-contractors where any such items may be held.

66.3 At the Expiry Date (howsoever arising) the Provider shall forthwith provide assistance to the Authority and any new contractor appointed by the Authority to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. The Provider shall provide such assistance free of charge.

66.4 The provisions of this clause shall survive the continuance of the Agreement and indefinitely after its termination.

**67 Force Majeure**

67.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 2 Months, either Party may terminate the Agreement by notice in writing with immediate effect.

67.2 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

**Part 9 – Best Value Duty**

**68 Authority’s Best Value Duty**

68.1 The Parties agree and acknowledge that the 1999 Act applies to the Services provided under the Agreement and the Provider shall, at no cost to the Authority, provide all reasonably necessary assistance to allow the Authority to comply with its Best Value Duty.

**69 Customer Satisfaction Survey**

69.1 The Provider shall, on each Customer Satisfaction Survey, subject to a written request by the Authority, Date, undertake (or procure the undertaking of) a Customer Satisfaction Survey

69.2 The Customer Satisfaction Survey shall be undertaken by means of distributing to users of the Services within 10 Working Days of each Customer Satisfaction Survey Date a Questionnaire (or other survey method as agreed between the Parties) in a form Approved by the Authority (acting reasonably).

69.3 The Authority shall provide reasonable assistance and information to the Provider to enable the Provider to undertake the Customer Satisfaction Survey.

69.4 Within [one month] of each Customer Satisfaction Survey Date, the Provider shall prepare a summary of the results of the Customer Satisfaction Survey in such form as the Authority shall reasonably require and promptly upon a written request from the Authority provide such further details (including copies of all returned Questionnaires and/or any other survey material used by the Provider) as the Authority shall reasonably require.

**70 Annual Service Report & Annual Service Plan**

70.1 Without prejudice to any other provision in the Agreement the Provider shall at its own cost, subject to the Authority’s written request, provide to the Authority the Annual Service Report.

70.2 The Provider shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require to verify and audit the information and other material contained in the Annual Service Report.

70.3 If, in the Authority’s reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Authority may serve upon the Provider a Services Improvement Notice.

70.4 The Provider shall, within 10 Working Days of the date of receipt of the Services Improvement Notice, provide the Authority at its own cost with an Annual Service Plan containing the Provider’s proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice.

70.5 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the clause 72 the Authority shall:

(a) confirm in writing the Annual Service Plan; or

(b) withdraw the Services Improvement Notice.

70.6 If the Authority confirms the Annual Service Plan the Authority shall propose a change in the Services in accordance with **clause** 50.

70.7 The Provider shall take all reasonable steps to mitigate any costs arising as a consequence of a Services Improvement Notice and an Authority Notice of Change served pursuant to **clause 70.6.**

**Part 10 – Dispute and Law**

**71 Governing Law and Language**

71.1 This Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the courts of England and Wales.

71.2 The language of the Agreement is English and all design data, documents, correspondence and any other information shall be provided in English unless otherwise specified by the Authority in writing.

**72 Dispute Resolution**

72.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within ten Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the Director of Adult Social Services for the Authority and a senior manager or director of the Provider (or equivalent) .

72.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

72.3 If the dispute cannot be resolved by the Parties pursuant to clause 72.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 72.5 unless both parties agree to the dispute being referred to mediation.

72.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.

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

(a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree within a reasonable period of time, then either Party may apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.

(b) If the Parties fail to reach agreement in the structured negotiations within 60 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.

|  |  |
| --- | --- |
| **2.2 Acceptance of Terms & Conditions** | |
| The Tenderer confirms acceptance of the Terms & Conditions (Pass/Fail) |  |

Section 3 - Background Information

**About Swindon**

The Vision for Swindon

On 24th September 2015, the Council adopted its Vision for Swindon

By 2030, Swindon will have all of the positive characteristics of a British city with one of the UK’s most successful economies, a low-carbon environment with compelling cultural, retail and leisure opportunities and excellent infrastructure. It will be a model of well managed housing growth that supports and improves new and existing communities.

Swindon will be physically transformed with existing heritage and landmarks complemented by new ones that people who live, work and visit here would recognise and admire. It will remain, at heart, a place of fairness and opportunity where people can aspire to and achieve prosperity, supported by strong civic and community leadership.

In order to deliver the vision the Council has established four priorities, which all Council staff and all providers of services commissioned by the Council will work together to achieve. These are:

1. Improve infrastructure and housing to support a growing, low carbon economy
2. Offer education opportunities that lead to the right skills and right jobs in the right places
3. Ensure clean and safe streets and improve our public spaces and local culture
4. Help people to help themselves, while always protecting our most vulnerable children and adults

More details of the Council’s Vision, Priorities and the 30 pledges which give more detail about how the Council will deliver the Vision and Priorities can be found on the Council’s website at <https://www.swindon.gov.uk/vision>

Specifically regarding Adult Social Care:

Swindon has an ambitious Vision for growth and increased prosperity; our priorities include:

* Well managed housing growth
* Improved infrastructure for a rapidly growing city
* Developing a workforce that meets the needs of business Transforming public services to meet the increasing needs of a growing population

As the latest Centre for Cities report highlights, we are:

* The city with the third highest population growth in the UK (more than double the national average)
* The city with the fourth highest growth in the number of businesses
* The city with the second highest growth in the number of homes
* The city with the third highest employment rate and the second highest proportion of private to public sector jobs.

Over many years, Swindon has consistently delivered high growth in terms of both housing numbers and economic output. The Council has supported this through the strength of its relationships with the private sector companies who have made their home here.

Swindon is a fast growing town with main developments at Wichelstowe (3500 homes) which is due to be followed by the UK’s largest urban extension, Swindon’s Eastern Villages (9,000 homes). We are also committed to ensuring that, through new house building, we can continue to support elderly and vulnerable members of our community, with the greatest possible dignity and independence.

The overall population of Swindon is forecast to rise to around 250,000 by 2030. As with any predominantly urban area there are challenges around inequality and disadvantage. Swindon has a younger population but the number and percentage of older people is due to grow faster than the national and south west average. In addition, there are extremes of high and low levels of deprivation. A number of areas score in the bottom 10% in the Index of Multiple Deprivation which highlights significant levels of deprivation in comparison to other parts of the Borough. There are also areas of Swindon that feature in the least deprived 10% nationally.

The Swindon Borough Council (SBC) resident population was estimated at 2150 00 people in 2014. 32,900 people were aged 65 years or more (14.2%), including 15,500 0 aged 75 years or more (6.8%). Swindon older population and births are both forecast to rise at a rate above the national average from 2016.

Swindon has a diverse and growing population of Black and Minority Ethnic families. School census figures show an increase of BME pupils of 20% in January 2014. Swindon has been a dispersal area for Asylum Seekers for several years and this has had an impact on a number of local schools as well as some public services. The 2011 census shows the number of people reporting themselves as White British as 84.6% compared to the average for the South West of 91.8% and the South East as 85.2%. The largest single nationality among the BME population is Goan but there are also significant populations from China, India, Bangladesh and Pakistan.

Note to Tenderers on Supplier Selection Questionnaire

**Notes for completion**

The “authority” means the public sector contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite suitable Suppliers to participate in this procurement process.

“You”/ “Your” or “Supplier” means the body completing these questions **i.e. the legal**

**entity seeking to be invited to the next stage of the procurement process and responsible for the information provided.** The ‘Supplier’ is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 and could be a registered company; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.

The Supplier Selection Questionnaire has been designed to assess the suitability of a Supplier to deliver the authority’s contract requirement(s). If you are successful at this stage of the process, your bid will be assessed against the award criteria.

Please ensure that all questions are completed in full, and in the format requested. Failure to do so may result in your submission being disqualified. If the question does not apply to you, please state clearly ‘N/A’.

Should you need to provide additional Appendices in response to the questions, these should be numbered clearly and listed. A template for providing additional information is provided at the end of this document.

