

This notice in TED website: <https://ted.europa.eu/udl?uri=TED:NOTICE:433721-2019:TEXT:EN:HTML>

**United Kingdom-Shrewsbury: Repair and maintenance services of boilers
2019/S 178-433721**

Contract notice

Services

Legal Basis:

Directive 2014/24/EU

Section I: Contracting authority

I.1) **Name and addresses**

Shropshire Council
Shirehall, Abbey Foregate
Shrewsbury
SY2 6ND
United Kingdom
Contact person: [REDACTED]

[REDACTED]: [REDACTED]
[REDACTED]

NUTS code: UKG22

Internet address(es):

Main address: www.shropshire.gov.uk

I.1) **Name and addresses**

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

Telephone: +44 1743253912

E-mail: procurement@shropshire.gov.uk

NUTS code: UKG22

Internet address(es):

Main address: www.shropshire.gov.uk

I.2) **Information about joint procurement**

The contract involves joint procurement

I.3) **Communication**

The procurement documents are available for unrestricted and full direct access, free of charge, at:
<https://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Repair-and-maintenance-services-of-boilers./45X2577NE6>

Additional information can be obtained from the abovementioned address

Tenders or requests to participate must be submitted electronically via: <https://www.delta-esourcing.com/tenders/UK-title/45X2577NE6>

Tenders or requests to participate must be submitted to the abovementioned address

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:**

RMCB 032 — Maintenance and Repair of Boilers and Burners, Biomass and Miscellaneous Gas Equipment
Reference number: RMCB 032

II.1.2) **Main CPV code**

50531100

II.1.3) **Type of contract**

Services

II.1.4) **Short description:**

The objective of the contract is for the contractor to provide a twice yearly inspection and maintenance of oil, gas fired and biomass boilers/burners, together with listed ancillary equipment and other miscellaneous oil and gas fired equipment installed on Council controlled premises, to ensure that they are maintained in a safe condition so as to prevent risk of injury to any person or damage to any property. The contractor shall also provide an emergency breakdown repair service and issue 'Landlords Certificates' where appropriate. The fixed priced contract will be for a period of up to 4 years commencing on 1.12.2019.

II.1.5) **Estimated total value**

Value excluding VAT: 390 000.00 GBP

II.1.6) **Information about lots**

This contract is divided into lots: no

II.2) **Description**

II.2.1) **Title:**

II.2.2) **Additional CPV code(s)**

II.2.3) **Place of performance**

NUTS code: UKG22

Main site or place of performance:

Shropshire CC.

II.2.4) **Description of the procurement:**

The delivery of the works undertaken by the contractor under this contract shall enable the client to discharge their responsibility under the Gas Safety (Installation and Use) Regulations 1998 in relation to boiler/burner plant and miscellaneous gas equipment.

The contract shall comprise of twice yearly inspection and maintenance of oil, gas (NG and LPG) fired and biomass boilers/burners, together with listed ancillary equipment and other miscellaneous oil and gas fired equipment installed on Council controlled premises along with those of other external clients to the client, to ensure that they are maintained in a safe condition so as to prevent risk of injury to any person or damage to any property.

It shall further comprise the provision of a breakdown repair service.

Staffing — TUPE:

Applicants should note that it is considered that the employee 'Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE')' may apply to this contract.

II.2.5) Award criteria

Criteria below

Quality criterion - Name: Quality / Weighting: 60

Cost criterion - Name: Price / Weighting: 40

II.2.6) Estimated value

Value excluding VAT: 390 000.00 GBP

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

Start: 01/12/2019

End: 31/03/2021

This contract is subject to renewal: yes

Description of renewals:

This contract can be extended for a further period of up to 4 years from 1.4.2021.

II.2.10) Information about variants

Variants will be accepted: no

II.2.11) Information about options

Options: no

II.2.12) Information about electronic catalogues

II.2.13) Information about European Union funds

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

II.2.14) Additional information

To respond to this opportunity please click here: <https://www.delta-esourcing.com/respond/45X2577NE6>

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:

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:

See tender documents.

III.1.5) Information about reserved contracts

III.2) Conditions related to the contract

III.2.1) Information about a particular profession

III.2.2) **Contract performance conditions:**

See tender documents.

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

Section IV: Procedure

IV.1) **Description**

IV.1.1) **Type of procedure**

Open procedure

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

IV.1.4) **Information about reduction of the number of solutions or tenders during negotiation or dialogue**

IV.1.6) **Information about electronic auction**

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**

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

Date: 11/10/2019

Local time: 12:00

IV.2.3) **Estimated date of dispatch of invitations to tender or to participate to selected candidates**

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**

IV.2.7) **Conditions for opening of tenders**

Date: 11/10/2019

Local 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:

5 years.

VI.2) **Information about electronic workflows**

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:-Repair-and-maintenance-services-of-boilers./45X2577NE6>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/45X2577NE6>

GO Reference: GO-2019911-PRO-15347184

VI.4) **Procedures for review**

VI.4.1) **Review body**

Shropshire Council
Shirehall
Shrewsbury
SY2 6ND
United Kingdom
Telephone: +44 1743253912
E-mail: procurement@Shropshire.gov.uk
Internet address: www.shropshire.gov.uk

VI.4.2) **Body responsible for mediation procedures**

Shropshire Council
Shirehall, Abbey Foregate
Shrewsbury
SY2 6ND
United Kingdom
Telephone: +44 1743253912
E-mail: procurement@shropshire.gov.uk
Internet address: www.shropshire.gov.uk

VI.4.3) **Review procedure**

VI.4.4) **Service from which information about the review procedure may be obtained**

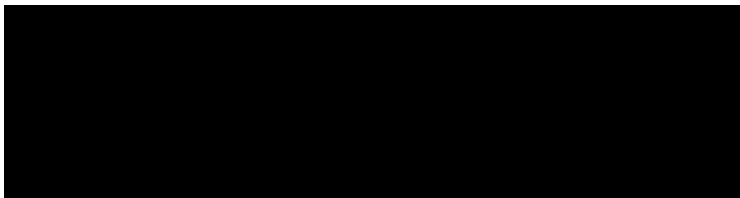
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Shrewsbury
SY2 6ND
United Kingdom
Telephone: +44 1743253912
E-mail: procurement@shropshire.gov.uk
Internet address: www.shropshire.gov.uk

VI.5) **Date of dispatch of this notice:**

11/09/2019

**Commissioning Development & Procurement
Finance Governance & Assurance**

Shirehall, Abbey Foregate
Shrewsbury, SY2 6ND



Dear Bidder

**RMCB 032 – MAINTENANCE & REPAIR OF BOILERS & BURNERS BIOMASS &
MISCELLANEOUS GAS EQUIPMENT
SHROPSHIRE COUNCIL**

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

1. Instructions to Tenderers
2. Tender Response Document
3. Draft Form of Agreement (including Specification and Servicing Schedule)
4. Appendix 1 – Site List
5. TUPE Confidentiality letter

Tenders should be made on the enclosed Tender Response Document. Your Tender must be completed, signed and returned along with a signed copy of the instructions for tendering through our Delta Tenderbox.

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

Returning of Tenders

- The deadline for returning tenders is **noon on 11th October 2019** 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 11th September 2019 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 raise all clarification questions before the deadline of **3rd October 2019**.

TUPE information is available to all bidders. To obtain the same please complete the TUPE confidentiality undertaking and return a signed copy through the Delta e-tendering portal.

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 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 us through the Delta e-tendering portal.





INSTRUCTIONS FOR TENDERING

**RMCB 032 – MAINTENANCE &
REPAIR OF BOILERS/BURNERS
BIOMASS & MISCELLANEOUS
GAS EQUIPMENT**

Shropshire Council Instructions for tendering

Contract Description:

The delivery of the works undertaken by the Contractor under this Contract shall enable the Client to discharge their responsibility under The Gas Safety (Installation and Use) Regulations 1998 in relation to boiler/burner plant and miscellaneous gas equipment.

The contract shall comprise of twice yearly inspection and maintenance of oil, gas (NG & LPG) fired and biomass boilers/burners, together with listed ancillary equipment and other miscellaneous oil and gas fired equipment installed on Council controlled premises along with those of other external clients to the Client, to ensure that they are maintained in a safe condition so as to prevent risk of injury to any person or damage to any property.

It shall further comprise the provision of a breakdown repair service.

The inspection and maintenance service is intended to demonstrate compliance with:

1. Gas Safe Register
2. HSE Approved Code of Practice L56 Safety in the installation and use of gas systems and appliances
Gas Safety (Installation and Use) Regulations 1998
3. Gas Safety (Management) Regulations 1996
4. Gas Appliances (Safety) Regulations 1995
5. Institute of Gas Engineers IGE/UP/11 Gas installations for educational establishments
6. Institute of Gas Engineers IGE/UP/1A Strength testing, tightness testing and direct purging of small low pressure industrial and commercial Natural gas installations
7. B.S. 5482 Code of practice for domestic butane and propane gas burning installations
8. The Health and Safety at Work etc. Act 1974
9. OFTEC Regulations
10. The Workplace (Health, Safety and Welfare) Regulations 1992
11. The Control of Pollution (Oil Storage) Regulations 2001

The visits to be within the months shown in the Schedule of Properties – Appendix 1 and shall not lapse the date given. Inspections are permitted to be undertaken up to 2 weeks early.

The Contract shall comprise of the remedial works required to repair the existing equipment if found to be faulty subject to the prior approval of the Budget Holder and Client and shall be in accordance with clause 2.10

The Contractor shall identify & report on all gas fittings which could potentially create a risk to health. Where a serious and immediate risk to health and safety is identified or suspected the Contractor shall:

1. Where an 'At Risk' situation is encountered inform the Client at the earliest opportunity prior to implementing the Gas Industry Unsafe Situations Procedure
2. Implement the Gas Industry Unsafe Situations Procedure without delay where an 'Immediately Dangerous' situation exists and inform the client at the earliest opportunity.

