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## **INVITATION TO TENDER (ITT)**

**for**

**Local Healthwatch Bracknell Forest**

**December 2012**

### **COMPLETED BY**

**ORGANISATION**      [Tenderer to complete]

**NAME**                      [Tenderer to complete]

**DATE**                        [Tenderer to complete]

### **TO BE COMPLETED AND RETURNED TO THE COUNCIL**

This document contains **RESTRICTED INFORMATION** once completed by the Tenderer.

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# 1 Introduction

## 1.1 Background

1.1.1 The Council is located in central Berkshire, and was designated a New Town in 1949 but became a Unitary authority in April 1998. The Council's services are divided between four directorates, Corporate Services, Adult Social Care & Health & Housing, Environment, Culture & Communities and Children, Young People & Learning.

## 1.2 Outline Requirement

1.2.1 The Council is seeking to appoint a Service Provider to deliver as required the services detailed in this ITT.

1.2.2 The Provider shall, working as a sole provider or a prime provider working collaboratively with existing networks, deliver a Local Healthwatch service for Bracknell Forest that shall assume the existing functions of Local Involvement Networks to provide a service that shall:

- ensure local people have access to advice and information to help them make informed choices about their health and social care needs and will work with and signpost to existing networks, advice, information and advocacy providers to do so;
- promote and support the involvement of local people in the commissioning and provision of local care services;
- gather the views of local people and aggregate this information into evidence of need, and;
- make this information known to commissioners and providers of services, regulatory and assessment bodies such that improvements to services for local people can be made.

1.2.3 The contract duration will be for a maximum of 3 years, covering an initial period of 2 years plus an optional extension of 1 year (i.e. 2 + 1)

1.2.4 This Invitation to Tender excludes the provision of NHS Complaints Advocacy which are services to assist people making or who wish to make complaints about the provision of NHS services or the functions of certain NHS bodies. However, the Service Provider shall be required to refer people to the appropriate third party contracted by the Purchaser and support local people in accordance with the levels of support outlined in the Contract with any complaints they may wish to make or progress in relation to health services.

## 1.3 TUPE

1.3.1 The provisions of the Transfer of Undertakings (Protection of Employment) Regulations may apply on expiry of the current contractual arrangements. The current Service Provider for the Local Involvement Network is the Council at the following address:

1.3.2

1.3.3 Information on potential transferees is provided by the Council at .

## 1.4 Project Schedule

1.4.1 The following is the proposed timetable for the procurement and implementation of the Local Healthwatch Service

Publish OJEU Contract Notice & advert in South East Business Portal		Week beginning	
Issue Invitation to Tender		Week beginning	
Last Questions from Tenderers		Friday	
Issue Final Question & Answer Summary		Monday	
<b>Tender Return Date</b>	<b>Mid-Day</b>	<b>Monday</b>	
Supplier Presentations		Friday	
Contract Award			
Contract Start Date		Monday	

Tenderers should note that the above dates are approximate and are subject to change.

## 2 Instructions to Tenderers

### 2.1 Entry Level Questions

2.1.1 Please read through the documents included in this pack, in particular the Specification.

#### 2.1.2 Please complete Schedule 1 - Entry Level Questions.

2.1.2.1 Please ensure that you include sufficient justification for any specified exception to these questions. If you do not pass the Entry Level Questions, we shall reserve the right to disqualify your tender.

### 2.2 General Instructions

2.2.1 If, having completed the Entry Level Questions at Schedule 1 you intend to tender for the Local Healthwatch Service, please read through the following instructions carefully and prepare your bid accordingly.

2.2.2 The Council will not be responsible for any costs or expenses you incur in preparing or delivering or in the evaluation of the tender, nor with any costs or expenses incurred with the formation of a contract should you be successful.

2.2.3 You are deemed to have obtained at your own expense, all information necessary for the preparation of your tender.

2.2.4 Prior to the date for return of tenders, the Council may clarify, amend or add to the documentation. A copy of each such instruction will be issued by the Council to every contractor and shall form part of the tender documentation. No amendment shall be made to the tender documentation unless it is the subject of such an instruction. You should promptly acknowledge receipt of such instructions.

2.2.5 Clarifications of the invitation to tender documents must be made **in writing** by either email or letter to the following:

- 2.2.6 As soon as practical after receipt of any request for clarification, the Council will respond in writing to all tenderers except where the clarification has been identified by the tenderer, and subsequently agreed by the Council, as being commercially sensitive. The Council will not be bound to respond to any request for clarification of the Invitation to Tender which is received later than
- 2.2.7 Only clarifications made in writing by the Council will form part of the Invitation to Tender documents.
- 2.2.8 All questions submitted to the Council in writing and answers, will be logged, summarised and issued to all tenderers.
- 2.2.9 All information contained in the invitation to tender shall be treated as confidential except insofar as is necessary to be disclosed for the purposes of obtaining quotations essential for the preparation of your tender.

## 2.3 Tender Response

2.3.1 Please submit **6 hard copies** of your tender, plus one electronic copy on CD/DVD. Most business file types are acceptable; however any file containing code, password protection or seemingly inappropriate images will be rejected. We are unable to accept tenders on USB stick.

2.3.2 **Your tender must comprise the following Schedules duly completed and returned in accordance with clause 2.4 below:**

**SCHEDULE 1 – Entry Level Questions**

**SCHEDULE 2 – Organisation Information**

**SCHEDULE 3 – References**

**SCHEDULE 4 – Pricing Schedule**

**SCHEDULE 5 – Specification Compliance Statement**

**SCHEDULE 6 – Conditions of Contract Compliance Statement**

**SCHEDULE 7 – Freedom of Information Act 2000 - Schedule of Reserved Information:**

**SCHEDULE 8 – Tender Checklist**

**SCHEDULE 9 – Form of Tender**

2.3.3 You may, if you wish, submit a separate document provided that the tender cross-references the relevant section and paragraph numbers of this invitation to tender.

**All sections must be responded to even if simply “Understood” or “Agreed”.**

2.3.4 The Council has indicated a maximum number of words against some questions. The number indicated includes words in any charts, appendices and diagrams which are incorporated into the tenderer's response unless otherwise clearly indicated. In the event that the number of words is exceeded, the Council will only consider the first part of the tenderer's response up to the maximum allowed.

2.3.5 Where any external reference material, such as brochures, specifications and system descriptions, is used to support your tender, any statements within the reference material which may allow change to obligations or reduce liability, such as "specifications subject to change without notice", or other disclaimers will be regarded as void and shall not form part of the contract in the event that the tender is accepted.

2.3.6 Where a particular section of the tender response relates to information given in another section or in external reference material, then you must ensure that the response is clearly cross-referenced.

2.3.7 All pricing should be stated exclusive of VAT.

2.3.8 Tenders shall remain open for an initial acceptance for a minimum of 120 calendar days, although the Council may ask you to extend of the period of validity

## 2.4 Submission of Tenders

2.4.1 The original, signed, tender must be returned by no later than

2.4.2 Please address to:

2.4.3 If submitting hard copies, the envelope must not indicate the name of the sender; envelopes that do may be rejected unopened. Similarly, tenders received after the tender submission date/time may be rejected.

## 2.5 Tender Decline

If you decide not to respond to this ITT, please let the contact in Section 2.2.5 know in writing as soon as possible, giving a brief reason(s).

## 2.6 Evaluation of Tenders

- 2.6.1 Suppliers must pass the Entry Level Questions in **Schedule 1**
- 2.6.2 The Council may seek confirmation that suppliers meet the Council's minimum levels of economic and financial standing or technical or professional ability, originally stated in the contract notice, at any time.
- 2.6.3 Suppliers must be financially sound, and the checks carried out by the Council shall be appropriate to the type of organisation tendering ie it could be an established company or a newly formed consortium or partnership. We shall use an external credit reference agency where possible and, where available we will seek copies of accounts or alternatively business plans or financial statements to ascertain financial standing. Such information and evidence will be examined by Council accountants. In cases where tenders are submitted by consortia or partnerships, such checks will be made on the lead supplier. The Council will expect the supplier (in the case of consortia or partnerships, the lead supplier) to be able to provide evidence that their financial resources are sufficiently sound to service the Contract. Those who are unable to provide satisfactory evidence will be disqualified.
- 2.6.4 The contract will be awarded on the basis of the most economically advantageous offer having regard to:
- 2.6.5 The **Total Cost** of the goods, services or works, **(50% of the total score)**. In this case the prices tendered for the full 3 years (2 years + 1 further optional year) will be evaluated.
- 2.6.6 The **Quality** of the solution in terms of functionality and infrastructure **(50% of the total score)** takes into account issues such as; quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, after sales service, technical assistance, delivery date and delivery period and period of completion.
- 2.6.7 The **Total Cost** score is out of 100 marks and will be awarded based on a mathematical formula taking into account the overall weighting allocated to this particular section. In this instance, it is calculated by taking the lowest Total Cost divided by the next lowest Total Cost and multiplied by 100. As a result, the lowest Total Cost (subject to the provisions of regulation 30(6) of the Public Contracts Regulations 2006) will be awarded a score of 100 for price alone, with tenderers thereafter being allocated a relative score. This will be combined with quality, to give an overall score for each tenderer.
- 2.6.8 The Council's evaluation will include supplier presentations. Evaluation of these elements will be used to review the initial scoring based on further understanding gained.
- 2.6.9 The headline **Quality** evaluation criteria are as follows:-

Criteria	Marks	Applicable Document(s) & Section(s)
Entry Level Questions		Schedule 1
Your Organisation & General		ITT Section 5, Schedule 2
Equal Opportunities		ITT Section 6
Training		ITT Section 7
References		ITT Section 8, Schedule 3

Business Continuity	ITT Section 9
Enhanced CRB Checks	ITT Section 10, Appendix B
Financial Standing	Schedule 2
Method Statement	ITT Section 12,
Questions	
Insurance	Appendix A, ITT Section 11
Freedom of Information	Schedule 7
Tender Checklist	Schedule 8
Form of Tender	Schedule 9

### **Total**

- 2.6.10 Evaluation of pricing will be by using the evaluation spreadsheet, attached as Appendix C of this ITT. The evaluation spreadsheet details any sub-criteria, weightings and formulae used.
- 2.6.11 The Council shall be under no obligation to award a contract for all or any part of the requirement set out in the Invitation to Tender, to any tenderer or at all.
- 2.6.12 You may be required to answer any Council queries on your proposal and to attend formal meetings with the Council during the tender evaluation period. Additionally the Council may wish to visit tenderers' premises to view the facilities and systems that may be used to deliver the service.

## **2.7 Alternative Offers**

Alternative offers will only be considered if they constitute a fully priced alternative and are submitted in addition to a tender complying with the requirements specified in the Invitation to Tender documents. Alternative offers must contain sufficient supplementary information, drawings and data to permit a complete evaluation to be made.

## **2.8 Canvassing**

Any contractor who directly or indirectly canvasses any member or official of the Council concerning the award of the contract for the provision of the Goods/Services, or who directly or indirectly obtains or attempts to obtain information from any such member or official concerning any other tender for the Goods/Service will be disqualified. If discovery occurs after the award of the contract, the Council shall then be entitled to summarily terminate the contract.

## **2.9 Whistle blowing policy**

Your attention is drawn to the Council's whistle blowing policy which can be found on the Procurement website at: [www.bracknell-forest.gov.uk/procurement](http://www.bracknell-forest.gov.uk/procurement)

## **3 Your Organisation**

### **3.1 Overview**

- 3.1.1 Please **complete Schedule 1**, providing standard information on your organisation.

## **4 Specification**

### **4.1 Specification Compliance**

- 4.1.1 Please confirm your acceptance of the attached Specification. If there are any



exceptions, please indicate on Schedule 5.

## 5 General

5.1 Please provide a brief overview of your organisation and how it could best provide the Local Healthwatch Service required by the Council, as detailed in the Specification.

Include details on how many staff your organisation (including consortia members or named sub-contractors, where appropriate) employs (including voluntary staff), and proportion of available resources that are dedicated to the provision of the goods/services similar to those set out in the Specification. You should detail here how you propose to comply with the Delivery and Organisational requirements set out in sections 4.34 to 4.37 of the Specification.

**Response [Maximum 500 words]**

## 6 Equal Opportunities

6.1 Does your organisation have an Equal Opportunities policy? If Yes, enclose a copy of the policy within your response and indicate how it is communicated to employees.

**Response [Maximum 200 words]**

6.2 If No, please refer to the Council's equal opportunities document at:

<http://www.bracknell-forest.gov.uk/good-practice-on-equality-and-diversity-when-contracting-with-bracknell-forest-council.pdf>

In the absence of your own policy, please download document and confirm acceptance by signing and returning instead.

**Attached / Not applicable**

6.3 Briefly describe how your organisation ensures that it remains compliant and up to date with the Equality Act 2010?

**Response [Maximum 300 words]**

6.4 Do you provide staff with training on equal opportunities? If Yes, please describe how and when this is performed throughout an individual's employment.

**Response [Maximum 200 words]**

6.5 Does your organisation have a procedure for employees to raise issues of discrimination or harassment? If Yes, please provide details.

**Response [Maximum 200 words]**

6.6 Have any Industrial Tribunal or other Legal cases (pending or otherwise) relating to equality issues been brought against your organisation within the last three years? If Yes, please provide details

**Response [Maximum 200 words]**

## 7 Training

- 7.1 Briefly describe your organisation's approach to staff training, including Equalities, Health and Safety, Safeguarding and any other areas relevant to the provision of the Local Healthwatch Service..

**Response [Maximum 200 words]**

- 7.2 For the Local Healthwatch Service, indicate how many hours training, on average, would be received by each member of staff (including voluntary staff) within a 12 month period. List by subject.

**Response [Maximum 300 words]**

## 8 References

- 8.1 List other current contracts you have with Local Authorities or other Public Sector bodies. Such contracts should have direct relevance to the requirements of the Local Healthwatch Service, and in the case of Service Providers who are Consortia or Partnerships, may have been performed by any of the organisations which comprise the Service Provider.

**Response**

- 8.2 Complete **Schedule 3**, providing full details of two cases which demonstrate collaborative working with existing organisations to improve services or outcomes for local people. The Council may approach the organisations named and may discuss details of the examples given to obtain feedback on performance.

- 8.3 If you cannot provide two such references studies, please advise why

**Response**

- 8.4 In the last three years, have you had any contracts:
- That have incurred contract penalties, default notices or payment of liquidated damages?
  - Terminated by the client earlier than originally intended due to poor performance?
  - Where you have withdrawn from the contract either before or after the award of contract?

If Yes to any of the above, please give details and explain what has been rectified in order to avoid this situation arising in the future.

