

UK-Shrewsbury: Food, beverages, tobacco and related products.

UK-Shrewsbury: Food, beverages, tobacco and related products.

Section I: Contracting Authority

I.1) Name and addresses

Shropshire Council

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Tel. +44 1743252992, Email: procurement@shropshire.gov.uk

Contact: [REDACTED] - Procurement Manager

Main Address: www.shropshire.gov.uk

NUTS Code: UKG22

I.2) Joint procurement

The contract involves joint procurement: Yes.

In the case of joint procurement involving different countries, state applicable national procurement law: Not provided

The contract is awarded by a central purchasing body: No.

I.3) Communication

The procurement documents are available for unrestricted and full direct access, free of charge, at: <http://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Food%2C-beverages%2C-tobacco-and-related-products./D3A7RU6258>

Additional information can be obtained from: the abovementioned address

Tenders or requests to participate must be sent electronically via <http://www.delta-esourcing.com/tenders/UK-title/D3A7RU6258> to the abovementioned address

Electronic communication requires the use of tools and devices that are not generally available.

Unrestricted and full direct access to these tools and devices is possible, free of charge, at: Not provided

I.4) Type of the contracting authority

Regional or local authority

I.5) Main activity

General public services

Section II: Object

II.1) Scope of the procurement

II.1.1) Title: RMCS 017 - Speciality & Hospitality Food Items

Reference Number: RMCS 017

II.1.2) Main CPV Code:

15000000 - Food, beverages, tobacco and related products.

II.1.3) Type of contract: SERVICES

II.1.4) Short description: A framework arrangement for the supply and delivery of speciality and hospitality food items including Frozen Chicken Epic, Cheese & Tomato Pizzini, Large Garlic Spread Ciabatta Slices, BBQ Pulled Pulled Beef in BBQ sauce and 6" Sausage Rolls

II.1.5) Estimated total value:

Value excluding VAT: 400,000

Currency: GBP

II.1.6) Information about lots:

This contract is divided into lots: No

II.2) Description

II.2.2) Additional CPV codes:

Not Provided

II.2.3) Place of performance:

UKG22 Shropshire CC

II.2.4) Description of procurement: A framework arrangement for the supply and distribution of speciality and hospitality food items including Frozen Chicken EPIC Burger, Cheese & Tomato Pizzini, Large Garlic Spread Ciabatta Slices, BBQ Pulled Pork, Pulled Beef in BBQ Sauce and 2120 6" Sausage Rolls to Shropshire Council for an initial period of 2 years commencing on 20th February 2017 with the option to extend for a further period of 2 years.

The Council are seeking a sole contractor to supply and distribute speciality and hospitality item to sites (mainly schools) throughout Shropshire, Worcestershire, Herefordshire, Cheshire, Staffordshire, North Wales and the West Midlands which are serviced by Shire Services.

As a public authority, in line with the Public Services (Social Value) Act 2012 the Council has due regard to economic, social and environmental well-being in Shropshire. Accordingly the council is looking, in relation to the delivery of this contract, for proposals from contractors that could help provide social value benefits within Shropshire where practicable.

II.2.5) Award criteria:

Price is not the only award criterion and all criteria are stated only in the procurement documents

II.2.6) Estimated value:

Value excluding VAT: 400,000

Currency: GBP

II.2.7) Duration of the contract, framework agreement or dynamic purchasing system:

Start: 20/02/2017 / End: 19/02/2021

This contract is subject to renewal: Yes

Description of renewals: There is provision within the contract to extend for a further period of up to 2 years.

II.2.10) Information about variants:

Variants will be accepted: No

II.2.11) Information about options:

Options: No

Description of options: Not provided

II.2.12) Information about electronic catalogues:

Tenders must be presented in the form of electronic catalogues or include an electronic catalogue: No

II.2.13) Information about European Union funds:

The procurement is related to a project and/or programme financed by European Union funds: No

Identification of the project: Not provided

II.2.14) Additional information: Not provided

Section III: Legal, Economic, Financial And Technical Information

III.1) Conditions for participation

III.1.1) Suitability to pursue the professional activity, including requirements relating to enrolment on professional or trade registers

List and brief description of conditions:

See tender documents

III.1.2) Economic and financial standing

List and brief description of selection criteria:

See tender documents

Minimum level(s) of standards possibly required (if applicable) :

See tender documents

III.1.3) Technical and professional ability

List and brief description of selection criteria:

See tender documents

Minimum level(s) of standards possibly required (if applicable) :

See tender documents

III.1.5) Information about reserved contracts (if applicable)

The contract is reserved to sheltered workshops and economic operators aiming at the social and professional integration of disabled or disadvantaged persons: No

The execution of the contract is restricted to the framework of sheltered employment programmes: No

III.2) Conditions related to the contract

III.2.1) Information about a particular profession

Reference to the relevant law, regulation or administrative provision:

Not Provided

III.2.2) Contract performance conditions

See tender documents

III.2.3) Information about staff responsible for the performance of the contract

Obligation to indicate the names and professional qualifications of the staff assigned to performing the contract: Yes

Section IV: Procedure

IV.1) Description

IV.1.1) Type of procedure: Open

IV.1.3) Information about a framework agreement or a dynamic purchasing system

The procurement involves the establishment of a framework agreement

Framework agreement with a single operator

Envisaged maximum number of participants to the framework agreement:

Not Provided

In the case of framework agreements justification for any duration exceeding 4 years: Not

Provided

IV.1.6) Information about electronic auction:

An electronic auction will be used: No

Additional information about electronic auction: Not provided

IV.1.8) Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: No

IV.2) Administrative information

IV.2.1) Previous publication concerning this procedure:

Notice number in the OJ S: Not provided

IV.2.2) Time limit for receipt of tenders or requests to participate

Date: 25/10/2016 Time: 12:00

IV.2.4) Languages in which tenders or requests to participate may be submitted: English,

IV.2.6) Minimum time frame during which the tenderer must maintain the tender: Not Provided

IV.2.7) Conditions for opening of tenders:

Date: 25/10/2016

Time: 12:00

Place:

Shirehall, Shrewsbury

Section VI: Complementary Information

VI.1) Information about recurrence

This is a recurrent procurement: Yes

Estimated timing for further notices to be published: 4 years

VI.2) Information about electronic workflows

Electronic ordering will be used No

Electronic invoicing will be accepted No

Electronic payment will be used No

VI.3) Additional Information: The contracting authority considers that this contract may be suitable for economic operators that are small or medium enterprises (SMEs). However, any selection of tenderers will be based solely on the criteria set out for the procurement.

For more information about this opportunity, please visit the Delta eSourcing portal at:

<https://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Food%2C-beverages%2C-tobacco-and-related-products./D3A7RU6258>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/D3A7RU6258>

VI.4) Procedures for review

VI.4.1) Review body:

Shropshire Council
Shirehall, Shrewsbury, SY2 6ND, United Kingdom
Tel. +44 1743252992

VI.4.2) Body responsible for mediation procedures:

Shropshire Council
Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom
Email: procurement@shropshire.gov.uk

VI.4.3) Review procedure

Precise information on deadline(s) for review procedures:

Not Provided

VI.4.4) Service from which information about the lodging of appeals may be obtained:

Shropshire Council
Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom
Email: procurement@Shropshire.gov.uk

VI.5) Date Of Dispatch Of This Notice: 21/09/2016

Annex A

IV) Address of the other contracting authority on behalf of which the contracting authority is purchasing

Purchased on behalf of other contracting authority details:

1: Contracting Authority

Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council's involvement.

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom
Email: procurement@Shropshire.gov.uk
Main Address: www.shropshire.gov.uk
NUTS Code: UKG22

Commissioning & Procurement

Shirehall, Abbey Foregate
Shrewsbury, SY2 6ND



Tel: (01743) 252993

Fax: (01743) 255901

Please ask for: [REDACTED]

Email: procurement@shropshire.gov.uk

Dear Bidder

**RMCS 017 – SPECIALITY & HOSPITALITY FOOD ITEMS
SHROPSHIRE COUNCIL**

You have been invited to tender for the above requirement. With this letter please find copies of the following documents:

1. Instructions for Tendering and Special Terms & Conditions
2. Shropshire Council General Terms and Conditions
3. Tender Response Document
4. Appendix A – Pricing Schedule
5. Appendix B – Food Additives to be avoided
6. Appendix C – Establishment List

Tenders should be made on the enclosed Tender Specification and Response Document. Your Tender must be completed, signed and returned together with a signed copy of the 'Instructions for Tendering' through our Delta Tenderbox. You are recommended to keep a copy of all tender documents and supporting documents for your own records.

Please pay particular attention to the points below concerning the returning of tenders.

Returning of Tenders

- The deadline for returning tenders is **noon on 25th October 2016**, any tenders received after this time will not be accepted
- Tenders are to be submitted through Delta, our electronic tender portal
 - Please ensure that you allow yourself at least two hours when responding prior to the closing date and time, especially if you have been asked to upload documents. If you are uploading multiple documents you will have to individually load one document at a time or you can opt to zip all documents in an application like WinZip. Failure to submit by the time and date or by the method requested will not be accepted.
 - Once you upload documentation ensure you follow through to stage three and click the 'response submit' button. Failure to do so, will mean the documents won't be viewable by the Council.

Tenders **cannot** be accepted if:

- Tenders are received by post, facsimile or email
- Tenders are received after **12 noon on the given deadline**

European Requirements

In accordance with the EU Procurement Directive, Shropshire Council will accept equivalent EC member or international standards in relation to safety, suitability and fitness for purpose. Where a particular brand of article or service has been referred to in the tender document, alternatives or equivalents which achieve the same result will be equally acceptable. In these cases Shropshire Council will take into account any evidence the tenderer wishes to propose in support of the claim that the product or service is equivalent to the named types.

All tender documents and any accompanying information must be submitted in English. A Contract Notice in respect of this requirement was dispatched on 21st September 2016 to appear in the Supplement to the Official Journal of the European Union.

Freedom of Information

Under the provisions of the Freedom of Information Act 2000 from 1 January 2005, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. Information about your organisation, which Shropshire Council may receive from you may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.

Therefore if you provide any information to Shropshire Council in the expectation that it will be held in confidence, you must make it clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as “commercial in confidence” will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be given.

Other Details

Please note that if supplementary questions are raised by any tenderer prior to the closing of tenders and Shropshire Council decides that the answers help to explain or clarify the information given in the Tender Documents, then both the questions and the answers will be circulated to all enterprises invited to submit a tender.

Please also note that Shropshire Council is committed to achieving Social Value outcomes through all its procurement activity, specific requirements for this contract are set out within the Tender Response Document and in addition for your further information the council's Social Value Framework guidance can be found at www.shropshire.gov.uk/doing-business-with-shropshire-council.

As part of its sustainability policy, Shropshire Council encourages tenderers to minimise packaging, particularly presentational or retail packaging.

Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council's involvement

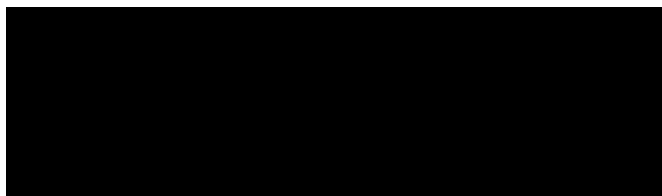
Please also note that Shropshire Council is committed to achieving Social Value outcomes through maximising the social, economic and/or environmental impact of all its procurement activity. Specific requirements for this contract are set out within the Tender Response

personal info

Document and in addition for your further information the council's Social Value Framework guidance can be found at www.shropshire.gov.uk/doing-business-with-shropshire-council.

If you have any queries relating to this invitation to tender, please contact me on telephone number 01743 252993.

Yours faithfully



Procurement Manager
Commissioning & Procurement
Enc

SHROPSHIRE COUNCIL

GENERAL TERMS

AND

CONDITIONS

FOR

THE SUPPLY

OF

GOODS SERVICES AND WORKS

TABLE OF CONTENTS

1. DEFINITIONS

2. GENERAL
3. SPECIFICATION AND QUALITY OF THE GOODS, SERVICES AND WORKS
4. ALTERATIONS TO THE SPECIFICATION OF GOODS AND SERVICES
5. PRICE AND PAYMENT
6. DELIVERY
7. LOSS OR DAMAGE IN TRANSIT
8. INSPECTION
9. REJECTION
10. TITLE - PASSING PROPERTY
11. THE COUNCIL'S OBLIGATIONS
12. WARRANTY
13. INDEMNIFICATION
14. TERMINATION AND CANCELLATION
15. PREVENTION OF BRIBERY
16. INTELLECTUAL PROPERTY RIGHTS
17. INDEPENDENT CONTRACTORS
18. SEVERABILITY
19. ASSIGNMENT, TRANSFER AND SUB-CONTRACTING
20. WAIVER
21. HAZARDOUS GOODS
22. NOTICES
23. CONFIDENTIALITY
 - 23A. AGREEMENT STATUS
24. COUNCIL DATA
25. PROTECTION OF PERSONAL DATA
26. COUNCIL DATA AND PERSONAL DATA AUDITS
27. PUBLIC INTEREST DISCLOSURE ('WHISTLE BLOWING')
28. INSURANCE
29. EQUALITIES
30. HUMAN RIGHTS
31. HEALTH AND SAFETY AT WORK
32. FREEDOM OF INFORMATION ACT 2000 & ENVIRONMENTAL INFORMATION REGULATIONS 2004
33. SAFEGUARDING
34. SUSTAINABILITY
35. EXPIRY
36. AUDIT AND MONITORING
37. RIGHTS OF THIRD PARTIES
38. ENTIRE AGREEMENT
39. FORCE MAJEURE
40. GOVERNING LAW AND JURISDICTION
41. COMPLAINTS PROCEDURE
42. DISPUTES
43. STAFFING SECURITY [where used]
44. SECURITY REQUIREMENTS [where used]

These General Terms and Conditions are incorporated in contracts **of all values and types** made between Shropshire Council and a Contractor for the supply of Goods and Services (as defined below).

Only those Terms and Conditions denoted with the suffix **"W"** (**Property Services contracts**) or **"Z"** (**Highways contracts**) will be incorporated into those agreements where a standard form contract is being used to provide Works (as defined below)

1. **DEFINITIONS**

1.1 In this document the following words shall have the following meanings:

'Agreement'	means the Agreement between the Council and the Contractor consisting of the Purchase Order or Form of Agreement, these General Terms and Conditions and any other documents (or parts thereof) specified in the Purchase Order or Form of Agreement.
'Associated Person'	means in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest.
'Bribery Act'	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.
"Council Data"	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (a) supplied to the Contractor by or on behalf of the Council; or which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Personal Data for which the Council is the Data Controller;
"Council Software"	software which is owned by or licensed to the Council, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software;
"Council System"	the Council's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council or the Contractor in connection with this Agreement which is owned by or licensed to the Council by a third party and which interfaces with the Contractor System or which is necessary for the Council to receive the Services;
"Council Representative"	the representative appointed by the Council
"Council"	means Shropshire Council
"Commercially Sensitive Information"	comprises the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business which the Contractor has indicated to the Council in writing that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss;
"Confidential Information"	any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Council or the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") ;
"Contractor"	means the person, firm or company or any other organisation specified in the Agreement contracting with the Council.
"Contractor Equipment"	the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub contractors (but not hired, leased or loaned from the Council) for the provision of the Services;
"Contractor Software"	software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services;

"Contractor System"	the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Council System);
"Contractor Personnel"	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor;
"Data Controller"	shall have the same meaning as set out in the Data Protection Act 1998
"Data Processor"	shall have the same meaning as set out in the Data Protection Act 1998
"Data Protection Legislation"	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;
"EIR"	means the Environmental Information Regulations 2004 (as may be amended from time to time.)
"Exempt Information"	means any information or class of information (including but not limited to any document, report, Agreement or other material containing information) relating to this Agreement or otherwise relating to the parties to this Agreement which potentially falls within an exemption to FOIA (as set out therein)
"FOIA"	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause
"FOIA notice"	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner
"Form of Agreement"	means the contract document (other than a Purchase Order) to which these General Terms and Conditions are attached or referred to
"Goods"	means all goods specified in the Agreement.
"Hazardous Goods"	means any solid, liquid, or gas that can cause harm to humans and other living organisms due to being radioactive, flammable or explosive, irritating or damaging the skin or lungs, interfering with oxygen intake and absorption (asphyxiants), or causing allergic reactions (allergens).
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Intellectual Property Rights"	means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable
"Law"	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Packages"	includes bags, cases, cylinders, drums, pallets and other containers

"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Price"	means the price of the Goods and/or charge for the Services or Works being provided by the Contractor
'Prohibited Act'	the following constitute Prohibited Acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (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; (c) committing any offence: (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or (d) defrauding, attempting to defraud or conspiring to defraud the Council.
"Public body"	as defined in the FOIA 2000
'Purchase Order'	means the Council's official order which encompasses orders written or electronically generated via any of the Council's ordering systems and to which these General Terms and Conditions are attached or referred to
"Receiving Party"	means a party to this Agreement to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response
'Regulated Activity'	in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
'Regulated Provider'	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;
"Request for Information"	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
"Security Policy"	the Council's security policy as updated from time to time;
"Services"	means any and all of the services to be provided by the Contractor under this Agreement including those set out in any schedules or service descriptions.
'Software'	Specially Written Software, Contractor Software and Third Party Software;
'Specially Written Software'	any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Agreement;
'Sub-Contract'	any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to

	provide to the Contractor the Goods, Works or Services or any part thereof, or facilities or services necessary for the provision of the Goods, Works or Services or any part of the Goods, Works or Services, or necessary for the management, direction or control of the Goods, Works or Services or any part of thereof.
‘Sub-Contractor’	the third parties that enter into a Sub-Contract with the Contractor.
"Third Party Software"	software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.
“Works”	means all civil engineering and building works of whatever nature to be provided by the Contractor to the Council
‘Writing’	includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received.