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1.0 Invitation to Tender

- 1.1** You are invited to tender for the maintenance and repair of boilers/burners biomass and miscellaneous gas equipment as detailed in the Tender Response Document. The contract will be for an initial period of **1 year and 3 months** commencing on the **1st December 2019** with the option to extend for a further period of up to 4 years.
- 1.2** Tenders are to be submitted in accordance with the Draft Form of Agreement 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.

2.0 Terms and Conditions

- 2.1** Every Tender received by the Council shall be deemed to have been made subject to the Draft Form of Agreement 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 be required to undertake the required services.

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 may 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, 11th October 2019**.

- 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 **The Transfer of Undertakings (Protection of Employment) regulations 2006 (Delete if not applicable)**
- 6.1 Tenderers should note that the Employee 'Transfer of Undertakings (Protection of Employment) Regulations '2006 ('TUPE') will apply to this contract. Also compliance with the provisions in relation to Local Authority Pensions will also be required. Tenderers are advised to seek their own legal advice about the practicality of these regulations and should reflect the financial implications of such a transfer in their tender submissions.

6.2 Details of employees of companies/and of the Council who are currently carrying out the work that is included in the Contract can be requested by signing the TUPE confidentiality undertaking letter and returning it via Delta. Tenderers should note, however, that where the Council provides information to them for the purposes of TUPE, such information may originate from a third party. As the Council has no control over the compilation of such third party information, the Council gives no guarantee or assurance as to the accuracy or completeness of such information and cannot be held responsible for any errors or omissions in it.

7.0 Tender Evaluation

7.1 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.

7.2 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.

8.0 Clarifications

8.1 Tenderers are responsible for clarifying any aspects of the tendering process and/or the Invitation to Tender documents in the manner described below.

8.2 If you are unsure of any section and require further clarification, please contact via our Delta Tenderbox.

8.3 Where appropriate, the Authorised Officer named above may direct the Tenderer to other officers to deal with the matter.

8.4 All queries should be raised as soon as possible (in writing), in any event not later than **3rd October 2019**.

8.5 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.

8.6 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.

9.0 Continuation of the Procurement Process

9.1 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.

9.2 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.

9.3 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.

10.0 Confidentiality

10.1 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.

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

10.3 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.

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

10.4.1 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;

10.4.2 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

- 10.4.3** Tenderers shall not undertake any publicity activity within any section of the media.
- 10.5** Tenderers may disclose, distribute or pass this Invitation to tender to their professional advisors, sub-contractors or to another person provided that:
- 10.5.1** 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
- 10.5.2** the Tenderer obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the Invitation to Tender; or
- 10.5.3** 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
- 10.5.4** the Tenderer is legally required to make such a disclosure.
- 10.6** 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.

10.7 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.

11.0 Freedom of Information

- 11.1** 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.
- 11.2** 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.

- 11.3** 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.
- 11.4** 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.
- 11.5** 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>

12.0 Disqualification

- 12.1** The Council reserves the right to reject or disqualify a Tenderer's Tender submission where:
- 12.1.1** 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
- 12.1.2** The tenderer is guilty of serious or intentional or reckless misrepresentation in relation to its tender return and/or the procurement process.
- 12.1.3** 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.
- 12.1.4** 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.

12.2 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.

12.3 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.

13.0 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.

14.0 Award of Contract

14.1 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.

14.2 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.

14.3 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.

15.0 Value of Contract

Shropshire Council cannot give any guarantee in relation to the value of this contract

16.0 Acceptance

16.1 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.

16.2 The Tender documentation including, the General and Specific 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.

16.3 The Tenderer shall be prepared to commence the provision of the supply and services on the start date of the contract being 1st December 2019

17.0 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.

18.0 Liability of Council

18.1 The Council does not bind himself to accept the lowest or any tender.

18.2 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.

18.3 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.

18.4 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.

18.5 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.

19.0 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

20.0 **Declaration**

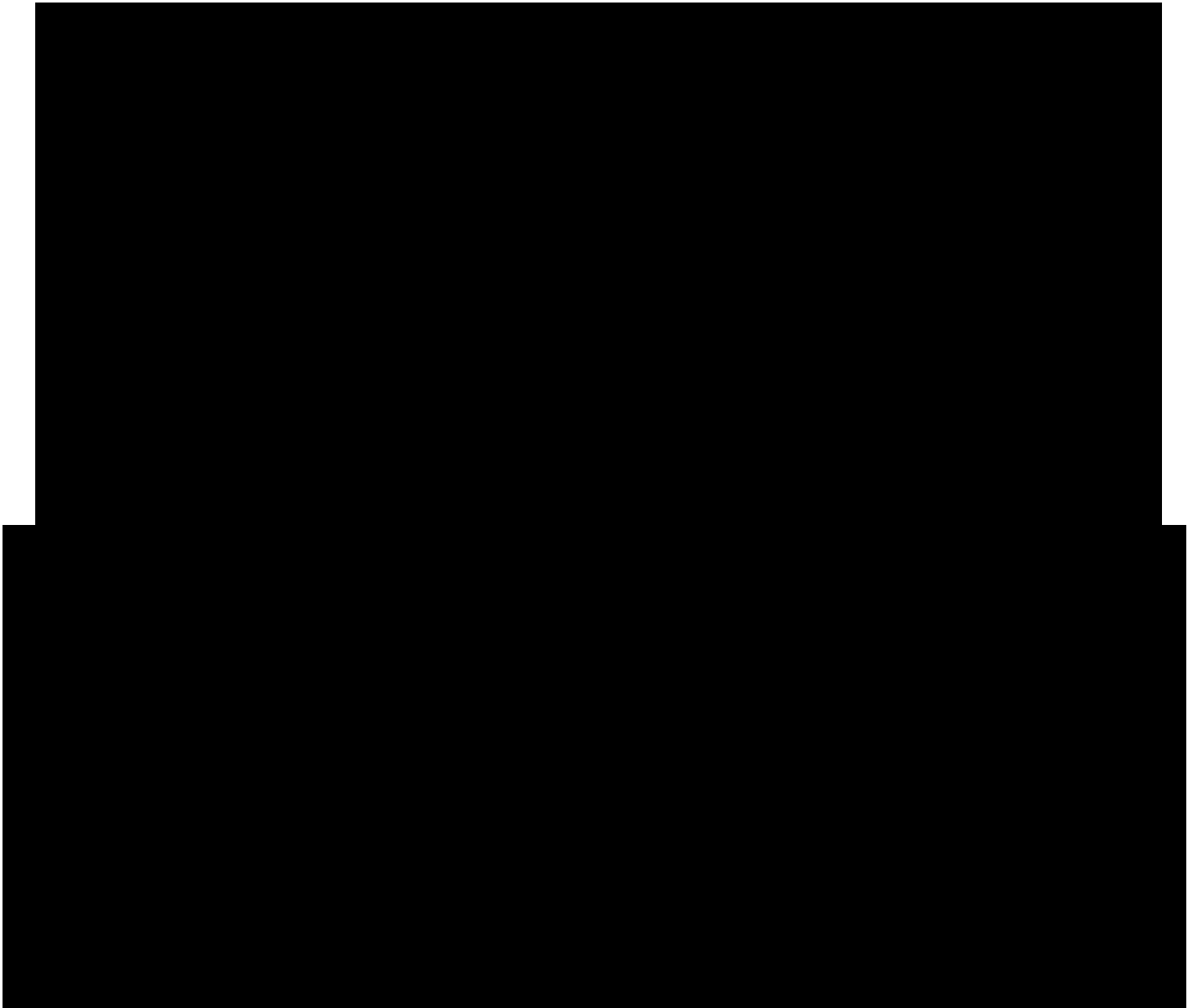
We, as acknowledged by the signature of our authorised representative, accept these Instructions to Tender as creating a contract between ourselves and the Council. We hereby acknowledge that any departure from the Instructions to Tender may cause financial loss to the Council.

SHROPSHIRE COUNCIL

**RMCB 032 -Maintenance of Boiler/Burner Plant, Biomass Boilers
Miscellaneous Gas Equipment**

Experience of Staff

(Individual forms to be completed for all Supervisors and each Site Operative who may participate in the maintenance of boiler/burner plant miscellaneous gas equipment)





Tender Response Document

RMCB 032 – MAINTENANCE & REPAIR OF BOILERS/BURNERS BIOMASS & MISCELLANEOUS GAS EQUIPMENT

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:

The delivery of the works undertaken by the Contractor under this Contract shall enable the Client to discharge their responsibility under The Gas Safety (Installation and Use) Regulations 1998 in relation to boiler/burner plant and miscellaneous gas equipment.

The contract shall comprise of twice yearly inspection and maintenance of oil, gas (NG & LPG) fired and biomass boilers/burners, together with listed ancillary equipment and other miscellaneous oil and gas fired equipment installed on Council controlled premises along with those of other external clients to the Client, to ensure that they are maintained in a safe condition so as to prevent risk of injury to any person or damage to any property.

It shall further comprise the provision of a breakdown repair service.