**Response [Maximum 300 words]**

## 9 Business Continuity

- 9.1 Does your organisation have a Business Continuity, Disaster Recovery or Risk Management plan which would be in place in the event that you are awarded the Local Healthwatch Service contract? Briefly describe what key actions your organisation will take to ensure continued provision to Service Users should there be a major event; for example, should there be adverse weather or a pandemic flu which results in loss of staff, or a fire or utility failure resulting in loss of your premises, or a major IT system

failure.

**Response [Maximum 300 words]**

## **10 Enhanced CRB Checks**

- 10.1 Please detail how your organisation obtains, reviews and maintains records of Enhanced Criminal Records Bureau checks for all staff, including sub-contractors, who visit Service Users.

**Response [Maximum 100 words]**

## **11 Insurance**

- 11.1 Provide details of your Public Liability Insurance policy. The Council requires a minimum of £5 million public liability cover. Please enclose a copy of your insurance certificate.
- 11.2 Please provide a copy of your Employer's Liability Insurance certificate. The Council requires a minimum of £5m cover.
- 11.2 Please provide a copy of your Professional Indemnity Insurance certificate. The Council requires a minimum of £1m cover.

## **12 Service Delivery – Method Statements**

- 12.1 **PROJECT INITIATION The Service must be fully operational within 6 months of contract award.**

Please detail, or attach a copy of your Project Delivery Plan for establishing the Service. Detail the key milestones for implementing the Service as of 1<sup>st</sup> April 2013 and at 3 and 6 months intervals following contract award

Response

- 12.2 **GOVERNANCE The Service must secure the necessary skills, knowledge and experience to run effectively, efficiently and sustainably.**

Please set out your proposals for the governing Board, management & operational structure for the service, including volunteers and lay people, and where applicable, the roles of any consortia members. Set out what assets they bring and what role they will play. Please explain post titles, duties, and the training and qualifications they might hold (or need) with CVs.

Response

- 12.3 **ADVICE, INFORMATION AND SIGNPOSTING Critical to the Service is the ability to provide advice and information.**

"Establishing Local Healthwatch: Advice, information and signposting" sets out a summary of this function. Using your LOCAL knowledge and experience, how would

you source, gather, hold, search, cross reference and manage information in a structured way to ensure it is up-to-date, relevant, accessible and appropriate to local people with different needs. What issues do you envisage and how might they be overcome?

Response

12.4 **ENGAGING THE WIDEST RANGE OF LOCAL PEOPLE Critical to the success of the service is the ability to reach out to ALL audiences.**

Why is it important to ensure a wide cross-section of views of local people are gathered? Give examples of innovative approaches you have taken to reach beyond “traditional audiences” or “usual suspects”. Using your sound knowledge of different techniques for engaging and involving people, how would you promote Local Healthwatch Bracknell Forest and secure the views of local people of working age between the ages of 20 and 40? What opportunities or issues do you anticipate and how might they be overcome?

Response

12.5 **WORKING WITH HEALTH AND WELLBEING BOARDS Local Healthwatch will be an equal partner on the Health and Wellbeing Board.**

How would you ensure that the right person is selected to be on the Board? Explain what skills and experience they might need and how you would develop people to ensure that they can participate effectively in such forums?

Response

12.6 **ACCESSIBLE SERVICES It is essential that the Service is delivered in an open, accessible and non-judgemental way if people are to seek advice and information on significant personal or emotional matters that may affect their health or social care choices.**

Explain how you will ensure that any information requests or enquiries received on subjects which conflict with the beliefs or values of your organisation (i.e. political, religious or other beliefs concerning, for example, abortion or family planning) are dealt with objectively and inclusively and in accordance with current, relevant legislation. What measures will you take to instil and build confidence in your organisation’s ability to put aside any reservations from its own beliefs in order to support the needs of individuals and the interests of the wider community?

Response

- 12.7 **MAKING AN IMPACT** The “Enter and View” function is an opportunity to observe the level of service provided and to secure the views of people using those services.

How might “Enter and View” be used to improve health and social care outcomes? What opportunities and challenges does Enter and View raise both for the Service and for organisations subject to Enter and View?

Response

- 12.8 **LEARNING FROM PAST EXPERIENCE** Local Healthwatch must build on the success and address the limitations of previous patient and public involvement mechanisms.

From your evaluation of the LINK legacy, what role do you see for volunteers, lay-members, networked organisations and partners in Local Healthwatch Bracknell Forest? Explain how your organisation will develop staff and volunteers to uphold the outcomes of the service. What issues do you foresee and how would you address them?

Response

- 12.9 **OPERATIONAL SUSTAINABILITY** Critical to the sustainability of the Service, Local Healthwatch will be expected to generate income and re-invest the majority back into the organisation.

Taking into account the functions of Local Healthwatch Bracknell Forest, what opportunities for generating income do you propose? Explain who your target markets might be and how they might benefit from your services.

Response

- 12.10 **COLLABORATIVE WORKING** Local Healthwatch Bracknell Forest is an organisation that must work in partnership with other organisations.

Demonstrating your understanding and experience of partnership working IN BRACKNELL FOREST, please describe the qualities of a good, collaborative partner. What assets might partners bring to Local Healthwatch and what accountabilities will the Service have to collaborative partners and/or sub-contractors? If possible, give an example where a relationship has gone awry and what steps you took to resolve the issue.

Response

12.11 **SAFEGUARDING** **Safeguarding is everyone's business.** How would your organisation respond to a safeguarding concern?

Response

## ***Appendix A – Terms and Conditions***

### **APPENDIX A**



# **LOCAL HEALTHWATCH SERVICES TERMS AND CONDITIONS OF CONTRACT (April 2013)**

## **Appendix A – Terms and Conditions**

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## DEFINITIONS & INTERPRETATION

In this Contract the following expressions have the following meaning:

“Bribery Act”	refers to the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
“Carer”	means people who, as relatives or friends, care for other people who receive health (NHS) services or social care services;
“Commencement Date”	means the date of the commencement of the Contract, which is;
“Contract”	means the Contract for the Service. The Contract includes these conditions, the Specification and all documentation contained in the same or referred to therein;
“Contracts Manager”	means the Head of Joint Commissioning who is responsible for the management of the Contract on behalf of the Purchaser;
“Corporate body”	means an organisation that has a legal identity;
“Health Services”	means services that are provided as part of the health service (NHS) in England;
“Health-Related Services”	means services that may have an effect on the health of individuals but are not health services or social care services;
“IP”	means all intellectual property rights of whatsoever nature including (without limiting the generality of the foregoing) copyright (and rights in the nature of copyright), design rights, database rights, trade marks, patents and patentable inventions (and the right to apply for any of the foregoing);
“LINK”	means Local Involvement Network;
“Local People”	means: a) people who live in the Bracknell Forest area b) people who get health and care services provided in Bracknell Forest c) people from Bracknell Forest who get social care

services provided in any other place, and;  
d) people who are representatives of the people mentioned in (a) to (c);

“Nominated Manager”	means the representative of the Service Provider responsible for the management of the Contract;
“Patient”	Means people who receive health services;
“Person/People”	the person or people aged 17+ who access the Service and where appropriate for people aged 17 shall also include reference to anyone who is entitled to act on behalf of that person;
“Prices”	means the prices for the provision of Services as detailed in the Pricing Schedule at Schedule 4 net of any VAT that may be applicable;
“Prohibited Act”	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Purchaser a financial or other advantage to:</p> <ul style="list-style-type: none"><li>(i) induce that person to perform improperly a relevant function or activity; or</li><li>(ii) reward that person for improper performance of a relevant function or activity;</li></ul> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>c) committing any offence:</p> <ul style="list-style-type: none"><li>(i) under the Bribery Act;</li><li>(ii) under legislation creating offences concerning fraudulent acts;</li><li>(iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Purchaser; or</li><li>(iv) defrauding, attempting to defraud or conspiring to defraud the Purchaser."</li></ul>
“Purchaser”	means Bracknell Forest Borough Council, Adult Social Care, Health & Housing, Time Square, Market Street, Bracknell, Berkshire RG12 1JD;
“Service”	means the provision of Local Healthwatch Bracknell Forest, in accordance with the Specification, and further in accordance with this Contract and any documents contained or referred to herein;
“Service Provider”	means the individual or group providing the Service;

“Social Care Services”	means services that are provided by local authority adult and / or children’s social services;
“Social Enterprise”	means an organisation complying with the following Social Enterprise UK definition. Social Enterprises must: <ul style="list-style-type: none"><li>• have a clearly defined social mission written into their constitution</li><li>• generate income through trading activity</li><li>• reinvest the majority of profits to further the social mission of the organisation;</li></ul>
“Specification”	means the care specification for the Service at Appendix B hereof;
“Term”	means the term of the Contract commencing upon the Commencement Date and terminating after a period of two years after the Commencement Date or earlier in accordance with the provisions of the Contract. The Term may be extended in accordance with the provisions of Clause 7.2 (Contract & Duration);
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any subsequent amendments made to the Regulations and the Acquired Rights Directive.

In the Contract, unless the contrary intention appears, a reference to an Act of Parliament or any Order, Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same

Where the context permits, words in the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular

All references to clauses are references to clauses of this Contract.

The clauses may only be varied with the written agreement of the Purchaser. No terms or clauses put forward at any time by the Service Provider shall form any part of the Contract unless they are expressly agreed in writing by the Purchasers Contracts Manager and a note of the agreed terms or clauses are inserted into the Contract and initialled by both parties.

## **2. THE COUNCIL’S FUNCTION AS A LOCAL AUTHORITY**

2.1 Nothing in this Contract shall prejudice or affect the Purchaser’s rights, powers, duties and obligations in relation to the exercise of its functions as a local authority

### **3. BEST VALUE**

- 3.1 In delivering the Service, the Service Provider shall use reasonable endeavours to secure demonstrable, measurable and continuous improvement (having regard in particular to economy, effectiveness and efficiency) in the performance of the Service; the time, cost, quality and health and safety standards within the various processes of the Service and generally to provide best value to the Purchaser

### **4. NO PARTNERSHIP**

- 4.1 Nothing in this Contract shall be deemed to constitute a partnership (as defined by the Partnership Act 1890) between the parties nor constitute any party the agent of the other

### **5. NOTICES**

- 5.1 No notice to be served upon the Service Provider shall be valid and effective unless it is delivered by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission or other means of telecommunication, including email, resulting in the receipt of a written communication in permanent form and sent or transmitted to the Nominated Manager responsible for contracts at the Service Providers principal place of business or to such other address as the Service Provider may have substituted
- 5.2 No notice to be served upon the Purchaser shall be valid or effective unless it is delivered by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission or other means of telecommunication, including email, resulting in the receipt of a written communication in permanent form and sent or transmitted to the, or to such other address as the Purchaser may have substituted
- 5.3 Any notice to be served shall be deemed to be given on the date that it is delivered by hand or transmitted by facsimile transmission or other means of telecommunication or if sent by post or by recorded delivery on the date when it would be delivered in the ordinary course of post in normal business hours

### **6. ALTERATIONS TO THESE TERMS AND CLAUSES AND VARIATIONS TO THE SERVICE**

- 6.1 Without prejudice to any other term of this Contract no omission from, addition to or variation of these terms and clauses shall be valid or effective unless it is agreed in writing and signed by the authorised officer of the Purchaser and the Service Provider

### **7. CONTRACT AND DURATION**

- 7.1 This Contract shall commence on the Commencement Date and shall continue for the Term subject to the terms and conditions of this Contract.

- 7.2 The Contract may be extended by agreement between the parties by one period of twelve months beyond the initial Term. The Price for any extension shall be in accordance with those set out in Schedule 4 Pricing Schedule unless otherwise agreed. Any agreement to extend the Contract shall be subject to confirmation in writing by the parties, and shall depend a) on funding for the Service being available, b) to the Council still requiring the Service to be performed and c) to the final agreement of the Price for the extension taking account of the Service Provider's ability to fund the Service itself at this stage.

## **8. THE SERVICE**

- 8.1 The Service executed under this Contract shall be carried out in accordance with the requirements of the Specification and where no standard is specified in accordance with the best industry practice and within the time (if any) specified in the Contract.
- 8.2 The Service shall be provided to Bracknell Forest Borough Council.

## **9. PRICE AND PAYMENT**

- 9.1 The Purchaser shall make payment to the Service Provider for Service properly performed, in accordance with the Specification and the Prices set out in the Pricing Schedule at Schedule 4 hereof.
- 9.2 The Price shall remain fixed for the Term.
- 9.3 The Service Provider shall submit invoices monthly in arrears in 12 equal monthly instalments in respect of each year of the Contract. Invoices shall be in a format to be determined by the Purchaser. Value Added Tax where applicable shall be shown separately on all invoices as an extra charge.
- 9.4 Payment of invoices submitted in accordance with Clause 9.3 shall be made within 30 days from receipt subject to the certification by the Purchaser that they are correct and that work has been performed satisfactorily. Where certification by the Purchaser identifies that any of the invoices are not correct the Service Provider shall be required to submit revised invoices to replace those where errors have been identified. Payment of revised invoices shall be made within 30 days from receipt subject to certification by the Purchaser that they are correct and that work has been performed satisfactorily.
- 9.5 The Service Provider may but is not obliged to charge interest at the rate of 2% over Lloyds TSB base lending rate on any late payment save where any payment is properly disputed.
- 9.6 Payment of the Price shall not operate as a waiver of any rights of the Purchaser under the Contract. The Purchaser reserves the right to make a deduction from the Price where the Service Provider has been in breach of the Contract provided that the deduction shall be commensurate with the breach and notified by the Purchaser to the Service Provider in writing.
- 9.7 In the event that the Contract shall be suspended in accordance with the provisions of Clause 13.7 (Termination and Suspension of Contract) no payment shall be made to the Service Provider for the period of such suspension.
- 9.8 The Purchaser may from time to time, review its financial processes in order to make improvements. The Service Provider shall cooperate fully with the Purchaser to

implement such changes, which shall be in a format to be determined by the Purchaser.

## **10. ASSIGNMENT AND SUBCONTRACTING**

- 10.1 The Purchaser acting reasonably shall be entitled to assign the benefit of this Contract in whole or in part to a statutory or other public body and shall give at least 14 days written notice of any assignment to the Service Provider.
- 10.2 The Service Provider may not transfer assign, dispose of, sub-contract or part with the benefit or the burden of the whole or any part of this Contract without the explicit written permission of the Purchaser.
- 10.3 In the event that the Purchaser permits the Service Provider to sub-contract all or part of the provision of the Services the Service Provider shall remain and continue to remain liable for the work of the sub-contracted provider.