**Verification of Information Provided**

Whilst reserving the right to request information at any time throughout the procurement process, the authority may enable the Supplier to self-certify that there are no mandatory/ discretionary grounds for excluding their organisation. When requesting evidence that the Supplier can meet the specified requirements the authority may only obtain such evidence after the final tender evaluation decision i.e. from the winning Supplier only.

**Sub-contracting arrangements**

Where the Supplier proposes to use one or more sub-contractors to deliver some or all of the contract requirements, a separate Appendix should be used to provide details of the proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.

The authority recognises that arrangements in relation to sub-contracting may be subject to future change, and may not be finalised until a later date. However, Suppliers should be aware that where information provided to the authority indicates that sub-contractors are to play a significant role in delivering key contract requirements, any changes to those sub-contracting arrangements may affect the ability of the Supplier to proceed with the procurement process or to provide the supplies and/or services required. Suppliers should therefore notify the authority immediately of any change in the proposed sub-contractor arrangements. The authority reserves the right to deselect the Supplier prior to any award of contract, based on an assessment of the updated information.

**Consortia arrangements**

If the Supplier completing this Questionnaire is doing so as part of a proposed consortium, the following information must be provided;

* names of all consortium members;
* the lead member of the consortium who will be contractually responsible for delivery of the contract (if a separate legal entity is not being created); and
* if the consortium is not proposing to form a legal entity, full details of proposed arrangements within a separate Appendix.

Please note that the authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that a specific legal form is deemed by the authority as being necessary for the satisfactory performance of the contract.

All members of the consortium will be required to provide the information required in all sections of the Questionnaire as part of a single composite response to the authority i.e. each member of the consortium is required to complete the form.

Where you are proposing to create a separate legal entity, such as a Special Purpose Vehicle (SPV), you should provide details of the actual or proposed percentage shareholding of the constituent members within the new legal entity in a separate Appendix.

The authority recognises that arrangements in relation to a consortium bid may be subject to future change. Suppliers should therefore respond on the basis of the arrangements as currently envisaged. Suppliers are reminded that the authority must be immediately notified of any changes, or proposed changes, in relation to the bidding model so that a further assessment can be carried out by applying the selection criteria to the new information provided. The authority reserves the right to deselect the Supplier prior to any award of contract, based on an assessment of the updated information.

**Confidentiality**

When providing details of contracts in answering Part 4 (Technical and Professional Ability), the Supplier agrees to waive any contractual or other confidentiality rights and obligations associated with these contracts.

The authority reserves the right to contact the named customer contact in section 4 regarding the contracts included in section 4. The named customer contact does not owe the authority any duty of care or have any legal liability, except for any deceitful or maliciously false statements of fact.

The authority confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the Public Contracts Regulations.

Section 4 - Supplier Selection Questionnaire

## 1 - Supplier information

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **1.1 Supplier details** | **Answer** | | | |
| Full name of the Supplier completing the Questionnaire |  | | | |
| Registered company address |  | | | |
| Registered company number |  | | | |
| Registered charity number |  | | | |
| Registered VAT number |  | | | |
| Name of immediate parent company |  | | | |
| Name of ultimate parent company |  | | | |
| Please mark ‘X’ in the relevant box to indicate your trading status | i) a public limited company | ▢ Yes | | |
| ii) a limited company | ▢ Yes | | |
| iii) a limited liability partnership | ▢ Yes | | |
| iv) other partnership | ▢ Yes | | |
| v) sole trader | ▢ Yes | | |
| vi) other (please specify) | ▢ Yes | | |
| Please mark ‘X’ in the relevant boxes to indicate whether any of the following classifications apply to you | i)Voluntary, Community and Social Enterprise (VCSE) | ▢ Yes | | |
| ii) Small or Medium Enterprise (SME) [[1]](#footnote-1) | ▢ Yes | | |
| iii) Sheltered workshop | ▢ Yes | | |
| iv) Public service mutual | ▢ Yes | | |
| **1.2 Bidding model** | | | |  |
| **Please mark ‘X’ in the relevant box to indicate whether you are;** | | | |  |
| a)      Bidding as a Prime Contractor and will deliver 100% of the key contract deliverables yourself | | | ▢ Yes |  |
| b)      Bidding as a Prime Contractor and will use third parties to deliver some of the services  If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for. | | | ▢ Yes |  |
| c)       Bidding as Prime Contractor but will operate as a Managing Agent and will use third parties to deliver all of the services  If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for. | | | ▢ Yes |  |
| d)      Bidding as a consortium but not proposing to create a new legal entity.  If yes, please include details of your consortium in the next column and use a separate Appendix to explain the alternative arrangements i.e. why a new legal entity is not being created.  Please note that the authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract. | | | ▢ Yes  **Consortium members**  **Lead member** |  |
| e)      Bidding as a consortium and intend to create a Special Purpose Vehicle (SPV).  If yes, please include details of your consortium, current lead member and intended SPV in the next column and provide full details of the bidding model using a separate Appendix. | | | ▢ Yes  **Consortium members**  **Current lead member**  **Name of Special Purpose Vehicle** |  |

|  |  |
| --- | --- |
| **1.3 Contact details** | |
| Supplier contact details for enquiries about this Questionnaire | |
| Name |  |
| Postal address |  |
| Country |  |
| Phone |  |
| Mobile |  |
| E-mail |  |

|  |  |  |
| --- | --- | --- |
| **1.4 Licensing and registration (please mark ‘X’ in the relevant box)** | | |
| 1.4.1 | Registration with a professional body  If applicable, is your business registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annex XI of directive 2014/24/EU) under the conditions laid down by that member state). | ▢ Yes  ▢ No  If Yes, please provide the registration number in this box. |
| 1.4.2 | Is it a legal requirement in the state where you are established for you to be licensed or a member of a relevant organisation in order to provide the requirement in this procurement? | ▢ Yes  ▢ No  If Yes, please provide additional details within this box of what is required and confirmation that you have complied with this. |

**2 - Grounds for mandatory exclusion**

You will be excluded from the procurement process if there is evidence of convictions relating to specific criminal offences including, but not limited to, bribery, corruption, conspiracy, terrorism, fraud and money laundering, or if you have been the subject of a binding legal decision which found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved).

If you have answered “yes” to question 2.2 on the non-payment of taxes or social security contributions, and have not paid or entered into a binding arrangement to pay the full amount, you may still avoid exclusion if only minor tax or social security contributions are unpaid or if you have not yet had time to fulfil your obligations since learning of the exact amount due. If your organisation is in that position please provide details using a separate Appendix. You may contact the authority for advice before completing this form.

|  |  |  |
| --- | --- | --- |
| **2.1 Within the past five years, has your organisation (or any member of your proposed consortium, if applicable), Directors or partner or any other person who has powers of representation, decision or control been convicted of any of the following offences?** | **Please indicate your answer by marking ‘X’ in the relevant box.** | |
| **Yes** | **No** |
| 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 Council Framework Decision 2008/841/JHA on the fight against organised crime; |  |  |
| 1. 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; |  |  |
| 1. the common law offence of bribery; |  |  |
| 1. bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010; or section 113 of the Representation of the People Act 1983; |  |  |
| 1. any of the following offences, 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: |  |  |
| (i) the offence of cheating the Revenue; |  |  |
| (ii) the offence of conspiracy to defraud; |  |  |
| (iii) 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; |  |  |
| (iv) 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; |  |  |
| (v) 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; |  |  |
| (vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993; |  |  |
| (vii) 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; |  |  |
| (viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or |  |  |
| (ix) 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 for use in frauds within the meaning of section 7 of that Act; |  |  |
| 1. any offence listed— |  |  |
| (i) in section 41 of the Counter Terrorism Act 2008; or |  |  |
| (ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection; |  |  |
| 1. any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f); |  |  |
| 1. money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002; |  |  |
| 1. 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; |  |  |
| 1. an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004; |  |  |
| 1. an offence under section 59A of the Sexual Offences Act 2003; |  |  |
| 1. an offence under section 71 of the Coroners and Justice Act 2009 |  |  |
| 1. 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; or |  |  |
| 1. any other offence within the meaning of Article 57(1) of the Public Contracts Directive— |  |  |
| (i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or |  |  |
| (ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland. |  |  |
| **Non-payment of taxes**  **2.2 Has it been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which your organisation is established (if outside the UK), that your organisation is in breach of obligations related to the payment of tax or social security contributions?**  If you have answered Yes to this question, please use a separate Appendix to provide further details. Please also use this Appendix to confirm whether you have paid, or have entered into a binding arrangement with a view to paying, including, where applicable, any accrued interest and/or fines? |  |  |