The inspection and maintenance service is intended to demonstrate compliance with:

1. Gas Safe Register
2. HSE Approved Code of Practice L56 Safety in the installation and use of gas systems and appliances
Gas Safety (Installation and Use) Regulations 1998
3. Gas Safety (Management) Regulations 1996
4. Gas Appliances (Safety) Regulations 1995
5. Institute of Gas Engineers IGE/UP/11 Gas installations for educational establishments
6. Institute of Gas Engineers IGE/UP/1A Strength testing, tightness testing and direct purging of small low pressure industrial and commercial Natural gas installations
7. B.S. 5482 Code of practice for domestic butane and propane gas burning installations
8. The Health and Safety at Work etc. Act 1974
9. OFTEC Regulations
10. The Workplace (Health, Safety and Welfare) Regulations 1992
11. The Control of Pollution (Oil Storage) Regulations 2001

The visits to be within the months shown in the Schedule of Properties – Appendix 1 and shall not lapse the date given. Inspections are permitted to be undertaken up to 2 weeks early.

The Contract shall comprise of the remedial works required to repair the existing equipment if found to be faulty subject to the prior approval of the Budget Holder and Client and shall be in accordance with clause 2.10

The Contractor shall identify & report on all gas fittings which could potentially create a risk to health. Where a serious and immediate risk to health and safety is identified or suspected the Contractor shall:

1. Where an 'At Risk' situation is encountered inform the Client at the earliest opportunity prior to implementing the Gas Industry Unsafe Situations Procedure
2. Implement the Gas Industry Unsafe Situations Procedure without delay where an 'Immediately Dangerous' situation exists and inform the client at the earliest opportunity

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 Part 1 Question 1.1 (a). 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 your tender response.

Contents

Section	Description	Page
A1	Form of Tender	8
A2	Non-Canvassing Certificate	9
A3	Non-Collusive Tendering Certificate	10
A4	Declaration of Connection with Officers or Elected Members of the Council	11
You must sign all 4 certificates in sections A1 to A4		
B Part 1	Supplier Information– For information only	14
B Part 2 Section 2	Grounds for <u>Mandatory</u> Exclusion	20
B Part 2 Section 3	Grounds for Discretionary Exclusion	22
Section C	Tender and Pricing Schedule	29

Evaluation Criteria

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

Selection Criteria Pass/Fail Questions (Section B)

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 competency, 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 Part 1	Supplier Information– For information only
Section B Part 2 Section 2	Grounds for <u>Mandatory</u> Exclusion
Section B Part 2 Section 2 Q 2.5	Gas Safe Registration
Section B Part 2 Section 2 Q 2.6	OfTEC Registration
Section B Part 2 Section 2 Q 2.7	NICEIC
Section B Part 2 Section 2 Q 2.9	DBS requirement
Section B Part 2 Section 2 Q 2.10	24 hours a day 365 days a year
Section B Part 2 Section Q 2.11	Asbestos Awareness Training
Section B Part 2 Section Q2.12	Quality Assurance
Section B Part 2 Section 3 - 8	Grounds for Discretionary Exclusion

In relation to discretionary exclusion grounds (section B part 3):-

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 40% (400 marks)		
Section C / Q 1.1	Price – Annual Maintenance Cost	30 / 300 max marks
Section C / Q 1.2	Price – Daywork Rates	10 / 100 max marks
Total for price		40 / 400 max marks
Quality 60% (600 marks)		
Section C / Q 2.1	Methodology for undertaking the contract	15 / 150 max marks
Section C / Q 2.2	Skills & Experience of staff to be used on the contract	5 / 50 max marks
Section C / Q 2.3	Risk Assessments	5 / 50 max marks
Section C / Q 2.4	Method Statements	5 / 50 max marks
Section C / Q 2.5	Landlord Certificate	5 / 50 max marks
Section C / Q 2.6	Sample Card	5 / 50 max marks
Section C / Q 2.7	Biomass Competency	5 / 50 max marks
Section C / Q 2.8	Methodology for specific item	10 / 100 max marks
Section C / Q 2.9	Social Value Proposals	5 / 50 max marks
Total for quality		60 / 600 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 600 marks available for Quality. Other tenders will receive a final mark that reflects the final % difference in the initial marks between those tenders and the tender receiving the highest initial mark for Quality overall.

Price Evaluation and scoring

Price will be evaluated as follows:

Price Q 1.1 – Annual Contract Price

The planned annual maintenance cost will be calculated using:

365 boiler summer services
365 boiler winter services
2 back boiler services
53 convactor heater summer services
53 convactor heater winter services
10 direct fired water heaters summer services
10 direct fired water heaters winter services
4 gas fire summer services
4 gas fire winter services
19 radiant tube heater summer services
19 radiant tube heater winter services
18 warm air unit summer services
18 warm air unit winter services

These will be added together to provide an overall basket cost.

The most competitively priced tender for question 1.1 will receive the maximum mark being **300**. **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.

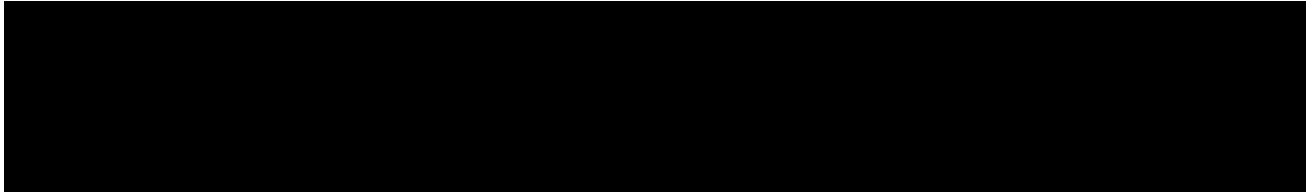
Price – Question 1.2 – Daywork Rates

The reactive maintenance costs will be calculated as below:

500 separate callouts to site lasting 4 hours on site during normal working hours.
50 separate callouts to site lasting 4 hours on site during outside of normal working hours.
10 separate callouts to site lasting 4 hours on site during Saturday working hours.
5 separate callouts to site lasting 4 hours on site during Sunday working hours.
5 separate callouts to site lasting 4 hours on site during Bank Holiday working hours.

These will be added together to provide an overall basket cost.

The most competitively priced tender for question 1.2 will receive the maximum mark being **100**. **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.



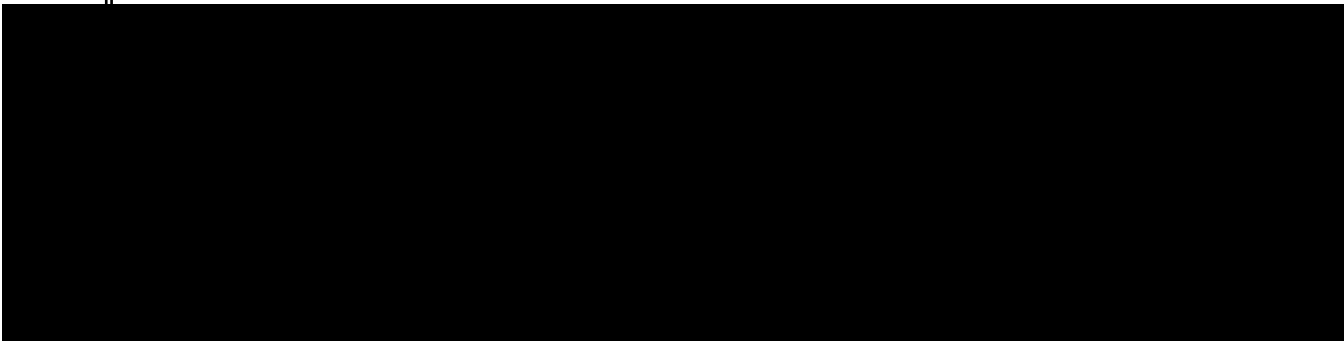
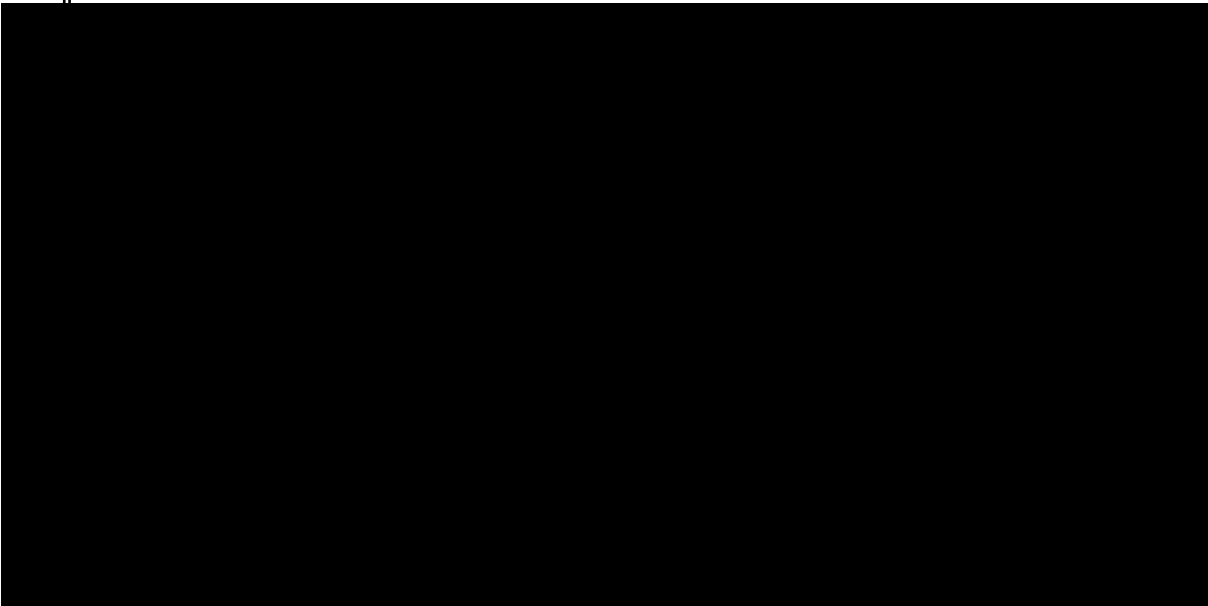
Section A:
1. Form of Tender

Form of Tender

Shropshire Council

Tender for RMCB 032 - Maintenance & Repair of Boilers/Burners Biomass & Miscellaneous Gas Equipment

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 RMCB 032 - Maintenance & Repair of Boilers/Burners Biomass & Miscellaneous Gas Equipment at the prices and terms agreed and subject to the terms of the invitation to tender documentation and the Terms and Conditions, copies of which we have received.