## **11. MONITORING AND REVIEW**

- 11.1 The Service Provider shall allow members of the Purchaser's staff reasonable access to any premises of the Service Provider at any time. Notice shall not necessarily be given to the Service Provider.
- 11.2 Subject to the provisions of Clause 17 (Data Protection) hereof, the Service Provider shall make available records of the Services provided as required in the Specification and any other information reasonably required by the Purchaser to monitor the performance of the Contract. This shall include reasonable access to files in order to ensure compliance with the Contract.
- 11.3 The Purchaser shall be entitled to carry out a review of the Service provided under this Contract at any reasonable time. The Service Provider shall participate as reasonably requested in any review of the Service.

## **12. INDEMNITY AND INSURANCE**

- 12.1 Save in respect of the death of or personal injury to any person to the extent that such death or personal injury may be caused by the Purchaser its employees or agents (other than the Service Provider), the Service Provider shall fully and promptly indemnify and keep indemnified the Purchaser its officers and employees against all liabilities, fines, penalties, damages, costs, losses, claims, demands and proceedings whatsoever howsoever arising whether in contract, tort, under statute or otherwise directly or indirectly out of or in the course of or in connection with the provision of or failure to provide the Service by the Service Provider.
- 12.2 Without thereby limiting its responsibilities under this Clause the Service Provider shall insure with an insurance company of good repute against the injury to or death of any person and loss of or damage to any property arising out of or in consequence of the Service Provider's obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.

- 12.3 The Service Provider shall obtain Employers Liability insurance cover in the sum of not less than £5,000,000 (five million pounds) in respect of any such personal injury to or death of any person arising under a contract of service with the Service Provider and arising out of an incident occurring during the course of such person's. The Purchaser shall reserve the right to review the requirement in respect of the amount of cover annually.
- 12.4 The Service Provider shall obtain Public Liability insurance cover in the sum of not less than £5,000,000 (five million pounds) or such greater sum as the Service Provider may choose in respect of any one incident and the Service Provider's insurance policy effecting such cover shall have the interest of the Purchaser endorsed thereon, or shall otherwise expressly by its terms confer its benefits upon the Purchaser. The Purchaser shall reserve the right to review the requirement in respect of the amount of cover annually.
- 12.5 The Service Provider shall obtain professional indemnity insurance in the sum of no less than £1,000,000 (one million pounds) throughout the Term and shall continue to maintain the same in force for a period of six years following the termination of the Contract. The provisions of this Clause 12.5 (Indemnity & Insurance) shall survive the termination of the Contract and remain in full force and effect for six years following the date of termination.
- 12.6 The Service Provider shall supply to the Purchaser prior to commencement of the Contract and annually upon request a certificate from its insurers or brokers confirming that the Service Provider's insurance policies comply with this Clause and the Service Provider shall supply to the Purchaser on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with this Clause.

### **13. TERMINATION AND SUSPENSION OF CONTRACT**

- 13.1 Subject to the other Terms of the Contract the Purchaser may terminate this Contract upon giving no less than three months written notice (or shorter period by written, mutual consent).
- 13.2 During any notice period given in accordance with this Clause the Service Provider shall be expected to continue to provide the Service save where circumstances render this impossible or when the Purchaser, in its absolute discretion, advises the Service Provider that it does not wish it to continue to provide the Service.
- 13.3 The Purchaser may terminate this Contract forthwith upon written notice (or upon such period of notice as the Purchaser deems appropriate) in the event that the Service Provider shall fail to perform the Service or shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to rectify such breach within 30 days of being required by the Purchaser in writing to do so.
- 13.4 The Purchaser may terminate the Contract forthwith upon written notice (or upon such period of notice as the Purchaser deems appropriate) if the Service Provider shall become bankrupt or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his Creditors or shall agree to carry out the Contract under the committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Service Provider shall have an execution levied on his goods.

13.5 The Purchaser may terminate this Contract forthwith upon written notice (or upon such period of notice as the Purchaser deems appropriate) in the event that the Service Provider shall:

13.5.1 fail to proceed diligently and regularly in the provision of the Service; or

13.5.2 have failed to comply with legislative requirements; or

13.5.3 is in breach of Clause 10 (Assignment and Sub-contracting); or

13.5.4 is in breach of Clause 15 (Bribery and Corruption); or

13.5.5 is in breach of Clause 32 (Confidentiality)

13.6 The Purchaser may terminate this Contract forthwith with or without written notice (or upon such period of notice as the Purchaser deems appropriate) if a safeguarding adults complaint is upheld against the Service Provider or any member of staff. The decision as to whether, or not, such a complaint against the Service Provider is valid and justified shall be made by the Contracts Manager. This decision shall be final and conclusive. The Purchaser reserves the right to suspend the Service whilst any investigation into an allegation takes place .

13.7 In the event that:

13.7.1 the Contract is terminated in accordance with the provisions of this Clause; or

13.7.2 the Service Provider shall fail to deliver the Service or any proportion thereof in accordance with the Contract then, in addition to any other common law remedies available to the Purchaser or any further remedies available to it pursuant to the terms of the Contract, the Purchaser may purchase other services similar to the Service to make good:

- such default or breach; or
- in the event that the Contract is terminated the Service remaining to be delivered.

The cost of purchasing other services so far as they exceed the amount which would have been payable to the Service Provider for them if they had been delivered in accordance with the Contract shall be recoverable from the Service Provider together with such sums as shall compensate the Purchaser for the administrative costs incurred as a result of such default or termination. The provisions of this Clause are without prejudice to any other remedies available to the Purchaser for breach of contract.

## **14. OBSERVANCE OF STATUTORY REQUIREMENTS**

14.1 The Service Provider shall comply with all statutes, orders and any regulation or bylaw applicable to the performance of the Contract and shall indemnify the Purchaser accordingly.

## **15. PREVENTION OF BRIBERY AND CORRUPTION**



15.1 The Service Provider:

15.1.1 shall not, and shall procure that any Service Provider Party and all Service Provider personnel shall not, in connection with this Contract commit a Prohibited Act;

15.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Purchaser, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Purchaser before execution of this Contract.

15.2 The Service Provider shall if requested, provide the Purchaser with any reasonable assistance, at the Purchaser's reasonable cost, to enable the Purchaser to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.

15.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Purchaser) to prevent any Service Provider Party or Service Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.

15.4 If any breach of clause 15.1 is suspected or known, the Service Provider must notify the Purchaser immediately.

15.5 If the Service Provider notifies the Purchaser that it suspects or knows that there may be a breach of clause 15.1, the Service Provider must respond promptly to the Purchaser's enquiries, co-operate with any investigation, and allow the Purchaser to audit books, records and any other relevant documentation.

15.6 A breach of these provisions may be material in the circumstances and, depending on the other contract terms, may be subject to the termination provisions. Similar to the records provisions, there is an obligation on the Service Provider to provide access to records for a period following termination. This is intended to permit the Purchaser to undertake investigations following expiry of the Contract.

15.7 The Purchaser may terminate this Contract by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 15.1.

15.8 Any notice of termination under clause 15.6 must specify:

15.8.1 the nature of the Prohibited Act;

15.8.2 the identity of the party whom the Purchaser believes has committed the Prohibited Act; and

15.8.3 the date on which this Contract will terminate.

15.9 Despite clause 22 (Disputes), any dispute relating to:

15.9.1 the interpretation of clause 15; or

15.9.2 the amount or value of any gift, consideration or commission, shall be determined by the Purchaser and its decision shall be final and

conclusive.

- 15.10 Any termination under clause 15.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Purchaser.

## **16. JURISDICTION**

- 16.1 The Contract shall be considered as a contract made in England and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 16.2 The parties irrevocably agree that subject to Clause 22 (Resolving Disputes) the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 16.3 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

## **17. DATA PROTECTION**

- 17.1 For the purposes of this Clause data, personal data and process/processing shall mean data, personal data and process/processing as defined in Section 1 of the Data Protection Act 1998 ("the Act").
- 17.2 The Service Provider hereby acknowledges that in the performance of its obligations under the Contract it will process personal data.
- 17.3 The Service Provider shall (and shall procure that any of its personnel involved in the provision of the agreement shall) comply with any notification requirements under the Data Protection Act and both Parties shall duly observe all their obligations under the Data Protection Act, which arise in connection with the agreement.
- 17.4 The Service Provider covenants and confirms that all information and data including personal data obtained and used in connection with the Services provided shall:
- 17.4.1 as between the Purchaser and the Service Provider be the property of the Purchaser;
  - 17.4.2 be processed for the sole purpose of undertaking the Service Provider's obligations under the Contract and for no other purpose;
  - 17.4.3 upon termination of the Contract shall be returned to the Purchaser within 7 days of such expiry or determination;
  - 17.4.4 shall not be copied and/or retained in any form by the Service Provider upon termination of the Contract except as required by law or under the Contract
  - 17.4.5 shall be kept secure and shall be treated as confidential information.
- 17.5 The Service Provider shall implement and maintain appropriate technical and organisational measures so as to prevent the destruction damage loss or alteration of

any data or the unauthorised or unlawful processing of any data as agreed with the Contracts Manager and the Service Provider shall provide to the Contracts Manager such information as the Contracts Manager may require to satisfy himself that the Service Provider is complying with such obligations including but not limited to a copy of its registration under the Act and shall permit any authorised representative of the Purchaser to have access to any site at which data is processed to monitor the implementation operation or existence of such procedures.

- 17.6 The Service Provider shall ensure that any of its staff and volunteers who have access to personal data are honest reliable and competent.
- 17.7 All incidents, including suspected loss, theft or misuse shall be reported immediately to the Purchaser. The Service Provider shall investigate the incident and shall inform the Purchaser of the outcome of the investigation as soon as practicably possible, together with the details of any resolving actions taken.
- 17.8 People have a right to access personal information held in their name, subject to certain procedures.
- 17.9 Any person undertaking work for or on behalf of the Service Provider shall advise an appropriate manager of the Purchaser if they or a close member of their family access any service involving Confidential Information provided by the Purchaser. Managers, in consultation with Heads of Service, will make a judgement on potential conflicts of interest, and if appropriate, make arrangements for restriction of access and alternative storage of Confidential Information.
- 17.10 Notwithstanding the general obligation in clause
- 17.10.1 where the Service Provider is processing Personal Data as a Data Processor for the Purchaser, the Service Provider shall ensure that it has in place appropriate technical and contractual 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 Data Protection Act; and
- 17.10.2 provide the Purchaser with such information as the Purchaser may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the Data Protection Act;
- 17.10.3 promptly notify the Purchaser of any breach of the security measures required to be put in place pursuant to clause 17.2; and
- 17.10.4 ensure it does not knowingly or negligently do or omit to do anything which places the Purchaser in breach of the Purchasers's obligations under the Data Protection Act.
- 17.11 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## **18. FREEDOM OF INFORMATION**

- 18.1 All information relating to, or arising from, this Contract, including information about its performance is covered by the Freedom of Information Act 2000; the Purchaser is under a legal obligation to disclose such information, if requested, unless an exemption applies.

- 18.2 The Purchaser may also be subject to disclosure obligations under other legislation or codes of practice.

## **19. RIGHTS OF THIRD PARTIES**

- 19.1 The parties hereby declare that no Term of the Contract is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded.

## **20. HUMAN RIGHTS**

- 20.1 The Service Provider acknowledges that:

20.1.1 in performing its obligations under the Contract it may be a public authority for the purposes of the Human Rights Act 1998; and,

20.1.2 that it is unlawful to exercise functions deemed to be of a public nature in a way that is incompatible with those rights contained in the European Convention of Human Rights and incorporated into English Law by the Human Rights Act 1998.

- 20.2 In providing the Service the Service Provider shall throughout the Contract and at its own cost be subject to the same duty in respect of Human Rights in the same way as if it were the Purchaser.

- 20.3 The Service Provider shall undertake or refrain from undertaking such actions as the Purchaser may request so as to enable the Purchaser to discharge its duty under the Human Rights Act 1998.

## **21. WAIVER**

- 21.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or clause of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract.

## **22. RESOLVING DISPUTES**

- 22.1 In the event of any dispute or difference arising between the parties in connection with this Contract, the Purchaser's Borough Solicitor or his nominated representative and the Managing Director of the Service Provider shall, within ten days of a written request from either party to the other addressed to the said representative and the said Managing Director, meet in good faith in an effort to resolve the dispute without recourse to legal proceedings.

- 22.2 If the dispute or difference is not resolved as a result of such meeting, either party may (at such meeting or within fourteen days from its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator ("Neutral Adviser").

- 22.3 If the parties are unable to agree on a Neutral Adviser or if the Neutral Adviser agreed upon is unable or unwilling to act, either party may within fourteen days from the date of the proposal to appoint a Neutral Adviser or within fourteen days of notice to either party that he or she is unable to unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Neutral Adviser.
- 22.4 The parties shall within fourteen days of the appointment of the Neutral Adviser meet with him/her in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 22.5 Unless concluded with a written legally binding agreement all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in all future proceedings.
- 22.6 If the parties accept the Neutral Adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be recorded in writing and, once it is signed by their duly authorised representatives, shall be binding on the parties.
- 22.7 Failing agreement, either of the parties may invite the Neutral Adviser to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings commenced pursuant to the terms of this Contract without the prior written consent of both parties.
- 22.8 If the parties fail to reach agreement in the structured negotiations within sixty days of the Neutral Adviser being appointed then any dispute or difference between them may be referred to the Courts unless within such period the parties agree to refer matter to arbitration before an arbitrator whose method of appointment is agreed between them.

## **23. REMEDIES CUMULATIVE**

- 23.1 Any remedy or right which either party may exercise in relation to a default committed by the other shall be in addition to, and shall be capable of being exercised without prejudice to all other rights and remedies available to either party.

## **24. INCONSISTENCY**

- 24.1 In the event of a conflict between any of the provisions of this Contract and any provision of the Specification, the former shall prevail.

## **25. HEADINGS**

- 25.1 The headings to these clauses shall not affect their interpretation.

## **26. FORCE MAJEURE**

- 26.1 Upon the occurrence of a Force Majeure, the FM Affected Party shall notify the other

Party in writing of the commencement of the Force Majeure, providing in reasonable detail, to the extent available to the FM Affected Party:

- (i) details of the event causing the Force Majeure;
- (ii) the steps being taken by the FM Affected Party to mitigate the effects of the Force Majeure; and
- (iii) a non-binding estimate of the extent and the expected duration of its inability to perform its obligations due to the Force Majeure.

