

## Clarification Questions – 14th July 2017

**Question - 1. *Clause 2A.3 - For so long as the Intermission is continuing, then:***

***Clause 2A3.1 - the Service Provider shall not be obliged to provide the Services.***

Please can the Council clarify whether it is expected, that during an Intermission, the Service Provider is required to carry on the service to those residents already placed in the home, or whether these residents will be removed from the home, during this period?

**Answer** – No service is required to be provided during a period of intermission. An intermission is defined as being a “hold” on the delivery of a service whilst the Service Agreement remains in force. An example of this would be when service user is away from the care home in hospital.

**Question - 2. *Clause 2A3.4 - the Service Provider shall use best endeavours to keep the Customer updated regarding any circumstances that might have given rise to the Intermission.***

Please can the requirement be changed from 'best endeavours' to 'reasonable endeavours'?

**Answer** – The Council is happy that the term best endeavours will remain for a contract of this nature.

**Question - 3. *Clause 3.2 - For the removal of doubt, the termination of this Supplier Agreement shall not by itself terminate any Service Agreement issued under it.***

In the instance that the Supplier Agreement is terminated, please can you confirm on which terms and conditions the Service Agreement will operate on.

**Answer** – The termination of a Supplier Agreement would only take place once all other remedies have been investigated. In the event a Supplier Agreement is terminated The Council will review all placements made with that supplier and decide whether they should remain for continuity of care or those service users placed elsewhere. In the event they remain at the care home the Placement Agreement will be the governing terms.

**Question - 4. *Clause 4.1 - Subject to clause 4.3, where a Customer requires specific Services for which it seeking to award a Service Agreement under the DPS it shall:***

***d) conduct a tender via the Application among the service providers to whom the Requirement has been issued;***

Is it the intention of the Council that once a Provider is on the DPS system that an individual tender process will be issued for each individual placement, into the home? It is unclear from the definition of the term 'Requirement'. Please can you provide clarification on this point?

**Answer** – A Requirement is defined as ‘A request issued by the Council from time to time on the DPS describing the specific Services that the Council requires and for which it is seeking to award a

Service Agreement'. When the Brokerage team has a service user requiring a care or nursing home they will place a requirement onto Sproc.Net setting out the needs of that service user. It will be distributed to all those who are enrolled to provide that type of care set out in the requirement, to provide an offer.

**Question - 5. Clause 6.8.2 - The Service Provider must use its best endeavours to collect the contribution due from the Service Users (or appointed representative) and any third party who is responsible for the payment of Charges. The Service Provider must notify the Council if that contribution has not been collected for a period of twelve (12) weeks, giving details of attempts to collect the amount. Failure to notify the Council may lead to the Service Provider bearing the loss of income.**

Please can the requirement be changed from 'best endeavours' to 'reasonable endeavours'?

Please could you clarify if payments will be made, where the Services are being provided, but there may not be a placement agreement in place?

**Answer** – The Council is happy that the term best endeavours will remain for a contract of this nature.

A Placement Agreement will always be issued at the same time as the Service Agreement and will set out the payment elements for each party.

**Question - 6. Clause 12.1 - Each Customer has a statutory duty to provide Best Value pursuant to the provisions of the Local Government Act 1999 which includes the need for continuous improvement in the standard of the Services and quality within financial restrictions. The Service Provider shall work with each Customer to identify develop and deliver Best Value services under the terms and conditions of the relevant Service Agreement(s) and, in addition in the case of the Council, of this Supplier Agreement within available resources.**

What is expected of the Service Provider in relation to this clause?

**Answer** – The provider will be expected to provide evidence as requested by the Council of continuous improvement against the terms of contract.

The provider will be expected to provide evidence as requested by the Council of continuous improvement against the terms of contract and individual outcomes identified.

Best value pertains to delivering services within financial restrictions and in line with market rates. The Council will select suppliers via the DPS to provide residential and nursing services based on an assessment of price coupled with service user choice. In relation to the best value clause the Council may seek clarity on a given provider's fee structure if their placement fees are repeatedly above those of equivalent provider services.