## 3. Grounds for discretionary exclusion – Part 1

The authority may exclude any Supplier who answers ‘Yes’ in any of the following situations set out in paragraphs (a) to (i);

|  |  |  |
| --- | --- | --- |
| **3.1 Within the past three years, please indicate if any of the following situations have applied, or currently apply, to your organisation.** | **Please indicate your answer by marking ‘X’ in the relevant box.** | |
| **Yes** | **No** |
| 1. your organisation has violated applicable obligations referred to in regulation 56 (2) of the Public Contracts Regulations 2015 in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time; |  |  |
| 1. your organisation is bankrupt or is the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State; |  |  |
| 1. your organisation is guilty of grave professional misconduct, which renders its integrity questionable; |  |  |
| 1. your organisation has entered into agreements with other economic operators aimed at distorting competition; |  |  |
| 1. your organisation has a conflict of interest within the meaning of regulation 24 of the Public Contracts Regulations 2015 that cannot be effectively remedied by other, less intrusive, measures; |  |  |
| 1. the prior involvement of your organisation in the preparation of the procurement procedure has resulted in a distortion of competition, as referred to in regulation 41, that cannot be remedied by other, less intrusive, measures; |  |  |
| 1. your organisation has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions; |  |  |
| 1. your organisation—   (i) has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or  (ii) has withheld such information or is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015; or |  |  |
| 1. your organisation has undertaken to |  |  |
| (aa) unduly influence the decision-making process of the contracting authority, or |  |  |
| (bb) obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure; or |  |  |
| 1. your organisation has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award. |  |  |

**Conflicts of interest**

In accordance with question 3.1 (e), the authority may exclude the Supplier if 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 Supplier to inform the authority, detailing the conflict in a separate Appendix. Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by the authority should not represent a conflict of interest for the Supplier.

**Taking Account of Bidders’ Past Performance**

In accordance with question (g), the authority may assess the past performance of a Supplier (through a Certificate of Performance provided by a Customer or other means of evidence). The authority may take into account any failure to discharge obligations under the previous principal relevant contracts of the Supplier completing this QUESTIONNAIRE. The authority may also assess whether specified minimum standards for reliability for such contracts are met.

In addition, the authority may re-assess reliability based on past performance at key stages in the procurement process (i.e. Supplier selection, tender evaluation, contract award stage etc.). Suppliers may also be asked to update the evidence they provide in this section to reflect more recent performance on new or existing contracts (or to confirm that nothing has changed).

**‘Self-cleaning’**

Any Supplier that answers ‘Yes’ to questions 2.1, 2.2 and 3.1 should provide sufficient evidence, in a separate Appendix, that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively “self cleans” the situation referred to in that question. The Supplier has to demonstrate it has taken such remedial action, to the satisfaction of the authority in each case.

If such evidence is considered by the authority (whose decision will be final) as sufficient, the economic operator concerned shall be allowed to continue in the procurement process.

In order for the evidence referred to above to be sufficient, the Supplier 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 the 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 Supplier shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the authority to be insufficient, the Supplier shall be given a statement of the reasons for that decision.

## 4. Grounds for discretionary exclusion – Part 2 – NOT USED

Please note that Section 4 relating to tax compliance only applies where the authority has indicated that the contract is over £5million in value, and the authority is a Central Government Department (including their Executive Agencies and Non-Departmental Public Bodies).

## 5 - Economic and Financial Standing

|  |  |  |
| --- | --- | --- |
|  | **FINANCIAL INFORMATION** | |
|  |  | |
| 5.1 | **Please provide one of the following to demonstrate your economic/financial standing;**  Please indicate your answer with an ‘X’ in the relevant box. | |
| 1. A copy of the audited accounts for the most recent two years |  |
| 1. A statement of the turnover, profit & loss account, current liabilities and assets, and cash flow for the most recent year of trading for this organisation |  |
| 1. A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position |  |
| 1. Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status). |  |

## 6 – Technical and Professional Ability

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 6 | **Relevant experience and contract examples** | | |  |
| Please provide details of at least one contract, from either the public or private sector, that is relevant to the authority’s requirement. Contracts for supplies or services should have been performed during the past two years.  The named customer contact provided should be prepared to provide written evidence to the authority to confirm the accuracy of the information provided below.  Consortia bids should provide relevant examples of where the consortium has delivered similar requirements; if this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle will be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member).  Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the principal intended provider(s) or sub-contractor(s) who will deliver the supplies and services. | | |  |
|  |  | Contract 1 | Contract 2 | Contract 3 |
| 6.1 | Name of customer organisation |  |  |  |
| 6.2 | Point of contact in customer organisation  Position in the organisation  E-mail address |  |  |  |
| 6.3 | Contract start date  Contract completion date  Estimated Contract Value |  |  |  |
| 6.4 | In no more than 500 words, please provide a brief description of the contract delivered including evidence as to your technical capability in this market. |  |  |  |
| 6.5 If you cannot provide at least one example for questions 6.1 to 6.4, in no more than 500 words please provide an explanation for this e.g. your organisation is a new start-up. | | | | |
|  | | | | |

## 7 – Pricing

Any tenderer who meets the quality criteria needs also to confirm that they will provide domiciliary care at a price of £17.40 per hour (including all costs). This rate will be negotiated annually towards the end of the fiscal year with the Authority. The negotiation process will operate through a forum inviting all framework accredited providers who will agree one hourly rate for all. This is based on a national model for negotiation purposes.

|  |  |  |
| --- | --- | --- |
| **We confirm that we will comply with this pricing** | **Yes** | **No** |
| **Name** |  | |
| **Signature** |  | |
| **Position in organisation** |  | |

On confirmation of pricing being acceptable each tenderer will be included on the framework contract. Each care package required by the Authority will then be subject to a mini-competition between all framework contract providers. Packages will be awarded on a first come first serve basis and will be awarded to the first provider who confirms they have availability.

## 8 - Additional Questionnaire Modules

Suppliers who self-certify that they meet the requirements for these additional modules will be required to provide evidence of this if they are successful at contract award stage. Please indicate your answer by marking ‘X’ in the relevant boxes.

## A – Project specific questions to assess Technical and Professional Ability

Further project specific questions relating to the technical and professional ability of the Supplier.

|  |  |
| --- | --- |
| **Technical & Professional Ability. Tenderers must score a minimum of three out of five for all parts in order to pass. Limit of words 500 per answer.** | |
| **Questionnaire Section 8A. 1-5 Reference No.** | **Supplier Response**  **Marking criteria scoring 0 - 5** |
| Your company has a business continuity plan which show that the company has plans for situations such as loss of buildings/ loss of data / loss of key equipment/ loss of key personnel and staff |  |
| Your company has appropriate staffing levels where there are at least 7 care workers to each manager  Number of managers:  Number of care workers: |  |
| The staff in your company are All trained within 30-days of induction on basic home care skills, diversity, physical handling and dementia awareness.  Provide evidence of your training plans and staff involved. |  |
| Explain your complaints procedure. How many complaints did you receive in the last 12 months? More than 3 complaints that have been upheld is a fail. |  |
| Provide evidence of how many safeguarding reports have been raised in the last year – and how many were upheld. More than 3 upheld safeguarding decisions will provide a fail for this question |  |

## B - Insurance

|  |  |  |
| --- | --- | --- |
| 1. | Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:  Employer’s (Compulsory) Liability Insurance = £5,000,000  Public Liability Insurance = £5,000,000 Professional Indemnity Insurance = £2,000,000  \* It is a legal requirement that all companies hold Employer’s (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders. | ▢ Yes  ▢ No |