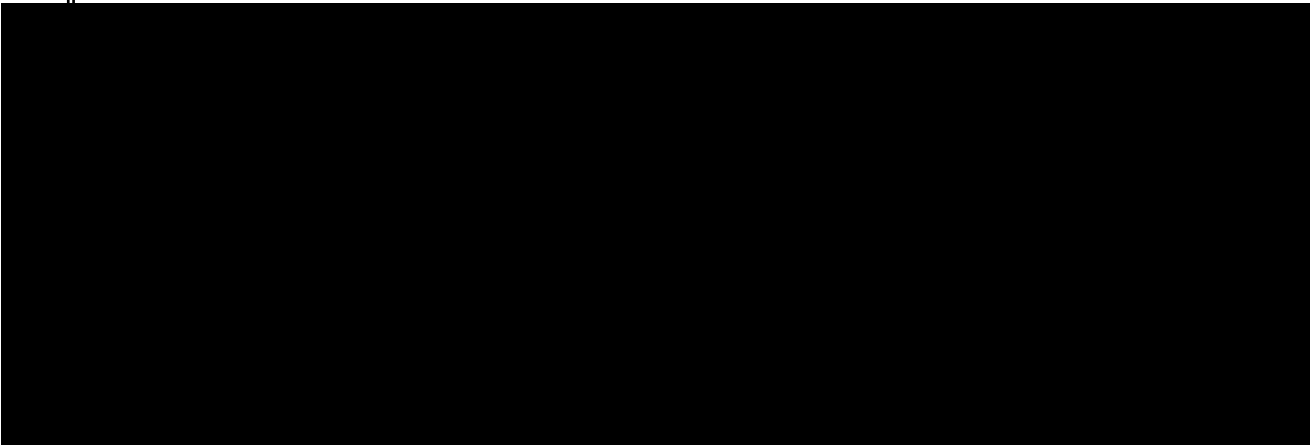
Section A:
2. Non – Canvassing Certificate

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 or 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.



Non-collusive Tendering Certificate

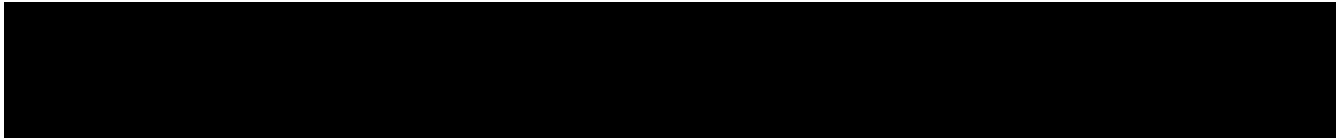
To: Shropshire Council (hereinafter called “the Council”)

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.



Section A:

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

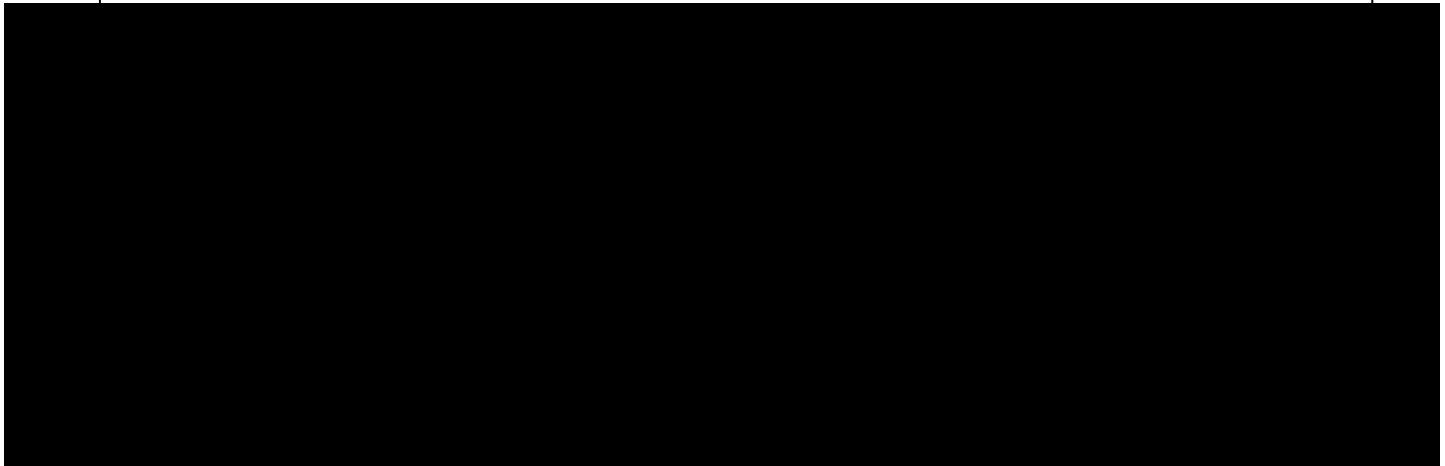
Are you or any of your staff who will be affected by this invitation to tender related or connected in any way with any Shropshire Council Elected Councillor or Employee?

Yes/ No

If yes, please give details:

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.



SECTION B

Standard Selection Questionnaire

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

The standard Selection Questionnaire is a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion. If there are grounds for exclusion (there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning). For the list of exclusion please see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf

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

When completed, this form is to be sent back to the contact point given in the procurement documents along with the selection information requested in the procurement documentation.

Supplier Selection Questions: Part 3

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

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

Consequences of misrepresentation

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

Notes for completion

1. The “authority” means the contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite suitable candidates to participate in this procurement process.
2. “You” / “Your” refers to the potential supplier completing this standard Selection Questionnaire i.e. the legal entity responsible for the information provided. The term “potential supplier” is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 (referred to as the “regulations”) and could be a registered company; the lead contact for a group of economic operators; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.
3. Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state ‘N/A’. Should you need to provide additional information in response to the questions, please submit a clearly identified annex.
4. The authority recognises that arrangements set out in section 1.2 of the standard Selection Questionnaire, in relation to a group of economic operators (for example, a consortium) and/or use of sub-contractors, may be subject to change and will, therefore, not be finalised until a later date. The lead contact should notify the authority immediately of any change in the proposed arrangements and ensure a completed Part 1 and Part 2 is submitted for any new organisation relied on to meet the selection criteria. The authority will make a revised assessment of the submission based on the updated information.
5. For Part 1 and Part 2 every organisation that is being relied on to meet the selection must complete and submit the self-declaration.
6. **Note for Contracting Authorities: The following paragraph is optional for inclusion if a decision has been made to request a self-declaration of the exclusion grounds from sub-contractors. All sub-contractors are required to complete Part 1 and Part 2¹.**
7. For answers to Part 3 - If you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration.

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

¹ See PCR 2015 regulations 71 (8)-(9)

Part 1: Potential supplier Information

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

Section 1	Potential supplier information	
Question number	Question	Response
1.1(a)	Full name of the potential supplier submitting the information	
1.1(b) – (i)	Registered office address (if applicable)	
1.1(b) – (ii)	Registered website address (if applicable)	
1.1(c)	Trading status a) public limited company b) limited company c) limited liability partnership d) other partnership e) sole trader f) third sector g) other (please specify your trading status)	
1.1(d)	Date of registration in country of origin	
1.1(e)	Company registration number (if applicable)	
1.1(f)	Charity registration number (if applicable)	
1.1(g)	Head office DUNS number (if applicable)	
1.1(h)	Registered VAT number	
1.1(i) - (i)	If applicable, is your organisation registered with the appropriate professional or trade register(s) in the member state where it is established?	
1.1(i) - (ii)	If you responded yes to 1.1(i) - (i), please provide the relevant details, including the registration number(s).	
1.1(j) - (i)	Is it a legal requirement in the state where you are established for you to possess a particular authorisation,	

	or be a member of a particular organisation in order to provide the services specified in this procurement?	
1.1(j) - (ii)	If you responded yes to 1.1(j) - (i), please provide additional details of what is required and confirmation that you have complied with this.	
1.1(k)	Trading name(s) that will be used if successful in this procurement.	
1.1(l)	Relevant classifications (state whether you fall within one of these, and if so which one) <ul style="list-style-type: none"> a) Voluntary Community Social Enterprise (VCSE) b) Sheltered Workshop c) Public Service Mutual 	
1.1(m)	Are you a Small, Medium or Micro Enterprise (SME) ² ?	
1.1(n)	Details of Persons of Significant Control (PSC), where appropriate: ³ <ul style="list-style-type: none"> - Name; - Date of birth; - Nationality; - Country, state or part of the UK where the PSC usually lives; - Service address; - The date he or she became a PSC in relation to the company (for existing companies the 6 April 2016 should be used); - Which conditions for being a PSC are met; - Over 25% up to (and including) 50%, - More than 50% and less than 75%, - 75% or more. (Please enter N/A if not applicable)	
1.1(o)	Details of immediate parent company: <ul style="list-style-type: none"> - Full name of the immediate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable) - Head office VAT number (if applicable) (Please enter N/A if not applicable)	
1.1(p)	Details of ultimate parent company: <ul style="list-style-type: none"> - Full name of the ultimate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable) - Head office VAT number (if applicable) 	

(Please enter N/A if not applicable)

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

2 See EU definition of SME - https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en

3 UK companies, Societates European (SEs) and limited liability partnerships (LLPs) will be required to identify and record the people who own or control their company. Companies, SEs and LLPs will need to keep a PSC register, and must file the PSC information with the central public register at Companies House. See PSC guidance.