- 1.2 Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 1.3 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006.
In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:
- (i) references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
 - (ii) the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes faxes but not e-mail, unless otherwise specifically agreed.
- 1.10 Any obligation in these terms and conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 References to clauses are to the clauses of these terms and conditions.
- 1.12 Where any statement is qualified by the expression so far as the Contractor is aware or to the Contractor's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.13 Where there is any conflict or inconsistency between the provisions of these terms and conditions or any other document forming part of the agreement with the Council, such conflict or inconsistency shall be resolved in a manner at the Council's sole discretion.

2 GENERAL

- 2.1 When requested, the Contractor shall specify the Goods, Services or Works to be provided at the price payable.

- 2.2 No variation of these General Terms and Conditions shall be binding unless agreed expressly in Writing by both the Council and the Contractor.
- 2.3 These General Terms and Conditions shall apply to the exclusion of any other terms or conditions submitted, proposed or stipulated by the Contractor, whether in Writing or orally, and any such other term or condition is hereby expressly excluded or waived.
- 2.4 The Contractor shall complete the Works or Services or supply the Goods within the agreed times but time shall not be of the essence in the performance of any services unless expressly stated in Writing by the Council.
- 2.5 The Contractor agrees that where requested in writing during the term of any Agreement for the supply Goods Works or Services it will ensure that an appropriately authorised representative of the Contractor shall attend a Committee meeting of the Council upon being invited to do so by the Council (**W**) (**Z**)

3 SPECIFICATION AND QUALITY OF THE GOODS, SERVICES AND WORKS

- 3.1 The quantity, quality and description of the Goods or Services shall comply in all respects with any quoted British Standards and the specification or illustration contained in any product pamphlet or other sales or marketing literature of the Contractor or drawings, samples and patterns specified in the Agreement or any modifications thereof that may be agreed by the Council in Writing.
- 3.2 All Goods will be of good construction, sound materials, and of adequate strength, shall be free of defects in design materials and workmanship, and shall comply with the requirements of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, as applicable to this Agreement and as amended by any related statutes, and any statutory re-enactment(s) or modification(s) thereof.

4 ALTERATIONS TO THE SPECIFICATION OF GOODS AND SERVICES

- 4.1 The parties may at any time mutually agree upon and execute alterations in the scope of Goods, Works or Services to be provided under this Agreement
- 4.2 On receipt of a request from the Council for alterations the Contractor shall, within 5 working days or such other period as may be agreed between the parties, advise the Council by notice in Writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties
- 4.3 Where the Contractor gives written notice to the Council agreeing to perform any alterations on terms different to those already agreed between the parties, the Council shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Contractor by notice in Writing whether or not it wishes the alterations to proceed thereafter the Contractor shall perform this Agreement upon the basis of such amended terms

5 PRICE AND PAYMENT

- 5.1 The price for the supply of Goods and Services are as set out in the Agreement and the Contractor shall invoice the Council at the time the Goods are despatched or the Services are provided.
- 5.2 The Price, which shall include all charges for delivery to the Council, packaging, insurance and carriage, shall be exclusive of VAT and shall be a fixed price for the duration of the Agreement and shall not be varied without prior written consent of the Council.
- 5.3 The Council reserves the right to set off against the price of the Goods or Services any sums owed or becoming due to the Council from the Contractor.

- 5.4 Provided that a nominated employee or authorised signatory of the Council has signed for Goods or Services the Council will make payment to the Contractor by BACS (Bank Automated Clearing System) within 30 days following of receipt of the relevant undisputed invoice or acceptance of the relevant Goods or Services. No other method of payment shall be acceptable and the Contractor shall ensure that their bank account details are provided to the Council at least 30 days prior to payment becoming due to enable the payment to be made. The Council shall not be liable for any late payment charges where the Contractor fails to provide the Council with their correct bank account details in accordance with this clause.
- 5.5 If the Council fails to make any payment due to the Contractor under this agreement by the due date for payment, then the Council shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 5.6 VAT, where applicable, shall be shown separately on all invoices as a strictly net extra, the Invoice must comply with VAT rules and regulations. The correct Purchase Order number must be quoted on all invoices, and the Council will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear such Purchase Order numbers.
- 5.7 The Council reserves the right to refuse payment of sums invoiced in excess of the prices stated in the Agreement.
- 5.8 Unless otherwise agreed in Writing by the Council the Contractor will pay any of its appointed sub-contractors within 30 days from receipt of an undisputed invoice.

6 DELIVERY

- 6.1 The Agreement will specify the quantity of Goods and the nature of the Services required and the date or dates and place of delivery of the Goods or provision of the Service or Services. The Contractor shall provide such programmes of manufacture and delivery as the Council may require. Each delivery or consignment shall have a packing note quoting the reference number of the Purchase Order (where applicable) prominently displayed, and the Council may reject quantities delivered in excess of those stated on the Agreement.
- 6.2 If Goods are in any respect incorrectly delivered the Contractor shall immediately affect correct delivery and shall be responsible for any additional costs or expenses incurred by both parties in so doing.
- 6.3 If Services are provided by the Contractor otherwise than in accordance with the terms of the Agreement, the Contractor shall immediately affect correct provision of the Services and shall be responsible for any additional costs or expenses incurred by the Council or the Contractor in so doing.
- 6.4 The Council may reject any Goods which are not in accordance with the Agreement and the Council shall not be treated as having accepted any Goods until the Council has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after a latent defect in the Goods has become apparent.
- 6.5 The Contractor shall comply with all applicable regulations or other legal requirements as regards the manufacture, packaging, labelling, and delivery of the Goods. The Contractor shall deliver the Goods properly and securely packed and supply the Services during the Council's usual business hours (8:45 to 17:00 Monday to Thursday and 8:45 to 16:00 Friday) or in accordance with the instructions shown on the Agreement.

- 6.6 Where Goods are delivered by road vehicle, available empty Packages may be returned by the same vehicle.
- 6.7 Where the Council has an option to return Packages and does so, the Council will return such Packages empty and in good order and condition (consigned 'carriage paid' unless otherwise agreed) to the Contractor's supplying works or depot indicated by the Contractor, and will advise the Contractor of the date of despatch.
- 6.8 Packages and containers of all kinds are supplied free by the Contractor and are non-returnable unless otherwise clearly stated, in the first instance, on quotations and subsequently on all Packages, advice notes and delivery notes.

7. LOSS OR DAMAGE IN TRANSIT

- 7.1 The Contractor shall promptly make good, free of charge to the Council, any loss in transit of the Goods if notified within 21 days of delivery or any damage to or defect in the Goods if notified within 10 days of delivery.

8. INSPECTION

- 8.1 The Contractor shall be responsible for the inspection and testing of the Goods and shall ensure that they comply with the Agreement prior to delivery to the Council. The Council shall have the right to inspect the Goods at the Contractor's works and those of its Sub-Contractors at all reasonable times and to reject any part thereof that does not comply with the terms of the Agreement.
- 8.2 The Contractor shall ensure that rights of access, inspection and rejection at premises of any sub-Contractor of the Contractor are given to the Council in sub-agreements between the Contractor and the Contractor's Sub-Contractors. Any inspection, checking, approval or acceptance given on behalf of the Council shall not relieve the Contractor or its Sub-Contractors from any obligations or liabilities set forth in this Agreement.

9. REJECTION

- 9.1 The Council shall have the right to reject any Goods or Services which do not comply with the Agreement, and are, without limitation, not of a stipulated quality or quantity or measurement, unfit for the purpose for which they are required or non-compliant with a description or specification or sample, and the Council may return such rejected Goods to the Contractor at the Contractor's cost and expense.
- 9.2 If the Contractor is unable to supply acceptable replacement Goods or Services within the time specified in the Agreement, or within any extension of such time as the Council may grant, the Council will be entitled to purchase elsewhere other Goods or Services, as near as is practicable to the same Agreement specifications as circumstances shall permit, but without prejudice to any other right which the Council may have against the Contractor including, but not limited to, payment by the Contractor of any excess costs incurred by the Council in doing so.
- 9.3 The making of such payment shall not prejudice the Council's right of rejection and the Contractor shall immediately reimburse the Council with an amount equal to that paid by the Council in respect of the Goods or Services and any applicable taxes. Before exercising the said right elsewhere the Council shall give the Contractor reasonable opportunity to replace rejected Goods or Services with Goods or Services that conform to the Agreement.
- 9.4 The Council is under no obligation to test or inspect the Goods before or on delivery.

10 TITLE - PASSING PROPERTY

- 10.1 Property and risk in the Goods will remain with the Contractor until the Goods are delivered to the place specified in the Agreement and a nominated employee of the Council has signed a delivery note for them, whereupon title will pass to the Council, without any limitation, constraint or encumbrance.
- 10.2 If payment for the Goods is made prior to delivery, property in the Goods shall pass to the Council once payment has been made and the Goods have been unconditionally appropriated by the Council.
- 10.3 In these circumstances the Contractor will set aside the Goods and store them separately from similar Goods held at the Contractor's premises specified in the Agreement and ensure that they are securely, clearly and visibly marked with the wording "Property of Shropshire Council" so as to identify those Goods as having been unconditionally appropriated by the Council to whose order they are held
- 10.4 The Contractor will allow a named representative of the Council reasonable accompanied access to its premises specified in the Agreement to verify compliance with clause 10.3 herein and will immediately rectify any non-compliance as identified by the Council's named representative
- 10.5 The Contractor will indemnify the Council for any loss of or damage to the Goods until delivered on-site.
- 10.6 Without prejudice to this indemnity the Contractor will have appropriate and adequate insurance cover against any such loss or damage with a reputable insurer from the time that title in the materials or Goods passes to the Council until they are delivered on-site and the Contractor shall provide the Council with certified copies of the relevant policy upon request.
- 10.7 The Contractor agrees that the Council has the right to enter the Contractor's premises specified in the Agreement where Goods are being held in order to recover the said materials or Goods in the event of the Contractor's insolvency

11 THE COUNCIL'S OBLIGATIONS

- 11.1 To enable the Contractor to perform its obligations under this Agreement the Council shall:
- a) co-operate with the Contractor;
 - b) provide the Contractor with any information reasonably required by the Contractor;
 - c) obtain all necessary permissions and consents which may be required before the commencement of the Services or the supply of Goods; and
 - d) comply with such other requirements as may be otherwise agreed between the parties.
- 11.2 Without prejudice to any other rights to which the Contractor may be entitled, in the event that the Council unlawfully terminates or cancels the Goods or Services agreed to in the Agreement the Council shall be required to pay to the Contractor as agreed damages and not as a penalty the full amount of any third party costs to which the Contractor has reasonably committed and in respect of cancellations on less than five working days' written notice the full amount of the Goods and Services.

12. WARRANTIES

- 12.1 The Contractor warrants that as from the date of delivery for a minimum period of 12 months the Goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials. Where certain Goods carry warranties for longer periods the Contractor will notify the Council of these from time to time as appropriate.

12.2 The Contractor warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

13 INDEMNIFICATION

13.1 The Council shall indemnify the Contractor against all reasonable claims, costs and expenses which the Contractor may incur and which arise, directly from the Council's breach of any of its obligations under this Agreement.

13.2 The Contractor shall indemnify the Council against all reasonable damage, liability, costs, claims, actions and proceedings arising out of the performance, defective performance or otherwise of this Agreement by the Contractor, its employees, servants or agents

14 TERMINATION AND CANCELLATION

14.1 The Council upon giving the Contractor notice in Writing may cancel any Agreement at any time. A fair and reasonable price will be paid for all work in progress at the time of the cancellation, providing all such work is delivered to, and/or performed for the Council and is accepted as described in Clauses 6 to 9 herein. The Council's liability is strictly limited to work in progress and no further loss or liability will accrue.

14.2 Either party may terminate this Agreement forthwith by notice in Writing to the other if:

- a). the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in Writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.
- b). the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- c). the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- d). the other party ceases to carry on its business or substantially the whole of its business; or
- e). the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

15 PREVENTION OF BRIBERY (W) (Z)

15.1 The Contractor:

- a) shall not, and shall procure that all Contractor Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- b) 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 Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

15.2 The Contractor shall:

- a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant

government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

b) the Contractor shall, within 10 Working Days of a request from the Council, certify to the Council in writing (such certification to be signed by an officer of the Contractor) the Contractor's compliance with this clause 15 and provide such supporting evidence of compliance with this clause 15 by the Contractor as the Council may reasonably request.

15.3 If any breach of clause 15.1 is suspected or known, the Contractor must notify the Council immediately.

15.4 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 15.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Agreement.

15.5 The Council may terminate this Agreement by written notice with immediate effect, and recover from the Contractor the amount of any loss directly resulting from the cancellation, if the Contractor or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 15.1. At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 15.5, the Council shall give consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

a) with the authority; or,

b) with the actual knowledge;

of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or

c) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.

15.6 Any notice of termination under clause 15.5 must specify:

a) the nature of the Prohibited Act;

b) the identity of the party whom the Council believes has committed the Prohibited Act; and

c) the date on which this Agreement will terminate.

15.7 Despite clause 42 (Disputes), any dispute relating to:

a) the interpretation of clause 15; or

b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

15.8 Any termination under clause 15.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Any specification, drawing, sample and pattern supplied by the Council to the Contractor, or specifically produced by the Contractor for the Council in connection with this Agreement, together with the copyright, design rights or any other intellectual property rights thereto shall be the exclusive property of the Council. On payment of the price and for no further consideration the Contractor assigns to the Council with full title guarantee all such copyright, design and other intellectual property rights.

16.2 The Contractor shall not disclose to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) or provide any such specification, drawing, sample or pattern to any third

party or use the same except to the extent that it is or becomes public knowledge through no fault of the Contractor, or as is required for the purposes of the Agreement.

16.3 This provision shall survive the expiration or termination of the Agreement.

17 INDEPENDENT CONTRACTORS

17.1 The Contractor and the Council are independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in Writing by both parties.

18 SEVERABILITY

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

19 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING

19.1 The Council may, subject to clause 19.2:
(a) assign any of its rights under the Agreement; or
(b) transfer all of its rights or obligations by novation, to another person.

19.2 The consent of the Contractor is required for an assignment or transfer by the Council unless:
(a) the assignment or transfer is to an Associated Person of the Council; or
(b) either the Council or the Contractor have committed a breach of this Agreement which gives the other party the right under the terms of this Agreement to terminate the Agreement. Any such consent must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.

19.3 The Contractor may not assign any of its rights, or transfer any of its rights or obligations under the Agreement.

19.4 The Contractor will not, without the written consent of the Council sub-contract its right or obligations under this Agreement nor allow Services to be provided other than through his own employees and using his own equipment.

19.5 In the event that the Council has consented to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the Contractor to the Council immediately it is issued.

19.6 Notwithstanding the Contractor's right to sub-contract pursuant to this clause 19, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that its employees, staff, agents and Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

20 WAIVER

20.1 The failure by either party to enforce at any time or for any period any one or more of these General Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

21 HAZARDOUS GOODS

- 21.1 Hazardous Goods must be marked by the Contractor with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Contractor shall observe the requirements of UK and international laws, regulations and agreements relating to the packing, labelling and carriage of hazardous Goods.
- 21.2 All information known, held by, or reasonably available to, the Contractor regarding any potential hazards known or believed to exist in transport, handling or use of the Goods supplied shall be promptly communicated to the Council.

