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Swindon Borough Council

**Services Contract**

**Invitation to Tender for:**

**Bikeability Training**

**Reference Number:**

**PB00210**



 **www.swindon.gov.uk**

Revised 12 April 2016

Content

## Section 1 General Information

 Instructions to Tenderers

**Section 2 General Conditions of Contract**

## Section 3 Background Information

## Section 4 Standard Questionnaire

**Section 5 Specification**

**Section 6 Tender Award Questions**

**Section 7 Pricing and Payment Schedule**

**Appendices**

**Appendix A**  Certificate of Bona Fide Tender

**Appendix B** Freedom of Information Act 2000 (FOI) Exemption Form

**Appendix C** Form of Agreement

**Appendix D** Tender Address Label

Section 1 - General Information

## Instructions to Tenderers

## 1 Statement Of Purpose

1.1 Swindon Borough Council (SBC), wishes to submit to tender the requirements for the provision of Bikeability training

1.2 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.

1.3 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 6th July 2017 each Tenderer receiving this Request must notify the Road Safety Officer (see 7.1 for details) in writing or 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.

## 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, in writing, 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 in writing to all Tenderers.

6.4 SBC shall not conduct face to face meetings with responding Tenderers at any time during the period between issuing the Request and receiving the Response to the Request unless SBC conduct a site visit or hold a supplier forum during this period.

## 7 Swindon Borough Council Contact

7.1 Any questions, clarifications or other communication concerning this tender document must be directed in writing 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):

Initial contact

Jane Deeley

Highways & Transport

Swindon Borough Council

Wat Tyler House

Beckhampton Street

Swindon

SN1 2JG

Email:jdeeley@swindon.gov.uk

Secondary contact

Philip Martlew

Highways & Transport

Swindon Borough Council

Wat Tyler House

Beckhampton Street

Swindon

SN1 2JG

Email:pmartlew@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 must provide all appropriate supporting documentation. 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 CDR, 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. 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 and submitted in **DUPLICATE** with one Response clearly marked **Master**. 1 USB soft copy of the response shall support these documents. If discrepancies between the copies are found, the Master 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 Thursday 13th July 2017**. Documentation not returned by the due date and time will be excluded from evaluation.

|  |  |
| --- | --- |
| Closing Date for Tender Clarifications | 6th July 2017 |
| Tender return by | 13th July 2017 |
| Evaluate Tender | 13th to 20th July 2017 |
| Preferred Bidder Status validation | 20th to 27th July 2017 |
| Issue reject/accept letters  | 27th July 2017 |
| Award contract | 29th July to 26th August 2017 |
| Implement Contract by | 1st September 2017 |

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.

## 13 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.

* 1. The evaluation process is separated into two separate stages as follows.

**Stage 1** – **Selection Criteria**

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

|  |
| --- |
| **13.3.1 STAGE 1 – STANDARD QUESTIONNAIRE**  **EVALUATION MODEL** |
| The evaluation model below shall be used for this questionnaire and is separated into two elements:Mandatory ‘pass/fail’ sections - A Tenderer must achieve a pass for **all** of the parts set out in 13.3.2 Please note if a potential supplier cannot provide evidence of ‘self-cleaning’ that is acceptable to the authority, they are to be excluded from further participation in the procurement and provided with a statement of the reasons for that decision.Only Tenderers who pass all of the pass/fail parts set out in 13.3.2 will be eligible to have their bids assessed against the **Stage 2** - **Award Criteria**.  |
| **13.3.2 Mandatory Pass/Fail Selection Criteria** |
| **Questionnaire Section 4 Reference** | **Mandatory Requirements to pass**  |
| General  | Tender Questionnaire response in the format as requested |
| General  | Tender Questionnaire response received on time |
| General  | All Sections fully completed including signed declaration. Electronic signature is acceptable. |
| General | For Part 1 and Part 2 every organisation that is being relied upon to meet the selection criteria must complete and submit the self-declaration. |
| Part 2 Exclusion Grounds Section 2.1.a - Grounds for Mandatory Exclusion | All Section 2.1.a and 2.3 a answered ‘No’ or evidence of self-cleaning provisions including remedial action, to the satisfaction of the contracting authority, in your response to 2.1(b), 2.2, 2.3 ( b) |
| Part 2 Exclusion Grounds Section 3.1 a-j – Grounds for Discretionary exclusion  | All Section 3.1 answered No’ or evidence of self-cleaning provisions including remedial action, to the satisfaction of the contracting authority, in your response to 3.2 |
| Part 3: Selection Questions Section 4.1 - Economic and Financial Standing | Answer Yes to 4.1 or if answering No then select one option from 4.1 (a) –( c) that you can provide to demonstrate your economic and financial standing |
| Part 3: Selection Questions Section 4.2 - Economic and Financial Standing | Self-certifying ‘YES’ you meet the minimum level of economic and financial standing and/or a minimum financial threshold as set out below:Turnover £240,000 and Positive Net Worth  |
| Part 3 Section 5 - Economic and Financial Standing / part of a wider group | If part of a wider group, and relying on the wider group to meet the selection criteria answer ‘Yes’ to providing Parent/Holding Company Accounts and ‘Yes’ to either 5.2 or 5.3 providing a guarantee |
| Part 3 Section 6 – Technical and Professional Ability | Must provide details of at least one relevant contract or satisfactory response to 6.3. setting out why you cannot provide an example and evidence that the required technical expertise and human resource and experience exist in your company  |
| Part 3 Section 7 – Pricing7.4 DfT funding | Bidders shall confirm that their pricing does not exceed the DfT funding rates stated |
| Part 3 Section 7 – Modern Slavery Act 2015 | If Self-certifying ‘Yes’ or N/A to 7.1, also self-certifying ‘Yes’ to 7.2 or providing an explanation to the satisfaction of the contracting authority |
| Part 3 Section 8 – Additional Questions8.1 a) Insurance  | Self-certifying ‘Yes’, you already have or can commit to obtain, prior to commencement of the contract the levels of Insurance cover indicated. |
| Part 3 Section 8 – Additional Questions8.4 a) Health and Safety | Self-certifying ‘Yes’ your organisation has a Health and Safety Policy that complies with current legislative requirements.Please note that for candidates with fewer than five employees that is not a mandatory requirement. |
|  8.5 a to c) | Self-certifying ‘Yes’ to all questions. |

**13.4 Stage 2 – Award Criteria**

Tenderers who are successful at Stage 1 Selection Criteria qualify to have their submission assessed the Award Criteria where we are seeking to identify the Most Economically Advantageous Tender (MEAT) as follows:

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| **13.4.1 STAGE 2 - AWARD CRITERIA**  **EVALUATION MODEL** |
| The breakdown of questions and associated weightings from the Pricing Schedule and Tender Questionnaire are identified below. |
| **Item** | **No.** | **Pricing Schedule** | **Weighting (out of 100%)** |
| ***Price* (pricing schedule as shown in Appendix I)*****Tender Award Questions*** | *n/a* | Submitted Price for Level 1 | 8 |
| *n/a* | Submitted price for Level 2 | 27 |
| *n/a* | Submitted price for Level 1/2 combined | 2 |
| *n/a* | Submitted price for Level 3 | 1 |
| *n/a* | Submitted price for Bikeability Balance | 2 |
| **Sub-total** | **40** |
|  |
| 6.1.1 | Method statement | 20 |
| 6.1.2 | Quality Assurance | 15 |
| 6.1.3 | Supporting access to training | 10 |
| 6.1.4 | Other support | 5 |
| **Sub-total** | **60** |
| **Total** | 100 |