## C – Compliance with equality legislation

|  |  |  |
| --- | --- | --- |
| For organisations working outside of the UK please refer to equivalent legislation in the country that you are located. | | |
| 1. | In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in any jurisdiction other than the UK)? | ▢ Yes  ▢ No |
| 2. | In the last three years, has your organisation had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds of alleged unlawful discrimination?  If you have answered “yes” to one or both of the questions in this module, please provide, as a separate Appendix, a summary of the nature of the investigation and an explanation of the outcome of the investigation to date.  If the investigation upheld the complaint against your organisation, please use the Appendix to explain what action (if any) you have taken to prevent unlawful discrimination from reoccurring.  You may be excluded if you are unable to demonstrate to the authority’s satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring. | ▢ Yes  ▢ No |
| 3. | If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations? | ▢ Yes  ▢ No |

## D - Environmental Management

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | Has your organisation been convicted of breaching environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator or authority (including local authority)?  If your answer to this question is “Yes”, please provide details in a separate Appendix of the conviction or notice and details of any remedial action or changes you have made as a result of conviction or notices served.  The authority will not select bidder(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the authority is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches. | ▢ Yes  ▢ No | |
| 2. | If you use sub-contractors, do you have processes in place to check whether any of these organisations have been convicted or had a notice served upon them for infringement of environmental legislation? | ▢ Yes  ▢ No |  |

## E - Health and Safety

|  |  |  |
| --- | --- | --- |
| 1. | Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements. | ▢ Yes  ▢ No |
| 2. | Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years?  If your answer to this question was “Yes”, please provide details in a separate Appendix of any enforcement/remedial orders served and give details of any remedial action or changes to procedures you have made as a result.    The authority will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the authority’s satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches. | ▢ Yes  ▢ No |

**F -CQC registration and report**

|  |  |  |
| --- | --- | --- |
| **1.** | Provide evidence of your CQC registration in the Swindon area | ▢ Yes  ▢ No |
| **2** | Provide a copy of your latest CQC report  Please note that markings less than requires improvement will not be considered | ▢ Yes  ▢ No |

**Questionnaire – Template for Appendices**

|  |
| --- |
| **Appendix Number -** |
| **Questionnaire section -** |
| **Question number -** |
|  |

Section 5 - Specification



**DOMICILIARY CARE FRAMEWORK SERVICE SPECIFICATION**

|  |  |  |
| --- | --- | --- |
| Date | Version | Details |
| 16/03/17 | 7.0 | FINAL |

|  |  |
| --- | --- |
| Service | Adults domiciliary care provision |
| Author | Tracy Gagetta |
| Commissioning Lead | Joy Kennard |
| Provider Lead | Domiciliary care providers within Swindon Borough borders and surrounding areas. |

Introduction & Demographics

Swindon has an ambitious vision for growth and increased prosperity with our main priorities in well managed housing growth, improved infrastructure for a rapidly growing city, developing a workforce that meets the needs of business and transforming public services to meet the increasing needs of a growing population. In addition, there are extremes of high and low levels of deprivation. A number of areas score in the bottom 10% in the Index of Multiple Deprivation (2015)[[2]](#footnote-2) which highlights significant levels of deprivation in comparison to other parts of the Borough. There are also areas of Swindon that feature in the least deprived 10% nationally.

Over many years, Swindon has consistently delivered high growth in terms of both housing numbers and economic output. The Authority has supported this through the strength of its relationships with the private sector companies who have made their home here. As the latest Centre for Cities (2017) report highlights we have the third highest population growth in the UK that more than doubles the national average. It is the city with the third highest productivity and innovation economic growth and the highest ratios recording at 4.3 private sector jobs for every publicly-funded position[[3]](#footnote-3).

The overall population of Swindon is forecast to rise to around 250,000 by 2026[[4]](#footnote-4). As with any predominantly urban area there are challenges around inequality and disadvantage. Swindon has a younger population but the number and percentage of older people is due to grow faster than the national and south west average. Swindon expects to see a significant increase in the number of older people in the coming years. Nationally as of 2010 census 10 million people in the UK are over 65 years old. The latest projections are for 5½ million more elderly people in 20 years’ time and the number will have nearly doubled to around 19 million by 2050. Within this total, the number of very old people grows even faster. There are currently three million people aged more than 80 years and this is projected to almost double by 2030 and reach eight million by 2050. While one-in-six of the UK population is currently aged 65 and over, by 2050 one in-four will be.[[5]](#footnote-5) The growth of this group correlates with an increase in emergency admissions to hospital, higher rates of discharge from hospital for patients with complex needs and increasing demand for social care support to enable people to stay at home.

Health & Social Care Integration

Our joint vision for people in Swindon is enshrined in the Health & Wellbeing Strategy[[6]](#footnote-6) which sets the context for the approach to the commissioning of domiciliary care to ‘ensure that everyone lives a healthy, safe, fulfilling and independent life and is supported by thriving and connected communities’ in particular to ensure that ‘adults and older people in Swindon are living healthier and more independent lives’.

We have aligned our joint resources in the Authority and our local partners at Swindon CCG to support the health, wellbeing, mental health, education and care of children, families and adults in the community to achieve the mission of both organisations. We have a long history of integrated commissioning and integrated service delivery for health and social care. This was outlined in detail in our bid ‘Shoulder to Shoulder’ to become an integration pioneer[[7]](#footnote-7). Our vision for the Better Care Fund builds on our successful integration and the Five Year Strategic Plan for Swindon.

We are a single unitary local authority with one CCG who represents 26 member practices in Swindon and Shrivenham, and a single acute NHS Trust; Great Western Hospital. This also includes Avon and Wiltshire Mental Health Partnership, who have established a clinical directorate that just serves Swindon. South Western Ambulance Service provides Swindon’s emergency patient transport provider and the Voluntary Action Swindon which is our one network of voluntary sector organisations.

Our track record in providing integrated commissioning and delivery has been recognised with Swindon becoming one of 10 members of the national Public Service Transformation Network Areas. This work has now been joined with the Integration Health Pioneers in the recognition of the work that is taking place in Swindon.

We have jointly commissioned services through National Health Services Act 2006 Section 75 Agreements since 2008. The Agreement renewed in 2016-17 comprises a total aligned fund of Swindon CCG £30.5m, SBC 391.3m providing a total of £121.8m. Services are commissioned through a joint commissioning team. All services are commissioned against an agreed joint commissioning plan and monitored by a Joint Commissioning Board. Our joint commissioning of services has achieved savings of £3.8m in adult social care in 2013/14 and £5m in 2014/15 with an underspent of £2.3m in 2014/15.

Background & Framework

|  |
| --- |
| Over the past twelve months, the Authority has seen considerable pressure in commissioning domiciliary care for older people. In 2016-17 we commissioned 9,337 hours per week on average and this had increased to 10,531 by Sept 16 with all packages individually spot purchased. This includes all clients aged 65 and over (physical health, sensory support, mental health, memory & cognition, learning disability). As the market of providers in Swindon is relatively small there is a need to ensure that there is a guarantee that domiciliary packages of care can be provided to manage the ongoing demand for this service from hospital discharges and .also to prevent increased numbers of adults with needs going into care placements. We will therefore be commissioning up to two main/master providers for domiciliary care. |
| This framework for domiciliary care would assure the quality of the domiciliary care provision in the period prior to the main/master domiciliary contract being in place in the Autumn 2017. The framework would ensure that the providers are moving increasingly to an outcome approach rather than a time and task focus. This would put the framework providers in a state of readiness should the main/master providers wish to sub contract any of the work upon or after contract award. |
| Our expectation through this tender is that there will be a reduction in the amount of hours required per week due to the efficient use of assistive technology, community support and a person centred approach based on outcomes. Equally it is likely that the overall number of packages of care will reduce as the main/master domiciliary care provider contract is in place.  In the circumstances of this contract the Authority considers that it is unlikely that the provisions of Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) would apply. However the Authority urges providers and tenderers to give the issue of TUPE appropriate consideration and to make their own determination. |
| As it is expected that the main/master domiciliary provider(s) will not be able to meet all of the provision required, at which time the framework providers could contribute to this. It may take several years before the main/master provider(s) are able to pick up all of the capacity required. |
| The current payment system is based on time and task with no guaranteed achievement of outcomes. SBC are proposing to move away from this system over the next 10-years. Work will be undertaken with all the providers on the framework to move to a more outcomes based approach rather than time and task. This piece of work will be of benefit in stepping down packages of care and therefore reducing ongoing costs. |
| The domiciliary framework contributes to fulfilling the Authority’s obligations under The Care Act 2014 by managing the market so that a range of good quality services is available which are safe, effective and financially sustainable. This includes an obligation on the Authority to quality assure the provision |
| By undertaking a qualification process for domiciliary care, this gives the Authority the ability to:   * Continue to purchase domiciliary care on a time and task basis at an agreed hourly rate with a move towards person-centred outcomes. * Ensures care for existing care users and new care users until such time as the main/ master domiciliary care contract is in place. * Provide a means of ensuring quality of care and commercial pricing as each new package of care will be mini competed. This will also be the case when new suppliers are appointed as a result of the tendering of the framework. * Achieve the overall aim of reducing the cost and length of care packages. |
| The domiciliary framework will provide the opportunity to:   * Open the demand to supply packages of care to competition and show equal treatment for all providers on the framework. * Ensure through evaluation of tenders that the suppliers meet expected quality and commercial standards. * Provide the potential for an increase in providers; though it is recognised that in the current climate together with the commissioning activity for domiciliary care this might be limited. |