22 NOTICES

- 22.1 Unless otherwise communicated to the party in Writing any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party that is the registered office or main place of business of the Contractor or if the Council, the Shirehall, Abbey Foregate, Shrewsbury. SY2 6ND
- 22.2 A Notice sent by email shall be deemed to be received providing receipt is acknowledged and confirmed, Notice sent by fax shall be deemed to be served on receipt of an error free transmission report, Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged

23 CONFIDENTIALITY (W) (Z)

- 23.1 All plans, drawings, designs or specifications supplied by the Council to the Contractor shall remain the exclusive property of, and shall be returned to the Council on completion of the Agreement and shall not be copied, and no information relating to the Goods or the Services shall be disclosed to any third party, except as required for the purpose of this Agreement.
- 23.2 No photographs of any of the Council's equipment, installations or property shall be taken without the Council's prior consent in Writing. The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) all information given by the Council in connection with the Agreement or which becomes known to the Contractor through his performance of the Agreement or use the same other than for the purpose of executing the Agreement.
- 23.3 The Contractor shall not mention the Council's name in connection with the Agreement or disclose the existence of the Agreement in any publicity material or other similar communication to third parties without the Council's prior consent in Writing.
- 23.4 The Contractor will keep confidential any information it becomes aware of by reason of the operation of this Agreement.
- 23.5 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
- 23.5.1 treat the other party's Confidential Information as confidential; and
 - 23.5.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent
- 23.6 Clause 23.5 shall not apply to the extent that:

- 23.6.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information;
 - 23.6.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 23.6.3 such information was obtained from a third party without obligation of confidentiality;
 - 23.6.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 23.6.5 it is independently developed without access to the other party's Confidential Information.
- 23.7 The Contractor may only disclose the Council's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 23.8 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement
- 23.9 Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:
- 23.9.1 to any consultant, contractor or other person engaged by the Council;
 - 23.9.2 for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council;
- 23.10 The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to this Agreement is made aware of the Council's obligations of confidentiality.
- 23.11 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 23.12 The provisions of this Clause shall survive the expiration or termination of this Agreement.

23A AGREEMENT STATUS AND TRANSPARENCY (W) (Z)

- 23A.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and any associated tender documentation provided by the Contractor (the Tender Submission) is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA.
- 23A.2 Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Council to publish this Agreement and the Tender Submission in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 23A.3 The Council may consult with the Contractor to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.

23A.4 The Contractor shall assist and cooperate with the Council to enable the Council to publish this Agreement and the Tender Submission.

24 **COUNCIL DATA**

24.1 The Contractor shall not delete or remove any copyright or proprietary notices contained within or relating to the Council Data.

24.2 The Contractor shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council and in particular the Contractor shall not store any Council Data, which the Council has notified the Contractor requires storage in an encrypted format, on any portable device or media unless that device is encrypted.

24.3 To the extent that Council Data is held and/or processed by the Contractor, the Contractor shall supply that Council Data to the Council as requested by the Council in any format specified in this Agreement or if none specified in any format reasonably requested by the Council.

24.4 The Contractor shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data and shall take such back up copies of the Council Data at regular intervals appropriate to the frequency of the revision of the Council Data.

24.5 The Contractor shall ensure that any system on which the Contractor holds any Council Data, including back-up data, is a secure system that complies with the Security Policy to include, but not limited to, the following requirements in the Security Policy:

24.5.1 Access to the system is restricted to Contractor Personnel with a legitimate need to access the Council Data; and

24.5.2 The system is kept up to date with the latest versions of operating system and anti-virus updates; and

24.5.3 Transfer of data to and from the system is conducted in a secure manner.

24.6 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Council may:

24.6.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Council Data as soon as practicable; and/or

24.6.2 itself restore or procure the restoration of Council Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so including the restoration of the Council Data.

24.7 If at any time the Contractor suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Council via the Council's ICT Helpdesk immediately and inform the Council of the remedial action the Contractor proposes to take.

24.8 The Contractor shall check for and delete Malicious Software and if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

24.9 Any cost arising out of the actions of the parties taken in compliance with the provisions of sub-clause .8 above shall be borne by the parties as follows:

24.9.1 by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Council Data (whilst the Council Data was under the control of the Contractor); and

24.9.2 by the Council if the Malicious Software originates from the Council Software or the Council Data (whilst the Council Data was under the control of the Council).

25 PROTECTION OF PERSONAL DATA

25.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Council is the Data Controller and that the Contractor is the Data Processor.

25.2 The Contractor shall:

25.2.1 Process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Council to the Contractor during the term of this Agreement);

25.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

25.2.3 implement appropriate technical and organisational measures, including but not limited to ensuring that Personal Data is not stored on any portable equipment or storage device or media unless encrypted, to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

25.2.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;

25.2.5 obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;

25.2.6 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Protection of Personal Data clause ;

25.2.7 ensure that no Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;

25.2.8 notify the Council (within five Working Days) if it receives:

- a) a request from a Data Subject to have access to that person's Personal Data; or
- b) a complaint or request relating to the Council's obligations under the Data Protection Legislation;

25.2.9 provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:

- a) providing the Council with full details of the complaint or request;
- b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;
- c) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
- d) providing the Council with any information requested by the Council;

25.2.10 permit the Council or the Council Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with the Audit clause, the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;

25.2.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Council); and

25.2.12 not process Personal Data outside the United Kingdom without the prior written consent of the Council and, where the Council consents to a transfer, to comply with:

- a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- b) any reasonable instructions notified to it by the Council

25.2.13 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.

25.2.14 The Contractor shall ensure that its employees and agents are aware of and comply with this clause and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of this clause.

26 COUNCIL DATA AND PERSONAL INFORMATION AUDITS

26.1 Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit for the following purposes:

26.1.1 to review the integrity, confidentiality and security of the Council Data;

26.1.2 to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services;

26.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

26.3 Subject to the Council's obligations of confidentiality, the Contractor shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

26.3.1 all information requested by the Council within the permitted scope of the audit;

26.3.2 reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;

26.3.3 access to Contractor Personnel

26.4 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services.

26.5 The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its intention to conduct an audit.

26.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.

26.7 This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Agreement which may be conducted as specified in this Agreement.

27. PUBLIC INTEREST DISCLOSURE ('WHISTLE BLOWING') (W)(Z)

- 27.1 The Contractor will ensure that his employees and agents are made aware of the Council's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request

28 INSURANCE

- 28.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all legal liability which may be incurred by the Contractor, arising out of the Contractor's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS).

- 28.2 If appropriate and requested in Writing, the Contractor may also be required to provide Product Liability insurance of at least £2,000,000 (TWO MILLION POUNDS) cover for any one claim.

- 28.3 Where the Contractor is providing Services of a professional nature, or the Council otherwise specifies that professional indemnity insurance is required, the Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain policy cover which indemnifies the contractor for negligent acts arising out of the performance of this Agreement. To comply with its obligations under this clause, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, Sub-Contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS) in respect of each and every claim.

28.3.1 The Contractor shall hold and maintain the insurances required under this Agreement for a minimum of 6 years following the expiration or earlier termination of this Agreement

- 28.4 The Contractor warrants that it has complied with this clause 28 and shall provide the Council with certified copies of the relevant policy documents (including any warranties or exclusions) together with receipts or other evidence of payment of the latest premiums due under those policies prior to the commencement of this Agreement and annually thereafter during the Term..

- 28.5 The Contractor shall:

- (a) do nothing to invalidate any insurance policy
- (b) notify the Council if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change

- 28.6 For the avoidance of doubt, the terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Agreement.

- 28.7 Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":

28.7.1 if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the Council:

- (i) details of the policy concerned; and
- (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and

28.7.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Contractor shall:

- (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or
- (ii) if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Council full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

29. EQUALITIES (W) (Z)

- 29.1 The Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of Goods, Services or Works under this Agreement, or in its employment practices.
- 29.2 Without prejudice to the generality of the foregoing, the Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 29.3 In addition, the Contractor and any Sub-Contractor employed by the Contractor in providing services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it .
- 29.4 The Contractor and any Sub-Contractor employed by the Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Equalities and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.
- 29.5 In the event of any finding of unlawful discrimination being made against the Contractor or any Sub-Contractor employed by the Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights Commission over the same period, the Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 29.6 The Contractor and any Sub-Contractor employed by the Contractor will provide a copy of its policies to the Council at any time upon request. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Contractor's compliance with the above conditions.

30 HUMAN RIGHTS (W) (Z)

- 30.1 The Contractor shall where appropriate take account of the Human Rights Act 1998 and shall not do anything in breach of it.

31 HEALTH AND SAFETY AT WORK (Z)

- 31.1 The Contractor will at all times in providing Goods, Services or Works to the Council comply with the provisions of the Health and Safety at work Act 1974 and provide evidence of doing so to the Council at any time upon request.

32 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR) (W) (Z)

- 32.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 32.2 The Contractor shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Contractor acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.
- 32.3 The Contractor shall and shall procure that its Sub-contractors shall:
- 32.3.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- 32.3.2 provide the Council, at the Contractor's expense, with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
- 32.3.3 provide, at the Contractor's expense, all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 32.4 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information the Council may consult with the Contractor prior to making any decision or considering any exemption.
- 32.5 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 32.6 The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 32.6.1 in certain circumstances without consulting the Contractor; or
- 32.6.2 following consultation with the Contractor and having taken their views into account;
- provided always that where sub-clause 32.6.1 above applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 32.7 The Contractor shall ensure that all Information required to be produced or maintained under the terms of this Agreement, or by Law or professional practice or in relation to the Agreement is retained for disclosure for at least the duration of the Agreement plus one year together with such other time period as required by the Agreement, law or practice and shall permit the Council to inspect such records as requested from time to time.
- 32.8 The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other Law, of any information (including Exempt Information) whether relating to this Agreement or otherwise relating to any other party.

- 32.9 Where the Contractor is a Public Body the parties acknowledge that such obligations and duties of the Council as set out above are reciprocal to the Contractor. The Council and the Contractor acknowledge and agree that:
- 32.9.1 as Public Bodies they are subject to legal duties under the FOIA and EIR which may require either party to disclose on request information relating to this Agreement or otherwise relating to the other party;
- 32.9.2 they are required by law to consider each and every Request for Information made under FOIA;
- 32.9.3 that all decisions made by the other pursuant to a request under the FOIA are solely a matter for the Receiving Party and at the discretion of the Receiving Party.
- 32.9.4 Notwithstanding anything in this Agreement to the contrary (including but without limitation any obligations or confidentiality), the Receiving Party shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Receiving Party shall consult the other party before making any such decision and shall not:
- (a) confirm or deny that information is held by the other party, or
 - (b) disclose information required
- to the extent that in the Receiving Party's opinion the information is eligible in the circumstances for an exemption and therefore the Receiving Party may lawfully refrain from doing either of the things described in part (a) and (b) of this clause.
- 32.9.5 each party shall bear its own costs of:
- a) assessing the application of any exemption under FOIA and/or
 - b) responding to any FOIA notice and/or
 - c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure
- 32.9.6 the Receiving Party shall in no circumstances be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA of any Exempt Information or other information whether relating to this Agreement or otherwise relating to the other party.
- 32.9.7 the other party shall assist the Receiving Party with the request as reasonably necessary to enable the Receiving Party to comply with its obligations under FOIA.

33 SAFEGUARDING(W) (Z)

- 33.1 Where the Service or activity being undertaken in this Agreement is a Regulated Activity the Contractor shall :
- (a) ensure that all individuals engaged in the provision of the Service or activity, and prior to commencing the provision of the service or activity, are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - (b) monitor the level and validity of the checks under this clause 33.1 for each member of the Contractor's Personnel.
- 33.2 The Contractor warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of a Service or activity that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 33.3 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 33 have been met.
- 33.4 The Contractor shall refer information about any person carrying out the Services or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Service users, children or vulnerable adults.

33.5 The Contractor shall not 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 Regulated Activity or who may otherwise present a risk to Service users.

33.6 Where the service requirement, specification or Purchase Order specifies that the Service or activity to be provided under this Agreement involves a Regulated Activity, or the Council otherwise notifies the Contractor, acting reasonably, that the Contractor's Personnel are required to be subject to a Disclosure and Barring Service check, the Contractor shall comply with clause 33.1 above..

34 SUSTAINABILITY

34.1 Contractors should at all times demonstrate how they contribute to the achievement of the Council's Sustainability Policy

35 EXPIRY

35.1 The Contractor will on the expiry or termination of the Agreement and, at its own cost, return (or at the request of the Council destroy) all information obtained in undertaking the performance of the Agreement.

36 AUDIT AND MONITORING (W) (Z)

36.1 The Contractor will allow access for the Council's officers to all relevant information for the purposes of audit and the monitoring of the Agreement.

37 RIGHTS OF THIRD PARTIES

37.1 The parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

38 ENTIRE AGREEMENT

38.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

39 FORCE MAJEURE

39.1 Neither the Council nor the Contractor shall be in breach of this Agreement nor liable for any failure or delay in performing their obligations under this Agreement where it is directly caused, arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Force Majeure Event"), provided that:-

39.1.1 any delay by a sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and

39.1.2 staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay.

39.2 If the Party is subject to a Force Majeure Event it shall not be in breach of this Agreement provided that:-

39.2.1 it promptly notified the Council in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

39.2.2 it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably

practicable and to resume the performance of its obligations as soon as reasonably possible

in which case the performance of that Party's obligations will be suspended during the period that those circumstances persist and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay.

- 39.3 Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Agreement and by law):-

39.3.1 any costs arising from that delay will be borne by the Party incurring the same; and

39.3.2 either Party may, if that delay continues for more than 5 weeks, terminate this Agreement immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

40 GOVERNING LAW AND JURISDICTION (W)

- 40.1 It is the responsibility of the Contractor to comply with all relevant European and English legislation. This Agreement shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts

41 COMPLAINTS PROCEDURE (W) (Z)

- 41.1 The Contactor shall operate a complaints procedure in respect of any goods, services or works provided under these terms & conditions, to the entire satisfaction of the Council, and comply with the requirements of any regulatory body to which the Contractor is subject (including any change in such requirements) and ensure that its complaints procedure meets the following minimum standards:

41.1.1 is easy to access and understand

41.1.2 clearly sets out time limits for responding to complaints and keeping the complainant and the Council informed of progress;

41.1.3 provides confidential record keeping to protect employees under this contract and the complainant

41.1.4 provides information to management so that services can be improved

41.1.5 provides effective and suitable remedies

41.1.6 is regularly monitored and audited and which takes account of complainant and Council feedback

- 41.2 The Contactor shall ensure that:

41.2.1 under no circumstances is a complaint investigated by a member of its staff employed under this contract who may be part of the complaint.

41.2.2 someone who is independent of the matter complained of carries out the investigation

41.2.3 the complainant is made aware that they are entitled to have the complaint investigated by the Council if they are not satisfied with either the process of investigation or finding of the Contactor's investigations

41.2.4 the Contactor will ensure that it responds to the complainant within a max of 10 days of receiving the complaint

- 41.3 The Contactor will make its complaints procedure available on request

- 41.4 The Contactor shall ensure that all its employees and persons employed under this contract are made aware of its complaints procedure and shall designate one employee

(who shall be identified to the Council) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint

- 41.5 The Contactor shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the Council on request or at 12 monthly intervals in any event.
- 41.6 Where the Council is investigating a complaint the Contactor is required to participate fully in all investigations within the timescales requested by the Council
- 41.7 The Contractor should note that if a complaint is made to the Council by a third party relating to the goods, services or works provided, the Local Government Ombudsman has the power to investigate such a complaint and the Council requires the Contractor to fully co-operate in such investigation. If the Council is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Contractor the Contractor shall indemnify the Council in respect of the costs arising from such maladministration or injustice.

42 DISPUTES

- 42.1 If any dispute or difference shall arise between the parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the same shall be dealt with as follows:-
 - 42.1.1 In the first instance a special meeting of both the Parties shall be arranged on 14 days written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute
 - 42.1.2 If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve the Council's Chief Executive or the Contractor's senior officer or such other authorised officer of either party whose details have been notified to the other party, with notice of the dispute and those officers shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice

Additional definitions for clauses 43 and 44	
"Security Plan"	the Contractor's security plan prepared pursuant <i>[to paragraph 3 of schedule 2.5 (Security Requirements and Plan) an outline of which is set out in Appendix of schedule 2.5 (Security Requirements)]</i> ;
"Staff Vetting Procedures"	the Council's procedures and policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures.

43 STAFFING SECURITY

- 43.1 The Contractor shall comply with the Staff Vetting Procedures in respect of all Contractor Personnel employed or engaged in the provision of the Services. The Contractor confirms that all Contractor Personnel employed or engaged by the Contractor at the commencement of this agreement were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 43.2 The Contractor shall provide training on a continuing basis for all Contractor Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan

44 SECURITY REQUIREMENTS

- 44.1 The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.
- 44.2 The Council shall notify the Contractor of any changes or proposed changes to the Security Policy.
- 44.3 If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a request for the Agreement to be varied in respect of any charges or fees payable under the Agreement. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs.
- 44.4 Until and/or unless a change to the charges or costs is agreed by the Council pursuant to this clause the Contractor shall continue to perform the Services in accordance with its existing obligations



INSTRUCTIONS FOR TENDERING & SPECIAL TERMS & CONDITIONS

**RMCS 017 – SPECIALITY &
HOSPITALITY ITEMS**

Shropshire Council Instructions for tendering

Contract Description:

A framework arrangement for the supply and distribution of speciality and hospitality food items to Shropshire Council for an initial period of 2 years commencing on 20th February 2017 with the option to extend for a further period of 2 years.