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| **Evaluation Criteria – Price elements**  |
| **Price elements** will be judged using the following methodology:The lowest price for a response which meets the pass criteria shall score 10. All other bids shall be scored on a pro rata basis in relation to the lowest price.For example:Bid 1 £20 scores 10Bid 2 £24 differential £4 or 20% remove 20% from price scores 8Bid 3 £30 differential £10 or 50% remove 50% from price scores 5Bid 4 £35 differential £15 or 75% remove 75% from price scores 2.5. The lowest score possible is 0. Please note that any price which exceeds the stated DFT funding will be an automatic fail. All scores are then subjected to a multiplier e.g. if price has a scoring criteria of 70%, the multiplier will be 7. |

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| **Award Evaluation Criteria – Non-price elements** |
| **Non-Price elements** will be judged on a score from 0 to 5, which shall be subjected to a multiplier so criteria worth 20% will have a 0-5 score and a multiplier of 4. The 0-5 score shall be based on: |
| 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. |

13.5 A detailed and numerically weighted evaluation matrix shall be used as part of the assessment, which will be determined to **two** (2) decimal places.

13.6 The evaluation panel of both stages may comprise the Authority, both commercial and operational (including commercial partners). Additionally depending on the contract, specific users of the works may also be invited to participate in the evaluation process, to which the Authority may consult such users during the procurement process.

13.7 After the initial tender evaluation the Tenderer with the Most Economically Advantageous Bid will become the Preferred Bidder and will be required to provide valid, complete documentation to support its bid as outlined in Section 4 Standard Selection Questionnaire. To support the Preferred Bidder status and finalise the evaluation process the Tenderer will be given five working 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.

13.8 The Authority has the right to withdraw preferred bidder status should the documentation not be submitted by the deadline or does not support statements made in the preferred bidder’s tender.

13.9 There are a number of Pass/Fail elements which the Tenderer will be required to ‘Pass’ to be considered for this opportunity.

13.10 Failure to comply with the Authority’s requirements for these mandatory sections **will** result in disqualification from the tender evaluation process.

 Please note there may be individual word limits prescribed for certain responses within the Tender and these will be clearly identified after the relevant question. Should any response you provide within your Tender submission exceed the specified word limit then the Authority will only consider the response up to the word limit for evaluation purposes. Supporting information will not be included in the associated word count, but this must be both reasonable and relevant to the specific referenced question.

## 14 Sureties NOT USED

## 15 Acceptance of Tender

15.1 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.

## 16 Post Tender Clarification

16.1 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.

## 17 Tender Compliance

17.1 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.

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| **Section 2 – General Conditions of Contract – Services – Table of Contents** |
| **Part 1 General Provisions**1 [Definitions and Interpretations](#DefinitionsandInterpretations)2 [Term](#Term)3 [Authority’s Obligations](#AuthoritysObligations)4 [Entire Agreement](#EntireAgreement) 5 [Scope of Agreement](#ScopeofAgreement)6 [Notices](#Notices)7 [Authorised Representatives](#AuthorisedRepresentatives)8 [Mistakes in Information](#MistakesinInformation)9 [Conflicts of Interest](#ConflictsofInterest)10 [Fraud](#Fraud)Part 2 The Provision of Services11 [The Services](#TheServices)12 [Manner of Carrying Out the Services](#MannerofCarryingOuttheServices)13 [Sufficiency of Information](#SufficiencyofInformation)14 [Free Issue of Materials](#FreeIssueofMaterials)15 [Quality and Standards](#QualityandStandards)16 [Non Exclusivity](#NonExclusivity)17 [Key Personnel](#KeyPersonnel)18 [Contractors Staff](#ContractorsStaff)19 [Inspection of Premises](#InspectionofPremises)20 [Agreement to Occupy the Authority’s Premises](#AgreementtoOccupyAuthoritysPremises)21 [Authority Property](#AuthorityProperty)22 [Sub-Contracting for the Delivery of Services](#SubContractingfortheDeliveryofthe)23 [Offers of Employment](#OffersofEmployment)**Part 3 Payment and Price**24 [Price](#Price)25 [Payment and Tax](#PaymentandTax)26 [Recovery of Sums Due](#RecoveryofSumsDue)27 [Price Adjustment on Extension](#PriceAdjustmentonExtension)28 [Currency](#Currency)29 [Change of Law](#ChangeofLaw)**Part 4 Statutory Obligations, Codes of Practice and Regulations**30 [Prevention of Corruption](#PreventionofCorruption)31 [Discrimination](#Discrimination)32 [The Contracts (Rights of Third Parties) Act 1999](#TheContractsRightsofThirdParties)33 [Environmental, Social and Labour Requirements](#EnvironmentalRequirements)34 [Health and Safety](#HealthandSafety) 35 Disclosure and Barring Service36 [TUPE](#TUPE) | **Part 5 Protection of Information**37 [Data Protection Act](#DataProtectionAct)38 [Confidentiality](#Confidentiality)39 [Security of Confidential Information](#SecurityofConfidentialInformation)40 [Authority Policies](#AuthorityPolicies)41 [Freedom of Information](#FreedomofInformation)42 [Publicity, Media and Official Enquiries](#PublicityMediaandOfficialEnquiries) 43 [Security](#Security)44 [Intellectual Property Rights](#IntellectualPropertyRights)45 [Copyright](#Copyright)46 [Audit and the Audit Commission](#AuditandtheAuditCommission) 47 [Local Commissioner](#LocalCommissioner)**Part 6 Control of the Agreement**48 [Assignment and Sub-Contracting](#AssignmentandSubContracting)49 [Waiver](#Waiver)50 [Variation of the Services](#VariationoftheServices)51 [Severability](#Severability)52 [Remedies in the Event of Inadequate Performance](#RemediesintheEventofInadequatePerf)53 [Remedies Cumulative](#RemediesCumulative)54 [Monitoring of Performance](#MonitoringofPerformance)55 [Possible Extension of Term](#PossibleExtensionofTerm)56 [Novation](#Novation)**Part 7 Liabilities**57 [Indemnity and Insurance](#IndemnityandInsurance)58 [Professional Indemnity](#ProfessionalIndemnity)59 [Warranties and Representations](#WarrantiesandRepresentations)Part 8 Default, Disruption and Termination60 [Termination on Change of Control and Insolvency](#TerminationonChangeofControlandIns)61 [Termination on Default](#TerminationonDefault)62 [Break](#Break)63 [Termination under Public Contracts Directive](http://pm/proctk/Tender/Over%20%C2%A3100%2C000/OJEU%20Open%20Procedure/1)64 [Consequences of Termination](#ConsequencesofTermination)65 [Business Continuity and Disruption](#BusinessContinuityandDisruption)66 [Recovery upon Termination](#RecoveryuponTermination)67 [Force Majeure](#ForceMajeure)Part 9 Best Value Duty68 [Authority’s Best Value Duty](#AuthoritysBestValueDuty)69 [Customer Satisfaction Survey](#CustomerSatisfactionSurvey)70 [Annual Service Report & Annual Service Plan](#AnnualServiceReportandAnnualServiceP)Part 10 Disputes Resolution and Law 71 [Governing Law and Language](#GoverningLawandLanguage)72 [Dispute Resolution](#DisputeResolution) |