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

Section 1	Bidding Model				
Question number	Question	Response			
1.2(a) - (i)	Are you bidding as the lead contact for a group of economic operators?				
1.2(a) - (ii)	Name of group of economic operators (if applicable)				
1.2(a) - (iii)	Proposed legal structure if the group of economic operators intends to form a named single legal entity prior to signing a contract, if awarded. If you do not propose to form a single legal entity, please explain the legal structure.				
1.2(b) - (i)	Are you or, if applicable, the group of economic operators proposing to use sub-contractors?				
1.2(b) - (ii)	If you responded yes to 1.2(b)-(i) please provide additional details for each sub-contractor in the following table: we may ask them to complete this form as well.				
	Name				
	Registered address				
	Trading status				
	Company registration number				
	Head Office DUNS number (if applicable)				
	Registered VAT number				
	Type of organisation				
	SME (Yes/No)				
	The role each sub-contractor will take in				

	providing the works and /or supplies e.g. key deliverables				
	The approximate % of contractual obligations assigned to each sub-contractor				

Contact details and declaration

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

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

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

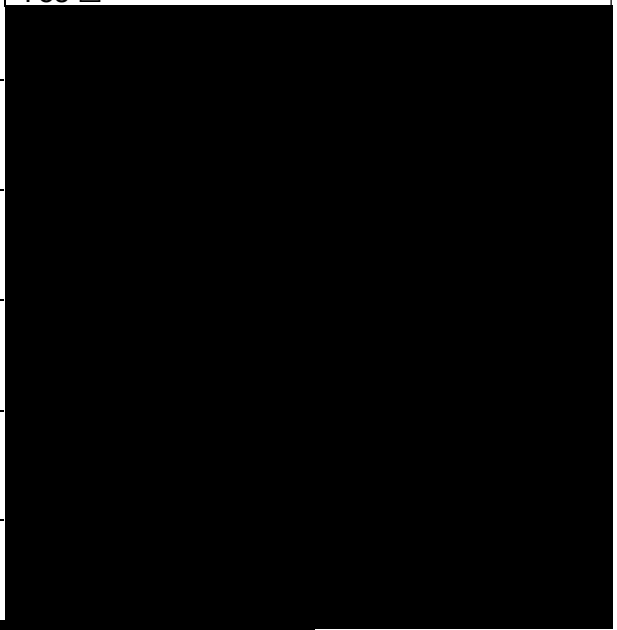

I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.

I am aware of the consequences of serious misrepresentation.

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

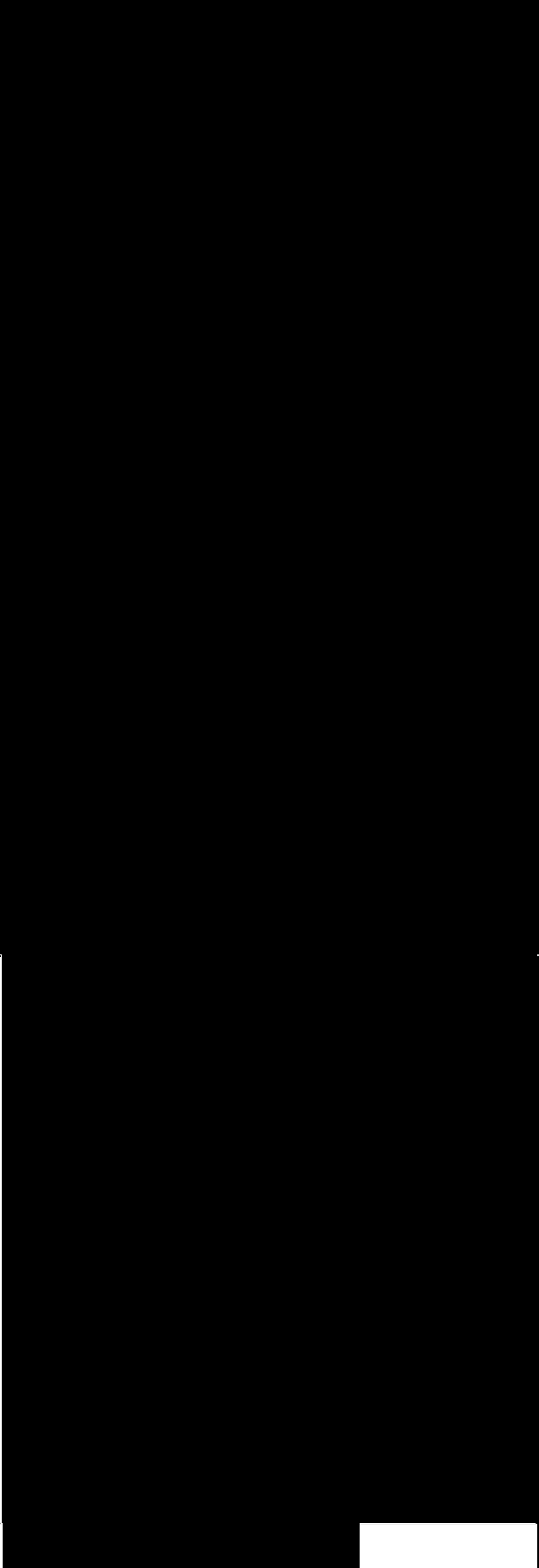
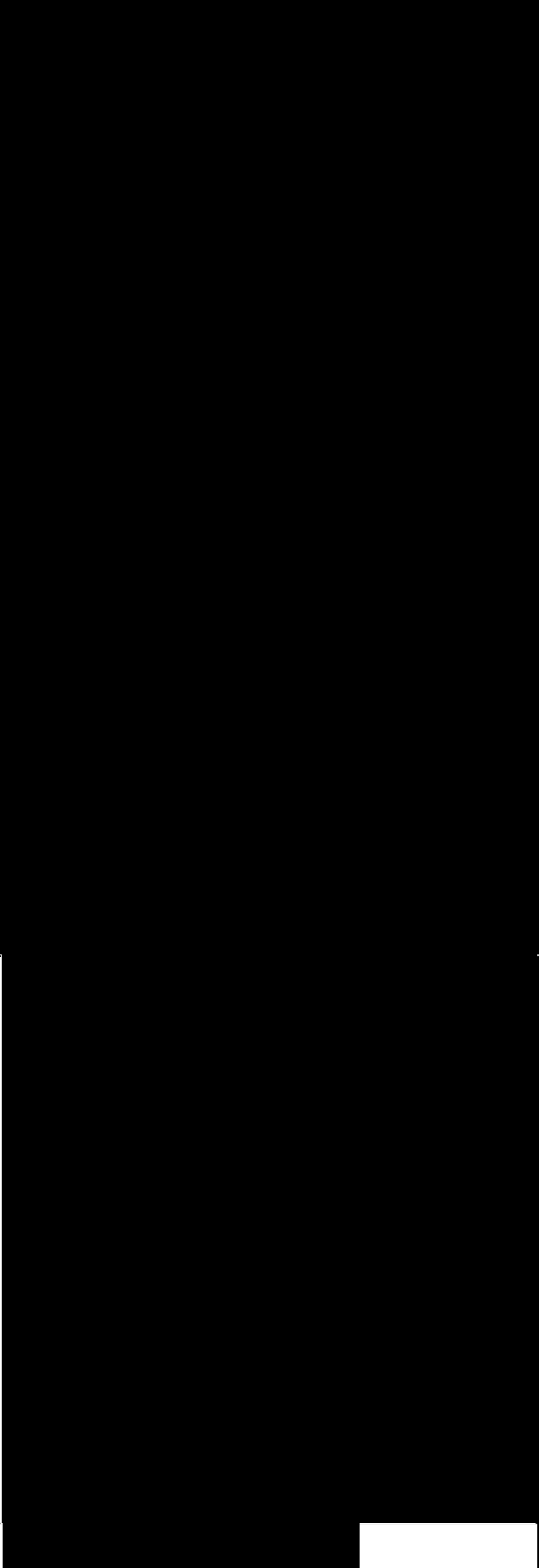
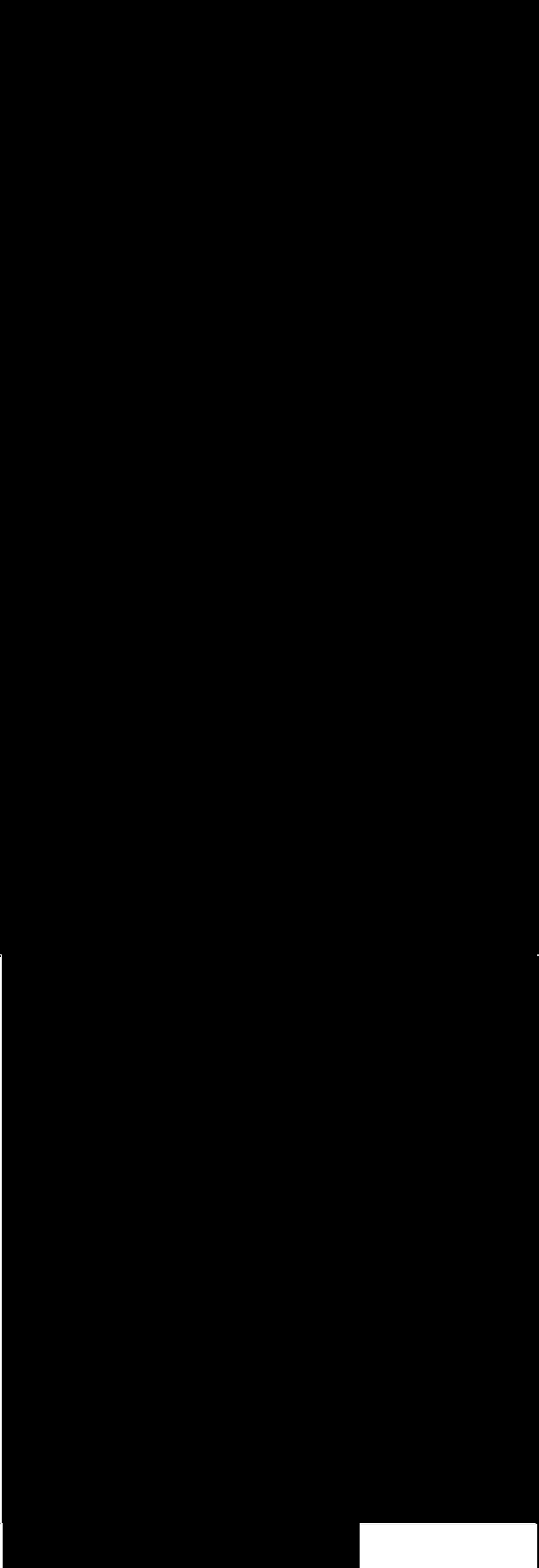
Part 2: Exclusion Grounds