The Council are seeking a sole contractor to supply and distribute speciality and hospitality item to sites (mainly schools) throughout Shropshire, Worcestershire, Herefordshire, Cheshire, Staffordshire, North Wales and the West Midlands which are serviced by Shire Services

Index

<u>Section</u>	<u>Description</u>	<u>Page</u>
1.0	Invitation to Tender	1
2.0	Terms and Conditions	1
3.0	Preparation of Tenders	2
3.1	Completing the Tender Response Document	2
3.2	Tender Preparation and Cost	2
3.3	Parent Company Guarantee	3
3.4	Warranty	3
4.0	Tender Submission	3
5.0	Variant Bids	4
6.0	Tender Evaluation	4
7.0	Clarifications	5
8.0	Continuation of the Procurement Process	6
9.0	Confidentiality	6
10.0	Freedom of Information	7
11.0	Disqualification	8
12.0	E-Procurement	9
13.0	Award of Contract	9
13.1	Award Criteria	9
13.2	Award Notice	9
13.3	Transparency of Expenditure	9
14.0	Value of Contract	10
15.0	Acceptance	10
16.0	Payment Terms	10
17.0	Liability of Council	11
18.0	Attendance at Committee	11
19.0	Special Terms & Conditions	11
20.0	Declaration	24

1.0 Invitation to Tender

- 1.1** You are invited to tender for a framework arrangement in specific categories of speciality & hospitality food items to quote for individual requirements throughout the duration of the framework agreement as detailed in the Tender Response Document. The framework will be for an initial period of **2 years** commencing on the **20th February 2017** with the option to extend for a further period of up to 2 years
- 1.2** Tenders are to be submitted in accordance with the General Terms and Conditions of Shropshire Council and the instructions outlined within this document.
- 1.3** Tenders must be submitted in accordance with the following instructions. Tenders not complying in any particular way may be rejected by Shropshire Council (the Council) whose decision in the matter shall be final. Persons proposing to submit a Tender are advised to read the Invitation to Tender documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their Tender is accepted.
- 1.4** The Invitation to Tender documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Invitation to tender document other than on an “in confidence” basis to those who have a legitimate need to know or who they need to consult for the purpose of preparing the tender as further detailed in these Instructions for Tendering.
- 1.5** Tenderers shall not at any time release information concerning the invitation to tender and/or the tender documents for publication in the press or on radio, television, screen or any other medium without the prior consent of the Council.
- 1.6** The fact that a Tenderer has been invited to submit a tender does not necessarily mean that it has satisfied the Council regarding any matters raised in the pre-tender questionnaire submitted. The Council makes no representations regarding the Tenderer's financial stability, technical competence or ability in any way to carry out the required services. The right to return to any matter raised in any pre-tender questionnaire submitted as part of the formal tender evaluation is hereby reserved by the Council.
- 1.7** The Invitation to Tender is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a tenderer to submit a tender or enter into a Contract or any other contractual agreement.
- 1.8** Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council's involvement

2.2 Terms and Conditions

- 2.1** Every Tender received by the Council shall be deemed to have been made subject to the General Terms and Conditions and these Instructions for Tendering unless the Council shall previously have expressly agreed in writing to the contrary.

- 2.2** The Tenderer is advised that in the event of their Tender being accepted by the Council, they will form part of a framework arrangement and will be required to provide quotes for individual requirements in accordance with the contract throughout the duration of the framework agreement.

3.0 Preparation of Tenders

3.1 Completing the Tender Response Document

- 3.1.1** Tenders should be submitted using the 'Tender Response Document' following the instructions given at the front of the document. The Tenderer's attention is specifically drawn to the date and time for receipt of Tenders and that no submission received after the closing time will be considered.

- 3.1.2** All documents requiring a signature must be signed;

- a) Where the Tenderer is an individual, by that individual;
- b) Where the Tenderer is a partnership, by two duly authorised partners;
- c) Where the Tenderer is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose.

- 3.1.3** The Invitation to Tender Documents are and shall remain the property and copyright of the Council

3.2 Tender Preparation and Costs

- 3.2.1** It shall be the responsibility of Tenderers to obtain for themselves at their own expense all information necessary for the preparation of their Tender. No claim arising out of want of knowledge will be accepted. Any information supplied by the Council (whether in the Tender Documentation or otherwise) is supplied only for general guidance in the preparation of tenders.

- 3.2.2** Any Tenderer considering making the decision to enter into a contractual relationship with the Council must make an independent assessment of the Tender opportunity after making such investigation and taking such professional advice as it deems necessary.

- 3.2.3** Tenderers will be deemed for all purposes connected with their Tender submission where appropriate to have visited and inspected the Council, its assets, all the locations in respect of the delivery of the services/supplies/works and to have satisfied themselves sufficiently as to the nature, extent and character of the services supplies/works sought, and the human resources, materials, software, equipment, machinery, and other liabilities and other matters which will be required to perform the contract.

- 3.2.4** The Council will not be liable for any costs incurred by Tenderers in the preparation or presentation of their tenders.

- 3.2.5** Tenderers are required to complete all pricing schedules in the Invitation to tender documents. The terms "Nil" and "included" are not to be used but a zero or figures must be inserted against each item. Unit rates and prices must be quoted in

pounds sterling and whole new pence.

- 3.2.6** It shall be the Tenderer's responsibility to ensure that all calculations and prices in the Tender documentation are correct at the time of submission.
- 3.2.7** The Tenderer is deemed to have made him/herself acquainted with the Council's requirements and tender accordingly. Should the Tenderer be in any doubt regarding the true meaning and intent of any element of the specification he is invited to have these fully resolved before submitting his Tender. No extras will be allowed for any loss or expense involved through any misunderstanding arising from his/her failure to comply with this requirement.
- 3.2.8** Any Tender error or discrepancy identified by the Council shall be drawn to the attention of the Tenderer who will be given the opportunity to correct, confirm or withdraw the Tender.
- 3.2.9** The Tender Documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Tender document other than on an In Confidence basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing the Tender.

3.3 Parent Company Guarantee

It is a condition of contract that if the tendering company is a subsidiary then its Ultimate Group/Holding Company must guarantee the performance of this contract and provide a letter to that effect signed by a duly authorised signatory of the Ultimate Group/Holding Company if requested to do so by the Council. Where the direct parent company cannot provide an adequate guarantee in the opinion of the Council, the Council will look to another group or associate company, with adequate assets, to be the guarantor. In cases where the contract is with a Joint Venture Company (JVC) or a Special Purpose Vehicle (SPV) company, which may have two or more parent companies and which may not be adequately capitalised or have sufficient financial strength on its own to support the risk and obligations it has under the contract, 'joint and several' guarantees / indemnities from the parent companies of the JVC or SPV may be sought.

3.4 Warranty

The Tenderer warrants that all the information given in their Tender and if applicable their Request to Participate Questionnaire is true and accurate. The information provided will be deemed to form part of any contract formed under this contract.

The Tenderer warrants that none of their current Directors have been involved in liquidation or receivership or have any criminal convictions

4.0 Tender Submission

- 4.1** Tenders must be submitted strictly in accordance with the letter of instruction accompanying this Invitation to Tender. Tenders must be submitted by the deadline of **noon, 25th October 2016**
- 4.2** No unauthorised alteration or addition should be made to the Specification and Tender Response Document, or to any other component of the Tender document.

- If any such alteration is made, or if these instructions are not fully complied with, the Tender may be rejected.
- 4.3** Qualified tenders may be submitted, but the Council reserves the right not to accept any such tender. The Council's decision on whether or not a Tender is acceptable will be final.
- 4.4** Tenderers should note that their Tender must remain open and valid and capable of acceptance for a period of at least 90 days.
- 4.5** Tenderers should note that Tenders and supporting documents must be written in English and that any subsequent contract, which may or may not be entered into, its formation, interpretation and performance, shall be subject to and in accordance with the laws of England and subject to the jurisdiction of the Courts of England and Wales.
- 4.6** Where Tender submissions are incomplete the Council reserves the right not to accept them.

5.0 Variant Bids

- 5.1** The Council is interested in alternative solutions which would provide and develop opportunities for savings in service costs, service improvement or other financial benefits. In particular, the Council wishes to encourage solutions which also deliver benefits and added value to the local economy, residents and the business community.
- 5.2** Tenderers may submit, at their discretion, a Tender offering a different approach to the project as a "Variant Bid". However, to permit comparability, at least one bid must be submitted strictly in accordance with the Invitation to Tender Documents (the "Compliant Tender"). Any Tender variant proposed must clearly state how it varies from the requirements of the Compliant Tender Documents, and be explicit in demonstrating the benefits that will accrue to the Council from adopting this approach. Tenderers will be required to identify which submission, in their view, demonstrates best value to the Council.
- 5.3** Variant Bids must contain sufficient financial and operational detail to allow any Variant Bid to be compared with the standard Tender, permitting its considerations in written form.

6.0 Tender Evaluation

- 6.1** The Tenderers may be called for interview to seek clarification of their tender or additional or supplemental information in relation to their tender. The presentations will not carry any weighting to the final score achieved by Tenderers, but will be used to clarify and moderate issues raised in the Tenderer's submissions. Any areas of discrepancy between submissions and information gained from the presentations will be reviewed and scores previously awarded will be amended if necessary.
- 6.2** If the Council suspects that there has been an error in the pricing of a Tender, the Council reserves the right to seek such clarification, as it considers necessary from the Tenderer in question.

7.0 Clarifications

- 7.1** Tenderers are responsible for clarifying any aspects of the tendering process and/or the Invitation to Tender documents in the manner described below.
- 7.2** If you are unsure of any section and require further clarification, please contact via our Delta Tenderbox.
- 7.3** Where appropriate, the Authorised Officer named above may direct the Tenderer to other officers to deal with the matter.
- 7.4** All queries should be raised as soon as possible (in writing), in any event not later than **18th October 2016**.
- 7.5** All information or responses that clarify or enhance the tendering process will be supplied to all Tenderers on a uniform basis (unless expressly stated otherwise). These responses shall have the full force of this Instruction and where appropriate the Conditions of Contract. If a Tenderer wishes the Council to treat a question as confidential this must be expressly stated. The Council will consider such requests and will seek to act fairly between the Tenderers, whilst meeting its public law and procurement duties in making its decision.
- 7.6** Except as directed in writing by the Authorised Officer, and confirmed in writing to a Tenderer, no agent or officer or elected Member (Councillor) of the Council has any express or implied authority to make any representation or give any explanation to Tenderers as to the meaning of any of the Tender Documents, or as to anything to be done or not to be done by a Tenderer or to give any warranties additional to those (if any) contained in the ITT or as to any other matter or thing so as to bind the Council in any way howsoever.

8.0 Continuation of the Procurement Process

8.1 The Council shall not be committed to any course of action as a result of:

- i) issuing this Invitation to Tender;
- ii) communicating with a Tenderer, a Tenderer's representative or agent in respect of this procurement exercise;
- iii) any other communication between the Council (whether directly or through its agents or representatives) and any other party.

8.2 The Council reserves the right at its absolute discretion to amend, add to or withdraw all, or any part of this Invitation to Tender at any time during the tendering stage of this procurement exercise.

8.3 At any time before the deadline for receipt of tender returns the Council may modify the Invitation to Tender by amendment. Any such amendment shall be numbered and dated and issued by the Council to all participating tenderers. In order to give prospective Tenderers reasonable time in which to take the amendment into account in preparing its Tender return, the Council may in its sole discretion, extend the deadline for submission of the tender returns. The Council reserves the right to amend, withdraw, terminate or suspend all or any part of this procurement process at any time at its sole discretion.

9.0 Confidentiality

9.1 All information supplied by the Council in connection with or in these Tender Documents shall be regarded as confidential to the Council unless the information is already within the public domain or subject to the provisions of the Freedom of Information Act 2000.

9.2 The Contract documents and publications are and shall remain the property of the Council and must be returned upon demand.

9.3 Tenderers shall ensure that each and every sub-contractor, consortium member and/or professional advisor to whom it discloses these papers complies with the terms and conditions of this ITT.

9.4 The contents of this Invitation to Tender are being made available by the Council on condition that:

9.4.1 Tenderers shall at all times treat the contents of the Invitation to tender and any related documents as confidential, save in so far as they are already in the public domain and Tenderers shall not, subject to the provisions relating to professional advisors, sub-contractors or other persons detailed below, disclose, copy, reproduce, distribute or pass any of the contents of the Invitation to tender to any other person at any time or allow any of these things to happen;

9.4.2 Tenderers shall not use any of the information contained in this Invitation to tender for any purpose other than for the purposes of submitting (or deciding whether to submit) the tender; and

9.4.3 Tenderers shall not undertake any publicity activity within any section of the media.

- 9.5** Tenderers may disclose, distribute or pass this Invitation to tender to their professional advisors, sub-contractors or to another person provided that:
- 9.5.1** this is done for the sole purpose of enabling an Invitation to tender to be submitted and the person receiving the Information undertakes in writing to keep the Invitation to Tender confidential on the same terms as if that person were the Tenderer; or
 - 9.5.2** the Tenderer obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the Invitation to Tender; or
 - 9.5.3** the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement or to any Contract(s) which may arise from it; or
 - 9.5.4** the Tenderer is legally required to make such a disclosure.
- 9.6** The Council may disclose detailed information relating to the Invitation to Tender to its officers, employees, agents, professional advisors or Governmental organisations and the Council may make any of the Contracts and procurement documents available for private inspection by its officers, employees, agents, professional advisors, contracting authorities or Governmental organisations.

9.7 Transparency of Expenditure

Further to its obligations regarding transparency of expenditure, the Council may be required to publish information regarding tenders, contracts and expenditure to the general public, which could include the text of any such documentation, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act to be determined at the absolute discretion of the Council.

10.0 Freedom of Information

- 10.1** Please note that from 1 January 2005 under the provisions of the Freedom of Information Act 2000, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. One of the consequences of those new statutory responsibilities is that information about your organisation, which Shropshire Council may receive from you during this tendering process may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.
- 10.2** In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the Act, Shropshire Council may consider it appropriate to ask you for your views as to the release of any information before we make a decision as to how to respond to a request. In dealing with requests for information under the Act, Shropshire Council has to comply with a strict timetable and it would therefore expect a timely response to any such consultation within five working days.
- 10.3** If, at any stage of this tendering process, you provide any information to Shropshire Council in the expectation that it will be held in confidence, then you must make it

clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as “commercial in confidence” will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be given.

- 10.4** Shropshire Council will not be able to accept that trivial information or information which by its very nature cannot be regarded as confidential should be subject to any obligation of confidence.
- 10.5** In certain circumstances where information has not been provided in confidence, Shropshire Council may still wish to consult with you as to the application of any other exemption such as that relating to disclosure that will prejudice the commercial interests of any party. However the decision as to what information will be disclosed will be reserved to Shropshire Council.

For guidance on this issue see: <http://www.ico.gov.uk>

11.0 Disqualification

- 11.1** The Council reserves the right to reject or disqualify a Tenderer's Tender submission where:
- 11.1.1** The tenderer fails to comply fully with the requirements of this Invitation to tender or is in breach of clause 15 of the Council's General Terms and Conditions relating to Bribery and Corruption or is guilty of a serious or intentional or reckless misrepresentation in supplying any information required; or
- 11.1.2** The tenderer is guilty of serious or intentional or reckless misrepresentation in relation to its tender return and/or the procurement process.
- 11.1.3** The tenderer directly or indirectly canvasses any member, official or agent of the Council concerning the award of the contract or who directly or indirectly obtains or attempts to obtain information from any such person concerning any other Tender or proposed Tender for the services. The Canvassing Certificate must be completed and returned as instructed.
- 11.1.4** The Tenderer :
- a) Fixes or adjusts the amount of his Tender by or in accordance with any agreement or arrangements with any other person; or
 - b) Communicates to any person other than the Council the amount or approximate amount of his proposed Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for preparation of the Tender for insurance purposes); or
 - c) Enters into an agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender to be submitted; or
 - d) Offers or agrees to pay or give or does pay or gives any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to

any Tender or proposed Tender for the services any act or omission.

11.2 Any disqualification will be without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a Tenderer may attract. The Non-Collusive Tendering Certificate must be completed and returned as instructed.

11.3 The Council reserves the right to disqualify an Applicant from further participating in this procurement process where there is a change in the control or financial stability of the Tenderer at any point in the process up to award of a contract and such change of control or financial stability has a materially adverse effect on the Tenderer's financial viability or ability to otherwise meet the requirements of the procurement process.