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:

|  |  |
| --- | --- |
| **“1999 Act”** | means the Local Government Act 1999 |
|  |  |
| **“Agreement”** | means this agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender, [the Tender] [and any other documents (or parts thereof) specified by the Authority]. |
|  |  |
| **“Annual Service Plan”** | means a written statement containing the Contractor’s proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice |
|  |  |
| **“Annual Service Report”** | means a written report provided to the Authority to the reasonable satisfaction of the Authority |
|  |  |
| **“Approval” and “Approved”** | means the written consent of the Contract Manager. |
|  |  |
| **“Authority”** | means Swindon Borough Council, its successors and assigns. |
|  |  |
| **“Authority Property”** | means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Agreement |
|  |  |
| **“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. |
|  |  |
| **“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. |
|  |  |
| **“Commencement Date”** | means the 1st day of September 2017 |
|  |  |
| **“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 Contractor to the Authority in confidence for the period set out in that Schedule; and/or |
|  | (b) that constitutes a trade secret. |
|  |  |
| **“Commercially Sensitive Information Schedule”** | means the Schedule containing a list of the Commercially Sensitive Information. |
|  |  |
| **“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. |
|  |  |
| **“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. |
|  |  |
| **“Contracting Authority”** | means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority. |
|  |  |
| **“Contractor”** | means the person, firm, organisation or company with whom the Agreement is made. |
|  |  |
| **“Contractor’s Representative”** | means the individual from time-to-time authorised to act on behalf of the Contractor for the purposes of the Agreement. |
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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 Contractor’s Annual Service Report and Annual Service Plan; |
|  |  |
| **“Customer Satisfaction Survey Date”** | means by end of March and August in each year of the Term. |
|  |  |
| **“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 |
|  |  |
| **“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  |
|  |  |
| **“Equipment”** | means the Contractor’s equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement. |
|  |  |
| **“Environmental Information Regulations”** | means the Environmental Information Regulations 2004. |
|  |  |
| **“Expiry Date”** | means the 31st day of March 2020 or such other date where the Agreement is terminated or there is an Extension |
|  |  |
| **“Extension”** | means the extension of the duration of the Agreement agreed in accordance with clause 2.2. |
|  |  |
| **“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 Contractor’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 Contractor) 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. |
|  |  |
| **“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. |
|  |  |
| **“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 Contractor 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  |
|  |  |
| **“Monitoring Schedule”** | means the Schedule containing details of the monitoring arrangements. |
|  |  |
| **“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 Contractor by the Authority under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 24.  |
|  |  |
| **“Pricing Schedule”** | means the Schedule containing details of the Price. |
|  |  |
| **“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 Contractor’s would reasonably and ordinarily be expected to comply as supplemented by the Specification. |
|  |  |
| **“Replacement Contractor”** | 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. |
|  |  |
| **“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. |
|  |  |
| **“Specification Schedule”** | means the Schedule 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 Contractor to perform the Agreement together with the Contractor’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 Contractor’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 Contractor.

##### 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.

4.2 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.

4.3 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.

4.4 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 Contractor as defined by the Partnership Act 1890.

5.2 In carrying out its obligations under the Agreement, the Contractor shall be acting as principal and not as the agent of the Authority and the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor 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  | Jane Deeley |
| Address | Wat Tyler House West (4th floor) |
|  | Beckhampton Street |
|  | Swindon |
| Postcode | SN1 2JG |
| Tel | 01793 466335 |
| Email | jdeeley@swindon.gov.uk |
|  |  |

1. For the Contractor:

|  |  |
| --- | --- |
| 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 Contractor will be notified in writing if there is a change to the person who is its Contract Manager.

7.2 The Contractor's Representative shall be as defined in the clause 6.3(b) and who shall have the power on behalf of the Contractor in connection with any matter relating to the performance of the Agreement. The Contractor 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 Contractor's Representative will hold annual review meetings to monitor the Contractor'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 Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor 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 Contractor shall take appropriate steps to ensure that neither the Contractor 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 Contractor or such persons and the duties owed to the Authority under the provisions of the Agreement. The Contractor 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 Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor’s suppliers, in connection with the receipt of monies from the Authority. The Contractor 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 Contractor shall provide the Services during the Term in accordance with the Authority’s requirements as set out in the Specification and the terms of the Agreement. The Authority shall have the power to inspect and examine the performance of the Services at the Premises at any reasonable time.

11.2 The Contractor shall at all times deliver the Services in accordance with the Law.

11.3 If the Authority informs the Contractor that the Authority considers that any part of the Services do not meet the requirements of the Agreement 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 Contractor 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.

11.4 Subject to the Authority providing Approval in accordance with clause 12.2, 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.

11.5 Without prejudice to any other rights and remedies the Authority may have pursuant to the Agreement, the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Contractor’s delay in the performance of its obligations under the Agreement and which delay the Contractor has failed to remedy following reasonable notice from the Authority. For the avoidance of doubt, the Contractor’s obligation to reimburse the Authority under this clause does not arise to the extent that the delay was caused by a delay or failure by the Authority to provide Approval under clause 12.2.

**12** **Manner of Carrying Out the Services**

12.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

12.2 The Contractor shall make no delivery of Equipment nor commence any work on the Authority’s Premises without obtaining the Authority’s prior Approval.

12.3 All Equipment brought onto the Authority’s Premises shall be at the Contractor’s own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority’s Premises will remain the property of the Contractor.

12.4 The Contractor shall maintain all items of Equipment within the Authority’s Premises in a safe, serviceable and clean condition.

12.5 All Equipment shall be at the risk of the Contractor. The Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.

12.6 The Authority shall have the power at any time during the performance of the Services to order in writing that the Contractor remove from the Authority’s Premises any Equipment which in the opinion of the Authority is either hazardous, noxious or not in accordance with the Agreement and if the Authority has ordered the Contractor to remove any item of Equipment, to replace such item with a suitable substitute item of Equipment.

12.7 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the Services in order to leave the Authority’s Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Authority’s premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of the Contractor’s employees, servants, agents, suppliers or sub-contractors.

12.8 Access to the Authority’s Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor’s suppliers as are necessary to perform of the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Authority’s Premises as the Authority may reasonably require and shall not impede in any way the Authority or its officers, contractors or agents in the exercise of the Authority’s rights of possession and control over the Premises (if any).

## 13 Sufficiency of Information

13.1 The Contractor 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 under the Agreement 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 Free Issue of Materials

14.1 Where the Authority, for the purposes of the Agreement, issues materials free of charge to the Contractor such materials shall be and remain the property of the Authority. The Contractor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Contractor shall use such materials solely in connection with the Agreement. Any surplus materials shall be disposed of at the Authority discretion.

14.2 The Contractor shall be afforded a reasonable opportunity to inspect the issued materials on delivery and carry out such tests as are reasonably practicable, or are specified in the Specification to satisfy himself as to the suitability of the issued materials. The Authority shall have no liability in respect of any defect in the issued materials which such inspection or testing would have revealed.

# 15 Quality and Standards

# 15.1 The Contractor 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 Contractor 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.

15.2 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.

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

15.4 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.

**16** **Non Exclusivity**

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

16.2 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.

**17** **Key Personnel**

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

17.2 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.

**18** **Contractor’s Staff**

18.1 The Authority reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:

(a) any member of the Staff; or

(b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor

 whose admission or continued presence would be, in the reasonable opinion of the Authority, undesirable.