26.2 The obligations of both Parties with respect to the obligations affected by the Force Majeure will be suspended for the duration of the Force Majeure. During the continuation of the Force Majeure, the FM Affected Party shall use all reasonable endeavours to overcome the Force Majeure. Upon the Force Majeure being overcome or it ceasing to subsist, both Parties will, as soon as reasonably practicable thereafter, resume full performance of their obligations under the Contract (including, for the avoidance of doubt, any suspended obligations).

26.3 Where a Force Majeure continues for a period of thirty working days, either party may, by written notice to the other party, terminate the Contract immediately.

## **27. EMERGENCY CLOSURE**

27.1 In the event of an emergency closure or a potential emergency closure of the Service Provider, the Purchaser shall be informed immediately by the Service Provider.

## **28. CHANGE OF OWNERSHIP**

28.1 The Service Provider shall immediately inform the Purchaser of any change affecting the Ownership of the Service Provider in addition to notifying any relevant registration authority.

28.2 In the event that the Service Provider wishes to transfer the Contract to any new owner the Service Provider shall request that the Purchaser shall assign the Contract. The Purchaser may refuse any request for assignment in its absolute discretion.

## **29. AGENCY**

29.1 The Service Provider is not and shall not hold itself out as being the agent of the Purchaser.

## **30. DECLARATION OF INTERESTS**

30.1 The Service Provider shall inform the Purchaser in writing of any elected member or employee of the Purchaser who is involved in any way with the Service Provider at any time during the term of the Contract.

## **31. CONSEQUENTIAL LOSS**

- 31.1 Notwithstanding anything expressed or implied in the Contract to the contrary the Purchaser shall not be liable under any circumstances whatsoever to the Service Provider for the Service Provider's consequential loss.
- 31.2 In this Clause "consequential loss" includes but shall not be limited to loss of savings, loss of profit, loss of use, loss of contract, loss of production, loss of revenue, business interruption or increased cost of working however caused arising out of or in connection with the Contract and whether or not foreseeable at the date of the Contract.

## **32. CONFIDENTIALITY**

- 32.1 For the purposes of this Clause "Confidential Information" means all information (whether commercial financial technical personal or otherwise) relating to the disclosing party its sub-Providers, People or servants or agents disclosed to or otherwise obtained by the recipient party under or in connection with the Service and the Contract and which is designated as being confidential or which is by its nature clearly confidential.
- 32.2 Each party undertakes in respect of Confidential Information for which it is the recipient:
- 32.2.1 to treat such information as confidential;
  - 32.2.2 not without the disclosing parties prior written consent to communicate or disclose any part of such information to any person except:
    - 32.2.2.1 to those employees agents sub-Providers and other suppliers on a need-to-know basis who are directly involved in Services
    - 32.2.2.2 the recipients auditors professional advisers and any other persons or bodies having a legal right or duty to have access to the knowledge of the Confidential Information in connection with the business of the recipient
    - 32.2.2.3 to ensure that all persons and bodies mentioned in Clause 32.2.2.2 are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the disclosing party and to use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Clause
    - 32.2.2.4 when using or circulating such information within its own organisation to the extent necessary for the purposes of the Services
- 32.3 The obligations in this Clause shall not apply to the Confidential Information:
- 32.3.1 in the recipient's possession (with full right to disclose) before receiving it; or
  - 32.3.2 which is or becomes public knowledge other than by breach of this Clause; or
  - 32.3.3 independently developed by the recipient without access to or use of the Confidential Information; or

32.3.4 lawfully received from a third party (with full right to disclosure).

32.4 The Service Provider shall indemnify the Purchaser from and against all claims losses expenses damages and costs arising from the breach of this Clause by the Service Provider its servants agents and sub-Providers.

32.5 This Clause shall continue in force for a period of three years following the date of termination of the Contract.

### **33. TUPE**

33.1 At any time before the expiry of the Contract Term or in the event that the Contract is terminated in accordance with these Conditions within 28 days of giving or receiving notice of such termination or where this Contract is terminated forthwith within 28 days of termination the Service Provider shall on the written request of the Contracts Manager collate whatever information is required for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (the "TUPE Information") which may include but shall not be limited to:

- (i) the number of staff, including supervisory and administrative staff, employed by the Service Provider and any sub-Contractor employed in the Services;
- (ii) the terms and conditions of employment of those staff; and
- (iii) any other information relating to those staff as properly may be required by the Purchaser under this Clause.

33.2 In the event that the Purchaser commences procedures for inviting tenders to provide the Services, the Service Provider shall make the TUPE Information available on request to any person who wishes to submit such a tender (a "Tenderer").

33.3 Throughout the period specified in Clause 33.1 the Service Provider shall maintain and amend the TUPE Information to the extent necessary to ensure that it is complete accurate and up to date and in the event that such amendments are made the Service Provider shall inform any person to whom it has made the TUPE Information available in accordance with this Clause of the nature extent and content of those amendments and the reasons for which they have been made.

33.4 The Service Provider shall, if requested by the Purchaser, provide the same information relating to employees of its contractors, sub-contractors and agents where relevant to the provision of the Service and shall do its utmost to procure co-operation from such contractors, sub-contractors and agents.

33.5 In the event that there is a transfer of employees pursuant to TUPE the Service Provider shall co-operate, and where relevant do its utmost to procure the co-operation of its contractors, sub-contractors and agents, in the orderly transfer of any relevant personnel.

33.6 The Service Provider shall indemnify the Purchaser against any and all losses, costs, expenses, awards, liabilities incurred by the Purchaser in connection with or as a result of any claims demands or proceedings of whatever nature by any employee or



former employee of the Service Provider or its sub-contractors or agents arising out of any non compliance with TUPE.

33.7 The Service Provider shall not make any claim against the Purchaser in connection with the effect on the Contract of TUPE.

33.8 The Service Provider undertakes not to change personnel or Service delivery structure during the last twelve months of the Contract other than for bona fide economic or operational reasons related to provision of the Service under the Contract including but not limited to changes to preclude or promote application of TUPE upon termination or expiry of the Contract.

33.9 In the event of non-compliance by the Service Provider with this Clause 33, then:

- (i) the parties acknowledge that the Purchaser shall be entitled to an injunction or an order for specific performance in order to obtain the TUPE information; and
- (ii) the Service Provider shall reimburse all expenses incurred by the Purchaser in enforcing the Service Provider's compliance with this Clause. For the avoidance of doubt, this shall include the cost of Purchaser officer time.

#### **34. INFORMATION AND RETENDERING**

34.1 Subject to clauses 17 (Data Protection) and 32 (Confidentiality), at the Purchaser's reasonable request, the Service Provider must provide the Purchaser with such information and data as the Purchaser may reasonably require to enable the Purchaser to prepare the necessary documentation to appoint another person to provide the Services in place of the Service Provider.

34.2 The requirement set out in clause 34.1 does not include any information or data which is considered commercially sensitive.

#### **35. CONCLUSION OF CONTRACT**

35.1 Subject to clauses 17 (Data Protection) and 32 (Confidentiality), upon the termination of this Contract the Service Provider shall give to the Purchaser or to any person the Purchaser may specify if requested, all data, information, files, records, documents and the like (in whatever format they may be held) which the Purchaser has supplied to the Service Provider for the purposes of this Contract (which may have subsequently been altered by the Service Provider) in connection with the carrying out of the Service Providers obligations under this Contract.

35.2 Unless the Purchaser authorises the Service Provider to do so, or it is required at law to do so, it must not retain any copies of the information etc referred to in Clause 35.1.

35.3 Clause 35.1 is subject to the provisions of clauses 17 (Data Protection) and 32 (Confidentiality).

## **36. SEVERABILITY**

- 36.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## **37. RECOVERY OF SUMS DUE**

- 37.1 Wherever under this Contract any sum of money is recoverable from or payable by the Service Provider that sum may be deducted from any sum then due or which at any later time may become due to the Service Provider under this Contract or under any other agreement or contract with the Purchaser.

## **38. HEALTH & SAFETY**

- 38.1 The Service Provider shall in performing the Contract adopt safe methods of work in order to protect the health and safety of its own employees, the employees of the Purchaser and of all other persons including members of the public and shall comply with the requirements of the Health & Safety at Work Act 1974, the Management of Health & Safety Regulations 1992, the Control of Substances Hazardous to Health (COSHH) Regulations 1988 and 1994 and the Road Traffic Act 1988, HSE guidance notes and approved Code of Practice and of any other Acts Regulations Orders or any European Directive pertaining to the health and safety of persons and shall have regard to the Purchaser's health and safety policy.
- 38.2 The Service Provider shall, prior to the commencement date of this Contract provide to the Purchaser on request with a written copy of its health and safety working procedures relating to the performance of the Contract.
- 38.3 The Service Provider shall review and amend its health and safety policy and safe working procedures as often as may be necessary and in the light of changing legislation or working practices and shall notify the Purchaser in writing of any such revisions if required by the Purchaser.
- 38.4 The Service Provider shall advise the Purchaser of the name address and telephone number of the person within its organisation responsible for health and safety and welfare matters.
- 38.5 The Service Provider shall be responsible for ensuring compliance (and that of any sub-Service Provider) with aforementioned safety policies.

## **39. EQUAL OPPORTUNITIES**

- 39.1 The Service Provider will ensure that its Terms and Conditions of Employment and its policies and procedures relating to employment comply with all current legislation

other legal requirements and codes of practice published by all relevant recognised bodies including but not limited to:-

ACAS

The Equalities and Human Rights Commission

The Department of Communities and Local Government

The Department for Business, Enterprise and Regulatory Reform

and shall upon request furnish the Purchaser with such evidence of compliance with the same as the Purchaser shall specify and require.

- 39.2 The Service Provider shall not discriminate or permit any employee or agent of the Service Provider to discriminate in any way against any person on the basis of race gender disability age sexual orientation gender change religion or belief or in any other way prohibited by law and shall comply at all times at its own expense with any requirements made by the Purchaser to be observed by Service Providers in its policies to promote equality and diversity.
- 39.3 The Service Provider shall comply with the Purchasers policies made pursuant to the Race Relations (Amendment) Act 2000 the Disability Discrimination Act 1995 the Equality Act 2006 and for the promotion of equality and diversity published from time to time and shall if required to do so produce evidence satisfactory to the Purchaser that the performance of the Contract is consistent with and in accordance with those policies.
- 39.4 The Service Provider shall be able to demonstrate that where appropriate (bearing in mind the nature of the Services to be provided) that those Services are accessible and delivered in a way that is appropriate to meet the needs of those People that the Services are intended to benefit.
- 39.5 The Service Provider shall on request provide the Purchaser with copies of any policies adapted by the Service Provider pursuant to its obligations. The Service Provider shall put in place a review of compliance with policies to a schedule to be agreed with the Purchaser and to submit a report to the Purchaser of this review on request.
- 39.6 The Service Provider shall ensure that its staff and volunteers are properly trained in respect of the matters detailed in this clause to ensure compliance with the Service Provider's duties relating to equality and diversity and fair access in the Contract.
- 39.7 The Service Provider shall inform the Contract Manager as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Service Provider under Race Relations legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1984) or settlements arising, and shall provide the Contract Manager with such further information and documentation as reasonably may be required in relation thereto.
- 39.8 In the event of any findings of unlawful racial discrimination being made against any of the Service Providers staff and volunteers by any court or employment tribunal or of an adverse finding in any formal investigation by the Commission for Racial Equality the Service Provider shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 39.9 The Service Provider shall on request, provide the Purchaser with details of any steps taken under clause 39.8.

- 39.10 Where relevant to the Contract and as agreed between the Service Provider and the Purchaser, the Service Provider shall monitor the representation within its workforce and provide the Purchaser with a breakdown of job applications and workforce of: different racial groups (meaning groups of persons defined by reference to colour, race, nationality or ethnic or nations origins), gender disability, age, religion or belief as maybe required, giving regard to the Purchasers procedures for the monitoring representation among its own employees.
- 39.11 The Service Provider shall provide such information as the Purchaser may reasonably request for the purpose of assessing the Service Providers compliance with this clause.

#### **40. AUDIT OF RECORDS**

- 40.1 At any time upon the request of the Purchaser the Service Provider shall make available for inspection and audit all records maintained by the Service Provider in relation to Contract invoicing and pricing, and also to any incidents or occurrences related to health, safety and environmental matters. The Service Provider similarly agrees to make available all records maintained on volunteers and staff recruitment and training and in respect of Criminal Records Bureau and related checks as set out in the Specification at Appendix B. The Service Provider shall allow the Purchaser full access to its premises upon reasonable request to allow such inspection or audit to take place and shall provide all reasonable facilities, resources and assistance to support this process. In this Clause the term “records” means all records in any medium (whether written, computer readable or otherwise) including accounts, data, documents, drawings and private notes about the Purchaser and all copies and extracts of them made or required by the Service Provider in the course of this Contract.

#### **41. SAFEGUARDING VULNERABLE ADULTS**

- 41.1 If a member of the Service Provider’s staff or volunteer becomes aware of abuse or suspects that abuse may be happening to an adult, then the Service Provider’s Manager must inform the Community Response and Reablement Duty Team of the Purchaser, by telephone on the same day of the concern being raised (as laid out in the Berkshire Safeguarding Adults Policy and Procedures 2008 for safeguarding adults or any such document from the Purchaser that supersedes this publication). If a Service Provider has safeguarding concerns out of normal office hours, then they should contact the Emergency Duty Team by telephone (or any such number as subsequently provided by the Purchaser, in order to make a safeguarding alert).
- 41.2 The Service Provider shall ensure that all staff and volunteers engaged in the provision of the Services are:
- 41.2.1 registered with the Independent Safeguarding Authority (ISA) in accordance with the Safeguarding Vulnerable Groups Act 2006 and regulations or orders made there under; and

- 41.2.2 are subject to a valid enhanced disclosure check undertaken through the Criminal Records Bureau (which the Purchaser requires to be renewed every 3 years) including a check against the adults' barred list as appropriate; and
- 41.2.3 the Service Provider shall monitor the level and validity of the checks under this clause for all staff and volunteers.
- 41.3 The Service Provider warrants that at all times for the purposes of this Contract:
- 41.3.1 it is appropriately registered in relation to all persons who are or will be employed or engaged by the Service Provider in the provision of the Services, and
- 41.3.2 it has no reason to believe that any such person:
- 41.3.2.1 is barred from the activity; or
- 41.3.2.2 is not registered with the ISA, in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made there under, as amended from time to time.
- 41.4 The Service Provider shall immediately notify the Purchaser of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 41 have been met.
- 41.5 The Service Provider shall refer information about any staff carrying out the Services to the ISA where it removes permission for such staff to carry out the Services (or would have, if such staff had not otherwise ceased to carry out the Services) because, in its opinion, such staff has harmed or poses a risk of harm to the Person/vulnerable adults.
- 41.6 The Service Provider shall not, without the prior written consent of the Purchaser, employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out the Service, or may present a risk to People or any other person.
- 41.7 The Purchaser's consent under clause 41.7 shall be conditional on appropriate safeguards being put in place as the Purchaser in its absolute discretion, and in accordance with any directions made under the SVGA 2006, may determine.
- 41.8 The Service Provider agrees to follow the Berkshire Safeguarding Adults Policy and Procedures 2008 and those of the Care Quality Commission Adult Protection Protocol detailed under "Role of the 'Registered Service Provider'" or any amended protocol thereunder or any relevant superseding protocol. Copies of this document can be found at: <http://www.bracknell-forest.gov.uk/berkshire-safeguarding-adults-policy-and-procedures> (subject to change).
- 41.9 The Service Provider and its staff and volunteers shall not act as either executors or as a witness to the will of any Person. Nor shall they accept power of attorney status for any Person or act in the capacity of a certificate Service Provider for a Lasting Power of Attorney or any other Power of Attorney.
- 41.10 The Service Provider shall respect the confidentiality of People and adhere to the Purchaser's Information Sharing and Assessment Protocol (Appendix F), which summarises local, 'arrangements to work effectively with other organisations to safeguard and promote welfare, including arrangements for sharing information;' (subject to any relevant provisions of the Data Protection Act).