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

Section 2	Grounds for mandatory exclusion	
Question number	Question	Response
2.1(a)	<p>Regulations 57(1) and (2) The detailed grounds for mandatory exclusion of an organisation are set out on the webpage (see link on page 11), which should be referred to before completing these questions. Please indicate if, within the past five years you, your organisation or any other person who has powers of representation, decision or control in the organisation been convicted anywhere in the world of any of the offences within the summary below and listed on the webpage.</p>	
	Participation in a criminal organisation.	Yes <input type="checkbox"/>
	Corruption.	
	Fraud.	
	Terrorist offences or offences linked to terrorist activities	
	Money laundering or terrorist financing	
	Child labour and other forms of trafficking in human beings	
2.1(b)	<p>If you have answered yes to question 2.1(a), please provide further details. Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction, Identity of who has been convicted If the relevant documentation is available electronically please provide the web address, issuing authority, precise reference of the documents.</p>	
2.2	<p>If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning)</p>	

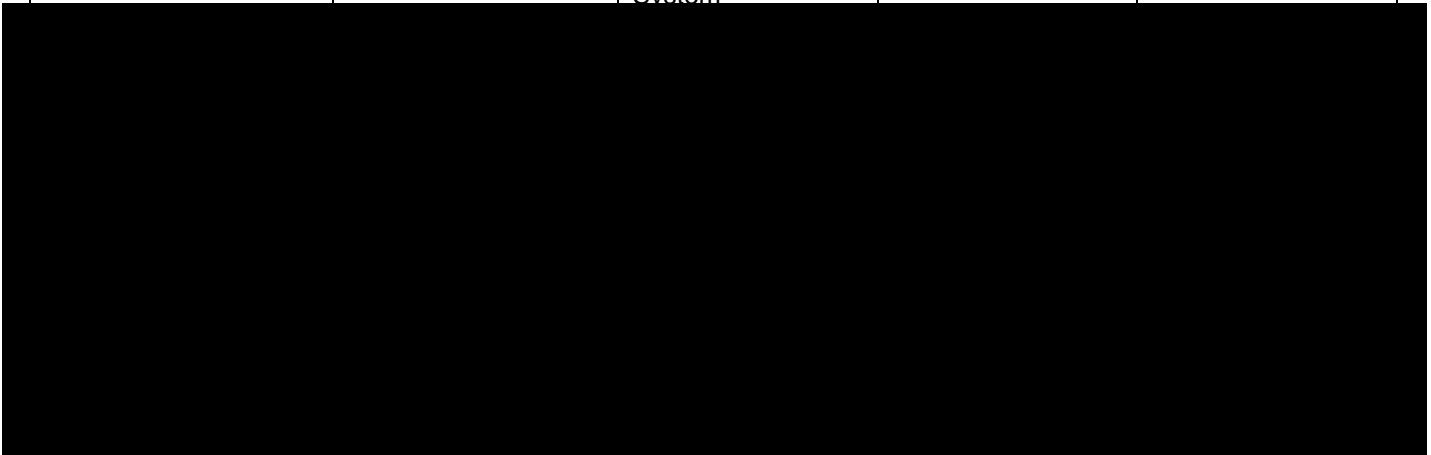
2.3(a)	<p>Regulation 57(3) Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions?</p>	[REDACTED]
2.3(b)	<p>If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines.</p>	[REDACTED]
2.4	<p>Please confirm that you have in place, or that you will have in place by contract award, the human and technical resources to perform the contract to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects</p>	[REDACTED]
2.4(a)	<p>Please provide details of the technical facilities and measures (including systems and processes) you have in place, or will have in place by contract award, to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects. Your response should include, but should not be limited to facilities and measures:</p> <ul style="list-style-type: none"> ○ to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services; ○ to comply with the rights of data subjects in respect of receiving privacy information, and access, rectification, deletion and portability of personal data; ○ to ensure that any consent based processing meets standards of active, informed consent, and that such consents are recorded and auditable; ○ to ensure legal safeguards are in place to legitimise transfers of personal data outside the EU (if such transfers will take place); ○ to maintain records of personal data processing activities; and ○ to regularly test, assess and evaluate the effectiveness of the above measures. 	[REDACTED]

2.5	<p>Are you currently Gas Safe Registered?</p> <p><u>This is a Mandatory Requirement.</u></p>	
2.6	<p>Are you currently OfTEC Registered?</p> <p><u>This is a Mandatory Requirement.</u></p>	
2.7	<p>Do you hold NICEIC – National Inspection Council for Electrical Installation Contracting?</p> <p><u>This is a Mandatory Requirement.</u></p>	
2.8	<p>If YES to 2.5, 2.6 & 2.7 please supply the following details as well as a copy of any certificates.</p> <p>Organisation: Reference No: Date membership expires or is to be renewed:</p> <p>Please tick here if a copy of certificates attached ✓</p>	
2.9	<p>Please confirm all operatives who will be employed on this service contract have been through the Enhanced DBS (Disclosure and Barring services) checking process.</p> <p><u>This is a Mandatory Requirement.</u></p>	
2.10	<p><u>24 Hour a Day 365 Days a Year Cover – This is a mandatory requirement</u></p> <p>Companies interested in being considered for maintenance or day to day repairs must confirm below if they can provide a 24 hour/day, 365 day/year emergency repair service with a maximum response time to attend a site of 2 hours.</p>	

	<p>Please confirm that you agree to provide this cover? YES / NO</p> <p>If yes, please state below how this cover will be resourced and organised. Include names, telephone numbers (mobile and fixed) of all individuals to be used.</p>	
2.11	<p>Please confirm that your employees who will be employed on this service contract have completed the Asbestos Awareness Training YES / NO</p> <p>Please enclose evidence for each employee Certificate(s)</p> <p>Enclosed YES / NO</p> <p><u>This is a Mandatory Requirement.</u></p>	
2.12	<p>Please state any formal quality assurance systems relevant to this contract, which your company operates i.e. (ISO</p>	

	equivalent – 9001:2008, 14001:2004) or EU Equivalent.		
	See table below		
Please provide copies of the certificates you have given above or other proof of the qualifications. <u>This is a Mandatory Requirement.</u>			

Name of Awarding Organisation/Body	Registration Number	Name of Quality Assurance System	Date Achieved	Date of expiry / renewal
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Please Note: The authority reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

Section 3	Grounds for discretionary exclusion	
Question number	Question	Response
	<p>Regulation 57 (8) The detailed grounds for discretionary exclusion of an organisation are set out on this webpage (see link on page 11), which should be referred to before completing these questions.</p> <p>Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation.</p>	
3.1(a)	Breach of environmental obligations?	
3.1(b)	Breach of social obligations?	
3.1(c)	Breach of labour law obligations?	
3.1(d)	Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State?	
3.1(e)	Guilty of grave professional misconduct?	
3.1(f)	Entered into agreements with other economic operators aimed at distorting competition?	
3.1(g)	Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure?	
3.1(h)	Been involved in the preparation of the procurement procedure?	
3.1(i)	Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions?	

3.1(j)	Please answer the following statements	
3.1(j) - (i)	The organisation is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.	
3.1(j) - (ii)	The organisation has withheld such information.	
3.1(j) –(iii)	The organisation is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.	
3.1(j)-(iv)	The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.	
3.2	If you have answered Yes to any of the above, explain what measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant	

Section 4	Economic and Financial Standing	
Question number	Question	Response
4.1	Are you able to provide a copy of your audited accounts for the last two years, if requested? If no, can you provide one of the following: answer with Y/N in the relevant box.	
	(a) A statement of the turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of Financial Position and Statement of Cash Flow for the most recent year of trading for this organisation.	
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	
	(c) Alternative means of demonstrating financial status if any	

	of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	
4.2	Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering 'Yes' or 'No' that you meet the requirements set out.	