18.2 If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Authority may reasonably desire.

18.3 The Contractor’s Staff, engaged within the boundaries of any of the Authority’s Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

18.4 The decision of the Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Authority shall be final and conclusive.

18.5 The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this clause.

**19** **Inspection of Premises**

19.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Agreement to be carried out and be satisfied in relation to all matters connected with the performance of the Agreement.

19.2 The Authority shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in clause 19.1.

## 20 Agreement to Occupy Authority’s Premises

20.1 Where any land or Premises (including temporary buildings) are made available by the Authority for occupation by the Contractor in connection with the Agreement, those Premises shall be made available to the Contractor on the terms contained in an agreement regulating the occupation of those Premises.

**21** **Authority Property**

21.1 Where the Authority for the purpose of the Agreement issues Authority Property free of charge to the Contractor such property shall be and remain the property of the Authority. The Contractor shall not in any circumstances have a lien on the Authority Property and the Contractor shall take all reasonable steps to ensure that the title of the Authority to such Authority Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.

21.2 Any Authority Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.

21.3 The Contractor shall maintain all Authority Property in good order and condition, excluding fair wear and tear, and shall use Authority Property solely in connection with the Agreement and for no other purpose without prior Approval.

21.4 The Contractor shall notify the Contract Manager of any surplus Authority Property remaining after the expiry, termination and/or partial termination (as appropriate) the Agreement and shall dispose of it as the Authority may direct. Waste of such Authority Property arising from bad workmanship or negligence of the Contractor or any of the Contractor’s employees, servants, agents, suppliers or sub-contractors shall be made good at the Contractor’s expense. Without prejudice to any other rights of the Authority, the Contractor shall deliver up Authority Property whether processed or not to the Authority on demand.

21.5 The Contractor shall ensure the security of all Authority Property, whilst in the Contractor’s possession, either on its Premises or elsewhere during the performance of the Agreement, in accordance with the Authority’s reasonable security requirements as required from time to time.

21.6 The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Authority Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Authority. The Contractor’s liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Authority. The Contractor shall inform the Contract Manager within [2] two Working Days of becoming aware of any defects appearing in or losses or damage occurring to Authority Property made available for the purposes of the Agreement.

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

22.1 Where the Contractor 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 Contractor 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 Contractor 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 Contractor’s obligations under the Agreement by the Contractor, the Authority shall pay the Price in accordance with clause 25.

24.2 In the event that the cost to the Contractor 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 Contractor, 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 12 months, any agreed written price change shall take effect on the anniversary of the Commencement Date and the Price will be calculated in accordance with the percentage increase or decrease against the previous months Retail Price Index (excluding mortgages), published by the Office for National Statistics. Any price increase shall not be greater than the Retail Price Index (excluding mortgages.

25 Payment and Tax

25.1 The Authority shall pay the undisputed sums due to the Contractor 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 Contractor 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 Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

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

25.6 The Contractor 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 Contractor (including any sum which the Contractor 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 Contractor under the Agreement or under any other agreement or contract with the Authority.

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

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

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 Contractor 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 Contractor at nil charge to the Authority.

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

#### 29 Change of Law

29.1 The Contractor 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 Contractor 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 Contractor 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 Contractor’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 Contractor can mitigate the effect of the Specific Change of Law, including:

(a) providing evidence that the Contractor 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 Contractor 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 Contractor’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 Contractor, its employees or anyone acting on the Contractor'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 Contractor 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 Contractor's liability shall not apply to this clause.

31 Discrimination

31.1 The Contractor 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 Contractor 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 Contractor must observe as far as

possible the Code and the Human Rights Act 1998

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

may reasonably require in order for the Authority to assess the Contractor’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 Contractor has unlawfully discriminated against any person in the provision of the Services then the Contractor 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 The Contractor shall, when working on the Authority’s Premises, perform the Agreement in accordance with the Authority’s environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

33.2 In performance of their obligations under the Agreement the Contractor 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 Contractor 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 Contractor of any health and safety hazards which may exist or arise at the Authority’s Premises and which may affect the Contractor in the performance of the Agreement.

34.2 While on the Authority’s Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working on those Premises.

34.3 The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Agreement on the Authority’s Premises where that incident causes any personal injury, damage to property which could give rise to personal injury or any incident falling into scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

34.4 The Contractor 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.

34.5 The Contractor 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.

34.6 The Contractor shall at all times during the Term, provide and maintain all such vehicles, plant, machinery and equipment (hereinafter together referred to as “plant”) as are necessary for the proper performance of this Agreement. Vehicles used on this Agreement shall comply with the Supply of Machinery Regulations 1992 and be of a design, which is entirely suitable for the performance of this Agreement.

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

35.1 The Contractor 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 Contractor 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 Contractor or on the Contractor’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 Contractor 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 Contractor 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 Contractor 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 Contractor. It is the responsibility of the Contractor 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 Contractor`s use of any volunteers in the performance of the Services

**36 TUPE**

36.1 The Contractor recognises that TUPE may apply in respect of this Agreement, and should they so apply that for the purposes of TUPE, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of full operations.

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 Contractor stops trading, and within 20 working days of being so requested by the Authority, the Contractor 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 Contractor 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 Contractor shall permit the Authority to use the information for the purposes of TUPE and of re-tendering. The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor becoming aware that the information originally given was inaccurate, the Contractor 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 Contractor 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 Contractor is processing personal data (as defined by the DPA) as a data processor for the Authority (as defined by the DPA) the Contractor 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 Contractor 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 Contractor 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 Contractor’s expense) with the Data Protection Officer to enable the Authority to comply with the Subject Access Request.

37.5 The Contractor 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 Contractor 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 Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor’s confidentiality obligations under the Agreement. Additionally, where it is considered necessary in the opinion of the Authority, the Contractor 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 Contractor:

(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 Contractor 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 Contractor undertakes to maintain security systems Approved by the Authority. Where necessary to prevent such access, the Authority may require the Contractor to alter any security systems at any time during the Term at the Contractor’s expense.

39.2 The Contractor 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 Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor’s obligations under clause 38. The Contractor 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 Contractor 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 Contractor shall use its best endeavours to ensure that the standards set out in the Charter are met.

40.3 Where the Contractor has been appointed as agent for the Authority and under this Agreement is required to let contracts, the Contractor 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 Contractor 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 Contractor’s expense) to enable the Authority to comply with these Information disclosure requirements.

41.2 The Contractor 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 Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

41.4 The Contractor 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 Contractor, or

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

41.5 The Contractor 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 Contractor 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 Contractor 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 Contractor 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.

43 Security

43.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its Staff shall likewise comply with such requirements.

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 Contractor by the Authority shall remain the property of the Authority;

(b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to the Authority and the Contractor shall not, and shall procure that the Contractor’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 Contractor may obtain in performing the Agreement except information which is in the public domain.

44.2 The Contractor 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 Contractor 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 Contractor 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 Contractor under any provision of the Agreement.

44.4 The Authority shall notify the Contractor 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 Contractor. The Contractor 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 Contractor, provided always that the Contractor:

(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 Contractor is likely to be made, the Contractor 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 Contractor 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 Contractor may obtain or make at their own expense any further copies required for use by them for performing the Agreement.

46 Audit and the Audit Commission

46.1 The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor'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 Contractor of the Services.

Part 6 – Control of the Agreement

48 Assignment and Sub-Contracting

48.1 The Contractor 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 Contractor of any obligation or duty attributable to the Contractor under the Agreement.

48.2 The Contractor 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 Contractor’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 Contractor 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 Contractor 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 Contractor, or the Contractor’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 Contractor 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 Contractor 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 Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor 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 Contractor 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 Contractor for such part of the relevant Services.