12.0 E-Procurement

As part of its procurement strategy Shropshire Council is committed to the use of technology that can improve the efficiency of procurement. Successful Tenderers may be required to send or receive documents electronically. This may include purchase orders, acknowledgements, invoices, payment advices, or other procurement documentation. These will normally be in the Council's standard formats, but may be varied under some circumstances so as not to disadvantage small and medium suppliers.

13.0 Award of Contract

13.1 Award Criteria

The Award Criteria has been set out within the Tender Response Document accompanying this invitation to tender. The Council is not bound to accept the lowest or any Tender.

13.2 Award Notice

The Council will publish the name and addresses of the successful Tenderers in the Official Journal of the European Union (OJEU) where appropriate. The Contracting Authority reserves the right to pass all information regarding the outcome of the Tendering process to the Office of Fair Trading to assist in the discharge of its duties. Additionally, the Council will adhere to the requirements of the Freedom of Information Act 2000 and Tenderers should note this statutory obligation.

13.3 Transparency of Expenditure

Further to its obligations regarding transparency of expenditure, the Council may also be required to publish information regarding tenders, contracts and expenditure to the general public, which could include the text of any such documentation, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act to be determined at the absolute discretion of the Council.

14.0 Value of Contract

Shropshire Council cannot give any guarantee in relation to the value of this contract to be awarded under this framework arrangement. Additionally, there is no guarantee that an individual framework supplier will be awarded any business under this agreement.

15.0 Acceptance

- 15.1** Tenders must be submitted strictly in accordance with the terms of the Council's Invitation to Tender documentation and acceptance of the tender shall be conditional on compliance with this Tender Condition.
- 15.2** The Tender documentation including, the General and Special Terms and Conditions of Contract, the Tender Response document, these Instructions to Tender, together with the formal written acceptance by the Council will form a binding agreement between the Contractor and the Council. If accepted, the Contractor will form part of a framework arrangement who will be asked to quote as appropriate for individual requirements throughout the duration of this framework arrangement. Once a quotation is accepted, an individual contract will be formed which will be subject to the terms of the documents described above.
- 15.3** Please note, if accepted onto the framework, the prices tendered by you will be used as a benchmark against the prices you quote for the specified requirements. If it is found your quoted prices consistently exceed the range of prices tendered, you may be removed from the framework arrangement. Allowances will be made when benchmarking, for inflation and general increases / decreases in the market
- 15.4** All successful Tenderers accepted onto the framework will be required to work to strict quality standards and deadlines, as detailed in individual purchase orders, failure to meet such quality standards or deadlines will result in a breach of a condition of contract and remedies will be sought, as appropriate, by the Council.
- 15.5** Please also note that the Council will monitor the quality of work supplied and delivery of such work under the framework and reserve the right to remove any successful Tenderer from the framework where they fail to meet reasonable standards in these areas].
- 15.6** The Tenderer shall be prepared to commence the provision of the supply and services on the start date of the framework arrangement 20th February 2017

16.0 Payment Terms

Tenderers should particularly note that the principles governing public procurement require that, as far as is reasonably possible, payments for Goods, Works or Services are made after the provision. Therefore any indication of a pricing strategy within a Tender which provides for substantial payments at the outset of the Contract will be examined carefully to decide whether or not a Tender in such form can be accepted. If in the opinion of the Council such substantial payments appear excessive in relation to the requirements of the Contract the Council reserves, without prejudice to any other right to reject any Tender it may have, the right to require the Tenderer to spread such proportion of the costs as are considered excessive over the duration of the Contract.

17.0 Liability of Council

- 17.1** The Council does not bind himself to accept the lowest or any tender.
- 17.2** The Council does not accept any responsibility for any pre-tender representations made by or on its behalf or for any other assumptions that Tenderers may have drawn or will draw from any pre-tender discussions.
- 17.3** The Council shall not be liable to pay for any preparatory work or other work undertaken by the Tenderer for the purposes of, in connection with or incidental to this Invitation to Tender, or submission of its Tender response or any other communication between the Council and any other party as a consequence of the issue of this Invitation to Tender.
- 17.4** The Council shall not be liable for any costs or expenses incurred by any Tenderer in connection with the preparation of a Tender return for this procurement exercise, its participation in this procurement whether this procurement is completed, abandoned or suspended.
- 17.5** Whilst the Tender Documents have been prepared in good faith, they do not purport to be comprehensive nor to have been formally verified. Neither the Council nor any of its staff, agents, elected Members, or advisers accepts any liability or responsibility for the adequacy, accuracy or completeness of any information given, nor do they make any representation or given any warranty, express or implied, with respect to the Tender Documents or any matter on which either of these is based (including, without limitation, any financial details contained within the Specification and Contract Documentation). Any liability is hereby expressly disclaimed save in the event of fraud, or in the event of specific warranties provided within the Contract Documentation.
- 18.0** The Contractor agrees that where requested in writing during the term of any Agreement for the supply Goods Works or Services it will ensure that an appropriately authorised representative of the Contractor shall attend a Committee meeting of the Council upon being invited to do so by the Council

19.0 Special Terms and Conditions

19.1 Operation of Contract

Tenderers are required to submit prices on the basis of a cost plus price. This price is to include all expenses incurred in the delivery of all ordered items to each establishment and any other costs associated with the execution of the contract.

For evaluation purposes, prices must be detailed in the pricing schedule (appendix A). Prices to be tendered should be those applying at 20th February 2017.

19.2 Acceptance of Tender

- a) The acceptance of any tender or part of any tender, will create a Standing Offer for the contractor(s) to supply and deliver speciality and hospitality items to the Authority in accordance with the terms and conditions contained herein the General Terms and Conditions and at the prices

agreed.

- b) The Contracting Authority reserves the right to purchase goods of the type specified from other suppliers if it deems necessary.

19.3 Award of Contract

The Contracting Authority will have the following options to award this arrangement;

- i) A single contractor to cover all requirements

19.4 Values/Quantities

Any values or quantities given in this invitation to tender are estimates and for guidance only. The Contracting Authority is not bound by these estimates and there are no maximum or minimum limits to the orders that may be placed by the Contracting Authority's Distributor(s). The Contracting Authority can give no guarantees in respect of the likely values to be seen under any contract and will not be liable for the value of stock incurred by the Contractor needed to discharge their obligations upon acceptance of the award of contract.

19.5 Prices

The basis of the arrangement will be a fixed price (product) on a termly basis.

The Contractor will be required to submit new product prices at least two weeks prior to a new school term.

Any queries or disputes relating to these prices must be raised prior to their implementation on the first day of the relevant term.

In exceptional circumstances, the Council may consider price increase requests. One month's notice in writing of any such increase to these prices must be given to the General Manager, Shire Services, and their written agreement received before any increases can be applied.

Tenderers are required to submit prices for the complete range of products specified and should be **all inclusive** (e.g. all packing and delivery charges, bags, cases, cans, drums and other containers etc.) but exclusive of VAT.

Tenderers are required to submit prices for the exact products listed in the pricing schedule (appendix A). This will form the price to be charged on each invoice.

The contractor's purchase price used in the calculation for the tendered product prices in question 1.1 of Section F must be nett of all discounts, rebates, bonuses and volume or turnover based discount or over-riders. Prices tendered will form the basis for all future prices and the Authority will require documentary proof of prices paid and supply arrangements.

The Contracting Authority reserves the right for its nominated representative to inspect the Contractor's purchasing arrangements, insurance policies, invoices, accounts and all other relevant contract documents during the month following submission of the tender and at any time during the period of the Standing Offer

Arrangement.

No alternatives of the products specified in the pricing schedule will be accepted. Failure to supply the products specified will result in the tender being rejected.

19.6 Price Verification

19.6.1 The prices quoted as 20th February 2017 form the basis of the Arrangement but as prices obviously will change during the lifetime of the arrangement, the procedure for price variation will be as follows:

Price variations for all products will be implemented on the first day of each new school term, the Contractor giving the Contracting Authority 14 days prior written notice of change.

19.6.2 Tenderers are reminded that the contract price is a cost plus price **Price reductions must be passed on in the same way as price increases**. If it comes to the notice of the Contracting Authority that any price variation has not been passed on, this will be deemed sufficiently serious to justify termination of the Standing Offer Arrangement.

19.6.3 In order to verify any price movements the Contracting Authority or its representatives will notify the Contractor of those products they wish to see invoices for and will arrange to visit the supplier during the fourteen days prior to implementation. They may also on such visits require sight of provision invoices or any other invoices for goods supplied.

19.6.4 For supply of all products, the contractor will be required to provide a termly list of prices within 3 days of their becoming effective. This price list will show the effective date of the changes, the period covered, the Contractor's product reference number, pack size and price. Sufficient copies of this price list will be required to be supplied by the Contractor for circulation within the Authority.

19.7 Specification

- a) Goods supplied shall be of satisfactory quality and be fit for the purpose for which they are to be used.
- b) Goods supplied must conform as to quantity, quality and description with the particulars stated in the Standing Offer Arrangement and the purchase order.
- c) All goods supplied must be at least to the standard specified in any appropriate British Standard Specification or British Code of Practice or EU Equivalents. Where specifications or Codes of Practice are amended during the period of offer the Contractor must supply to the new standard.
- d) All speciality and hospitality food items supplied against this Standing Offer Arrangement shall, in all respects, where relevant, comply with the requirements of:

- I. The Food Safety Act 1990
- II. The Trade Descriptions Act 1968
- III. The Weights and Measures Act 1985
- IV. Food Labelling Regulations 1996/1499
- V. Food Labelling (Declaration of Allergens) (England) Regulations 2008
- VI. Food Information (Miscellaneous Amendment and Revocation) (England) Regulations 2014
- VII. The Meat Products (England) Regulations 2003
- VIII. The Quick Frozen Foodstuffs (England) Regulations 2007
- IX. The Food Safety (General Food Hygiene) Regulations 2013
- X. The Materials and Articles in Contact with Food (England) Regulations 2012

and any other legislation applicable (and any other enactments or regulations made under or kept in being by the above Acts) or EU equivalent legislation relating to speciality and hospitality food items as if such products were for retail sale. Products must comply with all legislation relating to composition, standards, labelling and advertising of food.

- e) The Contracting Authority reserves the right to prohibit any foodstuff or ingredient which they consider to be detrimental to health.
- f) All packages must be marked with the correct description of the packaged item, and where appropriate a list of the ingredients must be shown, giving the minimum meat content where applicable.
- g) **Mechanically recovered beef of any kind must not be included in any of the offered products.**

Inclusion of any other type of Mechanically Recovered Meat (MRM) must be stated in writing to the Chief Trading Standards Officer of Shropshire Council and must be declared on the label of the product in question. Any MRM included must be produced in accordance with the BMAA Code of Practice. The amount of any MRM shall not in any event exceed 10% of the meat content.

No head meat of any kind is permitted in any product that forms part of this contract.

19.8 Variation of Specification

The Contractor shall not alter the specification of any goods, except as directed in writing by the Contracting Authority but the Contracting Authority has the right, from time to time, during the execution of the Standing Offer Arrangements by notice in writing to direct the Contractor to add or omit, or otherwise vary, the goods and the Contractor shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the original Standing Offer Arrangement.

Where the Contractor receives any such direction from the Contracting Authority which would occasion an amendment to the Standing Offer price, the Contractor

shall, with all possible speed, advise the Contracting Authority in writing to that effect giving the amount of any such amendments, ascertained and determined at the same level of pricing as that contained in the Contractor's tender.

If, in the opinion of the Contractor, any such direction is likely to prevent the Contractor from fulfilling any of his obligations under the Standing Offer Arrangement, he shall notify the Contracting Authority and the Contracting Authority shall decide with all possible speed, whether or not the same shall be carried out and shall confirm his instructions in writing and modify the said obligations to such an extent as may be justified. Until the Contracting Authority so confirm their instructions they shall be deemed to have not been given.

19.9 Additives

The products supplied must not include any of the colours/additives contained in the list in Appendix B. Any synthetic colours/additives, of the type listed, that are contained in any product supplied must be declared to the Contracting Authority in writing and permission obtained from the Contracting Authority in advance of supply.

19.10 Genetically Modified Foods

All goods supplied under this arrangement must not contain genetically modified ingredients. A written assurance must be given to this effect.

In addition, the foodstuffs (or their constituents) must comply with the Novel Foods and Novel Food Ingredients Regulations 1997, and also EC Regulations No 248/97 and 1139/98.

19.11 Irradiation

Where the Contracting Authority proposes to supply foodstuffs (or their constituents) which have been subject to ionising radiation this must be notified in writing to the Contracting Authority and their specific written approval obtained prior to supply.

19.12 Animal Welfare Considerations

Meat shall be produced from animals which are born, reared and slaughtered in full compliance with all British legislative requirements on animal welfare or the relevant legislative requirements of other EU Member States to equivalent effect.

Products which comply with a UK animal welfare standard e.g. Assured Food Standard, EBLEX, Freedom Food etc. will be given preference by the Contracting Authority where ever possible.

19.13 Samples

The Contracting Authority **may** ask for samples from the range of tendered products, for testing evaluation and analysis by the Trading Standards Service. The results of such an analysis, evaluation etc were the tender to be accepted, would act as a basis of the contract to which all future supplies must comply.

Samples may be called for at regular intervals during the contract period, and

these are to be provided free of charge.

19.14 Quality Assurance

The Contractor shall establish and maintain an adequate documented quality system as a means to demonstrate their continuing ability to meet the contract specifications.

The Contractor will also co-operate fully at all times with the Trading Standards Service by allowing them access to all relevant information and personnel to enable them to undertake periodic audits of the Quality Assurance System. The Quality Assurance System must meet the approval of the Trading Standards Service

19.15 Analysis

The Contracting Authority will be at liberty to apply any tests or cause any analyses to be made for the purpose of ascertaining the quality of speciality and hospitality food items being supplied. Should the result of such test or analyses indicate that the food items supplied are not equal to the standard specified, the charges for such tests or analyses shall be met by the Contractor.

The Contractor will also co-operate fully with the Trading Standards Service by allowing them access to their premises, and, whilst there, allowing them access to any relevant other documentation and process procedures, and also the freedom to take any samples required to ascertain that products comply with all relevant regulations and conditions of contract. The Contractor must ensure that these facilities are available to the Trading Standards Service whether the Contractor is the manufacturer of the product supplied or not.

19.16 Inspection of Goods and Premises

- (a) The Contractor will allow the Contracting Authority, any of its staff and appropriate personnel to inspect any delivery ticket and to check the quality and/or quantity of the goods at the premises of the Contractor, before despatch, during transit or at the place of delivery. The Contractor, his agents and servants shall give the Contracting Authority and its staff all reasonable assistance to enable them to check the quantity and/or quality of the goods or to inspect the Contractor's premises.
- (b) The Contracting Authority may submit samples of the goods to a public analyst or to a recognised testing house for examination. If the goods submitted are certified not to be of the quality or specification ordered, the Contracting Authority may reject the whole consignment from which the samples were taken. In addition, samples may be taken in the manner prescribed by the Food Safety Act 1990 by the Trading Standards Service.

The rights of the Contracting Authority under the Standing Offer Arrangement will not be prejudiced if analyses or tests are not carried out.

19.19 Orders

- (a) The Contractor will be required to provide printed order forms for use by

the Authority. These will list the items approved by the Contracting Authority in consultations with representatives in the Authority's user departments. **No order for any item not on this list is to be accepted by the Contractor without specific written instruction from either Shire Services' Service Manager or Operations Manager.**

A separate price list will be made available to all to indicate the range of additional items that may be added to the approved order form.

- (b) The Contracting Authority may place orders for the supply of goods at the terms agreed at any time during the period of offer and the placing of each order constitutes an acceptance of the Standing Offer and thus creates a contract for the supply of those items so ordered.
- (c) The Contractor may be required to introduce a system of electronic ordering during the lifetime of the arrangement. Any such system will be in accordance with a format/procedure determined by the Authority and at no cost to the Authority.
- (d) The Contracting Authority will not hold itself responsible or be liable for payment for goods unless requisitioned by an official order signed by an authorised officer of that Authority. In the case of any emergency the Contractor will supply on the oral instruction given on behalf of the Authority which will be confirmed by the Authority on an official order. If the Contractor does not receive such confirmation within two days he should notify the appropriate Head of Service or establishment.
- (e) Where required by the establishment the Contractor must split catering packs at no additional cost to the Authority.

19.18 Storage and Delivery

- (a) Upon receipt of official orders from the Contracting Authority, the Contractor will supply and deliver the goods required in accordance with the agreed prices and conditions. The Contractor must, at all times, comply with any statutory requirements in force at that time.
- (b) Deliveries must be made fully in accordance with the requirements of the Contracting Authority. All vehicles used for the delivery of services should conform to Euro IV emission standards or be a low emission vehicle (as defined by exemption from the London congestion charge. Use of pre Euro and Euro I, II & III vehicles will not be acceptable in any circumstances.
- (c) Shropshire is a rural, sparsely populated county with some schools accessible by narrow country lanes only which can be difficult to navigate for an inappropriate vehicle. All tenderers must ensure they have a fleet which can ensure delivery to sites within the stipulated timescales regardless of location or frequency.
- (d) All deliveries must be made in a vehicle that complies with The Food Safety (General Food Hygiene) Regulations 2013 and any subsequent amendments.