- 41.11 The Service Provider shall disseminate and implement 'appropriate whistle-blowing procedures, and a culture that enables issues about safeguarding and promoting the welfare of children to be addressed;'

## **42. MENTAL CAPACITY ACT**

- 42.1 The Service Provider shall comply with the requirements of the Mental Capacity Act 2005.
- 42.2 There are 5 core principles that underpin the Mental Capacity Act 2005 as follows:
- 42.2.1 A person must be assumed to have capacity unless it is established that they lack capacity.
  - 42.2.2 A person is not to be treated as unable to make a decision unless practicable (doable) steps to help them to do so unless all practical steps to help have been taken without success.
  - 42.2.3 A person is not to be treated as unable to make a decision merely because they make an unwise decision.
  - 42.2.4 An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.
  - 42.2.5 Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom on action.
- 42.3 These principles must be followed in any assessment of or decision about a Person's capacity. The Code of Practice can be found at:  
<http://www.dca.gov.uk/menincap/legis.htm#codeofpractice> (subject to change)
- 42.4 Where a Person is unable to express their views/decisions or has been assessed as lacking capacity; the Service Provider will ensure that each Person receives assistance with this process which may mean accessing the Independent Mental Capacity Advocate (IMCA) service under the Act.

## **43. INTELLECTUAL PROPERTY**

- 43.1 The Service Provider confirms and acknowledges that all IP including copyright which arises out of its provision of the Services for the Council are and shall remain the exclusive property of the Council and that the Service Provider shall not acquire any rights or interests in any such IP arising.
- 43.2 Subject to any pre-existing rights of third parties or to any pre-existing rights of the Service Provider, the Service Provider hereby assigns to the Council all present and future IP relating to and/or connected with the Services for the full period of such rights and any extensions or renewals of them
- 43.3 The Service Provider agrees to execute any document or do any thing required by the Council to confirm that all IP including copyright and any other rights in the product of its Services under this Contract belong to the Council

## ***Appendix B – Specification***

Easthampstead House, Town Square, Bracknell,  
Berkshire RG12 1AQ  
Tel: (01344) 352000



## **Appendix B - Specification**

### **Local Healthwatch Bracknell Forest**

**December 2012**

**4.1.1.iii.1.1.1**

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## About this document

The words or terms in this document that may need additional explanation are underlined and explained in the Glossary.

This document is the Specification for Local Healthwatch in Bracknell Forest. It sets out in an open and transparent way the criteria the Purchaser has set to make sure that the Service is fit for purpose.

So that you can make an informed decision about whether you wish to bid to run the Service, it sets out to make clear important details about the Service, such as what it is, what it must do, who it must benefit, what it must achieve and other requirements or criteria set out by the Purchaser or in legislation.

If you have questions you should contact the people identified in the Invitation to Tender documents.

This information in this document is based on information available to the Council up to and including 9 November 2012.

## 5 Introduction

### ***About this section***

This part of the Specification sets out the background to the Service requirement.

### ***Legislation***

Healthwatch is the new independent consumer champion for patients, carers and all people using or intending to use health and social care services. It is relevant to people of all ages, from birth to old age. It is created by the Health and Social Care Act 2012 and will exist in two distinct forms: Local Healthwatch at local authority level and Healthwatch England at national level.

*Health and Social Care Act 2012*

<http://www.legislation.gov.uk/ukpga/2012/7/part/5/enacted>

### ***Policy***

Local Healthwatch will be a service centred around local people and will deliver the ambitions of the Government's white paper *Liberating the NHS* which seeks to place people at the heart of all health and social care services. Local Healthwatch will gather the views of people of all ages on, and experiences of, the health and social care system. In this way, patients and the public views will have real influence with those who commission and on those who provide services, about what users, carers and local people need and want from them.

*Liberating the NHS*

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_117353](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_117353)

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Local Healthwatch supports the principles of Think Local, Act Personal which is the new National system of social care, where people can identify, select and organise their support in ways that meet their needs and wishes. People of all ages will have the freedom to choose and control the type of assistance they receive, and who they receive it from. This means more flexibility and responsiveness for those who need support. People can use different businesses and services in their local area to enable them live as independently as possible. To make the most of this opportunity, Local Healthwatch will help people access the information and advice they need to be able to make good choices about their care and support.

*Think Local, Act Personal*  
[www.thinklocalactpersonal.org.uk](http://www.thinklocalactpersonal.org.uk)

### **Local views**

This Specification is based on a commitment from the Council to ensure that Local Healthwatch is fit for purpose and meets not only the requirements of legislation but also seeks to accommodate the needs and expectations of local people expressed through community engagement and involvement activity and recorded in an independently produced “Vision Report”.

*Vision Report*  
<http://www.bracknellforestlink.org/sites/default/files/FinalBRACKNELL070812.pdf>

### **Financial considerations**

Potential providers should assess the specification and establish an appropriate level of service in relation to an assessment of local needs and circumstances.

Service Providers shall be aware of the following contexts.

- a. The funding for the service is not yet known, however a budget will be set for the service.
- b. The budget will be dependent on the funding allocation received from Government through the Department of Health
- c. The allocation is not ring-fenced and therefore will be subject to a local decision made by the Council in relation to the Council’s budget as a whole.
- d. The final budget will not be known until February 2013

#### **5.1 Indicative funding**

The indicative annual funding for the Service to 2015 is anticipated to range from between £90,000 to £110,000 per annum and is based on a combination of two data sources:

- a. An average of three years operating accounts for Bracknell Forest Local Involvement Network from 2010-2012 (<http://www.bracknellforestlink.org/link-reports>) indicating expenditure of £40,000 per annum
- b. Figures published by the Department of Health which indicate:
  - i) approximately £32,000 for new functions based on the LHW2 with minimum allocation option as agreed by Government

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([http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_129404.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_129404.pdf))

- ii) approximately £20,000 additional funding  
[http://www.local.gov.uk/c/document\\_library/get\\_file?uuid=5fa8760d-b5f0-4902-99da-6de7df509918&groupId=10171](http://www.local.gov.uk/c/document_library/get_file?uuid=5fa8760d-b5f0-4902-99da-6de7df509918&groupId=10171)

## 5.2 In the event of a funding shortfall

Taking into account the financial considerations outlined above, the Provider shall note that if funding is reduced, the value of the contract would be reduced and services would be reduced proportionately by necessity and discussions between the Purchaser and the successful Provider will take place to determine the scope and extent of service provision without any prejudice on either side.

## 6 Mandatory Service Requirements

### ***About this section***

This part of the Specification sets out details of the Service and what must be delivered as part of the Service in accordance with legislation. It does not outline how the Service should be delivered. As a potential Provider, you will be expected to use your skills, knowledge and experience to develop and put forward creative solutions. As well as health services, you will be equally concerned with both adult and children's social care.

### ***Service name***

The name of the Service shall be "Local Healthwatch Bracknell Forest".

### ***Implementation requirements***

The Service Provider shall be expected to set out how it will set up the Service, and demonstrate competent methodologies and processes, in an implementation plan as to how it will achieve the objectives of the Service and when. A full implementation plan will be required as part of the Invitation to Tender documentation.

### ***What the Service must do***

Local Healthwatch Bracknell Forest is to be the respected, authoritative, influential, credible, visible representative and champion of the public and patient voice for health and social care. As such, the Service can be divided into three core elements:

- a. Providing advice and information (signposting) about services and support for making informed choices
- b. Improving services by gathering views and making them known
- c. Strengthening the collective voice of local people

*Establishing local Healthwatch - Making an impact with Healthwatch:*  
[http://www.local.gov.uk/web/guest/publications/-/journal\\_content/56/10171/3734142/PUBLICATION-TEMPLATE](http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3734142/PUBLICATION-TEMPLATE)

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**6.1 Providing advice and information (signposting) about services and support for making informed choices**

To help local people make informed choices about health and social care services they might need, the Service Provider shall provide accurate, up to date, prompt, polite, culturally and audience-appropriate and impartial information, signposting, advice and assistance, taking into account provision for a variety of spoken languages, style and use of language, physical accessibility in terms of such aspects as mobility and hearing loops, as well as accessible in terms of such aspects as print size, or use of other media for example audio presentation, text phone.

The Service Provider should consider how information could be provided dependent on the different levels of need, capability and support requirements expressed by individuals using the Service and use a client information system in order to provide tracking, recording and reporting requirements including destinations and outcomes.

*You may find information on the Advice Quality Standard, General Level 1, helpful:*

<http://www.tan.org.uk/advice-quality-standard/levels-of-application>

Provide people with information about what they can do when things go wrong and signpost them to local complaints systems, NHS Complaints advocacy or other advocacy support or services.

*For information on advice, information and signposting, go to:*

[http://www.local.gov.uk/web/guest/publications/-/journal\\_content/56/10171/3738712/PUBLICATION-TEMPLATE](http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3738712/PUBLICATION-TEMPLATE)

**6.2 Improving services by gathering views and experience and making them known**

To give authoritative, evidence-based feedback to organisations responsible for commissioning or delivering local health and social care services, the Service Provider shall:

- a. ensure a wide cross-section of views of local people are gathered in a variety of ways in respect of local health and social care services
- b. communicate the views of local people to:
  - i) commissioners and deliverers of health and social care services (or other services with a health related outcome)
  - ii) the Overview and Scrutiny function of the Local Authority
  - iii) the Care Quality Commission
  - iv) Healthwatch England
- c. Sit on the Health and Wellbeing Board for the purposes outlined in 0 below
- d. Put in place open and transparent recognised structures for making decisions and enabling local people to influence what the Service does

The Service Provider shall:

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- a. Judiciously exercise powers to request information and undertake Enter and View activities to observe the provision of social care and health services to secure the views and experiences of local people
- b. establish a panel of authorised representatives to undertake Enter and View activities

*Regulations applicable to Enter and View*

<http://www.legislation.gov.uk/uksi/2008/528/contents/made>

- c. work collaboratively with commissioners and delivery organisations to develop recommendations for the improvement of services subject to Enter and View activities.

### **6.3 Strengthening the collective voice of local people & patients**

The Service Provider shall be required to maximise opportunities for local people to have their say and give voice to the views and experiences of local people and input to new or proposed services or the decommissioning of services

The Service Provider shall work creatively and collaboratively with representative individuals, organisations, groups or other national, regional, local or community networks in the public, private, voluntary and community, social enterprise or user-led sectors to achieve positive outcomes for local people

To secure robust representation and evidence broad involvement of local Stakeholder groups, the Service Provider shall:

- a. put in place a community engagement strategy

*For information on securing wide representation, go to:*

[\*Establishing local Healthwatch – Engaging with the widest range of local people:\*](#)

[http://www.local.gov.uk/web/guest/publications/-/journal\\_content/56/10171/3776878/PUBLICATION-TEMPLATE](http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3776878/PUBLICATION-TEMPLATE)

- b. make publicly available a directory of all organisations with which it is networked and with which it engages
- c. ensure local intelligence gathering systems complement those established by Healthwatch England, including the Healthwatch England data hub when it is established from April 2013, and work with Healthwatch England in its role as national champion to amplify the local voice

*For information on the Hub, go to*

<http://www.healthwatch.co.uk/content/website-and-domain-letter>

- d. produce an annual report that evidences:
  - i) How the local Healthwatch has been representative of local people
  - ii) How the local Healthwatch has carried out engagement, and gathered the views of local people
  - iii) Outcomes – what the Service has achieved for local people

*Regulations relating to Local Healthwatch*

<https://www.wp.dh.gov.uk/publications/files/2012/07/Summary-Report-Issues-relating-to-local-Healthwatch-regulations.pdf>

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## 7 Specific Service Requirements

### ***About this section***

The Council requires that Local Healthwatch must be an independent organisation.

Feedback from independent community engagement and involvement activity with local stakeholders has however highlighted a number of expectations the Service shall meet if it is to be the respected, authoritative, influential, credible, visible representative and champion a number of criteria should be met. These are set out in the sections below:

#### **7.1 Local Involvement Network (LINK) legacy**

The Service Provider, in the setting up and running of the Service, shall be expected to demonstrate how the positive legacy of the Bracknell Forest LINK has been taken into account and shall evidence consideration of policies, practices, skills, knowledge and experience of the LINK.

*See Legacy Report*

<http://www.bracknellforestlink.org/sites/default/files/Bracknell%20Forest%20LINK%20Legacy%20v1%2006.pdf>

#### **7.2 Governance**

The Service Provider shall be a corporate body.

The Service must be provided by an organisation that shall be classified as a “social enterprise” in accordance with applicable regulations issued by the Secretary of State for Health. For the purposes of this Specification, the term “social enterprise” will be used as defined by Social Enterprise UK such that any bidding organisation:

- a. Is an incorporated organisation with a legal identity that is separate from the person or people who run it
- b. Must be able to hire staff and enter into contracts
- c. Has a social objective outlined in its constitution that states its activities primarily benefit the community
- d. Is allowed to generate income, but reinvests at least 50% of any profits or surpluses back into the enterprise to further the social objective
- e. Must have a statement in its constitution about how assets will be distributed to sustain the social objective should the organisation be wound up

*See the Social Enterprise UK website for more information*

<http://www.socialenterprise.org.uk/>

The Service Provider shall:

- a. set clear vision and goals and undertake business, strategic and operational and forward planning to maximise resource devoted to front-line service delivery and prioritise on the basis of evidence of local need and experience
- b. operate in accordance with the Nolan Principles of Public Life

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*The Seven Principles*

<http://www.public-standards.gov.uk/>

- c. put in place an open and transparent structure for governance, decision making, behaving with integrity and exercising effective control

*Establishing local Healthwatch – Governance*

[http://www.local.gov.uk/web/guest/publications/-/journal\\_content/56/10171/3735761/PUBLICATION-TEMPLATE](http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3735761/PUBLICATION-TEMPLATE)

### **7.3 Independence**

The Service must secure and maintain independence to reduce and remove political or other influence on the strategic or operational activity of the Service.