* 1. If the Contractor 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 Contractor to remedy the failure and the Contractor 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 Contractor 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 Contractor 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 Contractor.

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

55 Possible Extension of Term

 Not applicable

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 Contractor’s obligations under this Agreement.

56.2 The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Contractor, which relates to the performance of the Agreement by the Contractor. 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 Contractor 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 Contractor 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 Contractor 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 Contractor is required to come onto premises owned by the Authority, the Contractor 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 Contractor 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 Contractor 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 Contractor.

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

58 Professional Indemnity

 Not applicable

59 Warranties and Representations

59.1 The Contractor warrants and represents that:

(a) the Contractor 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 Contractor;

(b) the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor is an individual or a firm and a petition is presented for the Contractor’s bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor 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 Contractor’s or firm’s affairs; or

(c) the Contractor 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 Contractor 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 Contractor shall notify the Contract Manager immediately when any change of control occurs.

60.3 If the Contractor, 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 Contractor or the Contractor’s Representative with immediate effect.

61 Termination on Default

61.1 The Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor’s Representative with immediate effect if the Contractor commits a Default and if:

(a) the Contractor has not remedied the Default to the satisfaction of the Authority within 14 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 Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Contractor 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 Contractor.

#### 61.3 The Contractor may terminate the Agreement if the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority 60 Working Days’ notice specifying the breach and requiring its remedy. The Contractor’s right of termination under this clause 61.3 shall not apply to non-payment of the charges or Price where such non-payment is due to the Authority exercising its rights under clauses 26.1 and 52.2(a).

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 at any time by giving three Months’ written notice to the Contractor.

**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 Contractor 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 Contractor

64 Consequences of Termination

64.1 Where the Authority terminates the Agreement under clause 61, or terminates the provision of any part of the Agreement under that clause, and then makes other arrangements for the provision of Services, the Authority shall be entitled to recover from the Contractor 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 Contractor 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 Contractor against any commitments, liabilities or expenditure, which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor 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 Contractor, and the Contractor 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

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

65 Business Continuity and Disruption

65.1 The Contractor 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 Contractor’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 Contractor 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 Contractor 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 Contractor’s suppliers the Contractor shall seek Approval of its proposals for the continuance of the Contractor’s performance of the Services in accordance with its obligations under the Agreement.

65.6 If the Contractor’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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor grants licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

66.3 At the Expiry Date (howsoever arising) the Contractor 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 Contractor 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 Contractor 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 Contractor shall, on each Customer Satisfaction Survey 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 Contractor to enable the Contractor to undertake the Customer Satisfaction Survey.

69.4 Within [one month] of each Customer Satisfaction Survey Date, the Contractor 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 Contractor) 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 Contractor shall at its own cost, provide to the Authority the Annual Service Report.

70.2 The Contractor 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 Contractor a Services Improvement Notice.

70.4 The Contractor 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 Contractor’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 Contractor 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 21 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the relevant Group Director of the Authority and a senior manager or director of the Contractor (or equivalent) of each Party.

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 Contractor (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>

Swindon Borough Council (SBC) has a long-standing cycle training programme, currently delivering level 1/2 training to around 1200 children each year, mostly in Year 6 at primary schools. Part of the delivery is carried out by a small in-house team of casual instructors, and part is out-sourced to a local organisation selected through a previous tendering process. Responsibility for Bikeability training rests with the Road Safety Officer within the Traffic Management Team, part of Highways and Transport.

Swindon has 64 primary schools (including 5 infant only and 5 junior only) with a Year 6 population of 2610 (Oct 2016). There are currently 11 secondary schools in the Borough, plus a University Technical College.

In 2016 SBC applied for and were awarded Bikeability grant funding from DfT to cover the period from April 2017-March 2020. This grant award includes funding for Level 1/2 and Level 3 training, as previously, plus the gradual introduction of stand-alone Level 1 and Level 2 courses over the duration of the grant. There is also funding available to introduce Bikeability Balance training at primary schools.

Level 1 covers basic bike handling skills and is delivered in a traffic-free environment, such as a playground.

Level 2 is taught on quiet roads, but in real traffic conditions and covers simple manoeuvres and road sense.

Level 3 covers more complex situations and equips the cyclist to handle a wide range of traffic conditions and road layouts.

Bikeability Balance is a series of school-based sessions using games and balance bikes to help children develop the handling and awareness skills they will need to take part in Bikeability Level 1.

TUPE Information

|  |  |
| --- | --- |
| **Post** | Casual Road Safety Assistant |
| **Number employed on casual basis** | 4 (of whom 2 spend majority of time on Bikeability) |
| **Hourly rate (inclusive of all costs)** | £10.42 |
| **Total Bikeability hours paid 2016-17** | 2315 |

Section 4 - Tender Questionnaire

Note to Tenderers on Standard Questionnaire

**Potential Supplier Information and Exclusion Grounds: Part 1 and Part 2.**

The standard Selection Questionnaire is a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion[[1]](#footnote-1). If there are grounds for exclusion, there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning).

A completed declaration of Part 1 and Part 2 provides a formal statement that the organisation making the declaration has not breached any of the exclusions grounds. Consequently we require all the organisations that you will rely on to meet the selection criteria to provide a completed Part 1 and Part 2. For example these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This means that where you are joining in a group of organisations, including joint ventures and partnerships, each organisation in that group must complete one of these self-declarations. Sub-contractors that you rely on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the self-declaration).

*Alternatively you can submit the completed Exclusion Grounds of the* [*EU ESPD*](https://ec.europa.eu/tools/espd) *(Part III) as a downloaded XML file to the buyer contact point along with the selection information requested in the procurement documentation*.

**Supplier Selection Questions: Part 3**

This procurement document will provide instructions on the selection questions you need to respond to and how to submit those responses. If you are bidding on behalf of a group (consortium) or you intend to use sub-contractors, you should complete all of the selection questions on behalf of the consortium and/or any sub-contractors.

If the relevant documentary evidence referred to in the Selection Questionnaire is not provided upon request and without delay we reserve the right to amend the contract award decision and award to the next compliant bidder.

**Consequences of misrepresentation**

If you seriously misrepresent any factual information in filling in the Selection Questionnaire, and so induce an authority to enter into a contract, there may be significant consequences. You may be excluded from the procurement procedure, and from bidding for other contracts for three years. If a contract has been entered into you may be sued for damages and the contract may be rescinded. If fraud, or fraudulent intent, can be proved, you or your responsible officers may be prosecuted and convicted of the offence of fraud by false representation, and you must be excluded from further procurements for five years.

**Notes for completion**

1. The “authority” means the contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite suitable candidates to participate in this procurement process.
2. “You” / “Your” refers to the potential supplier completing this standard Selection Questionnaire i.e. the legal entity responsible for the information provided. The term “potential supplier” is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 (referred to as the “regulations”) and could be a registered company; the lead contact for a group of economic operators; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.
3. Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state ‘N/A’. Should you need to provide additional information in response to the questions, please submit a clearly identified annex.
4. The authority recognises that arrangements set out in section 1.2 of the standard Selection Questionnaire, in relation to a group of economic operators (for example, a consortium) and/or use of sub-contractors, may be subject to change and will, therefore, not be finalised until a later date. The lead contact should notify the authority immediately of any change in the proposed arrangements and ensure a completed Part 1 and Part 2 is submitted for any new organisation relied on to meet the selection criteria. The authority will make a revised assessment of the submission based on the updated information.
5. For Part 1 and Part 2 every organisation that is being relied on to meet the selection must complete and submit the self-declaration.
6. For answers to Part 3 -If you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration.