Annual Budget

Domiciliary care estimated budget for 2016/17 for all adults 65 and over (physical support, memory & cognition, sensory support and mental health, learning disability) is estimated at £8.65m.

It is proposed that the costs of domiciliary care will reduce during the term of the framework, particularly after the main/master provider contract is awarded and all new work is then provided by the one or two providers. The overall annual costs are likely to increase across the combined contracts.

The current model framework for which to call off contracts expired on 3rd April 2015. This model is no longer considered suitable for the compliance and ‘best practice’ expectations of the Authority. The main/master domiciliary care provision to follow the proposed framework, will take time to fully develop and fulfil all domiciliary care packages, therefore, the framework will ensure provision of service and also provide a contingency during the transition period. The framework will provide a state of readiness to monitor compliance, continued care, commercial stability and a smooth and robust transition to the main/master domiciliary care provider(s), with the aim for the contract to be in place by autumn 2017.

Figure 1 displays how the transition of the two models will run in juxtaposition. The

***Figure 1***

|  |  |
| --- | --- |
|  |  |
| **Framework** | **Main/Master Provider(s)** |

Framework will encompass all packages from implementation start date. The main/master provider model will take new packages only from implementation start date of contract call-off. The premise includes a natural diminishing of packages within the framework over the next 4-years with the main/master provider increasing packages until the framework contract is finished or the packages have reduced completely to a natural progression, however, there are no guarantees of these two models running in concurrence until the main/master provider(s) contract is awarded.

The gradual progression of new packages gained by the main/master provider(s) and the decreasing of the framework packages over a period of years due to natural progression, provides the opportunity for the awarded main/master provider(s) to sub-commission to those providers accredited into the framework. This approach is solely based on the awarded main/master provider(s) bid offer and will not reflect upon the Authority’s overall commissioning strategy. The Authority will have no authority to decide which framework providers are sub-commissioned by the main/master provider(s).

Outcome Based Commissioning

Over recent years there have been significant changes in the way that social care is commissioned. With the introduction of direct payments and personal budgets, the Adult in Need has been given the opportunity to have more control over their care and treatment provision. An Adult in Need’s care is moving away from time and task services to an agreed outcomes approach. In the Institute of Public Care’s published report *Predicting and Managing demand in Adult Care*, it is recommended that councils are able to performance manage the changes they introduce so that they understand whether they are delivering individual and service outcomes required to meet their strategic objectives[[8]](#footnote-8). The two overarching objectives to this approach include:

1. Ability to analyse data to ensure intelligence within the sector and performance of services
2. Ensure there is a clear strategy as to how we are going to manage our services in the current financial climate

This outcomes based approach is agreed by the local authority to ensure the ‘core principles’ mentioned later in the service specification. This is measured against the agreed contract with the aim of improvement or stabilisation of the Older Persons health and wellbeing. The outcomes approach will focus on results and the impact this has on the Adult in Need.

Examples of outcomes measured on the person-centred care of the Adult in Need may include;

* Respect and dignity – the Adult in Need is given more control over their care and living arrangements
* Encouraged to continue living independently with such daily tasks as hygiene, fitness and mental health
* Continue to build relationships with their peers and family and support from their community

Swindon Borough Council will measure these outcomes based on feasible tasks agreed by the Adult in Need, Care Manager working for the local authority providing initial assessment, reviews and final authorisation over the needs of the adult and package of care as well as the Care Worker working in capacity of the Provider, providing care within the adult’s home. Reviews by a Contract Manager within the local authority will be administered as part of the contract monitoring process on a monthly or quarterly basis; depending on level of need.

Outcomes will also be measured at the ‘service level’ by Swindon Borough Council as part of the framework agreement and in accordance with:

* quality of care
* services provided
* staffing and recruitment
* admissions
* cost effective

Outcomes measured at the ‘person centred level’ will involve a phased approach and will include Provider’s input in approach, expectations and achievable timelines. This aspect of outcomes monitoring will gradually transition into the main/master provider model once processes are in place and both provider’s and the Authority are clear of methods and objectives.

Contract Monitoring

Swindon Borough Council will administer quarterly contract monitoring duties for all providers within the framework. Contract monitoring will involve quarterly data collection for intelligence purposes and key performance indicators to measure against overall outcomes of service (see Appendix 1).

The Service Provider will need to ensure that the service is robustly monitored and ensure that monitoring activity takes place as part of its quality and compliance procedures. In addition, Swindon Borough Council will conduct a quality monitoring visit to each service at least annually to measure the service against the key performance indicators as well as spending time talking to the Adults in Need, management and staff. It is at the discretion of the authority to visit the services more frequently if it is deemed necessary or contract monitoring arrangements change.

Information as requested by the Contracts Officer prior to the Contract Monitoring visit will be expected to be provided at least two weeks prior to the annual monitoring visit taking place, with advised dates included in Appendix 1. Where areas of development or deficiencies are identified the Provider will be expected to respond to a subsequent action plan provided by the Contracts Officer within the timeframe indicated by the Contracts Officer.

The Authority may also request additional data and statistical information for intelligence purposes, with KPI’s and outcomes added as and when required according to changes in requirements of the service. The provider is expected to return a financial self-assessment annually to the Contracts Team which will be developed over the course of the first year of contract between SBC and the Providers accredited.

Purpose of the Service

Core Principles

That Domiciliary Care providers ensure that our Adults in Need are able to access the required care, prevent further deterioration in condition and stay as well as possible, and live comfortably with any long-term condition and care need/s. Our Adult in Need must have the opportunity to live as independently as possible and support dignity and a healthy lifestyle.

Service Principles

It is a requirement that all providers will be registered with the Care Quality Commission (CQC) and will maintain registration throughout the duration of this contract. Providers are required to comply with the relevant regulation standards with the CQC and NICE Guidelines. The provider must promote key principles in the Care Act 2014 which include and is not exhaustive;

* Promote wellbeing
* Promote independence
* Choice in care
* Safety in care and the home

Providers must take account of individual personalities, lifestyles, interests, physical and mental health needs of the resident and will be designed to address the needs of the individual resident taking into account their age, gender, ethnicity, language, religion, culture and sexuality. Providers will ensure outcomes in care and support plans are met and each individual is respected and understood according to beliefs and lifestyle.

Performance of services will increasingly be judged according to the experience of Swindon’s Adult with Need, with transparent sharing of information so that people needing services can make informed choices, including the knowledge of what other people think of services with the overall aim to move toward an outcome-based approach to the purchase and provision of service which is Adult Social Care in Swindon’s strategy for the future.