Elected Borough, Town or Parish representatives will not be permitted to act in the capacity of owner, employee, trustee, director or non-executive director of the Service and the Provider will be required to put in place policies or practices that ensure that political involvement is declared, reduced or removed.

Members of the Service management team, executive or non-executive directors shall be required to make publicly available a register of interests in accordance with a policy and procedure determined for this purpose and shall comply with all relevant guidance in relation to conflicts of interest issued by the Secretary of State.

### **7.4 Branding**

The Service Provider shall use Healthwatch branding under license as set out in the Act and in compliance with applicable branding toolkits, standards and terms and conditions of use as set on the Healthwatch England website.

*[Healthwatch England Terms and Conditions](http://www.healthwatch.co.uk/terms-and-conditions)*

<http://www.healthwatch.co.uk/terms-and-conditions>

The Service Provider shall be responsible for ensuring that Local Healthwatch functions that are sub-contracted use the Local Healthwatch brand.

### **7.5 Website**

The Service Provider shall use Healthwatch website template and domain name and customise it to local need in compliance with applicable standards and terms and conditions of use.

### **7.6 Civil society organisations & developing social capital**

The Service Provider shall be expected to demonstrate how it will give opportunities to civil society organisations, volunteers and lay members to deliver or support the delivery of the Service.

### **7.7 Income generation, use of profits and protection of assets**

Whilst the Service will be funded by Government grants sourced from tax-payer money, the Service Provider, as a social enterprise, shall demonstrate how it will generate income and reinvest profits for the sustainability of the service and for the benefit of the community.

Any Constitution must identify provision relating to the distribution of assets for the benefit of the community should the Service be dissolved.



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All funding provided shall be used for the purposes of providing the Service.

### **7.8 Evidence Representation**

Provision of the Service has already been subject to an Equalities Screening to determine the potential benefit to different communities and this document is provided in the supporting information. The Service Provider shall be aware that the Service shall be subject to a full Equalities Impact Assessment 18 months after the contract start date being sufficient time to provide a full evaluation as to how the needs of different local communities have been met in accordance with the Council's Equality Impact Assessment Procedure. The Purchaser will support the Provider in the undertaking of this task as required.

### **7.9 Partnership working**

Although this list is not exhaustive, the Service shall demonstrate engagement with and the establishment of mutually supportive and beneficial relationships with individuals and organisations relevant to the health and social care economy:

- a. The Bracknell and Ascot Clinical Commissioning Group and individual GP practices, including the lay representative for patient and public involvement and other engagement systems and networks such as Patient reference groups or patient participation groups
- b. The NHS Commissioning Board (NHSCB) and Local Area Teams of the NHSCB
- c. Foundation Trusts
- d. Bracknell Forest Partnership boards relevant to achieving health and social care outcomes beyond the Health and Wellbeing Board
- e. Other Local Healthwatch organisations
- f. Voluntary and community sector organisations or groups, social enterprises and user led organisations and individuals
- g. Health overview and scrutiny
- h. The commissioning local authority, local authority officers and elected representatives
- i. A broad range of health and social care commissioners and provider agencies supporting local people

### **7.10 Staff and training**

The Service shall demonstrate commitment to the development of social capital by providing opportunity for the involvement of volunteers and lay-members in the Service.

<http://www.dh.gov.uk/health/2012/07/healthwatch-engagement/>

The Service Provider will be a robust and credible player in the local health and social care economy and the Provider shall be able to demonstrate that it has the appropriate level of skills, competencies and relevant experience required to deliver its statutory functions to the highest possible level. The Service Provider shall follow a rigorous recruitment process prior to the commencement of staff and paid directors and

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volunteers including lay people and non-executive directors. This shall include as a minimum:

**7.11 For staff**

A recruitment and selection policy that takes account of all current legislation. The policy covers clear job descriptions, recruitment, advertising and interviewing and also ensures that a minimum of two satisfactory and verified written references (including one from the most recent employer) are routinely obtained before new workers commence work.

At least one person shall be employed with or working towards NVQ Level 3 (Information, Advice & Guidance) or equivalent qualification relevant to the provision of information. Where this is not the case, the Provider shall demonstrate a time line for the achievement of the qualification by a staff member.

**7.12 For volunteers**

The Purchaser recognises the valuable contribution of volunteers and lay people in the support and delivery of services but that volunteers and lay people must be recruited against criteria which establish the role and expectations of such individuals.

The Purchaser considers it essential for the following policies to be in place:

- a. a recruitment, selection and review policy that covers recruitment, advertising and interviewing, clear role descriptions and review of progress and also ensures that a minimum of two satisfactory and verified written references (including one from the most recent employer) are routinely obtained before new volunteers begin supporting the organisation
- b. reimbursement of volunteers' expenses
- c. recognition of contribution to the Service

**7.13 For all**

The Service Provider shall ensure that:

Indemnity provisions are in place to ensure staff, volunteers, members and stakeholders are insured as appropriate and shall take into account guidance from Healthwatch England in this regard

Checks to ensure that all people employed or volunteering in the provision of the Service are registered with the Disclosure and Barring Service (DBS) in accordance with the Safeguarding Vulnerable Groups Act 2006 and regulations or orders made there under.

Enhanced DBS checks are in place for each person and the portability and durability of DBS checks are in line with statutory requirements.

All staff involved in the delivery of the Service have access to induction followed by regular support, supervision and training and that staff and volunteer performance is monitored, recorded and managed.

As a minimum requirement, any training provided includes the following:

- a. Health and Safety Awareness

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- b. Confidentiality and professional boundaries
- c. Equality and Diversity and provisions under the Equality Act 2010
- d. Adult and Children's Safeguarding
- e. Data Protection and Information Security
- f. Freedom of Information
- g. Effective communication

The Service Provider shall note that the Purchaser is able to offer general, specific and bespoke training opportunities at a fee in many of these areas to voluntary and community sector organisations subject to request.

### **7.14 Ownership**

All data and information shall be the property of the Council and shall be held in an accessible and transferable form. Full details of the Council position on such intellectual property issues will be given in the terms and conditions of any subsequent Contract.

### ***Who can deliver the Service***

#### **7.15 Delivery Model**

The Purchaser is seeking to award one contract. Below are some potential delivery models which are intended to afford opportunity to flexibly bring together resources, skills, knowledge and expertise to deliver the Service. The models are not ranked:

- a. Single supplier – all services delivered under contract with a single organisation that is a social enterprise already established or established specifically for this purpose
- b. Sub-contractor – services are delivered under contract with a lead organisation that is a social enterprise who may sub-contract some or all services to other organisations who may or may not be social enterprises
- c. Partnership – services are delivered under contract with a formal, legally constituted partnership of organisations that are social enterprises that can either deliver all the services within the partnership or can sub-contract some of the services to other organisations
- d. Consortia or “network or networks” - services are delivered under contract with a lead organisation who shall be a body corporate and operate as a social enterprise that acts as the lead organisation for a group of organisations that may or may not be social enterprises but which have come together to deliver all of the Service within the consortia or through the lead organisation agree to sub-contract some of the services to other organisations
- e. Any of the above that is able to evidence commitment to establishing the Service under either a, b, c or d above within a specified timeline

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### **7.16 Licensing and Sub-contracting arrangements**

The Service Provider shall be the contracted organisation responsible for overall delivery of the Service. The Service Provider may contract other bodies to deliver parts of the Service and there is no requirement for third parties to be social enterprises. No restrictions will be placed on which functions can or cannot be sub-contracted. However, should the Service Provider form a partnership and jointly hold the license all members of the partnership would need to be corporate bodies and classified as a social enterprise.

## **8 Core Competencies needed to provide the Service**

### ***About this section***

The Service Provider shall be responsible for creating a Service that is the respected, authoritative, influential, credible, visible representative and champion of the public and patient voice for health and social care.

To be successful, any and all eventual Service Providers shall be expected to evidence that they have the skills and competencies required to deliver their functions efficiently, effectively and economically. Prospective Service Providers should demonstrate the skills and competencies in a health and social care context wherever possible.

The Service Provider shall be able to demonstrate:

- a. The ability to adapt in a changing policy environment
- b. The ability to seek and accept feedback from local people and stakeholders about service delivery and performance and make changes to policy and practice as a result
- c. The ability to plan and deliver successful communications to increase visibility and awareness, improve knowledge and understanding for a service (or product) using a variety of mechanisms and media
- d. Awareness and understanding of the communities in Bracknell Forest, in particular disadvantaged, socially excluded and those who would otherwise have trouble accessing information, advice and support or expressing their views, wishes or feelings in relation to health and social care services and support
- e. An ability to proactively seek out and identify needs and research, source and provide information, advice and support to individuals and organisations
- f. An understanding and the use of different techniques for gathering views
- g. The necessary skills to synthesise, interpret and understand different kinds of data and information
- h. An understanding of the different communications needs of different people and stakeholders
- i. Awareness of health and social care needs of local people and the strategies and plans in place to address them

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- j. An ability to create productive working relationships with elected officials, Council officers, health service managers, GPs, lobbying, advice, policy groups and organisations

## 9 Quality Assurance

### ***About this section***

The Council is committed to ensuring that Local Healthwatch is created, supported and continuously developed to ensure it meets the needs of the people it is established to serve. Specific details will be set out in any future contract and the details are provided here to help set expectation.

Contract monitoring is important because it ensures that local people receive a consistent and reliable standard of service and support the Provider to maintain and develop a good quality service to the Purchaser and exercise its accountability responsibilities

### ***Who the Service will support and be accountable to***

#### **9.1 Local people**

The Service Provider must support “local people” as defined in the Act as:

- a. People who live in the local authority area
- b. People to whom care services are being provided or may be provided in the local authority area
- c. People from the local authority area to whom care services are being provided in any place (out of area placements)

#### **9.2 Commissioners**

The Service must support individuals or organisations that directly or indirectly design, deliver, monitor, scrutinise or regulate local health and social care services or any service with a health related outcome by providing feedback, research, and information on local people’s views and experiences of those services in order to improve those services.

#### **9.3 Health and Wellbeing Board**

The Service shall be represented on the Health and Wellbeing Board as a statutory and equal member of the Board and shall identify an appropriate person and substitute through a process of recruitment and selection, to fulfil the duties outlined below:

- a. Contribute to the development of the Enhanced Joint Strategic Needs Assessment
- b. Contribute to the development of the Joint Health and Wellbeing Strategy
- c. Scrutinise the alignment of health service and local authority commissioning plans with the priorities identified in the Joint Health and Wellbeing Strategy
- d. Demonstrate the alignment of the Service’s forward plan with the priorities identified in the Joint Health and Wellbeing Strategy

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- e. Act as a two-way channel of communication, engagement and involvement between the Service as a credible, representative voice of the wider community and the Board
- f. Share responsibility and accountability for decisions made
- g. Complete the applicable members' register of interests

*Establishing local Healthwatch - Working with health and wellbeing boards:*

[http://www.local.gov.uk/web/guest/publications/-/journal\\_content/56/10171/3734250/PUBLICATION-TEMPLATE](http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3734250/PUBLICATION-TEMPLATE)

#### **9.4 Healthwatch England**

The Service shall give Healthwatch England such assistance as it may require to enable it to carry out its functions effectively, efficiently and economically as set out in the Act, regulations or guidance from the Secretary of State.

#### **9.5 Regulatory Body**

As appropriate to the legal form of the corporate body.

#### ***How the contract will be monitored***

Methods of monitoring will include:

- a. Views of local people
- b. Office visits, including reasonable access to staff and files in order to ensure compliance with the Contract
- c. Implementation of action plans against performance targets or measures
- d. Contract reviews
- e. 360 degree reviews

The Purchaser and the Provider will be expected to meet on a regular basis to review the service delivery, contractual compliance and reporting requirements.

Subject to any transitional arrangements set out by the Secretary of State in relation to the delivery of the Service, in the first year of the Contract, three-monthly performance monitoring meetings shall be held. This may be reviewed in subsequent years' dependant on progress against agreed outcomes. Reviews will be no less than every six months. The meetings shall be attended by representatives of the Purchaser and the Service Provider.

#### ***What measures could be used***

The Service Provider shall be required to report progress against the following overarching outputs (this list is not exhaustive):

- a. Quarterly reports on Service provided: These reports shall be specified by the Council following consultation with the Service Provider
- b. An Annual Report and Return on Service provided, specifying performance targets and outcomes as set out in Regulations and other requirements specified by the Council following consultation with the Service Provider

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- c. A quarterly report showing the status of the CRB checks taken on the Service Providers staff and volunteers who are providing the Service (showing expiry dates, renewal action taken etc). The format of this report shall be subject to final agreement by the Council
- d. Any applicable Healthwatch England Quality Standards

The Service Provider shall also contribute to improving health and wellbeing outcomes and reducing health inequalities for local people as expressed in and measured by the National Outcomes Frameworks for the NHS, adult social care, public health, commissioning and the Children and Young People's Outcomes Strategy summarised as follows:

- a. Enhancing quality of life for local people with care and support needs
- b. Delaying and reducing the need for care and support
- c. Ensuring that local people have a positive experience of care and support
- d. Safeguarding adults whose circumstances make them vulnerable and protecting from avoidable harm

Key Performance Indicators (KPI) will be used to measure the delivery of the Service and these will be set out and agreed between the Purchaser and the successful Provider. KPIs must take into account relevant legislation, regulations, guidance and other measures which have been locally determined. There are two forms of KPIs: quantitative and qualitative.

Whilst the following is not an exhaustive list, it is intended to give an indication of the types of measures that will be used to monitor the delivery of the Service:

- a. How many requests for information were made by LHW, what the requests were about, to whom the requests were made and whether responses were received within 20 working days and the number of individuals receiving Service
- b. How many reports and/or recommendations were made to commissioners, what they were about, whether commissioners responded within 20 working days with an explanation of action(s) to be taken or an explanation of why action was not being taken and the time allocated to each person accessing the Service
- c. Which premises were entered and viewed by authorised representatives, what triggered those visits, how many times those premises were entered and viewed and the results of those visits and the issues for which the Service was provided
- d. What do local people think of the services they have received, how many complaints or compliments have been received
- e. Following 360 degree review, how stakeholders perceive the delivery of the Service
- f. Do local people record that preferred outcomes have been achieved
- g. How services have been changed and what benefits have been achieved

There may be additional requirements on how the information is presented such as:

- a. Are there trends or patterns and what corrective action might be taken as a result

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- b. Sub classifications will include a breakdown by protected characteristics outlined in the Equality Act 2012 and health and social care group.