The authority confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the regulations, or pursuant to an order of the court or demand made by any competent authority or body where the authority is under a legal or regulatory obligation to make such a disclosure.

The Standard 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.

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.

**Consortia arrangements**

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.

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.

Section 4 - Standard Questionnaire

**Part 1: Potential supplier Information**

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

|  |  |
| --- | --- |
| Section 1 | Potential supplier information |
| Question number | Question | Response |
| 1.1(a) | Full name of the potential supplier submitting the information |  |
| 1.1(b) – (i) | Registered office address (if applicable) |  |
| 1.1(b) – (ii) | Registered website address (if applicable) |  |
| 1.1(c) | Trading status 1. public limited company
2. limited company
3. limited liability partnership
4. other partnership
5. sole trader
6. third sector
7. other (please specify your trading status)
 |  |
| 1.1(d) | Date of registration in country of origin |  |
| 1.1(e) | Company registration number (if applicable) |  |
| 1.1(f) | Charity registration number (if applicable) |  |
| 1.1(g) | Head office DUNS number (if applicable) |  |
| 1.1(h) | Registered VAT number  |  |
| 1.1(i) - (i) | If applicable, is your organisation registered with the appropriate professional or trade register(s) in the member state where it is established? | Yes ☐No ☐N/A ☐ |
| 1.1(i) - (ii) | If you responded yes to 1.1(i) - (i), please provide the relevant details, including the registration number(s). |  |
| 1.1(j) - (i) | Is it a legal requirement in the state where you are established for you to possess a particular authorisation, or be a member of a particular organisation in order to provide the services specified in this procurement? | Yes ☐No ☐ |
| 1.1(j) - (ii) | If you responded yes to 1.1(j) - (i), please provide additional details of what is required and confirmation that you have complied with this. |  |
| 1.1(k) | Trading name(s) that will be used if successful in this procurement |  |
| 1.1(l) | Relevant classifications (state whether you fall within one of these, and if so which one)1. Voluntary Community Social Enterprise (VCSE)
2. Sheltered Workshop
3. Public service mutual
 |  |
| 1.1(m) | Are you a Small, Medium or Micro Enterprise (SME)[[2]](#footnote-2)? | Yes ☐No ☐ |
| 1.1(n) | Details of Persons of Significant Control (PSC), where appropriate: [[3]](#footnote-3) - Name; - Date of birth; - Nationality; - Country, state or part of the UK where the PSC usually lives; - Service address; - The date he or she became a PSC in relation to the company (for existing companies the 6 April 2016 should be used); - Which conditions for being a PSC are met;  - Over 25% up to (and including) 50%,  - More than 50% and less than 75%,  - 75% or more. [[4]](#footnote-4)(Please enter N/A if not applicable) |  |
| 1.1(o) | Details of immediate parent company: - Full name of the immediate parent company- Registered office address (if applicable)- Registration number (if applicable)- Head office DUNS number (if applicable)- Head office VAT number (if applicable)(Please enter N/A if not applicable) |  |
| 1.1(p) | Details of ultimate parent company:- Full name of the ultimate parent company- Registered office address (if applicable)- Registration number (if applicable)- Head office DUNS number (if applicable)- Head office VAT number (if applicable)(Please enter N/A if not applicable) |  |

Please note: A criminal record check for relevant convictions may be undertaken for the preferred suppliers and the persons of significant in control of them.

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

|  |  |
| --- | --- |
| Section 1 | Bidding model |
| Question number | Question | Response |
| 1.2(a) - (i) | Are you bidding as the lead contact for a group of economic operators? | Yes ☐No ☐ If yes, please provide details listed in questions 1.2(a) (ii), (a) (iii) and to 1.2(b) (i), (b) (ii), 1.3, Section 2 and 3.If no, and you are a supporting bidder please provide the name of your group at 1.2(a) (ii) for reference purposes, and complete 1.3, Section 2 and 3. |
| 1.2(a) - (ii) | Name of group of economic operators (if applicable) |  |
| 1.2(a) - (iii) | Proposed legal structure if the group of economic operators intends to form a named single legal entity prior to signing a contract, if awarded. If you do not propose to form a single legal entity, please explain the legal structure. |  |
| 1.2(b) - (i) | Are you or, if applicable, the group of economic operators proposing to use sub-contractors? | Yes ☐No ☐ |
| 1.2(b) - (ii) | If you responded yes to 1.2(b)-(i) please provide additional details for each sub-contractor in the following table: we may ask them to complete this form as well.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Name |  |  |  |  |  |
| Registered address |  |  |  |  |  |
| Trading status |  |  |  |  |  |
| Company registration number |  |  |  |  |  |
| Head Office DUNS number (if applicable) |  |  |  |  |  |
| Registered VAT number |  |  |  |  |  |
| Type of organisation |  |  |  |  |  |
| SME (Yes/No) |  |  |  |  |  |
| The role each sub-contractor will take in providing the works and /or supplies e.g. key deliverables |  |  |  |  |  |
| The approximate % of contractual obligations assigned to each sub-contractor |  |  |  |  |  |

 |

**Contact details and declaration**

I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.

I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document.

I understand that the information will be used in the selection process to assess my organisation’s suitability to be invited to participate further in this procurement.

I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.

I am aware of the consequences of serious misrepresentation.

|  |  |
| --- | --- |
| Section 1 | Contact details and declaration |
| Question number | Question | Response |
| 1.3(a) | Contact name |  |
| 1.3(b) | Name of organisation |  |
| 1.3(c) | Role in organisation |  |
| 1.3(d) | Phone number |  |
| 1.3(e) | E-mail address  |  |
| 1.3(f) | Postal address |  |
| 1.3(g) | Signature (electronic is acceptable) |  |
| 1.3(h) | Date |  |

**Part 2: Exclusion Grounds**

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

|  |  |
| --- | --- |
| Section 2 | Grounds for mandatory exclusion |
| Question number | Question | Response |
| 2.1(a) | **Regulations 57(1) and (2)** The detailed grounds for mandatory exclusion of an organisation are set out on this [web page](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf), which should be referred to before completing these questions. Please indicate if, within the past five years you, your organisation or any other person who has powers of representation, decision or control in the organisation been convicted anywhere in the world of any of the offences within the summary below and listed on the [webpage](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf). |
|  | Participation in a criminal organisation.  | Yes ☐No ☐If Yes please provide details at 2.1(b) |
|  | Corruption.  | Yes ☐No ☐If Yes please provide details at 2.1(b) |
|  | Fraud.  | Yes ☐No ☐If Yes please provide details at 2.1(b) |
|  | Terrorist offences or offences linked to terrorist activities | Yes ☐No ☐If Yes please provide details at 2.1(b) |
|  | Money laundering or terrorist financing | Yes ☐No ☐If Yes please provide details at 2.1(b) |
|  | Child labour and other forms of trafficking in human beings | Yes ☐No ☐If Yes please provide details at 2.1(b)  |
| 2.1(b) | If you have answered yes to question 2.1(a), please provide further details.Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction,Identity of who has been convictedIf the relevant documentation is available electronically please provide the web address, issuing authority, precise reference of the documents. |  |
| 2.2 | If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self-Cleaning) | Yes ☐No ☐ |
| 2.3(a) | **Regulation 57(3)**Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions? | Yes ☐No ☐ |
| 2.3(b) | If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines. |  |