(e) Storage and Delivery

All frozen products must be quick frozen. Storage prior to delivery to individual establishments should be at 0°F (-18° C) for no longer than three months. Longer periods of storage must be at -20°F (-29°C). Cold storage temperatures must not be allowed to fluctuate. The temperature of frozen products at the time of delivery must not be higher than 5°F (-15°C).

At no time during either preparation or delivery shall the temperature of frozen meat rise above -15°C.

If applicable, carcass meat must be transferred from chill to cutting room, and returned to chill or freezing within a maximum of 2 hours.

Boxed frozen products must be reduced to an internal temperature of -18°C or below within 24 hours of being boxed.

Frozen Meat

Frozen meat shall not be frozen for more than one year and must have been frozen by means of specialist freezing equipment such as blast freezer.

Vehicles

Vehicles delivering frozen foodstuffs should comply with relevant sections of UKAFFP Code of Practice.

Please note - cooks at the receiving establishments are instructed to verify that the temperature of the frozen food products when delivered, is within the above parameters. This is to be confirmed by a print-out from the lorry. All deliveries must be (-15°C) or below in order to be accepted. If it is not, the delivery will be rejected (see Clause 18.24 - Rejection of Goods).

UNDER NO CIRCUMSTANCES SHOULD PRODUCTS WHICH ARE RE-FROZEN BE DELIVERED TO ANY ESTABLISHMENT SUPPLIED UNDER THIS ARRANGEMENT.

- (f) The Contractor will exercise due care and attention when making deliveries to the Contracting Authority. Where possible, all delivery vehicles should be fitted with reverse warning hooters, and drivers must ensure the highest standards of safety during deliveries.

- (g) Deliveries may be required one, two or three weekly depending on each sites requirements. Please see schedule of delivery points for more information. This is for **guidance only** and may change during the term of the contract depending on each sites individual needs

Deliveries to school kitchens must be made on Mondays to Fridays between the hours of 9.00 am and 2.00 pm. No deliveries outside these hours will be permitted unless agreed with the Authority where local arrangements are put in place.

Deliveries to other establishments will be required to be made on Mondays to Fridays at times agreed with a responsible officer at each establishment.

Most school kitchens will only normally require deliveries during term times (approximately forty weeks per year) but occasional deliveries during school holidays may be required.

Social Services, some school kitchens and other establishments will require a delivery service for the full 52 weeks of the year.

Additionally, a delivery will be required to all schools on the same day in September (usually the day prior to the start of term) every year during this arrangement.

- (h) The goods ordered are to be delivered free of charge at the risk of the Contractor, to the delivery point(s) specified in the purchase order. The goods must be off loaded by the Contractor and placed in position as directed. If goods are incorrectly delivered, the Contractor will be held responsible for any additional expense incurred in delivering the goods to their correct destination.

Important - No alternative products should be substituted without the prior written approval of the Authority's representative.

All alternative or substitute items are to be charged at the same price as the contracted item.

If, for any reason, the Contractor fails to deliver to individual establishments on the scheduled delivery day, the Contractor must deliver the goods on the next working day.

- (i) The Contracting Authority disclaim all responsibility for the security of goods delivered and left on the premises of the Authority by the Contractor. Goods must not be left unattended and the delivery driver must obtain a signature from the Authority's authorised representative.
- (j) The risk on the goods will remain with the Contractor until the goods are delivered and accepted. Notwithstanding, any receipt issued, the goods will not be deemed to have been accepted until the Authority's representative has had a reasonable opportunity to examine them.

- (k) If the Contractor requires the return of any container in which the goods are delivered, the Contractor will clearly indicate the requirement on the container, delivery note and invoice. Containers will be returned by the Authority only at the Contractor's expense. There will be no liability on the part of the Authority for any loss of, or damage to, containers and it will be the Contractor's responsibility to remove all containers on subsequent deliveries.
- (l) All containers, basket and trays etc used by the Contractor in the performance of the contract shall be capable of being sterilised before re-use where appropriate and shall be kept in a clean state to prevent the risk of contamination of the goods being supplied.
- (m) For the purpose of this contract all deliveries made will be deemed to be retail sales.
- (n) The personal hygiene of the driver must be of the highest standard and clean protective clothing must be worn. Smoking will not be permitted during the actual delivery. The vehicle interior shall be maintained in a clean hygienic condition as should all the storage equipment used in the vehicle. The Contractor shall ensure that the interior is cleaned daily.

All contractor's personnel entering an establishment, must be easily identifiable by way of an identity badge showing their name, photograph and which company they represent.
- (o) All deliveries, where required must comply with the Food Safety (General Food Hygiene) Regulations 2013.

19.19 Delivery Notes

All supplies of hospitality and speciality food items made to individual establishments against this contract must be accompanied by a delivery note from the supplier stating (as appropriate):

THE CONTRACTOR'S NAME AND ADDRESS
 THE DELIVERY POINT ADDRESS
 THE PURCHASE ORDER NUMBER
 THE DATE OF DELIVERY
 THE CORRECT DESCRIPTION OF THE GOODS BEING SUPPLIED INCLUDING
 THE NUMBER OR WEIGHT OF EACH ITEM
 WARNING – DO NOT REFREEZE

One copy of the delivery note is to be retained by the representative of the Authority, authorised to accept delivery. The other copy is to be signed and returned to the Contractor by the said representative.

19.20 Payment

(a) School Kitchens

Payment in respect of deliveries to school kitchens may be made to the Contractor by electronic payment system, with payment being made by

the Contracting Authority within 7 days if an electronic payment system is implemented. This electronic payment will be made under a format/procedure which is acceptable to the Contracting Authority. Tenderers are required to submit their detailed proposals within the tender response document.

The Contractor will be required to offer an extra discount to the Contracting Authority for payment ahead of the Contractor's normal trading terms on the implementation of a direct billing system.

The processing of credit notes will also be included in this electronic payment system.

(b) Social Services and Other Establishments

Payment in respect of deliveries to social services and other establishments will be made in accordance with the following, although during the lifetime of the arrangement it is possible that they may also wish to make payment by electronic payment as detailed in a) above.

- Invoices

An invoice bearing the same information as the delivery note, together with all prices calculated and totalled, must be sent with the goods direct to the individual establishment/delivery point when the goods are delivered.

Payment of the invoices will be due at the end of the next complete calendar month following date of delivery, or as otherwise agreed by the Authority and the Contractor.

- Credit Notes

In the event of non-delivery of goods identified as damaged at the time of receipt, or not delivered for any other reason, the driver will be required to issue an instant credit note in respect of the items concerned. This procedure will ensure that no delay in payment occurs whilst awaiting credit.

19.21 Information to be supplied

The Contractor will supply the following information:

- (a) Lists produced weekly (for products) showing Contractor's reference number, pack size and price.
- (b) Data on a monthly basis of all products purchased by the individual Authority showing the quantity and value for both in that month both for individual items and in total.
- (c) Data on a monthly basis of all products purchased by the Authority showing the quantity and value accumulated throughout the year both for individual items and in total and also giving details of product delivered to individual establishments using the arrangement.

This information should be presented throughout the period of the

contract, in a format which is acceptable to Shropshire Council.

Should the Contractor fail to provide the required usage information, the Contractor will be deemed to be in breach of contract. It is considered that such a breach will be sufficient for the contract to be terminated.

- (d) There may be requirements during the period of the Standing Offer Arrangement for the Contractor to provide other statistical information.
- (e) Sufficient copies of any or all of the above information may be required from the Contractor for circulation to user Authority.

19.22 Packaging

All food products must be packaged and wrapped sufficiently to protect the product from damage and contamination during storage and delivery. Where a manufacturer has recommended a particular storage method, this shall be adhered to by the Contractor. All packaging in contact with food is to comply with The Materials and Articles in Contact with Food (England) Regulations 2012.

Damaged or broken packaging of food will not be accepted. All prepared products must comply with the Food Labelling Regulations 1996/1499 as amended, and, if not already included, must have the particular specified in Regulation (5) of these Regulations printed on the packaging together with an indication of quantity in accordance with the current Weights & Measures Legislation.

All frozen food products shall include the statement "Do not Refreeze".

19.23 Rejection of Goods

- (a) The Contracting Authority or its representatives have the power to reject any goods if in their opinion, the Contractor has not complied with all Terms and Conditions relating to the Standing Offer Arrangement.
- (b) Where possible notice of rejection will be given on the day of delivery, by any means considered appropriate by the Contracting Authority.
- (c) In the event of rejection the Contractor will:
 - (i) immediately replace the goods with those of the required quality/specification;
 - (ii) remove the rejected goods at the Contractor's own expense within 7 days of rejection.

Any rejected goods which have not been removed within 7 days will be disposed of by the Contracting Authority and the Contractor will be charged with all expenses incurred. The Contracting Authority will not be liable for any loss or expenses suffered by the Contractor as a result of disposal. Any replacement or removal of goods shall not prejudice any other action that the Contracting Authority may take.

19.24 Power to Purchase Elsewhere

If the Contractor fails to deliver the goods on time or if they fail to comply with any

of the Terms and Conditions relating to the Standing Offer Arrangement, the Contracting Authority will be entitled to purchase elsewhere. The Contractor may offer alternative goods after discussion with the Contracting Authority. Any additional costs incurred by the Contracting Authority over the agreed price will be repaid by the Contractor without prejudice to any other action that may be taken.

19.25 Establishment Listing

- (a) The Authority reserves the right to withdraw or include any establishments either on a temporary or permanent basis to this arrangement as necessary.
- (b) Details of establishments covered by the Standing Offer Arrangement are detailed on the Establishment List Schedule (appendix c) and are correct at the present time, but may alter to take account of any changes and other legislation which may occur during the lifetime of the standing offer arrangement.
- (c) Schedule only contains secondary/middle schools as these sites will be the primary user of the items covered under this agreement. Shire Services also provide catering services to approximately 145 primary schools. Accounts for these sites will be set-up on needs basis only upon instruction from the Contracting Authority.

19.26 Delegation

The Contractor shall not delegate the whole or part of this Standing Offer Arrangement to any other person or company without the prior approval of the Contracting Authority.

19.27 Counter Inflation Legislation

It is a requirement that the Contractor shall not breach any Counter Inflation and/or Price Legislation in force at the time.

19.28 Sustainability

The contractor will at all times use their best endeavours to assist the Contracting Authority and operate themselves in a manner which meets the aims and objectives set out in the sustainable policies of Shropshire Council, copies of which are available on the Council's website.

19.29 Analysis of Usage

It will be a condition of contract that the Contractor will supply the Contracting Authority with a detailed breakdown of usage against this arrangement. The following information will be required:

- (a) The total monthly usage/value and cumulative usage/value of all speciality and hospitality items delivered
- (b) The monthly usage/value and cumulative usage/value per individual establishment.
- (c) A breakdown of transport/product costs as required by the Contracting

Authority.

The information should be presented throughout the period of the contract, in a format which is acceptable to the Contracting Authority.

19.30 Extension of Arrangement

Subject to satisfactory service being received, this standing offer arrangement shall apply for a period of up to 2 years. The Contracting Authority reserves the right to extend the arrangement at their total discretion for a further period of up to 2 years.

20.0 Declaration

We, as acknowledged by the signature of our authorised representative, accept these Instructions to Tender as creating a contract between ourselves and the Council. We hereby acknowledge that any departure from the Instructions to Tender may cause financial loss to the Council.

Signed (1) Status.....

Signed (2) Status.....

(For and on behalf of)

Date

Product Name¹

Frozen Chicken EPIC

Cheese and Tomato Pizzini

Large Garlic Spread Ciabatta Slices

BBQ Pulled Pork

Pulled Beef In BBQ Sauce

2120 6" Sausage Rolls

1 - Please submit the manufacturer product specific

2 - Your cost price plus any on cost. The on cost is to

Product Description	unit size	Pack Size	case size
Chicken fillet in a seasoned crumb, fully cooked and individually quick-frozen	100-120g	10	10
Cosmo Pizzini Calzone Cheese & Tomato	135g	20	1
A large white ciabatta split horizontally with cut surfaces topped with garlic and parsley spread	120g	80	1
Cooked Pulled Pork in a BBQ Sauce	500g	1	20
Cooked Pulled Beef Brisket in BBQ Sauce	250g	1	24
Savoury pork sausage meat encased in a traditional, oblong puff, pastry casing – Frozen Unbaked	6"	66	1

cation for each item as part of your tender.

o include all expenses incurred in the delivery of all ordered items to each establishment and any other costs associated w

Name of Manufacturer	Approx Annual Usage (case)	Case Splitable	Price Per Case ²	Annual Price
HCC Foods	1650	Yes	£0.00	£0.00
Cosmo Products Ltd	2288	n/a	£0.00	£0.00
Giles Foods	858	n/a	£0.00	£0.00
Ready Foods Limited	71	Yes	£0.00	£0.00
Ready Foods Limited	11	Yes	£0.00	£0.00
Wrights	22	n/a	£0.00	£0.00
Shopping Basket Price				£0.00

with the execution of the contract.

Food Additives to be avoided

Products supplied under the terms of this agreement must not contain any of the 13 Food Additives listed below that are in in bold.

The rest should be avoided where possible. Should any product/item contain any of the other additives listed below, this must be declared to the Contracting Authority in writing and permission obtained from the Contracting Authority in advance of supply.

Colours

E102	Tartrazine
E104	Quinoline Yellow
E110	Sunset Yellow FCF (Orange Yellow S)
E122	Carmoisine (Azorubine)
E123	Amaranth
E124	Ponceau 4R (Cochineal Red A, Brilliant Scarlet 4R)
E127	Erythrosine B5
E128	Red 2G
E129	Allura Red AC
E131	Patent Blue V
E132	Indigo Carmine (Indigotine)
E133	Brilliant Blue FCF
E142	Green S
E150	Caramel (a) (b) (c) (d)
E151	Black PN (Brilliant Black BN)
E153	Carbon Black (Vegetable Carbon)
E154	Brown FK (Kipper Brown)
E155	Brown HT (Chocolate Brown HT)
E161(g)	Canthaxanthin
E173	Aluminium
E180	Pigment Rubine (Lithol Rubine BK)

Flavour Enhancers

E621	Monosodium glutamate (MSG)
E622	Monopotassium glutamate (MPG)
E635	Disodium 5-ribonucleotide

Sweeteners

E950	Acesulfame K
E951	Aspartame
E953	Isomalt
E954	Saccharin
E965	Maltitol (i), Maltitol (ii), Maltitol syrup
E966	Lactitol
E967	Xylitol

Other additives not allowed for infants and young children.

E310	Propyl gallate
E311	Octyl gallate
E312	Dodecyl gallate

Preservatives

E210	Benzoic acid
E211	Sodium benzoate
E220	Sulphur dioxide
E249	Potassium nitrite
E250	Sodium nitrite
E251	Sodium nitrate
E252	Potassium nitrate
E282	Calcium propionate

Some preservatives, 'The Sulphites', are known to be a problem for asthmatics.

E221	Sodium sulphite
E222	Sodium hydrogen sulphite
E223	Sodium metabisulphite
E224	Potassium metabisulphite
E226	Calcium sulphite
E227	Calcium hydrogen sulphite
E228	Potassium hydrogen sulphite

Anti-oxidants

E320	Butylated hydroxyanisole (BHA)
E321	Butylated hydroxytoluene (BHT)

Flavourings

All flavourings unless clearly stated 'Natural' must be avoided. Flavourings do not have E numbers

Other additives that can be a problem for asthmatics or aspirin sensitive people.