## **9.6 Limitations**

The Purchaser will not require the Provider to disclose any confidential or personal information obtained from or about any person accessing the Service except where that Person may be at risk of significant harm or in order to comply with a statutory duty.



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## 10 Glossary

360 degree review	A method of getting feedback that comes from a wide range of people and organisations connected with a service, e.g. users of the service, funders, partners
Authorised representative	people who have been selected and trained to undertake Enter and View activity
Bracknell Forest and Ascot Clinical Commissioning Group	The group of GP practices in the Bracknell Forest and Ascot area that will be responsible for commissioning health services from 1 April 2013
Carer	people who, as relatives or friends, care for other people who receive health (NHS) services or social care services
Civil society organisations	Groups, organisations or associations in wider society or the community which represent a wide range of interests. Groups can be voluntary, community, social enterprises, user-led groups, etc.
Corporate body	An organisation that has a legal identity.
corrective action	Changes or improvements made in an organisation to reduce or eliminate problems, issues or other undesirable situations
Data hub	The Healthwatch England system will provide a central, secure location where every local Healthwatch will be able to share comments and documents, good practice etc with other local Healthwatch organisations and with Healthwatch England.
Enter and view activity	a statutory function of Local Healthwatch which allows <u>authorised representatives</u> to enter certain premises and observe the care provided to secure the views and experiences of users of those services in order to make recommendations about improvements to services under observation
Equalities Impact Assessment	A process which proactively researches and gathers evidence to assess whether services meets the needs of certain people with protected characteristics where sufficient evidence, following Equalities Screening, cannot be demonstrated.
Equalities Screening	A process of evaluation which assesses existing evidence to examine the extent to which services meet the needs of certain people with protected characteristics.
Fit for purpose	means the service must be suitable for the purpose for which it was intended
Health and social care group	Measures of services are usually broken down by a range of health and social care classifications such as, mental health, physical disability, learning difficulty, long-term condition, etc.
Health and Wellbeing Board	Committees of the local authority with specific statutory powers, duties and functions, for example, a duty to prepare joint strategic needs assessments (JSNAs) and joint health and wellbeing strategies. They are subject to a legal duty to encourage integrated working between commissioners of health or social care services. Although Boards are not responsible for children's services, the director of children's services is one of the prescribed officers that have to be

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	on the board, reflecting the need for both adults and children's services to be commissioned in ways that improve integration, especially where there are serious health and care problems within families.
health services	services that are provided as part of the health service (NHS) in England
health-related services	services that may have an effect on the health of individuals but are not health services or social care services
independent advocacy services	Services to assist people making or who wish to make complaints about the provision of NHS services or the functions of certain NHS bodies
legitimate interest in health and social care services	people who are currently using, have used or are considering using health and social care services or services with a health-related outcome
Local Involvement Network (LINK)	Functions of Local Involvement Networks will be taken on by Local Healthwatch organisations
Local people	<ol style="list-style-type: none"><li>people who live in the Bracknell Forest area</li><li>people who get health and care services provided in Bracknell Forest</li><li>people from Bracknell Forest who get social care services provided in any other place, and;</li><li>people who are representative of the people mentioned in (a) to (c)</li></ol>
NHS Commissioning Board	The NHS CB will provide support to clinical leaders at every level of the NHS including providers, will support their development so that they can exercise their duties and functions autonomously and without excessive burdens or interference, hold them to account and be directly responsible for some specialist commissioning. The NHS CB will supported by a number of Local Area
Overview and Scrutiny function	A legal function of the Council to ensure that the elected members and employees of the Council are held to account for the decisions they make. Overview and Scrutiny is delivered through committees made up of elected members and other representatives. Their work is part of a positive contribution to the development of Council policy and practice.
patient	people who receive health services
protected characteristics	In accordance with the Equality Act 2010, the interests of specific groups of people must be considered to ensure that they do not experience disadvantage or inequalities in outcomes. The specific groups relate to equality of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and/or sexual orientation.
Qualitative indicators	Qualitative indicators are expressed in subjective terms and measure what people e.g. service quality is rated as "excellent," "average" or "below average."
Quantitative indicators	Quantitative performance indicators are number based measures, e.g.

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Regulations	the number of written complaints received Additional legal requirements (secondary legislation) made by the Secretary of State rather than going through Parliament (primary legislation).
Ring-fenced	describes where funding is protected for a particular use
Social capital	the collective or economic value that is brought about by networks of individuals and groups working together
social care services	services that are provided by local authority adult and children's social services
Social Enterprise	This Specification uses the Social Enterprise UK definition such that any bidding organisation must be a <u>corporate body</u> that: <ul style="list-style-type: none"><li>• has a clearly defined social mission written into its constitution</li><li>• generates at least 51% of income through trading activity</li><li>• reinvests at least 51% of profits to further the social mission of the organisation</li></ul>
the Act	the Health and Social Care Act 2012

### ***Appendix C – Evaluation Spreadsheet***

Refer separate Excel document.

### ***Appendix D – Freedom of Information Act 2000***

Refer to ITT

### ***Appendix E – Information Sharing & Assessment Protocol***

Refer to separate PDF Document

### ***Appendix F – Information on Potential TUPE Transferees***

Refer separate Word document.

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***Appendix D – Freedom of Information Act 2000***

**GUIDANCE TO TENDERERS ON FREEDOM OF INFORMATION ACT 2000:  
ACCESS TO INFORMATION ABOUT OR ARISING UNDER CONTRACTS**

**1 Introduction**

1.1 All information relating to any tender made to the Council or any contract to which the Council is party, including information arising under the contract or about its performance, will be covered by the Freedom of Information Act 2000 (the Act) from January 2005. The Council will be under a legal obligation to disclose such information if requested unless an exemption applies. The legal obligations to respond to a request for information falls on the Council. The Council must determine whether an exemption applies to information and whether the request should be refused. The Council may also be subject to disclosure obligations under other legislation or codes of practice. This Guidance sets out the approach of the Council to the disclosure of information about contracts.

**2. General rules on disclosure**

2.1 The Council has determined that, in the absence of special circumstances:-

- The Invitation to Tender (ITT) will always be available under the Act to those who enquire.
- Responses to tenders (apart from price information and commercially sensitive information – see below) will be held in confidence at least until award of the contract.
- Broad cost information will generally be available after award of contract under the Act to those who enquire.
- Information obtained from suppliers in responses to tenders and not generally available (future product information, research plans, financial details) will be held in confidence until no longer sensitive.
- Detailed tender prices will be held in confidence until no longer sensitive (see below).

2.2 Tenderers must therefore inform the Council, on the enclosed Schedule of Reserved Information, of such other information which it regards as being eligible for exemption from disclosure by the Council under the Act. The reasons for all such exemptions must be fully justified against the relevant section of the Act.

**3. Reserved Information**

3.1 The Act specifies a number of different grounds for exemption. Most of these are not considered to be relevant to a tendering process or subsequent award of contract. Those which are most likely to be relevant are:-

- The information constitutes a trade secret (section 43(1))

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- Disclosure would prejudice the commercial interest of any person (including the Council) (section 43(2))
  - Disclosure would constitute an actionable breach of confidence (section 41(1))
  - Personal data or information relating to the private life of any individual which is appropriate for protection (section 40)
- 3.2 If the Council agrees that information nominated by the successful tenderer may be legitimately classified as “reserved”, the Schedule of Reserved Information will form an integral part of the contract. The Schedule will list the class or category of information or the information itself and specify which exemptions under the Act apply to each specified class, category or specific information. The schedule shall indicate when it is likely that the information can be made available under the Act or if the information is unlikely ever to be made so available. Where such information is exempt under the rules governing commercial matters, (section 43(2)), then unless special circumstances apply, it will not be withheld under the Act for more than three years after completion/expiry of the contract.
- 3.3 Information relating to the overall value, performance or completion of the contract, contract records and administration will not generally be accepted as reserved information. The Council may however withhold access to such information under the Act in appropriate cases. The decision whether to withhold information shall be for the Council alone to determine. It shall have no obligation to consult the contractor.
- 3.4 The Council will automatically make information available under the Act from 3 years after completion/expiry of the contract, in the absence of specific agreement to the contrary. In the event that the Council receives a request for such information before the expiry of the 3 year period which it considers it may be appropriate to provide it will, wherever possible, notify the tenderer and take into consideration any representations made by the tenderer within 7 days of receipt of the notice by the tenderer.
- 4. Handling requests for information and notice to those affected**
- 4.1 Other than as set out above the Council shall have no obligation to consult the contractor where any request for information, whether under the Act or otherwise, touches or concerns the contract.
- 5. Information about the provision of the service which is the subject of the contract which arises in the course of performance of the contract**
- 5.1 The Council will have obligations to respond to the Act and other requests for information and the contract will include appropriate terms requiring the contractor to supply such information as requested by the Council.

Any enquiries about this policy and its application should be addressed to the Borough Solicitor, Bracknell Forest Borough Council, Easthampstead House, Town Square, Bracknell, Berks, RG12 1AQ

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***SCHEDULE 1 – Entry Level Questions***

No.	Question	Answer
1.	Can you meet all the requirements set out in the Specification, and do you agree to these?	Yes / No
2.	Please confirm that the required insurance cover (See ITT Section 6.3) will be in place by the start of the contract.	Yes / No
3.	Can you supply a copy of your latest Audited or Management Accounts or alternatively Business Plan or financial statements?	Yes / No
4.	Do you agree to the Council's terms and conditions?	Yes / No
5.	Do you agree to our payment terms of Nett 30 days on receipt of acceptable invoice?	Yes / No
6.	Have you provided two references as detailed at Schedule 3?	Yes / No
7.	Do you agree to comply with the Council's Information Sharing Protocol?	Yes / No
8.	Can you supply the following policies and demonstrate how they are implemented and maintained? <ul style="list-style-type: none"><li>• Recruitment and Selection</li><li>• Equal Opportunities</li><li>• Complaints</li><li>• Code of Conduct</li><li>• Safeguarding</li></ul>	Yes / No
9.	Please confirm that all staff who have direct contact with children and vulnerable adults within your organisation, have an enhanced CRB check prior to appointment, and confirm that your organisation routinely renews those checks.  If you answered " <b>No</b> " to any of the questions 1 to 9 please provide any justification(s) why your organisation's tender should still be considered by the Council below:	Yes / No
10.	<b>Response</b>	
11.	Has your organisation, or any of its directors or senior staff, been found guilty for any of the following offences?	
12.	<ul style="list-style-type: none"><li>• Conspiracy</li></ul>	Yes / No
13.	<ul style="list-style-type: none"><li>• Corruption</li></ul>	Yes / No
14.	<ul style="list-style-type: none"><li>• Bribery</li></ul>	Yes / No

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- 15. • Fraud (including not paying taxes or social security contributions) Yes / No
- 16. • Money laundering Yes / No
- 17. • Professional misconduct Yes / No
- 18. Have your organisation, any of its directors, been previously declared insolvent or bankrupt? Yes / No

If you answered "Yes" to any of questions 11 to 18 please provide any justification(s) why your organisation's tender should still be considered by the Council below:

19. **Response**

Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Job Title

\_\_\_\_\_

Organisation

\_\_\_\_\_

Date

\_\_\_\_\_

***SCHEDULE 2 – Organisation Information***

**Notes for completion:**

Please answer every question. Many procurements generate a great deal of interest from potential suppliers, so please ensure that you complete the questionnaire as requested.

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Failure to do so may result in your application being disqualified. If the question does not apply to you please write N/A; if you don't know the answer please write N/K.

“Authority” means the purchasing organisation that is seeking to award a contract.

“You”/ “Your” or “Potential Provider” means the business or company which is completing this form.

**Verification of Information Provided:**

The higher the risk of the procurement, the higher the level of verification is likely to be required. Not all questions require supporting documents up front at this stage (for example certificates, statements with this questionnaire.) **However, the Council may ask to see these documents at a later stage, so it is advisable you ensure they can be made available upon request.** You may also be asked to clarify your answers or provide more details about certain issues.

**Sub Contracting Arrangements**

Where a sub-contracting approach is proposed, all information requested should be given in respect of the prime contractor.

Where sub-contractors will play a significant role in the delivery of the services or products under any ensuing contract, please indicate in a separate annex (by inserting the relevant company/organisation name) the composition of the supply chain, indicating which member of the supply chain will be responsible for the elements of the requirement.

It is recognised that arrangements in relation to sub-contracting may be subject to future change. However, Potential Providers should be aware that where sub-contractors are to play a significant role, any changes to those sub-contracting arrangements may constitute a material change and therefore may affect the ability of the Potential Provider to proceed with the procurement process or to provide the goods and/or services.

**Consortia Arrangements**

If the Potential Provider bidding for a requirement is a consortium, the following information must be provided:

- full details of the consortium; and
- the information sought in this FORM in respect of each of the consortium's constituent members as part of a single composite response.

Potential Providers should provide details of the actual or proposed percentage shareholding of the constituent members within the consortium in a separate Annex. All consortia shall be required to comply with the requirements of clauses 4.34 to 4.37 of the Specification. The Authority recognises that arrangements in relation to consortia may (within limits) be subject to future change. Potential Providers should therefore respond in the light of the arrangements as currently envisaged. Potential Providers are reminded that any future proposed change in relation to consortia must be notified to the Authority so that it can make a further assessment by applying the selection criteria to the new information provided.