With an overall expectation that providers will ensure effective working relationships with the Local Authority, community led social enterprises and health organisations. This will help to prevent unnecessary A&E visits and hospital admissions as well as providing preventative care and measures to allow the Adult in Need to continue living happily and safely in their own home for as long as possible.

Delivery Requirements

**Promote Wellbeing**

The Adult in Need feeling valued, being able to decide on day to day matters, having influence and making choices in all aspects of his/her life.

Required Outcomes include evidence that the Adult in Need:

* leads a fulfilling life
* is listened to, and takes part in day to day discussions with their carer
* lives safely in their own communities and homes
* has physical, mental or emotional needs identified and appropriate assistance sought
* is shown respect and is not subject to any form of discrimination
* is given the opportunity to follow their cultural and spiritual beliefs

To enable the achievement of the outcomes you must:

* reflect the needs and wishes of the Adult in Need when structuring the service as agreed in the support plan
* encourage care staff to build up a relationship of mutual trust and respect with the Adult in Need
* train staff to recognise signs and symptoms and provide early prevention of any mental health issues
* train staff about adult protection practice and handling
* have a complaints procedure that has been understood by and shared with your staff and the Adult in Need
* encourage interaction between the Care Worker and Adult in Need during the delivery of the service

**Promoting Independence**

The Adult in Need being part of the decision making process, having an input into day to day activities, making choices and encouraged to maximise their independence and involvement in expected outcomes.

Required Outcomes include evidence that the Adult in Need:

* leads an independent life
* takes greater control of their life
* is involved in day to day decisions about the care offered
* lives independently in their own communities and home
* experiences and performs useful and meaningful activities with whatever assistance is required
* develops and maintains maximum independence

Key processes to support outcomes to enable the achievement of the outcomes you must:

* encourage care staff to enable the Adult in Need to be as independent as possible
* encourage the Adult in Need to develop and maintain their skills and abilities to perform functional and meaningful activities
* encourage the Adult in Need to be involved in agreeing their Support Plan
* make sure that staff work towards carrying out tasks *with* the Adult in Need and not *for* the Adult in Need

**Choice in Care**

The Adult in Need being informed and enabled to influence the way in which care is provided in a flexible and appropriate way.

Required Outcomes to evidence that the Adult in Need:

* contributes positively to the support planning process
* makes informed choices based on sufficient information about alternatives and implications
* is listened to whether complaining or complimenting the service, or suggesting improvements
* has minor changes made to his/her care in order to meet day-to-day changing needs

Key processes to support outcomes to enable the achievement of the outcomes you must:

* make sure that the Adult in Need is able to contribute to, and influence, the content of his/her Support Plan
* have a system for reviewing the quality of care which the Provider arranges
* have a complaints procedure that has been understood by, and shared with, your staff, the Adult in Need, their advocate or relatives
* make sure that staff have the necessary skills and confidence to respond positively to the changing needs of the individual and to advise the Care Manager of the changing need

**Safety in Care and the Home**

The Adult in Need being confident that care is provided in a manner which ensures their safety and well-being.

Required Outcomes to evidence that the Adult in Need:

* is introduced to Care Worker(s) in order to reduce fear of new people
* ensure the same Care Worker(s) attend visits, if possible, for continuity purposes
* knows what time visits will take place (within a flexible timeframe)
* is visited at the appointed time agreed with the Adult in Need
* ensured that their personal information is kept confidential
* understands when and why it is appropriate for their confidential information to be shared
* knows where keys to their home are stored safely and that the security of their home is not compromised
* undertakes individual activities that have been risk assessed and are not restricted from valued activities unnecessarily
* has trust and respect for members of staff and confidence in their abilities
* has confidence that policies and procedures are in place in respect of their safety and that these are understood by staff

*Appendix 2* lists the key processes to support outcomes to enable the achievement of the outcomes and compliance. The provider must submit to the Contracts team during contract monitoring:

* have a process in place to ensure that the Adult in Need knows in advance about their care visit and any changes in their visit (e.g. change of staff or time)
* make sure that the Adult in Need and their property are protected, have policies and procedures that reinforce the Adult in Need's sense of security, and ensure that these are shared with and understood by staff
* make sure that any keys held at your offices are stored in a secure manner and accessed only by authorised staff
* make sure that the Adult in Need's security code and telephone number(s) are stored appropriately and shared only on a need-to-know basis
* make sure that staff are easily identified as carers for your Organisation by use of badges, photographs and uniforms
* make sure that staff know that receipts are required for any purchase made on behalf of the Adult in Need, that the receipts are provided to the Adult in Need, and that loyalty cards of staff are not to be used when purchasing on behalf of a Adult in Need
* make sure that staff are aware of all probity issues (eg staff must not: knowingly be the beneficiaries of an Adult in Need’s will, accept and receive gifts from the Adult in Need, use contact with the Adult in Need for private gain and witness legal documents)
* have a written risk assessment for the Adult in Need and be sure that staff know of the policies and procedures in place in respect of Adult in Need safety
* have written environmental risk assessments for the Adult in Need premises
* have a planned training and induction programme for staff
* have a process in place for staff to report ongoing health and safety risks

Additional Requirements

**Dementia and Complex Needs**

The Provider will support and provide the care needed to encourage independence to people with dementia. Swindon Borough Council expect providers within the framework to identify and ensure the following key features are included within the service as stipulated by recent research undertaken by the Personal Social Services Research Unit as excellent service; and are as follows:

* The importance of flexibility in the provision of services
* Staff trained and aware of dementia and able to recognise the particular nuances of expression and unique features characteristic of dementia and able to respond appropriately.
* The value of using life stories and other memory aids
* Being able to recognise when specialist care and support is required and discuss with the Commissioner
* The importance of consistency in care workers
* Recognising when someone is developing dementia type behaviours and ensuring they are referred for assessment

**All Adults in Need**

Providers will be expected to demonstrate day to day practices which support these features for all Adults in Need:

* Implementation of the Mental Capacity Act 2005, including Deprivation of Liberty, safeguards, with appropriate use of mental capacity assessments and best interest decision making
* End of Life care and support
* Managing challenging and difficult behaviour
* Administering medication
* Rehabilitation of people discharged from hospital
* Timely hospital discharges
  + All new packages of care from hospital will start within 4 hours of the referral. Contact with the Adult in Need and hospital staff will be within 2 hours. Referrals and commencement of packages will be 7 days per week.
* Supporting people with long term conditions

**Service Availability & Outcomes**

All Services must be available from 7.00am until 10.00pm, every day of the year. The provider will be expected to deliver outcomes identified as part of the care management assessment process including support planning and referring to the person centred care plan.

It is expected that the Service Provider will have clear outcomes agreed for each individual and will work towards achieving these. The service will operate as part of the whole health and social care system and Service Providers are expected to work in a collaborative and effective way with the full range of existing local services, to participate in local training and provider information events.

The Provider will also liaise with the relevant clinical networks and health screening programmes and these should be encouraged to outreach into the hubs.

**Support Plan**

In order to ensure that the Support Plan is regularly reviewed with the Adult in Need and any other relevant person, and changes are made when necessary, we require that:

1. You review your records at least once a month to be sure that you receive feedback from your staff, using compliments, complaints and Care Management information, and use this information to inform whether a more formal review is necessary.

2. Your review includes any special requirements of the Adult in Need and forms part of his/her personal record.

3. You consider the Adult in Need's requests, and make changes in the arrangements for the delivery of the services, provided that there has not been a change in the Adult in Need’s circumstances or needs, and provided that the change will not lead to a change in the Care Plan. Agreed changes must be notified, in writing, to the Care Manager.

4. Staff refer to the Provider, to make sure that the Care Manager is notified of any increase or deterioration in physical or mental health, and record these changes in the Adult in Need notes maintained by you.

5. You are aware that the SDO and Care Plan are reviewed by the Adult in Need, Care Manager, and any other relevant person after four weeks of the start date, after three months and six monthly thereafter.