E212	Potassium benzoate
E213	Calcium benzoate
E214	Ethyl 4-hydroxybenzoate
E215	Sodium ethyl 4-hydroxybenzoate
E216	Propyl 4-hydroxybenzoate
E217	Sodium propyl 4-hydroxybenzoate
E218	Methyl 4-hydroxybenzoate
E219	Sodium methyl 4-hydroxybenzoate
E230	Diphenyl
E231	Orthophenyl phenol
E232	Sodium orthophenyl phenol
E233	Thiabendazole
E234	Nisin
E235	Natamycin

School Type	School Name	Address 1	Address 2	Address 3	Postcode	Telephone	Number of Weekly deliveries (approx)
Secondary	Belvidere School - Technology College	Crowmere Road	Shrewsbury		SY2 5LA	01743 234092	2
Civic	Bluebells	Shropshire Food Enterprise Ce	Vanguard Way, Battlefield	Shrewsbury	SY1 3TG	01743 250250	
Secondary	Bryn Elian High School	Windsor Drive	Old Colwyn	Colwyn Bay	LL29 8HU	01492 518215	2
Secondary	Cardinal Griffin Catholic College	Cardinal Way	Stafford Road	Cannock	WS11 4AW	01543 502215	2
Middle	Catshill Middle School	Meadow Road	Catshill	Bromsgrove	B61 0JW	01527 872431	
Secondary	Chantry High School	Martley	Worcester		WR6 6QA	01886 888420	
Secondary	Charlton School	Severn Drive	Wellington	Telford	TF1 3LE	01952 259667	2
Secondary	Church Stretton School - Specialist Technology Centre	Shrewsbury Road	Church Stretton		SY6 6EX	01694 725125	2
Secondary	Coppice Performing Arts School	Ecclestone Road	Wednesfield	Wolverhampton	WV11 2QE	01902 558011	2
Secondary	Dyson Perrins High School	Yates Hay Road	Malvern		WR14 1WD	01684 575673	
Secondary	Eirias High School	Eirias Road	Colwyn Bay		LL29 7SP	01492 532025	2
Secondary	Hagley RC High School	Brake Lane	Hagley		DY8 2XL	01562 884528	
Secondary	Hereford College of Arts (College Road)	College Road	Hereford		HR1 1EB		
Secondary	Hereford College of Arts (Folly Lane)	Folly Lane	Hereford		HR1 1LU	01432 355166	
Secondary	Idsall School	Coppice Green Lane	Shifnal		TF11 8PD	01952 468412	2
Secondary	John Masfield High School	Mabel's Furlong	Ledbury		HR8 2HF	01531 631012	
Secondary	Lacon Childe School	Love Lane	Cleobury Mortimer		DY14 8PE	01299 270312	2
Secondary	Lakelands Academy	Oswestry Road	Ellesmere		SY12 0EA	01691 627036	2
Secondary	Mary Webb School & Science	Pontesbury	Shrewsbury		SY5 0TG	01743 792108	1
Secondary	Meole Brace School Science College	Longden Road	Shrewsbury		SY3 9DW	01743 353819	2
Civic	Column Restaurant	Shirehall	Abbey Foregate	Shrewsbury	SY2 6ND	01743 252872	
Secondary	Sir John Talbot's Technology College and Sixth Form	Tilstock Road	Whitchurch		SY13 2BY	01948 660630	1
Secondary	St Martins 3-16 Learning Community	Primary Campus	St Martins	Oswestry	SY11 3DH	01691 776500	1
Secondary	The Bewdley School and 6th Form Centre	Stourport Road	Bewdley		DY12 1BL	01299 403277	
Secondary	The Community Castle - Bishop's Castle	Brampton Road	Bishop's Castle		SY9 5AY	01588 638308	2
Secondary	The Corbet School - Technology and Language College	Eyton Lane	Baschurch	Shrewsbury	SY4 2AX	01939 262007	2
Civic	The Gateway Coffee Shop	Chester Street		Shrewsbury	SY1 1NB	01743 367614	
Secondary	The Marches Academy	Morda Road	Oswestry		SY11 2AR	01691 664413	2
Middle	Witton Middle School	Old Coach Road	Droitwich Spa		WR9 8BD	01905 773362	
Secondary	Ysgol Emrys Ap Iwan	Faenol Avenue	Abergele	Conwy	LL22 7HE	01745 827734	2



Tender Response Document

RMCS 017 – SPECIALITY & HOSPITALITY FOOD ITEMS

Name of TENDERING
ORGANISATION
(please insert)

Please also add your company name to the footer of each page of the returned document

Shropshire Council Tender Response Document

Contract Description/Specification:

A framework arrangement for the supply and distribution of speciality and hospitality food items to Shropshire Council for an initial period of 2 years commencing on 20th February 2017 with the option to extend for a further period of 2 years.

The Council are seeking a sole contractor to supply and distribute speciality and hospitality item to sites (mainly schools) throughout Shropshire, Worcestershire, Herefordshire, Cheshire, Staffordshire, North Wales and the West Midlands which are serviced by Shire Services.

Instructions for the completion of this document

1. This document must be completed in its entirety with responses being given to all questions. If you are unsure of any section/question and require further clarification, please contact us via our Delta Tenderbox. You are recommended to keep a copy of all tender documents and supporting documents for your own records.
2. Tenderers must also complete and sign the four certificates in Sections A1 to A4. These must be signed;
 - a) Where the tenderer is an individual, by that individual;
 - b) Where the tenderer is a partnership, by two duly authorised partners;
 - c) Where the tenderer is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose.
3. All questions require specific responses from you relating to the organisation named in Section B Question 1.1. All information supplied must be accurate and up to date. The Council reserves the right to refuse to consider your application if the Tender Response Document is not fully completed or is found to be inaccurate.
4. Where copies of certificates and other details are requested **a copy must** accompany the electronic copy of your Tender Response Document.
5. 500 word limit to each answer (including any referencing to additional attachments).
6. The Authority reserves the right to reject any organisation from the tender exercise where the tender response contains non-compliances with its stated specification.

Contents

Section	Description	Page
A1	Form of Tender	6
A2	Non-Canvassing Certificate	7
A3	Non-Collusive Tendering Certificate	8
A4	Declaration of Connection with Officers or Elected Members of the Council	9
You must sign all 4 certificates in sections A1 to A4		
B	Supplier Information– For information only	10
C	Grounds for <u>Mandatory</u> Exclusion	13
D	Grounds for Discretionary Exclusion	16
E	Technical and Professional Ability	23
F	Tender and Pricing Schedule	25

Award Criteria

Tenderers will be evaluated on the answers they provide in the 'Tender Response Document'. The following award criteria is made up of 'pass/fail' (selection) questions and 'weighted marked' (award) questions and shows how each section is to be marked.

Selection Criteria Pass/Fail Questions (Sections B to E)

This information will be provided for proof of compliance and will be judged on a pass or fail basis. Applicants must comply with these issues to demonstrate their proven competence, financial stability, resources and other arrangements. Questions marked 'For information only' will not be assessed; however they must still be answered in full.

Section / Question No.	Selection Criteria
Section B	Supplier Information– For information only
Section C	Grounds for <u>Mandatory</u> Exclusion
Section D	Grounds for Discretionary Exclusion
Section E	Pass/ Fail Technical and Professional ability

In relation to discretionary exclusion grounds (section D &E):-

Financial viability: Responses will be analysed and evaluated by the Authority's Audit sections and will include checks via an independent agency (currently Equifax).

If the financial analysis of the Applicant (please note financial information provided by consortium members will be evaluated to assess the Applicant consortium as a whole) gives cause for concern as to its ability to deliver the Contract, the Applicant will fail this section.

If the financial analysis of the Applicant does not give any cause for concern as to its ability to deliver the Contract – it shall be deemed to have passed the section.

Please note the Contracting Authority reserves the right to further check the Financial Stability and Capacity of an applicant prior to any award of contract in the manner set out above in order to ensure that they still pass that requirement.

For other Discretionary exclusion grounds: If in the opinion of the Contracting Authority the responses provided casts serious doubt on the Tenderer's ability to perform this contract, they may be excluded.

Award Criteria – Weighted Marked Questions

Tenders will be evaluated on the answers provided in this Tender Response Document and judged against the criteria shown in the table below. The following award criteria is made up of 'Quality' and 'Price' and shows how each criteria is to be weighted against each other.

Section / Question No.	Award Criteria	Weighting / Max Marks Available
Price 60% (60 marks)		
Section F / Q 1.1	Price	60 / 600 max marks
Section F / Q 1.2	Price	FIO
Section F / Q 1.3	Price	FIO
Section F / Q 1.4	Price	FIO
Total for price		60 / 600 max marks
Quality 40% (40 marks)		
Section F / 2.1	Change of price procedure	FIO
Section F / 2.2	Order, Delivery and Quality procedures	4 / 40 marks
Section F / 2.3	Order, Delivery and Quality procedures	4 / 40 marks
Section F / 2.4	Order, Delivery and Quality procedures	2 / 20 marks
Section F / 2.5	Order, Delivery and Quality procedures	4 / 40 marks
Section F / 2.6	Order, Delivery and Quality procedures	2 / 20 marks
Section F / 2.7	Order, Delivery and Quality procedures	4 / 40 marks
Section F / 2.8	Order, Delivery and Quality procedures	2 / 20 marks
Section F / 2.9	Food Safety	4 / 40 marks
Section F / 2.10	Added Value	2 / 20 marks
Section F / 2.11	Social Value	2 / 20 marks
Section F / 2.12	Handling of complaints	2 / 20 marks
Section F / 2.13	Client Care	4 / 40 marks
Section F / 2.14	Contract Implementation	4 / 40 marks
Total for quality		40 / 400 max marks

Quality Questions/ Scoring Scheme

Questions within the quality sections shown above will be scored using the following scoring scheme. Each answer from the questions identified below will be given a mark between 0 and 10 with the following meanings:

Assessment	Mark	Interpretation
Excellent	10	<i>Exceeds the requirement. Exceptional demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	9	
Good	8	<i>Satisfies the requirement with minor additional benefits Above average demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	7	
Acceptable	6	<i>Satisfies the requirement. Demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures, with evidence to support the response.</i>
	5	
Minor Reservations	4	<i>Satisfies the requirement with minor reservations Some minor reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with limited evidence to support the response.</i>
	3	
Serious Reservations	2	<i>Satisfies the requirement with major reservations. Considerable reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>
	1	
Unacceptable	0	<i>Does not meet the requirement Does not comply and/or insufficient information provided to demonstrate how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>

The use of odd numbers indicates an answer's allocated mark lies between definitions.

The tender receiving the highest initial mark for Quality Criteria overall will receive the full 400 final marks available for Quality. Other tenders will receive a mark that reflects the percentage difference in the initial marks between those tenders and the tender receiving the highest initial mark for Quality overall.

Price Evaluation and scoring

The most competitively priced tender will receive the maximum mark for price being **600. Less competitive tenders** will receive a % of the maximum mark that represents the difference in cost between that tender and the most competitively priced tender.

The price on which tenders will be evaluated is calculated by adding together your 'price per case' multiplied by the 'approx annual usage' figure for each of the 6 items within the pricing schedule.

The basis of how you should calculate your 'price per case' figure is contained within section 19.1 and 17.9 of the special terms and conditions included in the Instructions to Tenderers.

Note: the products listed in the pricing schedule are not exhaustive of the products that will be required as part of this contract. Other items will be required under this contract.

Section A:
1. Form of Tender

Form of Tender

Shropshire Council

Tender for RMCS 017 – Speciality & Hospitality Items

We confirm that this, our tender, represents an offer to Shropshire Council that if accepted in whole, or in part, will create a binding contract for the supply of Speciality & Hospitality Items at the prices and terms agreed and subject to the terms of the invitation to tender documentation and the General Terms and Conditions, copies of which we have received.

Signed Name.....

Date

Designation

Company.....

Address

.....

..... Post Code

Tel No Fax No

E-mail address

Web address

Section A:
2. Non – Canvassing Certificate

Non-Canvassing Certificate

To: Shropshire Council (hereinafter called “the Council”)

I/We hereby certify that I/We have not canvassed or solicited any member officer or employee of the Council in connection with the award of this Tender of any other Tender or proposed Tender for the Services and that no person employed by me/us or acting on my/our behalf has done any such act.

I/We further hereby undertake that I/We will not in the future canvass or solicit any member officer or employee of the Council in connection with the award of this Tender or any other Tender or proposed Tender for the Services and that no person employed by me/us or acting on my/our behalf will do any such act.

Signed (1) Status.....

Signed (2) Status.....

(For and on behalf of)

Date

Section A:
3. Non – Collusive Tendering Certificate

Non-collusive Tendering Certificate

To: Shropshire Council (hereinafter called “the Council”)

The essence of selective tendering is that the Council shall receive bona fide competitive Tenders from all persons tendering. In recognition of this principle:

I/We certify that this is a bona fide Tender, intended to be competitive and that I/We have not fixed or adjusted the amount of the Tender or the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other person.

I/We also certify that I/We have not done and undertake that I/We will not do at any time any of the following acts:-

- (a) communicating to a person other than the Council the amount or approximate amount of my/our proposed Tender (other than in confidence in order to obtain quotations necessary for the preparation of the Tender for insurance); or
- (b) entering into any agreement or arrangement with any other person that he shall refrain from Tendering or as to the amount of any Tender to be submitted; or
- (c) offering or agreeing to pay or give or paying any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender for the Services any act or omission.

Signed (1) Status.....

Signed (2) Status.....

(For and on behalf of)

Date

4. Declaration of Connection with Officers or Elected Members of the Council

Are you or any of your staff who will be affected by this invitation to tender related or connected in any way with any Shropshire Council Elected Councillor or Employee?

Yes / No

If yes, please give details:

Name	Relationship

Please note:

This information is collected to enable the Council to ensure that tenders are assessed without favouritism. Whether or not you have a connection with elected members or employees will have no bearing on the success of your tender, but your tender will not be considered unless this declaration has been completed.

Signed (1) Status.....

Signed (2) Status.....

(For and on behalf of)

Date

SECTION B

1. Supplier Information

1.1 Supplier details	Answer	
Full name of the Supplier completing the Tender		
Registered company address		
Registered company number		
Registered charity number		
Registered VAT number		
Name of immediate parent company		
Name of ultimate parent company		
Please mark 'X' in the relevant box to indicate your trading status	i) a public limited company	<input type="checkbox"/> Yes
	ii) a limited company	<input type="checkbox"/> Yes
	iii) a limited liability partnership	<input type="checkbox"/> Yes
	iv) other partnership	<input type="checkbox"/> Yes
	v) sole trader	<input type="checkbox"/> Yes
	vi) other (please specify)	<input type="checkbox"/> Yes
Please mark 'X' in the relevant boxes to indicate whether any of the following classifications apply to you	i) Voluntary, Community and Social Enterprise (VCSE)	<input type="checkbox"/> Yes
	ii) Small or Medium Enterprise (SME) ¹	<input type="checkbox"/> Yes
	iii) Sheltered workshop	<input type="checkbox"/> Yes
	iv) Public service mutual	<input type="checkbox"/> Yes

¹ See EU definition of SME: <http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/>

1.2 Bidding model	
Please mark 'X' in the relevant box to indicate whether you are;	
a) Bidding as a Prime Contractor and will deliver 100% of the key contract deliverables yourself	<input type="checkbox"/> Yes
b) Bidding as a Prime Contractor and will use third parties to deliver <u>some</u> of the services If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.	<input type="checkbox"/> Yes
c) Bidding as Prime Contractor but will operate as a Managing Agent and will use third parties to deliver <u>all</u> of the services If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.	<input type="checkbox"/> Yes
d) Bidding as a consortium but not proposing to create a new legal entity. If yes, please include details of your consortium in the next column and use a separate Appendix to explain the alternative arrangements i.e. why a new legal entity is not being created. Please note that the Authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract.	<input type="checkbox"/> Yes <u>Consortium members</u> <u>Lead member</u>
e) Bidding as a consortium and intend to create a Special Purpose Vehicle (SPV). If yes, please include details of your consortium, current lead member and intended SPV in the next column and provide full details of the bidding model using a separate Appendix.	<input type="checkbox"/> Yes <u>Consortium members</u> <u>Current lead member</u> <u>Name of Special Purpose Vehicle</u>

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

1.4 Licensing and registration (please mark 'X' in the relevant box)		
1.4.1	<p>Registration with a professional body</p> <p>If applicable, is your business registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annex XI of directive 2014/24/EU) under the conditions laid down by that member state).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, please provide the registration number in this box.</p>
1.4.2	<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?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, please provide additional details within this box of what is required and confirmation that you have complied with this.</p>

SECTION C

2. – Grounds for Mandatory Exclusion

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

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

2.1 Within the past five years, has your organisation (or any member of your proposed consortium, if applicable), Directors or partner or any other person who has powers of representation, decision or control been convicted of any of the following offences?	Please indicate your answer by marking ‘X’ in the relevant box.	
	Yes	No
(a) conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;		
(b) corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;		
(c) the common law offence of bribery;		
(d) bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010; or section 113 of the Representation of the People Act 1983;		
(e) any of the following offences, where the offence relates to fraud affecting the European Communities’ financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities:		
(i) the offence of cheating the Revenue;		
(ii) the offence of conspiracy to defraud;		
(iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;		

(iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;		
(v) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;		
(vi) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;		
(vii) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;		
(viii) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006; or		
(ix) the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;		
(f) any offence listed—		
(i) in section 41 of the Counter Terrorism Act 2008; or		
(ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection;		
(g) any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f);		
(h) money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;		
(i) an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996;		
(j) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;		
(k) an offence under section 59A of the Sexual Offences Act 2003;		
(l) an offence under section 71 of the Coroners and Justice		

Act 2009		
(m) an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or		
(n) any other offence within the meaning of Article 57(1) of the Public Contracts Directive—		
(i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or		
(ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland.		
<p><u>Non-payment of taxes</u></p> <p>2.2 Has it been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which your organisation is established (if outside the UK), that your organisation is in breach of obligations related to the payment of tax or social security contributions?</p> <p>If you have answered Yes to this question, please use a separate Appendix to provide further details. Please also use this Appendix to confirm whether you have paid, or have entered into a binding arrangement with a view to paying, including, where applicable, any accrued interest and/or fines?</p>		

SECTION D

3. Grounds for discretionary exclusion - Part 1

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

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

Contract Regulations 2015; or		
(i) your organisation has undertaken to		
(aa) unduly influence the decision-making process of the contracting authority, or		
(bb) obtain confidential information that may confer upon your organisation undue advantages in the procurement procedure; or		
(j) your organisation has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.		