Please Note: The authority reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

|  |  |
| --- | --- |
| Section 3 | Grounds for discretionary exclusion  |
|  | Question | Response |
| 3.1 | **Regulation 57 (8)**The detailed grounds for discretionary exclusion of an organisation are set out on this [web page](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf), which should be referred to before completing these questions. Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation. |
| 3.1(a) | Breach of environmental obligations?  | Yes ☐No ☐If yes please provide details at 3.2 |
| 3.1 (b) | Breach of social obligations?  | Yes ☐No ☐If yes please provide details at 3.2 |
| 3.1 (c) | Breach of labour law obligations?  | Yes ☐No ☐If yes please provide details at 3.2 |
| 3.1(d) | Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation’s assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State? | Yes ☐No ☐If yes please provide details at 3.2 |
| 3.1(e) | Guilty of grave professional misconduct? | Yes ☐No ☐If yes please provide details at 3.2 |
| 3.1(f) | Entered into agreements with other economic operators aimed at distorting competition? | Yes ☐No ☐If yes please provide details at 3.2 |
| 3.1(g) | Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure? | Yes ☐No ☐If yes please provide details at 3.2 |
| 3.1(h) | Been involved in the preparation of the procurement procedure? | Yes ☐No ☐If yes please provide details at 3.2 |
| 3.1(i) | Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions? | Yes ☐No ☐If yes please provide details at 3.2 |
| 3.1(j)3.1(j) - (i)3.1(j) - (ii)3.1(j) –(iii)3.1(j)-(iv) | Please answer the following statementsThe organisation is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.The organisation has withheld such information.The organisation is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award. | Yes ☐No ☐If yes please provide details at 3.2Yes ☐No ☐If yes please provide details at 3.2Yes ☐No ☐If yes please provide details at 3.2Yes ☐No ☐If yes please provide details at 3.2 |

|  |  |  |
| --- | --- | --- |
| 3.2 | If you have answered Yes to any of the above, explain what measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning) |  |

**Part 3: Selection Questions**[[5]](#footnote-5)

|  |  |
| --- | --- |
| **Section 4** | **Economic and Financial Standing**  |
|  | Question | Response |
| **4.1** | Are you able to provide a copy of your audited accounts for the last two years, if requested?If no, can you provide **one** of the following: answer with Y/N in the relevant box. | Yes ☐No ☐ |
| (a) A statement of the turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of Financial Position and Statement of Cash Flow for the most recent year of trading for this organisation. | Yes ☐No ☐ |
| (b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position. | Yes ☐No ☐ |
|  | (c) Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status). | Yes ☐No ☐ |
| **4.2** | Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering ‘Yes’ or ‘No’ that you meet the requirements set out. | Yes ☐No ☐ |

|  |  |
| --- | --- |
| **Section 5** | **If you have indicated in the Selection Questionnaire question 1.2 that you are part of a wider group, please provide further details below:**  |
| **Name of organisation** |  |
| **Relationship to the Supplier completing these questions** |  |

|  |  |  |
| --- | --- | --- |
| **5.1** | Are you able to provide parent company accounts if requested to at a later stage? | Yes ☐No ☐ |
| **5.2** | If yes, would the parent company be willing to provide a guarantee if necessary? | Yes ☐No ☐ |
| **5.3** | If no, would you be able to obtain a guarantee elsewhere (e.g. from a bank)?  | Yes ☐No ☐ |

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Contract 1** | **Contract 2** | **Contract 3** |
| **Name of customer organisation** |  |  |  |
| **Point of contact in the organisation** |  |  |  |
| **Position in the organisation** |  |  |  |
| **E-mail address** |  |  |  |
| **Description of contract**  |  |  |  |
| **Contract Start date** |  |  |  |
| **Contract completion date** |  |  |  |
| **Estimated contract value** |  |  |  |

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

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

|  |  |
| --- | --- |
| **Section 7** | **Modern Slavery Act 2015:** **Requirements under Modern Slavery Act 2015[[6]](#footnote-6)** |
| **7.1** | Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")? | Yes ☐N/A ☐ |
| **7.2** | If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015? | Yes ☐Please provide relevant the url …No ☐Please provide an explanation |

**8. Additional Questions**

Suppliers who self-certify that they meet the requirements to these additional questions will be required to provide evidence of this if they are successful at contract award stage.

|  |  |
| --- | --- |
| **Section 8** | **Additional Questions**  |
| **8.1** | **Insurance** |
| a. | Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below: Y/N Employer’s (Compulsory) Liability Insurance = £5,000,000Public Liability Insurance = £5,000,000\*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. |

|  |  |
| --- | --- |
| **8.2** | **Skills and Apprentices[[7]](#footnote-7)****NOT USED**  |

|  |  |
| --- | --- |
| **8.3** | **Steel[[8]](#footnote-8)** **NOT USED**  |

|  |  |
| --- | --- |
| **8.4** | **Health and Safety**  |
| **a.** | Please self-certify that your organisation has a written Health and Safety Policy that complies with current legislative requirements. Please note that this requirement does not apply to candidates with fewer than five employees. | Yes ☐No ☐Not applicable ☐ |

|  |  |
| --- | --- |
| **8.5** | **Project Specific**  |
| **a** | Please self-certify that your organisation is a registered Bikeability scheme and provide your registration number |
|  |  |
| **b** | Please self-certify that all instructors provided by your organisation are registered with an Instructor Training Organisation (ITO) |
|  |  |
| **c** | Please self-certify that your organisation has a Child Protection policy  |
|  |  |

**Questionnaire – Template for Appendices**

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

Section 5 - Specification

1. Length of contract

The Supplier will deliver Bikeability training from September 2017 to March 2020.

1. Number of places

The Supplier will deliver training in accordance with the number of places detailed in Table 1 below.

Table 1: Number of training places per Level by Year

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Sept 2017- March 2018 | April 2018 - March 2019 | April 2019 -March 2020 | Total |
| Level 1 | 210 | 334 | 524 | 1068 |
| Level 1/2 | 500\* | 1004 | 786 | 2290 |
| Level 2 | 0 | 0 | 197 | 197 |
| Level 3 | 35 | 33 | 33 | 101 |
| Bikeability Balance | 54 | 147 | 154 | 355 |
| Totals | 799 | 1518 | 1694 | 4011 |

\* Subject to training completed in 2016-17 school year.