**Question - 7. Clause 15.1 - The Service Provider shall indemnify the Customer against all claims, demands, proceedings, actions, damages, costs, expenses and any other liabilities in respect of, or**

*arising out of, the provision of the Services in relation to the injury to or death of any person, or loss of or damage to any property including property belonging to that Customer or financial loss arising from any advice given or omitted to be given by the Service Provider or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This does not apply to the extent that such injury, death, loss or damage arises out of the act, default, or negligence of the relevant Customer, its employees, or agents not being the Service Provider or persons engaged by the Service Provider.*

This clause provides for an unlimited liability for the Service Provider. This is not reasonable in this type of contract. This should be limited to the value of the contract. Please can this be reflected in the contract?

**Answer** – This is a standard clause and will not be amended.

**Question - 8. Clause 31B. TERMINATION OF THE SUPPLIER AGREEMENT**

Please can reciprocal rights be inserted into the contract for termination of the Supplier Agreement?

**Answer** –

**Question** - 9. You have said that it is your intention to use an automated process for the payment of suppliers. Does this mean that there is no need for weekly invoicing? How will this work?

**Answer** – When payments are made through the Sproc.Net system a Service Receipt will be automatically generated by the system and payment processed. No action will be required by the supplier for this to happen.

**Question** – 10. If we are unable to complete our application before the 30th of July, will it be possible to get an extension? If our application is not completed and evaluated before July 30 will we still be able to bill for our existing residents funded by Haringey?

**Answer** – No extension is required as the DPS is open for Accreditations and Enrolments at anytime. If you are not enrolled by the 31<sup>st</sup> July you will not receive any new requirements issued through the system. The billing process will be continuous

**Question** – 11. Are there are specialist provisions such as YPD, palliative etc. included in the nursing category?

**Answer** – There are no additional care templates within the residential or nursing categories. However the Council will set out supplementary requirements by placement in service user support plans, and in the requirement 'descriptions' on Sproc.Net when we seek to make a placement.

**Question – 12.** It was mentioned at the market engagement that training would commence on July 24th. Will we get advance notification of this so we can prepare our staff?

**Answer –** Training notifications will be emailed out to suppliers. They will be a mixture of classroom and webinar sessions

**Question - 13. *Clause 20.1 - The Service Provider hereby grants to each Customer an irrevocable nonexclusive royalty-free license to use any material created by the Service Provider in the provision of the Services in which, but for this sub-clause 20.1, the Service Provider would own the IPR (including but not limited to data, working papers and the contents of any report). The Service Provider agrees that the relevant Customer may without let or hindrance publish, alter, release, license or otherwise exploit and deal with such material as it thinks fit, via any medium.***

The Service Provider would not be agreeable to allowing the Council to release or publish material which has been altered, without first gaining the approval of the Service Provider. This type of clause is inappropriate for this type of contract and as such should be removed.

**Answer –** The purpose of this Clause is to give the Council the right to use any intellectual property rights (IPR) that may be created during the course of the provision of services by the Service Provider under the DPS. This is a standard provision in contracts for the supply of services  
The Authority does not intend to amend Clause 20.1.

**Question - 14. *Clause 20.3 - The Service Provider agrees to waive all moral rights in respect of the material referred to in sub-clause 20.1.***

As per our response to clause 20.1, this clause is inappropriate in this type of contract and as such should be removed.

**Answer –** The Authority does not intend to amend Clause 20.1

**Question - 15. *Clause 31B. TERMINATION OF THE SUPPLIER AGREEMENT***

Please can reciprocal rights be inserted into the contract for termination of the Supplier Agreement?

**Answer –** We have noted your comments and have previously made a revision to clause 31.1 of the Supplier Agreement to allow termination of the Service Agreement by either party under notice. Once all Service Agreements are terminated the supplier has the option not to respond to any further requirements posted on Sproc.Net

**Question - 16** Could expound on the contracts we are required to provide. Are they contracts with other local authorities/CCG or individual placement agreements?

**Answer –** These are contracts we can refer to should we need a reference, so would probably be aimed at other Local Authorities or CCG's.