Conflicts of interest

In accordance with question 3.1 (e), the authority may exclude the Supplier if there is a conflict of interest which cannot be effectively remedied. The concept of a conflict of interest includes any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

Where there is any indication that a conflict of interest exists or may arise then it is the responsibility of the Supplier to inform the authority, detailing the conflict in a separate Appendix. Provided that it has been carried out in a transparent manner, routine pre-market engagement carried out by the Authority should not represent a conflict of interest for the Supplier.

Taking Account of Bidders' Past Performance

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

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

'Self-cleaning'

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

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

In order for the evidence referred to above to be sufficient, the Supplier shall, as a minimum, prove that it has;

- paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;

- clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
- taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the Supplier shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered by the Authority to be insufficient, the Supplier shall be given a statement of the reasons for that decision.

4. Grounds for discretionary exclusion - Part 2

The authority reserves the right to use its discretion to exclude a supplier where it can demonstrate the supplier's non-payment of taxes/social security contributions where no binding legal decision has been taken.

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

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
 1. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion

From 1 April 2013 onwards, have any of your company's tax returns submitted on or after 1 October 2012; (Please indicate your answer by marking 'X' in the relevant box).		
4.1	Given rise to a criminal conviction for tax related offences which is unspent, or to a civil penalty for fraud or evasion;	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2	Been found to be incorrect as a result of: <ul style="list-style-type: none"> ▪ HMRC successfully challenging it under the General Anti-Abuse Rule (GAAR) or the "Halifax" abuse principle; or ▪ a tax authority in a jurisdiction in which the legal entity is 	<input type="checkbox"/> Yes <input type="checkbox"/> No

	<p>established successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or the “Halifax” abuse principle; or</p> <ul style="list-style-type: none"> ▪ the failure of an avoidance scheme which the Supplier was involved in and which was, or should have been, notified under the Disclosure of Tax Avoidance Scheme (DOTAS) or any equivalent or similar regime in a jurisdiction in which the Supplier is established. 	
<p>If answering “Yes” to either 4.1 or 4.2 above, the Supplier may provide details of any mitigating factors that it considers relevant and that it wishes the Authority to take into consideration. This could include, for example:</p> <ul style="list-style-type: none"> • Corrective action undertaken by the Supplier to date; • Planned corrective action to be taken; • Changes in personnel or ownership since the Occasion of Non-Compliance (OONC); or • Changes in financial, accounting, audit or management procedures since the OONC. <p>In order that the Authority can consider any factors raised by the Supplier, the following information should be provided:</p> <ul style="list-style-type: none"> • A brief description of the occasion, the tax to which it applied, and the type of “non-compliance” e.g. whether HMRC or the foreign tax authority has challenged pursuant to the GAAR, the “Halifax” abuse principle etc. • Where the OONC relates to a DOTAS, the number of the relevant scheme. • The date of the original “non-compliance” and the date of any judgement against the Supplier, or date when the return was amended. • The level of any penalty or criminal conviction applied. 		

5. ECONOMIC AND FINANCIAL STANDING

FINANCIAL INFORMATION									
5.1	<p>Please provide one of the following to demonstrate your economic/financial standing;</p> <p>Please indicate your answer with an 'X' in the relevant box.</p> <table border="1"> <tr> <td>(a) A copy of the audited accounts for the most recent two years</td> <td></td> </tr> <tr> <td>(b) A statement of the turnover, profit & loss account, current liabilities and assets, and cash flow for the most recent year of trading for this organisation</td> <td></td> </tr> <tr> <td>(c) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position</td> <td></td> </tr> <tr> <td>(d) Alternative means of demonstrating financial status if any of the above are not available (e.g. Forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).</td> <td></td> </tr> </table>	(a) A copy of the audited accounts for the most recent two years		(b) A statement of the turnover, profit & loss account, current liabilities and assets, and cash flow for the most recent year of trading for this organisation		(c) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position		(d) Alternative means of demonstrating financial status if any of the above are not available (e.g. Forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	
(a) A copy of the audited accounts for the most recent two years									
(b) A statement of the turnover, profit & loss account, current liabilities and assets, and cash flow for the most recent year of trading for this organisation									
(c) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position									
(d) Alternative means of demonstrating financial status if any of the above are not available (e.g. Forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).									
5.2	<p>(a) Are you are part of a wider group (e.g. a subsidiary of a holding/parent company)?</p> <p>If yes, please provide the name below:</p> <table border="1"> <tr> <td>Name of the organisation</td> <td></td> </tr> <tr> <td>Relationship to the Supplier completing the PQQ</td> <td></td> </tr> </table> <p>If yes, please provide Ultimate / parent company accounts if available.</p> <p>If yes, would the Ultimate / parent willing to provide a guarantee if necessary?</p> <p>If no, would you be able to obtain a guarantee elsewhere (e.g from a bank?)</p> <div style="float: right;"> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No </div>	Name of the organisation		Relationship to the Supplier completing the PQQ					
Name of the organisation									
Relationship to the Supplier completing the PQQ									

6. TECHNICAL AND PROFESSIONAL ABILITY

6	Relevant experience and contract examples			
	<p>Please provide details of up to <u>three</u> contracts, in any combination from either the public or private sector, that are relevant to the Authority's requirement. Contracts for services should have been performed during the past <u>three</u> years. VCSEs may include samples of grant funded work.</p> <p>The named customer contact provided should be prepared to provide written evidence to the Authority to confirm the accuracy of the information provided below.</p> <p>Consortia bids should provide relevant examples of where the consortium has delivered similar requirements; if this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle will be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member).</p> <p>Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the principal intended provider(s) or sub-contractor(s) who will deliver the supplies and services.</p>			
		Contract 1	Contract 2	Contract 3
6.1	Name of customer organisation			
6.2	Point of contact in customer organisation Position in the organisation E-mail address			
6.3	Contract start date Contract completion date Estimated Contract Value			
6.4	In no more than 500 words, please provide a brief description of the contract delivered including evidence			

	as to your technical capability in this market.			
6.5 If you cannot provide at least one example for questions 6.1 to 6.4, in no more than 500 words please provide an explanation for this e.g. your organisation is a new start-up.				

SECTION E

7 – Project specific questions to assess Technical and Professional Ability

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

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

7.1 - Insurance

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

7.2 – Compliance with equality legislation

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

7.3 – Environmental Management

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

7.4 – Health & Safety

1.	Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years? If your answer to this question was “Yes”, please provide details in a separate Appendix of any enforcement/remedial orders served and give details of any remedial action or changes to procedures you have made as a result. The Authority will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the Authority’s satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?	<input type="checkbox"/> Yes <input type="checkbox"/> No

7.5 It is a requirement within the terms and conditions for this Contract that where requested in writing during the term of the Agreement that the Contractor will ensure that an appropriately authorised representative of the Contractor shall attend a Committee meeting of the Council upon being invited to do so by the Council. Please confirm your acceptance of this term by ticking the box below.

☐

SECTION F – PRICING SCHEDULE

1.	Pricing Schedule	
1.1	Pricing schedule – Please complete Appendix A	600 max marks
1.2	Please indicate how long the prices stated in the pricing schedule are valid for?	FIO
1.3	Settlement terms (additional discount): _____% for payment within _____days from invoice date.	FIO
1.4	Indicate if you have a minimum order delivery and if so, the value of this order.	FIO
1.5	Submit a product catalogue detailing other products that you supply.	FIO

SECTION F – TENDER SCHEDULE

2.	Tender Specification Response	Max Marks Available
	Change of price procedure	
2.1	<p>Confirm you agree to the price verification procedure as detailed in section 17.6 within our Terms and Conditions.</p> <p>If you are unable to comply with this section please outline why here and describe how you will inform us of any price variation.</p>	FIO
	Order, Delivery and Quality procedures	
2.2	Please detail your company policy on the placing of orders and detail all available ways individual sites can place orders with your company that you would operate for our contract.	40
2.3	Please state what your timescales are with respect to the placing of orders through to delivery of items to each of our individual sites. Also indicate minimum order times.	40
2.4	Please state from which locations our orders will be processed and distributed from and how you will meet the required delivery schedule?	20
2.5	Please detail your policy on food storage at each location from where our products will be distributed from. Please include details such as size of storage areas and temperatures at each location.	40
2.6	Please list full details of your delivery fleet indicating types of vehicles, number, size, age, refrigeration and freezer functions, location/operating base and fleet renewal programme that you would use to operate our contract.	20
2.7	In relation to the start of the school term each September, it is a requirement that all sites take a delivery within a small window that is no larger than 3 days. Please state how you will manage deliveries in order to achieve this within standard delivery times.	40
2.8	Please describe your quality control procedures at different stages from the point of ordering through to delivery that you would use to operate our contract.	20
	Food Safety	
2.9	Please describe your food safety systems you would use in the operation of our contract referencing, but not limited to, storage and delivery of food items along with any accreditations/awards/membership you may have in this area.	40

	Added Value and Social Value to be provided	
2.10	Please indicate any products or services you provide that may add value to this contract and help enhance the quality of the service we provide to our clients.	20
2.11	Deriving Social Value outcomes from our contracting is important for Shropshire Council. Accordingly please provide details of any economic, environmental or social benefits you will deliver if you are awarded the contract and undertake the required services	20
	Handling of complaints	
2.12	Please detail your company complaints procedure that you would operate for our contract and give examples of how this has been used to satisfactorily resolve any issues (such as returned items) that have occurred recently with contracts that you currently hold.	20
	Client Care	
2.13	Please detail how your company would manage client relationships if you were successful in being awarded this contract.	40
	Contract Implementation	
2.14	This contract is due to commence on the 20 th February 2017. Please outline what support you would offer to us and how you would manage the mobilisation of this contract.	40



personal & commercial info

The Little Food Co Ltd
Glovers Meadow
Maesbury Road
Oswestry
SY10 8NJ
FAO [REDACTED]

Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
Shropshire SY2 6ND

Date: 30th November 2016

Emailed to [REDACTED]

Dear Bidder

RMCS 017 – SPECIALITY & HOSPITALITY FOOD ITEMS COMMENCING ON 20TH FEBRUARY 2017 FOR AN INITIAL PERIOD OF 2 YEARS WITH THE OPTION TO EXTEND FOR A FURTHER PERIOD OF UP TO 2 YEARS

SUBJECT TO CONTRACT

This is an Award Decision Notice pursuant to The Public Contracts Regulations 2015 (the "Regulations").

We are pleased to inform you that, following the evaluation process, Shropshire Council proposes to accept your offer to form the above contract as set out in your recent tender.

However, this letter is not, at this stage, a communication of Shropshire Council's formal acceptance of your offer. A mandatory "standstill" period is now in force pursuant to the Regulations; this period will end at midnight on 12th December 2016.

Subject to Shropshire Council receiving no notice during the standstill period of any intention to legally challenge the award process, the Council aims to conclude the award of the contract after the expiry of the standstill period.

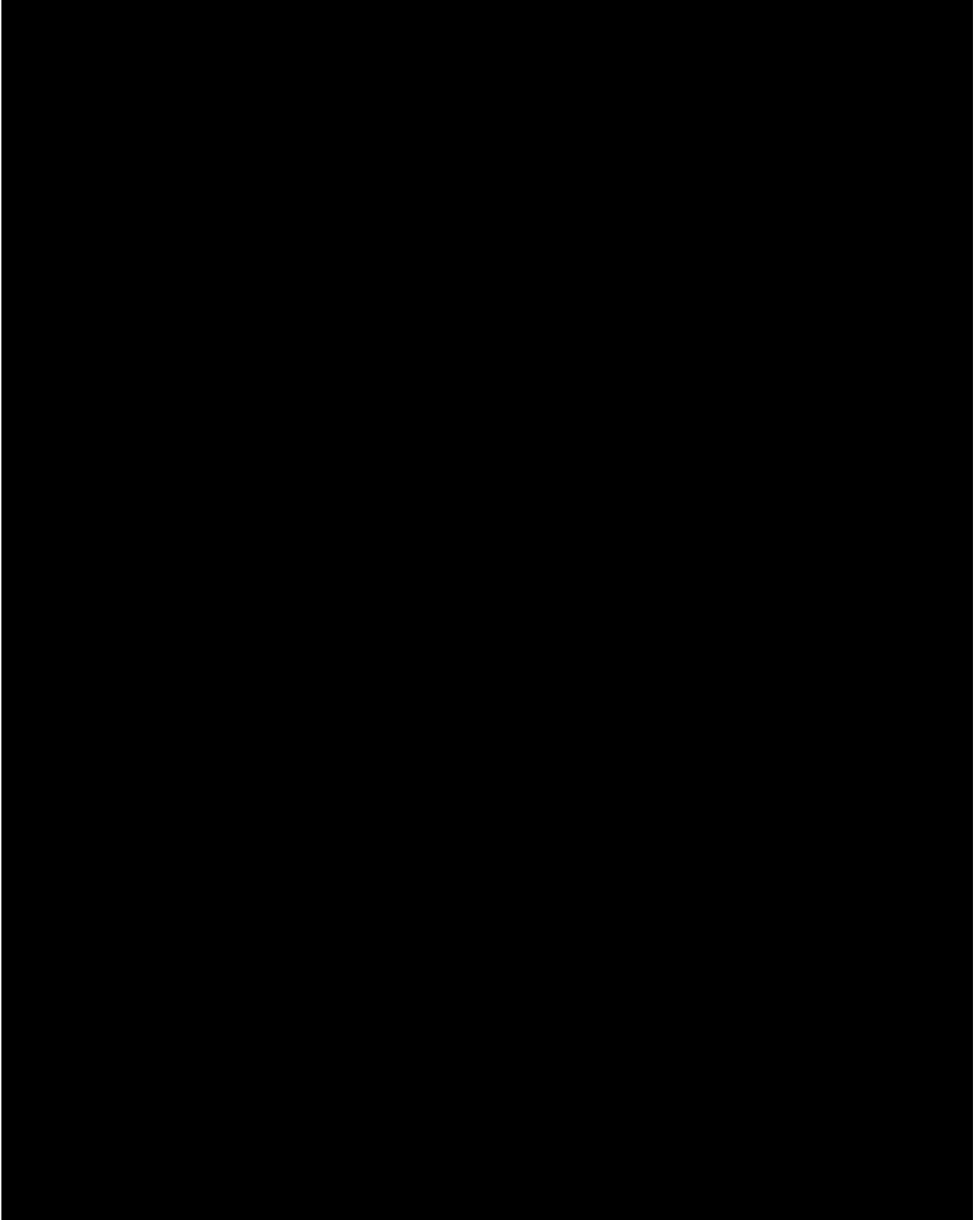
The award criteria for this contract was set out in full in Invitation to Tender with quality accounting for 40% and price for 60% of the total marks.

We can confirm that your tender received the following scores and ranking:-

Criteria	Your Weighted Score	Your Rank (out of All 2 tenders received)
Price (out of 600 marks)	[REDACTED]	[REDACTED]
Quality (out of 400 marks)	[REDACTED]	[REDACTED]
Overall	[REDACTED]	[REDACTED]

commercial info

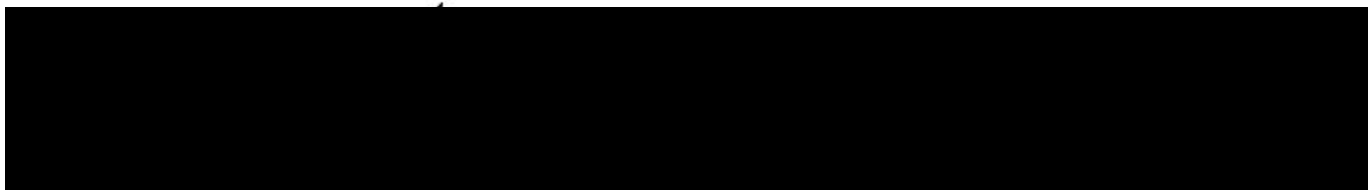
Please find details of the marks allocated to you for Quality and reasoning behind the Quality marks as follows:-



personal info

We will be in touch with you again at the end of the standstill period.

Yours faithfully



Manager Shire Services

Project Officer – Shire Services