ORGANISATION NAME:

\_\_\_\_\_

DATE: \_\_\_\_\_

**LOCAL HEALTHWATCH  
BRACKNELL FOREST**



INVITATION TO TENDER

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ORGANISATION NAME:

\_\_\_\_\_

DATE: \_\_\_\_\_

**LOCAL HEALTHWATCH  
BRACKNELL FOREST**



INVITATION TO TENDER

**FORM A: ORGANISATION AND CONTACT DETAILS**

Full name of organisation tendering (or of organisation acting as lead contact where a consortium or partnership bid is being submitted)		
<b>ORGANISATION DETAILS</b>		
Registered office address	Company or charity registration number	
	VAT registration number	
	Name of immediate parent company	
	Name of ultimate parent company	
Type of organisation	i) a public limited co.	
	ii) a limited company	
	iii) a limited liability partnership	
	iii) other partnership	
	iv) sole trader	
	v) other (please specify)	

<b>CONTACT DETAILS</b>	
<b>Contact details for enquiries about this FORM</b>	
Name	
Address	
Post Code	
Country	
Phone	

ORGANISATION NAME:

\_\_\_\_\_

DATE: \_\_\_\_\_

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BRACKNELL FOREST**



INVITATION TO TENDER

Mobile	
Email	

Consortia, Partnerships and Sub-Contracting	a) Your organisation is bidding to provide the services required itself	
	b) Your organisation is bidding in the role of Prime Contractor and intends to use third parties to provide some services	
	c) The Potential Provider is a consortium	
<p>If your answer is (b) or (c) please indicate in a separate annex (by inserting the relevant company/organisation name) the composition of the supply chain, indicating which member of the supply chain (which may include the Potential Provider solely or together with other providers) will be taking the leading role, and will therefore be responsible for delivery of the requirement.</p>		

**QUESTIONS 1.1 and 1.2 FOR COMPLETION BY NON-UK BUSINESSES ONLY**

1.1	<p>Registration with professional body</p> <p>Is your business registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in <b>Annexes IX A-C of Directive 2004/18/EC</b>) under the conditions laid down by that member state).</p>	
1.2	<p>Is it a legal requirement in the State where you are established for you to be licensed or a member of a relevant organisation in order to provide the requirement in this procurement? If yes, please provide details of what is required and confirm that you have complied with this.</p>	

ORGANISATION NAME:

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INVITATION TO TENDER

**FORM B - GROUNDS FOR MANDATORY REJECTION**

**Important Notice:**

In some circumstances the Authority is required by law to exclude you from participating further in a procurement. If you cannot answer 'no' to every question in this section it is very unlikely that your application will be accepted, and you should contact us for advice before completing this form.

Please state 'Yes' or 'No' to each question.

Has your organisation or any directors or partner or any other person who has powers of representation, decision or control been convicted of any of the following offences as defined within Section 23 of the Public Contract Regulations 2006 (SI 5/2006):		Answer
Answer "Yes" only if they have been convicted.		
(a)	Conspiracy	Yes / No
(b)	Corruption	Yes / No
(c)	Bribery	Yes / No
(d)	Fraud (including not paying taxes or social security contributions)	Yes / No
	(i) the offence of cheating the Revenue;	Yes / No
	(ii) the offence of conspiracy to defraud;	Yes / No
	(iii) fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;	Yes / No
	(iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985 or section 993 of the Companies Act 2006;	Yes / No
	(v) defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;	Yes / No
	(vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or	Yes / No
	(vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;	Yes / No
(e)	money laundering within the meaning of the Money Laundering Regulations 2003 or Money Laundering Regulations 2007; or	Yes / No
(f)	any other offence within the meaning of Article 45(1) of Directive 2004/18/EC as defined by the national law of any relevant State	Yes / No

ORGANISATION NAME:

\_\_\_\_\_

DATE: \_\_\_\_\_

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INVITATION TO TENDER

**FORM C - GROUNDS FOR DISCRETIONARY REJECTION**

**Important Notice.**

The Authority is entitled to exclude you from consideration if any of the following apply but may decide to allow you to proceed further. If you cannot answer 'no' to every question it is possible that your application might not be accepted. In the event that any of the following do apply, please set out (in a separate Annex) full details of the relevant incident and any remedial action taken subsequently. The information provided will be taken into account by the Authority in considering whether or not you will be able to proceed any further in respect of this procurement exercise.

Please state 'Yes' or 'No' to each question.

Please state 'Yes' or 'No' to each question.

<b>Is any of the following true of your organisation?</b>	
(a) <u>being an individual</u> , is bankrupt or has had a receiving order or administration order or bankruptcy restrictions order made against him or has made any composition or arrangement with or for the benefit of his creditors or has not made any conveyance or assignment for the benefit of his creditors or appears unable to pay or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986, or article 242 of the Insolvency (Northern Ireland) Order 1989, or in Scotland has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of his estate, or is the subject of any similar procedure under the law of any other state;	Yes / No
(b) <u>being a partnership constituted under Scots law</u> , has granted a trust deed or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of its estate; or	Yes / No
(c) <u>being a company or any other entity within the meaning of section 255 of the Enterprise Act 2002</u> has passed a resolution or is the subject of an order by the court for the company's winding up otherwise than for the purpose of bona fide reconstruction or amalgamation, or had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is the subject of similar procedures under the law of any other state?	Yes / No
<b>Has your organisation</b>	
(a) been convicted of a criminal offence relating to the conduct of your business or profession;	Yes / No
(b) committed an act of grave misconduct in the course of your business or profession;	Yes / No
(c) failed to fulfil obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the relevant State in which you are established;	Yes / No
(d) failed to fulfil obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the relevant State in which you are established; or	Yes / No
e) been guilty of serious misrepresentation in providing any information required of you under Regulation 23 of the Public Contracts Regulations	Yes / No

ORGANISATION NAME:

\_\_\_\_\_

DATE: \_\_\_\_\_

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2006?	
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ORGANISATION NAME:

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DATE: \_\_\_\_\_

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INVITATION TO TENDER

**FORM D - Economic and Financial Standing Regulation 24**

**2 FINANCIAL INFORMATION**

If, for some reason, your organisation is not required to produce Audited Accounts or an Annual Report, business plan or financial statement, then the Council's Finance Section will need to have visibility of such financial information/ evidence.

The Council will, wherever possible or relevant, seek more information from independent credit reference agencies as part of the evaluation and reserves the right to undertake credit checks at each stage of the procurement process. The Council will expect the supplier (in the case of consortia or partnerships, the lead supplier) to be able to provide evidence that their financial resources are sufficiently sound to service the Contract. Those who are unable to provide satisfactory evidence will be disqualified.

**NB We will not accept applications from more than one company forming part of the same Group**

2.1	Please provide one of the following set out below:- <b>(please indicate which one by ticking the relevant box)</b>	
	<i>A copy of your audited accounts for the most recent two years</i>	
	<i>A statement of your turnover, profit &amp; loss account and cash flow for the most recent year of trading</i>	
	<i>A statement of your cash flow forecast for the current year and a bank letter outlining the current cash and credit position</i>	
	<i>Alternative means of demonstrating financial status if trading for less than a year</i>	

ORGANISATION NAME:

\_\_\_\_\_

DATE: \_\_\_\_\_

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**SCHEDULE 3 – References**

	<p><b>The Service must work collaboratively in an objective, open and transparent way with a range of organisations from different sectors and people from different communities.</b></p> <p>In accordance with Section 8 of the ITT, please provide details of two examples of where you have worked collaboratively with an existing organisation to improve services or outcomes for local people. The Council may wish to contact the referees to confirm the accuracy of the information provided.</p>		
		<b>Contract 1</b>	<b>Contract 2</b>
1.	Customer Organisation (name):		
2.	Customer contact name, phone number <b>and</b> email		
3.	Contract start date Contract completion date Contract Value		
4.	Brief description of contract (max 150 words) including evidence as to your technical experience in this market.		

Provide details below of what outcomes were (or were not) delivered for the above organisations and what was learned from the experience.

**Response**



ORGANISATION NAME:

\_\_\_\_\_

DATE: \_\_\_\_\_

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## ***SCHEDULE 4 – Pricing Schedule***

Refer to attached Excel spreadsheet

ORGANISATION NAME:

DATE: \_\_\_\_\_

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**SCHEDULE 5 – Specification Compliance Statement**

Section	Subject	Compliant		If no, state why and propose alternative. (Use additional sheet(s) if necessary)
		Yes	No	
1.	About This Document			
2.	Introduction			
3.	Mandatory Service Requirements			
4.	Specific Service Requirements			
5.	Core Competencies Needed to Provide the Service			
6.	Quality Assurance			
7.	Glossary			

**NB Significantly non-compliant bids will be rejected.**

Signature: .....

Name: .....

Position: .....

Organisation: .....

Date: .....

ORGANISATION NAME:

DATE: \_\_\_\_\_

**LOCAL HEALTHWATCH  
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INVITATION TO TENDER

***SCHEDULE 6 – Conditions of Contract Compliance Statement***

Clause	Subject	Compliant		If no, state why and propose alternative. (Use additional sheet(s) if necessary)
		Yes	No	
1	Definitions and Interpretation			
2	Council's Function			
3	Best Value			
4	No Partnership			
5	Notices			
6	Alterations to these Terms & Clauses & Variations to the Service			
7	Contract & Duration			
8	The Service			
9	Price & Payment			
10	Assignment & Sub-Contracting			
11	Monitoring & Review			
12	Indemnity & Insurance			
13	Termination & Suspension of Contract			
14	Observance of Statutory Requirements			
15	Prevention of Bribery & Corruption			
16	Jurisdiction			
17	Data Protection			
18	Freedom of Information			
19	No Rights of Third Parties			
20	Human Rights			
21	Waiver			
22	Resolving Disputes			
23	Remedies Cumulative			
24	Inconsistency			
25	Headings			
26	Force Majeure			
27	Emergency Closure			
28	Change of Ownership			
29	Agency			
30	Declaration of Interests			
31	Consequential Loss			
32	Confidentiality			
33	TUPE			

ORGANISATION NAME:

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**INVITATION TO TENDER**

34	Information & Retendering			
35	Conclusion of Contract			
36	Severability			
37	Recovery of Sums Due			
38	Health & Safety			
39	Equal Opportunities			
40	Audit of Records			
41	Safeguarding Vulnerable Adults			
42	Mental Capacity Act			
43	Intellectual Property			

**NB Significantly non-compliant bids will be rejected.**

Signature: .....

Name: .....

Position: .....

Organisation: .....

Date: .....

ORGANISATION NAME:

DATE: \_\_\_\_\_

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INVITATION TO TENDER

***SCHEDULE 7 – Freedom of Information Act 2000 - Schedule of Reserved Information:***

<b>Reserved Information</b>	<b>When available for disclosure</b>	<b>Relevant Section of Act</b>	<b>Reason</b>
Tender responses (excl sensitive tender information)	After award of contract	Section 43(2) and/or section 36	Commercial confidentiality and prejudice to the effective conduct of public affairs.
Sensitive tender information received from bidder (e.g. price information)	When no longer sensitive	Section 43(2) and/or section 36 (EIR regulation 12(5))	Sensitive information should not be released. Commercial confidentiality and prejudice to the effective conduct of public affairs.
Information obtained from suppliers and not generally available (future product information, research plans, financial details)	When no longer sensitive	Section 41 (EIR regulation 12(5))	The information will generally have been specifically requested by the authority and supplied with a reasonable expectation it will not be made public. Otherwise, companies may refuse to divulge the information, to the probable detriment of the public interest.
Price breakdown/information	When no longer sensitive	Section 43(2) (EIR regulation 12(5))	
CV's and reference site information	Until exemption does not apply	Section 40 and/or 41 (EIR regulation 12(5) and/or regulation 13)	Personal information or information supplied to the bidder in confidence
Information relating to contract negotiation	When no longer sensitive	Section 43(2) and/or section 36	

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INVITATION TO TENDER


I have read the accompanying “Guidance to Tenderers on Freedom of Information Act 2000: Access to information about or arising under contracts”. The above table has been completed in accordance with these guidelines and I have reasonably designated this information as confidential. I understand that the Council will not accept a blanket disclaimer

**Name** ..... **Job Title**..... **Organisation**.....

**Signed**..... **Date**.....

ORGANISATION NAME:

\_\_\_\_\_  
 DATE: \_\_\_\_\_

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INVITATION TO TENDER

**SCHEDULE 8 – Tender Checklist**

Please tick checklist to indicate that copies of all relevant documents are enclosed.

<i>Section</i>	<i>Required Documents</i>	<i>Document enclosed Yes/No</i>	<i>Comments</i>
	<b>ITT</b>		
<b>2.3.1</b>	6 Hard copies of tender documents plus CD/ DVD copy		
<b>4 - 12</b>	Completed ITT (Sections 3 -12) giving all information requested		
<b>11</b>	Copies of Insurance Certificates or confirmation from your insurers that the minimum levels of cover will be provided if you are awarded the contract.		
	<b>Schedules</b>		
<b>1</b>	Entry Level Questions		
<b>2</b>	Organisation Information		
<b>3</b>	Experience & Contract Examples		
<b>4</b>	Pricing Schedule		
<b>5</b>	Specification Compliance Statement		
<b>6</b>	Conditions of Contract Compliance Statement		
<b>7</b>	Schedule of Reserved Information		
<b>8</b>	Tender Checklist (this document)		
<b>9</b>	Form of Tender		
	<b>Other – Please List</b>		

**SCHEDULE 9 – Form of Tender**

ORGANISATION NAME:

\_\_\_\_\_

DATE: \_\_\_\_\_

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**INVITATION TO TENDER**

I/We, the undersigned, having examined the Conditions of Contract, Specification and all other Tender Documents, hereby offer to supply the goods/undertake the services required, in accordance with the tender documents for prices detailed in the Pricing Schedule.

I/We understand that the Council is not bound to accept the lowest or any tender received.

This tender remains open for acceptance for 120 days from the date fixed for the submission of tenders in the Invitation to Tender.

I/we agree that the essence of selective tendering is that the Council shall receive bona fide competitive tenders from all those tendering. In recognition of this principle, I/we warrant that this is a bona fide tender, intended to be competitive, and that I/we have not fixed or adjusted the price tendered by, or under or in accordance with any agreement or arrangement with any other tenderer. I/ we furthermore warrant that no approaches have been made to any other tenderers for the purpose of obtaining or influencing their tender prices or any other details of their bid. I/ we also warrant that I/we have not and will not before the award of any contract for the work:

- (i)(a) communicate to any person other than the Council the amount or approximate amount of the tender or proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
- (b) enter into any agreement or arrangement with any person that they shall refrain from tendering, or that they shall withdraw any tender once offered or vary the amount of any tender to be submitted;
- (ii) pay, give or offer to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the work, any act or thing of the sort described at (i)(a) or (b) above.

Unless and until a formal agreement is prepared and executed, this tender, together with your written acceptance thereof, shall constitute a binding contract between us.

Signature

\_\_\_\_\_  
(please use non black ink)

Name

\_\_\_\_\_

Job Title

\_\_\_\_\_

Organisation

\_\_\_\_\_



ORGANISATION NAME:

\_\_\_\_\_

DATE: \_\_\_\_\_

**LOCAL HEALTHWATCH  
BRACKNELL FOREST**



INVITATION TO TENDER

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Address

\_\_\_\_\_

☎ Telephone No.(s)

\_\_\_\_\_

Email

\_\_\_\_\_

Date

\_\_\_\_\_