Continuity of Carers

In order to ensure that the Adult in Need is comfortable with their carer and has reasonable continuity of care, we require that:

1. You make sure that no more than three Care Workers (or, if double handling, three pairs of Care Workers) are involved in the care of any Adult in Need at any one time, unless prior agreement has been obtained from the Care Manager

2. You ask the Care Manager to agree a higher number of Care Workers in instances where the Adult in Need receives an exceptional care package

3. In instances where you decide to make a change without the agreement of the Adult in Need, you record the reason in the Contact Book and the Adult in Need must be given the opportunity to sign the document indicating their disagreement. The Care Manager must also be informed

Records

In order to ensure that records of visits to the Adult in Need’s home and details of care given are comprehensive, are shared as appropriate, and are in-line with the Data Protection Act 1998, we require that:

1. Acceptable standards of literacy in English and the first language of the Adult in Need are used.

2. The Contact Book must be left in the Adult in Need’s home at all times, and completed pages only be removed and placed on the Adult in Need’s file at your premises after one month.

3. Appropriate sections of the Adult in Need's personal file are accessible to relevant care staff.

4. Staff visiting an Adult in Need for the first time sign the Adult in Need’s file to show they have read the relevant sections and are familiar with the Adult in Need’s needs.

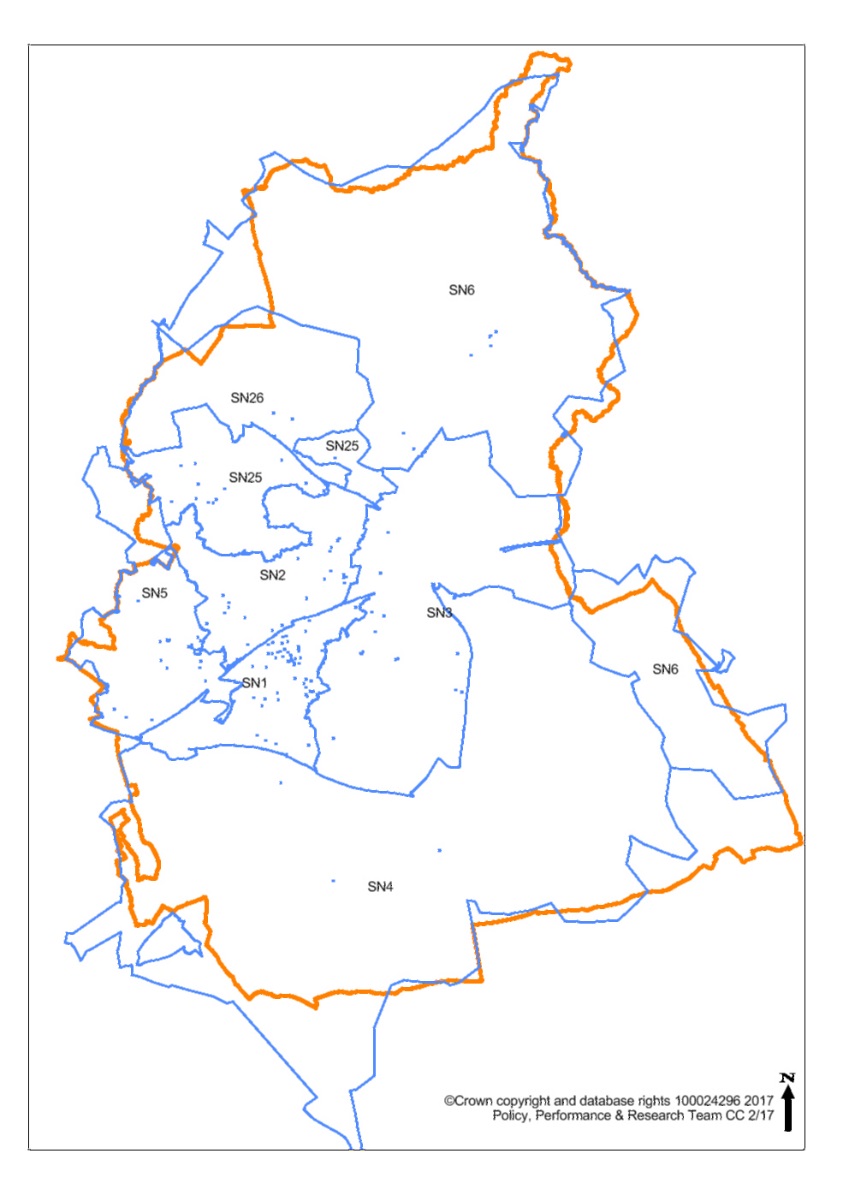
5. Staff are aware of your policy in regard to confidentiality of records.

6. You allow our authorised staff to see records required by this Specification.

7. You accommodate visits by our authorised staff which may take place at any time and could be unannounced. We will be reasonable in exercising this right.

Geographical Scope

This framework contract for Domiciliary Care will provide care services for all new care users within the Borough of Swindon. For clarity this includes postcodes SN1, 2, 3, 4, 5, 6, 25, and 26. See *figure 2* below for perimeters.

**Figure 2**

**Appendix 1**

Key Performance Indicators to be measured during quarterly contract monitoring

Deadlines for submission;

Quarter 1 July 15th

Quarter 2 October 15th

Quarter 3 January 15th

Quarter 4 April 15th

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **SBC Key Performance Indicators** | | | | | | |
|  | **Expected Outcome** | **KPI Description** | **Target %** | **Reporting Period** | **No. of Successful Outcomes** | **Reason for failure (if applicable)**  **Explain how this has impacted best practice and implemented positive change** |
| 1 | Providers proactively deal with all complaints, suggestions and compliments | 1. No. complaints responded to within 28 days of receipt 2. No. complements received | 100 | Quarterly |  |  |
| 2 | Residents receive committed, consistent, quality care | a) All safeguarding issues identified and reported to management team during shift  b) All safeguarding issues identified and reported to SBC within 24-hour period  c) All safeguarding issues investigated with 7-day period | 100 | Quarterly |  |  |
| 3 | Residents receive committed, consistent, quality care | a) New staff receive induction training within 30-days of employment  b) All care staff to be trained in basic care, moving and handling people, MCA/DoLS, medication and dementia awareness within 12-weeks of employment | 100 | Quarterly |  |  |
| 5 | Package reviews | SBC request package increase or decrease must be assessed and agreed by Provider within 5 calendar days | 100 | Quarterly |  |  |
| 6 | Service User are safeguarded from physical and emotional abuse, harassment, neglect and self-harm | All staff are subject to an enhanced DBS check prior to commencing employment | 100 | Quarterly |  |  |
| 7 | Hospital discharges are allocated in timely manner | 1. Within 4-hours of discharge of restart packages 2. Within 12-hours of discharge for new packages needing assessment   *(packages are kept open for 4-week period upon admission to hospital)* | 95 | Quarterly |  |  |
| 8 | Decrease in packages | Those receiving longer term care packages have decreased from their initial assessment/latest review | 15 | Monthly initially then Quarterly end of Year 1 |  |  |
| 9 | Increase in packages | Those receiving longer term care packages have increased from their initial assessment/latest review | 25 | Monthly initially then Quarterly end of Year 1 |  |  |
| 10 | Palliative care | Those receiving palliative care and request to die at home | 75 | Quarterly |  |  |
| 11 | Forum attendance | Provider representative to attend forum hosted by SBC | 85-90 | Bi-monthly |  |  |
| 12 | Financial self-assessment | Annual completion of financial self-assessment template and submission  *(provided by SBC and to be agreed by Providers post contract award)* | 100 | Annually |  |  |

Data Collection template to be completed by Providers and submitted on quarterly basis for contract monitoring