Section 5	If you have indicated in the Selection Questionnaire question 1.2 that you are part of a wider group, please provide further details below: NOT APPLICABLE
Name of organisation	
Relationship to the Supplier completing these questions	

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

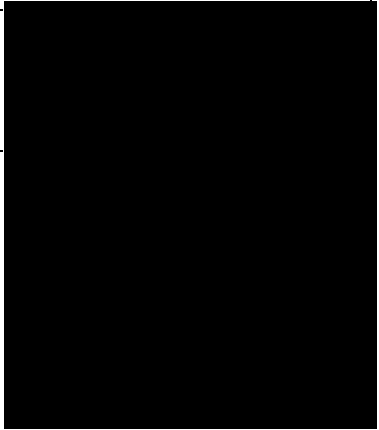
Section 6	Technical and Professional Ability
6.1	<p>Relevant experience and contract examples</p> <p>Please provide details of up to three contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs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

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

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


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

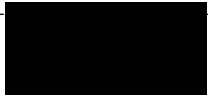
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Section 7	Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015	
	Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?	
	If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015? n/a	

8. Additional Questions

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

Section 8	Additional Questions	
8.1	Insurance	
	Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below: Y/N	

8.2	Skills and Apprentices 4 –	
a.	Do you have a process in place to ensure that your supply chain supports skills, development and apprenticeships in line with PPN 14/15 (see guidance) and can provide evidence if requested?	

⁴ Procurement Policy Note 14/15– Supporting Apprenticeships and Skills Through Public Procurement
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/456805/27_08_15_Skills_Apprenticeships_PPN_vfinal.pdf

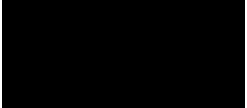


8.3 – Compliance with equality legislation

For organisations working outside of the UK please refer to equivalent legislation in the country that you are located.	
1.	In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in any jurisdiction other than the UK)?
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>
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?

8.4 – Environmental Management

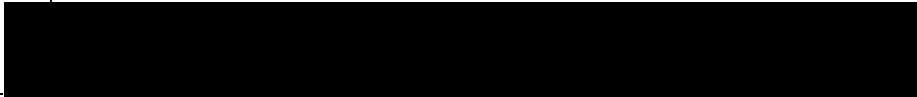

1.	<p>Has your organisation been convicted of breaching environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator or authority (including local authority)?</p> <p>If your answer to the this question is “Yes”, please provide details in a separate 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.</p> <p>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.</p>
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?

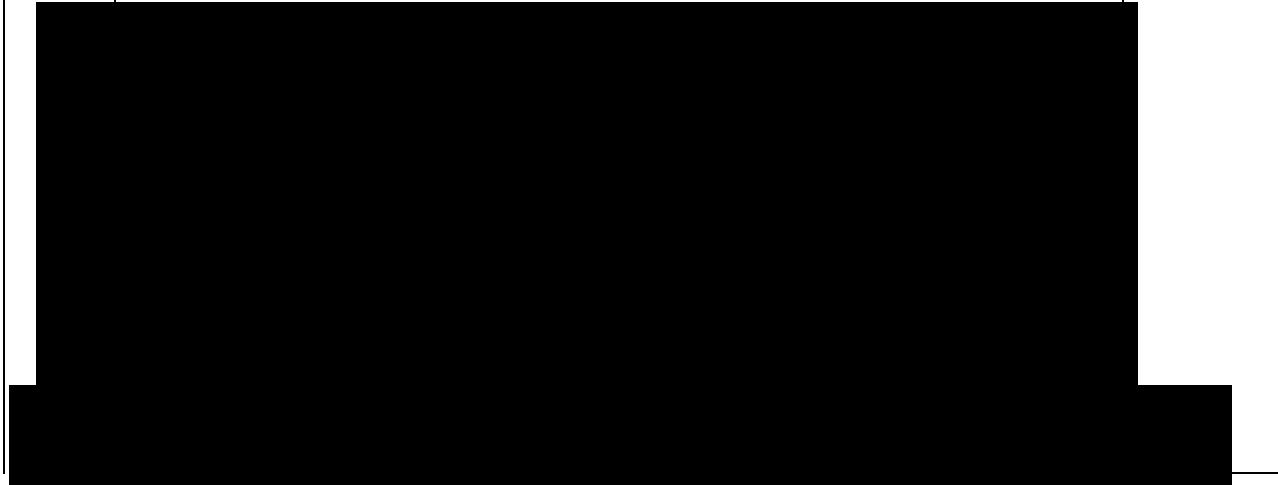
8.5 – Health & Safety

1.	Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements.	
2.	<p>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?</p> <p>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.</p> <p>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.</p>	
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?	

8.6 Safeguarding of adults and children

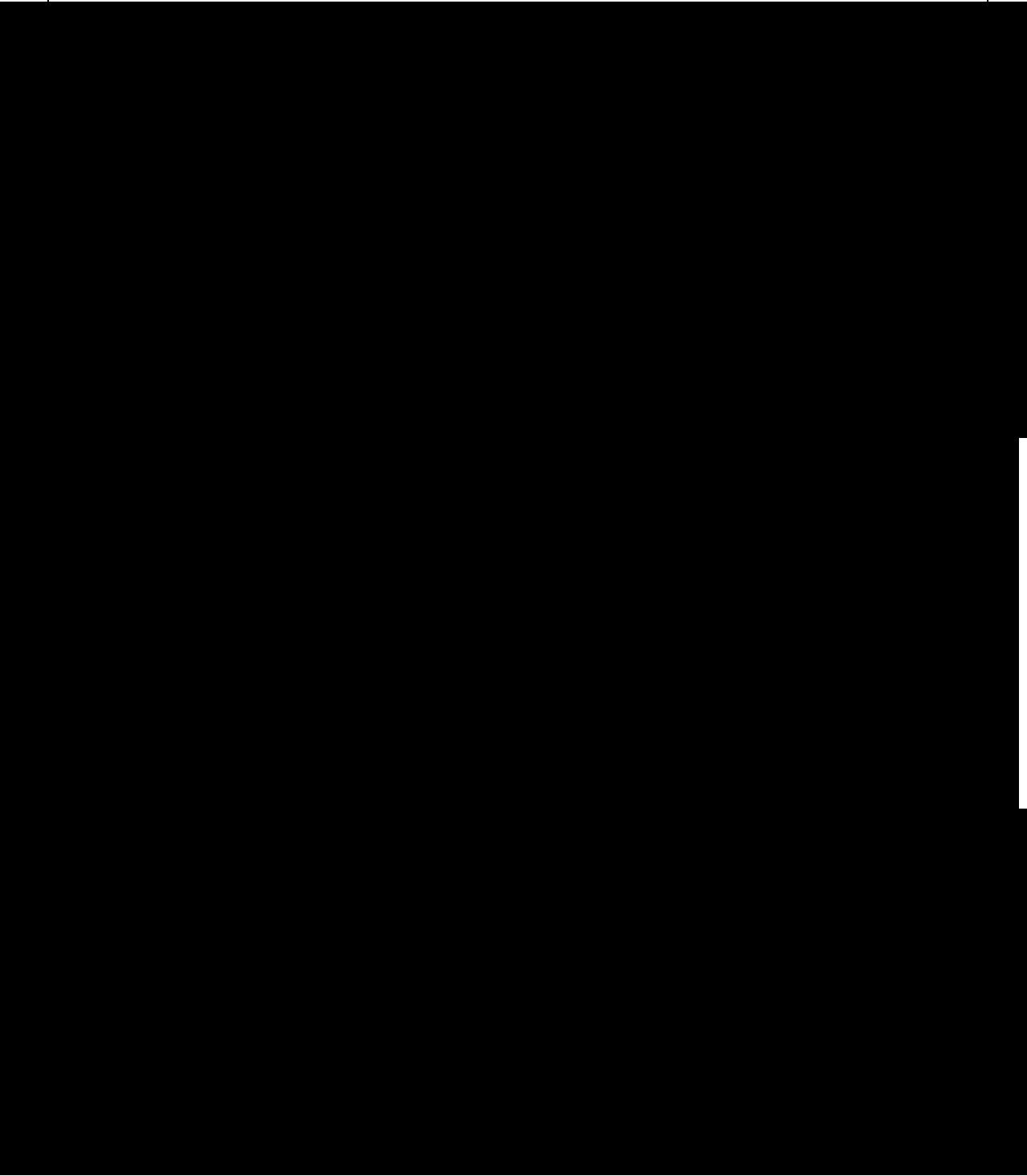
(for services where staff come into regular contact with children and adults)




*	<p><i>Why do we need to know this?</i> <i>The safeguarding duties placed on public authorities require the Council and its partners to work to the following guidance:</i></p> <p>Safeguarding children http://westmidlands.procedures.org.uk/#</p> <p>Safeguarding adults http://keepingadultssafeinshropshire.co.uk/multi-agency-procedures/</p> <p><i>We need to ensure all companies that work with Shropshire Council are clear about our safeguarding expectations and are committed to meet our expectations. The Council also needs to ensure that your organisation has a good record for safeguarding children and adults</i></p>	
1	<p>Do you have a Safeguarding Policy or statement for safeguarding children? Do you have a Safeguarding Policy or statement for safeguarding adults?</p> 	
2	For information: our requests for references will include a question relating to your organisation’s record for safeguarding.	