1. Training delivery requirements
	1. The Supplier will be a registered Bikeability Scheme and able to provide up-to-date copies of the policy documents required for registration, including but not limited to:
		1. Child Protection Policy
		2. Health & Safety Policy
		3. Generic Risk Assessment
		4. Equalities Policy
		5. Emergency Procedures
		6. Complaints Policy
	2. All training will comply with the minimum requirements for the structure of courses, including minimum training times and instructor:trainee ratios set out in the Bikeability Delivery Guide and Bikeability Plus Delivery Guide. <https://professionals.bikeability.org.uk/download/704/>
	3. All instructors employed to meet the required ratios will be National Standards qualified and be members of an ITO (Instructor Training Organisation). Additional unqualified instructors may support training, but will not be used to meet the ratios.
	4. All instructors will have current DBS clearance before working in Swindon schools.
	5. The Supplier will liaise with individual schools to arrange mutually convenient dates and times for training sessions. This will usually be during the school day, although additional courses may be arranged during after-school or holiday periods to accommodate trainees who cannot attend school-time training.
	6. The Supplier will agree a clear cancellation policy for training sessions with Swindon Borough Council and communicate this to schools at the time of booking. The Supplier will inform the Council of any changes to scheduled training dates as soon as possible.
	7. The Supplier will deliver training throughout the year, subject to extreme weather conditions.
	8. Swindon Borough Council strongly encourages the use of cycle helmets, particularly by children but does not insist on their use for Bikeability training. However, the Supplier will accommodate any policies set by individual schools with regard to the wearing of cycle helmets by their pupils.
	9. The Supplier will work with parents/carers and schools to identify and accommodate any relevant additional needs that may affect a child’s access to training. For example, where a child has a Statement of Special Needs and a support worker, the instructor should discuss the child’s needs with the member of staff and may ask them to support the child during the training session.
	10. The Supplier will ensure that all incidents involving injury or damage to property, or near misses are recorded, and details submitted to the schools and Swindon Borough Council
	11. For Bikeability Levels 1-3, the Supplier will provide the relevant Bikeability badges and certificates for trainees who reach the required levels. For Bikeability Balance, the Supplier will provide Bikeability Balance certificates and stickers for all children who complete the training.
2. Training administration requirements
	1. Swindon Borough Council will collect parental/carer requests for training on an annual basis via schools, and will pass on numbers of potential trainees and their names to individual schools and the Supplier.
	2. The Supplier will obtain written parental/carer consent for each trainee, including relevant information regarding any additional needs.
	3. All promotional material for this service will indicate that the Supplier is working on behalf of Swindon Borough Council. Use of the Swindon Borough Council logo must follow the Council’s Brand Guidelines, which can be supplied on request. The supplier will not utilise this contract to create additional revenues without the express agreement of Swindon Borough Council.
	4. The Supplier will provide to the Council on a monthly basis a summary progress report of numbers trained at each level, details of schools engaged and a timetable showing scheduled delivery of training sessions.
	5. The Supplier will submit a monthly invoice to Swindon Borough Council showing payment due based on the numbers of trainees who have attended each training course.
	6. The supplier will maintain and submit records for each training course at the end of each school term (Oct/Dec/Feb/end Mar/May/Jul) to enable Swindon Borough Council to submit grant claims to the Department for Transport by their required deadlines.
		1. For Level 1-3 training, records will include: name of school (or other venue); start and end dates of course; number of places booked and attended; name, year group and Bikeability Level achieved for each trainee; number of trainees identifying as disabled.
		2. For Bikeability Balance courses, records will include: name of school; start and end dates of course; number of places booked and attended; year group trained; number of trainees achieving Bikeability Balance module outcomes.
	7. The supplier will maintain a log of customer comments/complaints and provide feedback on customer satisfaction from trainees and school representatives to Swindon Borough Council on a half yearly basis in March and August.

Section 6 – Tender Award Questions

Please note your responses to section 6.1 Tender Award Questions form part of the award criteria relating to quality. You must provide full answers in accordance with each questions word count.

|  |
| --- |
| **6.1 Tender Award Questions** |
| **QUALITY QUESTIONS (60% OF TOTAL MARKS)** |
| 6.1.1 | Please provide a short method statement detailing how you will meet the requirements of the specification. (Maximum 1000 words)This should include:* Demonstration of capacity to deliver the number of training places required over the duration of the contract
* Details of the structure of your training sessions for Levels 1-3 including instructor:trainee ratios, and number of hours of training
* Details of the structure of your training sessions for Bikeability Balance
* Numbers of Instructors and Assistant Instructors you will have available for this contract, their qualifications and experience, and employment status
* Details of your procedures for avoiding cancellation of scheduled training sessions.

***20% Weighting***  |
| **TENDERER RESPONSE** |
|  |
| 6.1.2 |  Please provide details of the processes you have in place to manage the quality of the training you deliver.**15% Weighting** |
| **TENDERER RESPONSE** |
|  |
| 6.1.3 | Please explain how your company works to enable all children, including those with additional needs to access Bikeability training ***10% Weighting*** |
| **TENDERER RESPONSE** |
|  |
| 6.1.4 | Please give details of added value that you would be able to bring to this contract, for example support for other cycling-related initiatives. ***5% weighting*** |
| **TENDERER RESPONSE** |
|  |

Section 7 – Pricing and Payment Schedule

|  |
| --- |
| **Pricing & Payment** |
| 7.1 | Tenderers are required to complete the Pricing Schedule included in the ITT/Form of Contract, all prices quoted shall be inclusive of all costs associated in the delivery of this Contract but shall be exclusive of VAT. All costs must be included in this section, as costs appearing elsewhere in the proposal but not mentioned in this Pricing Schedule shall be presumed waived. |
| **Tenderers to confirm compliance****Response (Pass/Fail)** |  |
| 7.2 | The Contractor shall at all times provide every assistance to the Authority in complying with the Local Government Act 1999 with regard to Best Value.  |
| **Tenderers to confirm compliance****Response (Pass/Fail)** |  |
| 7.3 | Tenderer confirms that their pricing does not exceed the DfT funding rates stated |
| **Tenderers to confirm compliance****Response**  |  |

**Please complete prices in the table below for all Levels/modules.**

Prices must be in Pounds Sterling and inclusive of all expenses (including management costs, resources, travel time and mileage costs, preparation and activity costs) but exclusive of VAT.

Prices are to be fixed for the duration of the contract (to end March 2020)

|  |  |  |
| --- | --- | --- |
| Training Level/Module | DfT funding per training place (£) | Price per place (£) |
| Level 1 | £5 |  |
| Level 2 | £40 |  |
| Level 1/2 combined  | £40 |  |
| Level 3 | £40 |  |
| Bikeability Balance | £25 |  |

**I/We can confirm to offer the goods/services specified in compliance with the tender document at the forgoing pricing schedules**

|  |  |
| --- | --- |
| Signed: |  |
| Date: |  / /  |
| Print Name: |  |
| In the capacity of: |  |

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

## Bikeability training

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: Bikeability Training

**Closing Date 12:00hrs 13th July 2017**

**SWINDON BOROUGH COUNCIL**

**ROAD SAFETY OFFICER**

**Wat Tyler House (4th floor)**

## Beckhampton Street

**Swindon**

**SN1 2JG**

**UK**

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

1. For the list of exclusion please see https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/551130/List\_of\_Mandatory\_and\_Discretionary\_Exclusions.pdf [↑](#footnote-ref-1)
2. See EU definition of SME: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/ [↑](#footnote-ref-2)
3. UK companies, Societates European (SEs) and limited liability partnerships (LLPs) will be required to identify and record the people who own or control their company. Companies, SEs and LLPs will need to keep a PSC register, and must file the PSC information with the central public register at Companies House. [See PSC guidance](https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships). [↑](#footnote-ref-3)
4. Central Government contracting authorities should use this information to have the PSC information for the preferred supplier checked before award. [↑](#footnote-ref-4)
5. [See Action Note 8/16 Updated Standard Selection Questionnaire](https://www.gov.uk/government/collections/procurement-policy-notes) [↑](#footnote-ref-5)
6. [Procurement Policy Note 9/16 Modern Slavery Act 2015](https://www.gov.uk/government/collections/procurement-policy-notes) [↑](#footnote-ref-6)
7. [Procurement Policy Note 14/15– Supporting Apprenticeships and Skills Through Public Procurement](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/456805/27_08_15_Skills__Apprenticeships_PPN_vfinal.pdf) [↑](#footnote-ref-7)
8. [↑](#footnote-ref-8)