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Service Statistics** | **Q1**  **#** | **Q2**  **#** | **Q3**  **#** | **Q4**  **#** | **Total # Accumulative** |
| Total No. of Adults in Need (AIN) currently accessing service |  |  |  |  |  |
| No. of new packages |  |  |  |  |  |
| No. of restarts after hospital discharge |  |  |  |  |  |
| No. of package increases |  |  |  |  |  |
| No. of package decreases |  |  |  |  |  |
| No. of AIN accessing community facilities (day centres, library, shopping, etc) |  |  |  |  |  |
| No. of hospital admissions |  |  |  |  |  |
| No. of A&E attendance |  |  |  |  |  |
| No. of falls and accidents in home |  |  |  |  |  |
| No. of AIN admitted to residential/care home |  |  |  |  |  |
| No. of deaths |  |  |  |  |  |
| No. of safeguarding incidences |  |  |  |  |  |
| No. with early onset dementia |  |  |  |  |  |
| No. of those awaiting assessment for equipment |  |  |  |  |  |
| No. of those currently using CADLE/SADLE support |  |  |  |  |  |
| No. of complaints from AIN and/or family/guardian |  |  |  |  |  |
| No. of compliments from AIN and/or family/guardian |  |  |  |  |  |
| **Staffing and Recruitment** | | | | | |
| Total No. of staff Quarter 4 – *include in total accumulative section only* |  |  |  |  |  |
| No. of staff resigned/dismissed |  |  |  |  |  |
| No. of training days |  |  |  |  |  |
| % of staff retained overall |  |  |  |  |  |
| % of sickness rate overall |  |  |  |  |  |

**Appendix 2**

These are key processes to support outcomes to enable the achievement of the outcomes and compliance. The provider must submit to the Contracts team during contract monitoring:

* have a process in place to ensure that the Adult in Need knows in advance about their care visit and any changes in their visit (e.g. change of staff or time)
* make sure that the Adult in Need and their property are protected, have policies and procedures that reinforce the Adult in Need's sense of security, and ensure that these are shared with and understood by staff
* make sure that any keys held at your offices are stored in a secure manner and accessed only by authorised staff
* make sure that the Adult in Need's security code and telephone number(s) are stored appropriately and shared only on a need-to-know basis
* make sure that staff are easily identified as carers for your Organisation by use of badges, photographs and uniforms
* make sure that staff know that receipts are required for any purchase made on behalf of the Adult in Need, that the receipts are provided to the Adult in Need, and that loyalty cards of staff are not to be used when purchasing on behalf of a Adult in Need
* make sure that staff are aware of all probity issues (eg staff must not: knowingly be the beneficiaries of an Adult in Need’s will, accept and receive gifts from the Adult in Need, use contact with the Adult in Need for private gain and witness legal documents)
* have a written risk assessment for the Adult in Need and be sure that staff know of the policies and procedures in place in respect of Adult in Need safety
* have written environmental risk assessments for the Adult in Need premises
* have a planned training and induction programme for staff
* have a process in place for staff to report ongoing health and safety risks

APPENDIX A

Certificate of Bona Fide Tender

The essence of selective tendering is that the client shall receive bona fide competitive tenders, from all those 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 tender by or under or in accordance with any agreement 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 hour and date specified for the return of this tender any of the following:

(a) Communicate to a person other than the person calling for these tenders the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations for the preparation of the tender;

(b) 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;

(c) Offer to pay or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or have caused to be done in relation to any other tender or proposed tender for the said supply / service any act or thing of the sort described above.

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.

We acknowledge that the Authorised Officer will be entitled to cancel the contract and to recover from us the amount of any loss resulting from such cancellation if we or our representatives (whether with our without our knowledge) shall have practiced collusion in tendering for this contract or any other contract with the Authority or shall employ any corrupt or illegal practices either in the obtaining or execution of this contract or any other contract with the Authority:

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Occupation/Profession:

For and on behalf of:

APPENDIX B

Freedom of Information Act 2000 (FOI)

Exemption Form

**GUIDANCE**

The Authority encourages its Contractors to take their own legal advice about the FoI Act. The Authority shall not be held liable for any actions claims or costs howsoever arising.

The Authority considers that the following information is likely to be captured by the “confidential” (s.41 absolute exemption) and/or “commercial interest” (s43 qualified exemption) and therefore maybe subject to the Public Interest test:

* Trade secrets; or
* Financial, commercial, scientific, technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates; or
* Where disclosure could prejudice the competitive position of that person in the conduct of his/her profession or business or otherwise in his/her occupation; or
* Where disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

NB: Contractors should note that claiming blanket confidentiality of tender documentation, breaches current Government guidelines provided to the Authority and will not be accepted, therefore rendering the entire tender documentation disclosable under the FoI Act.

As part of the government’s transparency agenda it is our intention to publish on line copies of contracts and tender documents. If you consider any information should not be released, you must make us aware of this during the procurement process. Advice on how the Freedom of Information Act 2000 exemptions may apply is available from the Information Commissioner’s website at:

<http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx>

## PROCEDURE

1. Please specify below the relevant clauses or documentation containing the information you claim is exempt.

We consider that pricing schedules and technical specifications are most likely to be covered by one or other of the above exemptions and would therefore not, normally, be disclosed.

Each document claimed under the exemptions should be clearly marked as “confidential” or “commercially sensitive”.

CONFIDENTIAL INFORMATION:

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |

COMMERCIALLY SENSITIVE INFORMATION:

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |

2. The Authority is obliged to consider whether something, which its Contractor claims is confidential, is truly confidential. In those instances where the Authority does not agree with the exemption claimed, it will always consult with the Contractor before disclosing the information.

Where the Authority decides to release such information, it will only do so in the following circumstances:

* Where the Contractor consents; or
* Where the information or information of a similar type is generally available to the public (e.g. where a Minister would give such information in answer to a Parliamentary Question);or
* Where the Contractor has been advised, at the time that the information is received, that the information will be released; or
* Where the Authority believes that the public interest would be better served by disclosing rather than by refusing to disclose the information. In this instance, the views of the Contractor will be sought in advance of a decision being made. Where the Contractor refuses to agree to disclosure of the information, the Contractor is able to refer the matter to the Information Commissioner at the Contractor’s expense.

|  |  |
| --- | --- |
| Signed | Position |
| Print Name | Date |

APPENDIX C

Form of Tender

To: Swindon Borough Council

Law and Democratic Services

Civic Offices

Euclid Street

Swindon SN1 2JH

**Swindon Borough Council Domiciliary Care Framework**

Having examined the contents of the tender document, terms and conditions of Memorandum of Agreement, service level issues, and product specifications, we offer to carry out the work in conformity with the said conditions for the maximum fixed prices detailed in the attached schedules.

We undertake to carry out the works specified within the period stated in the enquiry letter.

Our tender offer shall be binding between us for a period of one hundred and twenty (120) days from the closing date for receipt of tenders.

Unless and until a formal agreement is prepared and executed this Tender and a written acceptance thereof shall constitute a binding contract between us.

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

We further undertake, if our Tender is accepted, to comply with all the General Conditions of Contract and Specifications for the service comprising the contract.

Dated this       day       of       20

Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:       in the capacity of

duly authorised to sign tenders for and on behalf of:

Witness:

Address:

Occupation/Profession

# APPENDIX D – TENDER RETURN LABEL

# TENDER FOR: Adult Social Care- interim solution

**Closing Date 28th April 2017 ( 12 00 noon )**

**SWINDON BOROUGH COUNCIL**

**LAW AND DEMOCRATIC SERVICES**

**CIVIC OFFICES**

## EUCLID STREET

**Swindon**

**SN1 2JH**

**UK**

Confidential – to be opened only by an authorised representative of Swindon Borough Council

1. See EU definition of SME: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/ [↑](#footnote-ref-1)
2. https://www.gov.uk/government/statistics/english-indices-of-deprivation-2015 [↑](#footnote-ref-2)
3. http://www.centreforcities.org/publication/cities-outlook-2017/ [↑](#footnote-ref-3)
4. http://www.swindon.gov.uk/download/downloads/id/516/school\_organisation\_plan\_2010-2013.pdf [↑](#footnote-ref-4)
5. http://www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/value-for-money-in-public-services/the-ageing-population/ [↑](#footnote-ref-5)
6. http://swindon.gov.uk/healthandwellbeingstrategy [↑](#footnote-ref-6)
7. Gilbert, John. DCS/DASS Swindon, (2013). Joint Commissioning and Integrated Delivery of Children and Adult Services in Swindon. [↑](#footnote-ref-7)
8. https://ipc.brookes.ac.uk/publications/Predicting\_and\_managing\_demand.html [↑](#footnote-ref-8)