3	<p>As a contractor providing a public service on behalf of a Shropshire Council, we expect that you will be familiar and committed to the local safeguarding procedures as prescribed by Shropshire's Safeguarding Children Board (SSCB) and http://www.safeguardingshropshireschildren.org.uk/ Shropshire Council's approach to adult protection http://www.shropshire.gov.uk/adult-social-care/ I/We certify that I/We are familiar with and committed to deliver our service in compliance with local safeguarding processes.</p> 	
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Section C – TENDER SCHEDULE

1.0	Price		
1.1	<p>Please complete the pricing schedule below:</p> <p><u>EQUIPMENT</u></p> <p><u>Boilers/Burners:</u> Summer Service: ----- Winter Service: -----</p> <p><u>Back boilers.:</u> -----</p> <p><u>Miscellaneous Gas Equipment:</u></p> <p><u>Convactor Heaters</u> Summer Service: ----- Winter Service: -----</p> <p><u>Direct Fired Water Heater.</u> Summer Service: ----- Winter Service: -----</p> <p><u>Gas Fire.</u> Summer Service: ----- Winter Service: -----</p> <p><u>Radiant Tube Heater.</u> Summer Service: ----- Winter Service: -----</p> <p><u>Warm Air Unit:</u> Summer Service: ----- Winter Service: -----</p> <p>-----</p> <p>-----</p> <p>Strainer Yearly Service -----</p> <p>-----</p>	<p>300 max marks</p>	

1.2	<p><u>Daywork Rates</u></p> <p>All Tenderers <u>MUST</u> provide all the following rates will be used for price evaluation as set out on Page 5.</p> <p>Rates for any reactive maintenance work not included in the specification and schedules. Operative for the period 1st December 2019 to 31st March 2021.</p> <p>The following costs are to be completed (Breakdown rates)</p> 	100 max marks
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2.	Quality Tender Specification Response - Please respond to all the following questions and create sufficient space for your responses by expanding the table.	
2.1	This contract covers a variety of different boiler types and clients groups. Please confirm that your organisation has the ability to meet this challenge and undertake the required contract on the Council's behalf. In this context, please confirm how you will organise this contract within your organisation and illustrate your response with details of similar contracts that your organisation has undertaken including any particular difficulties faced and how these were overcome.	150 max marks
2.2	Please complete the attached Appendix B – Staff experience forms to confirm the experience details for each of your staff (including any sub-contractors) who would be involved in the contract if you were successful. All relevant staff qualifications to this contract, H&S awareness training, and staff relevant experience and competence in all tasks required.	50 Max Marks
2.3	Please submit a detailed risk assessment for each of the elements of this contract. N.B. Please refer to section 1.10 of the 'Specification' document for more information.	50 Max Marks
2.4	Please submit a detailed method statement for each of the elements of this contract. N.B. Please refer to section 1.10 of the 'Specification' document for more information.	50 Max Marks
2.5	In order to show how you will deliver the required services to the Council please provide a sample of the Landlord's Certificate. The use of the standard GAS SAFE reporting (CP15 Plant Commissioning & Servicing Record) form is the preferred format. Sample of Landlord's Certificate enclosed 	50 max marks
2.6	Please provide a sample of the post card size service card that shall be completed and left on site fixed to the relevant plant or equipment. Sample of service card enclosed 	50 max marks
2.7	Please confirm that your company is capable and competent in servicing of biomass boilers?  Please provide evidence of this in the form of customer reference of where and to which site.	50 max marks

	■	
2.8	Please provide a methodology of how you would plan to replace a leaking cast iron Boiler section	100 Max Marks
2.9	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.	50 Max Marks

Notes to this form:

Text highlighted in yellow is where details need to be inserted

Text highlighted in green are optional clauses which require consideration as to whether or not they should be retained.

DATED:

day of

2019

BETWEEN

SHROPSHIRE COUNCIL (1)

[.....] (2)¹

Contract Ref: RMCB 032

Contract for Maintenance and Repair of Boiler/Burner Plant, Miscellaneous Gas
Equipment & Biomass Boilers



LEGAL AND DEMOCRATIC SERVICES

The Shirehall Abbey Foregate Shrewsbury SY2 6ND
DX 702024 Shrewsbury 2

¹ Insert Contractor's name

1. Definitions

1.1 In this Agreement, the following words shall have the following meanings:

Agreed Prices	means the Agreed Prices set out in Schedule 2 to this Agreement. The Agreed Prices shall remain firm until 31 st March 2021
‘Agreement’	means this Agreement
‘Annual Review’	means the annual review to be held on the anniversary of the term or on such date as shall be agreed between the Parties to review the progress of the operation of the Services, accounts and any other operational issues that may arise
‘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; OR any other body that substantially performs any of the functions of the Council that previously had been performed by the Council. .
‘Authorised Officer’	means the representative appointed by the Council to manage the Contract on its behalf
‘Best Practice’	means in accordance with the best

	practice within the industry of the Contractor
'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.
'Commencement Date'	1st December 2019
'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, however it is conveyed, 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") or which ought reasonably to be considered to be confidential, including all Personal Data

	and the Commercially Sensitive Information;
'Consumables'	means all items of equipment, materials or components that have to be replaced on a regular basis
'Contract Documents'	means all of the documents annexed to, contained and referred to within this Agreement
'Contractor'	means the party named above and includes its employees, servants and agents paid or unpaid acting on its behalf
'Contractor Personnel'	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor paid or unpaid;
'Contractor's Representative'	the representative appointed by the Contractor to manage the contract on its behalf
'Council'	means the party named above and includes its employees, officers, servants and agents acting on its behalf
'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

	<p>which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(b) any Personal Data for which the Council is the Data Controller;</p>
Data Controller	shall have the meaning given to the term "controller" as set out in Article 4 of the GDPR
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.;
Data Protection Impact Assessment:	an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.
'Data Processor'	shall have the meaning given to the term "processor" as set out in Article 4 of the GDPR
'Data Protection Legislation'	<p>means:</p> <p>i) all applicable Law about the processing of personal data and privacy; and</p> <p>ii) The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications</p>

(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 including if
applicable legally binding guidance and
codes of practice issued by the
Information Commissioner; and
iii) to the extent that it relates to
processing of personal data and
privacy, any Laws that come into force
which amend, supersede or replace
existing Laws including the GDPR, the
(LED Law Enforcement Directive
(Directive (EU) 2016/680) and any
applicable national implementing Laws
as amended from time to time including
the DPA 2018

Data Protection Officer

Shall have the meaning given in the
GDPR

Data Subject

Shall have the same meaning as set
out in the GDPR

Data Subject Request

a request made by, or on behalf of, a
Data Subject in accordance with rights
granted pursuant to the Data Protection
Legislation to access their Personal
Data.

DPA 2018	Data Protection Act 2018
'EIR'	means the Environmental Information Regulations 2004 (as may be amended from time to time.)
'Employment Checks'	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, disclosure and barring checks
'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)
"Expiry Date"	Shall be the later of either: i) the Initial Expiry Date; or ii) the last day of any agreed extension period further to clause 2 below; or iii) such other date as this Agreement is terminated in accordance with its terms
'Fees'	shall be payable in accordance with the Agreed Prices as set out in Schedule 2 annexed to this Agreement and includes all expenses, materials (including Consumables), labour, plant,

	equipment, handling of materials and plant, tools and appliances, travel time and mileage to and from Properties and all other things necessary for the supply of the required services unless where specifically stated otherwise
'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.
GDPR	Means the General Data Protection Regulation 2016/679
'Initial Term'	means the period commencing on the Commencement Date and expiring on the Initial Expiry Date
'Initial Expiry Date'	means 31st March 2021
'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
Key Performance Indicators	means the targets, results or objectives set out in Schedule 5

Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
LED:	Law Enforcement Directive (Directive (EU) 2016/680)
'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;
'Option to Extend'	means the Council's option to extend the Initial Term by a period of up to a maximum of four years commencing from and including the date following the Initial Expiry Date
'Order'	means an official order placed by the Council to the Contractor for the supply of Services in accordance with the

	terms of this Agreement
'Parties'	the Contractor and the Council and 'Party' shall mean either one of them
'Personal Data'	shall have the same meaning as set out in the GDPR
'Personal Data Breach'	means: anything which constitutes a "personal data breach" as set out in in Article 4 of the GDPR;
Processor Personnel:	means all directors, officers, employees, agents, consultants and contractors of the Data Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement
'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.

'Project Materials'

means all reports, the Specification, documents, papers, information, data, disks, drawings, samples, patterns, in whatever form, medium or format and wherever such Project Materials are located or stored together with all copies of Project Materials

'Property/Properties'

means the sites where the Services will be delivered as listed in Schedule 3 of this Agreement

Protective Measures

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the

	effectiveness of the such measures adopted by it
'PSG'	Is Property Services Group being the Council's service area responsible for maintenance of its properties and buildings
'Public body'	as defined in the FOIA 2000
'RAG System'	Means the traffic light contract performance monitoring system used by the Council as more specifically referred to in clause 28 and the Specification
'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
'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;
'Relevant Transfer'	means a relevant transfer for the purposes of TUPE
'Request for Information'	means a written request for information pursuant to the FOIA as defined by

Section 8 of the FOIA

'Review'	means a formal review of the progress of the Services and the achievement of the Key Performance Indicators
'Services '	means the provision of maintenance and repair of boiler/burner plant, miscellaneous gas equipment and biomass boilers as more specifically referred to in the Specification
'Specification'	The specific description of the Services as set out in Schedule 1 annexed to 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 Services or any part thereof, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of thereof.
'Sub-Contractor'	the third parties that enter into a Sub-Contract with the Contractor.
Sub-processor	any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
'Tender'	means the tender dated [.....] ⁶

⁶ Where the tender is being annexed to this Agreement, please insert date of tender

	submitted by the Contractor and accepted by the Council annexed to this Agreement in Appendix B
'Term'	means the period commencing on the Commencement Date and expiring on the Expiry Date
'TUPE'	means the Transfer of Undertakings (Protection of Employment) Regulations 2006
'Valid Invoice'	Means an invoice submitted by the Contractor which must contain the following detail required by the Council to enable payment as specified in clause 9 of this Agreement: <ul style="list-style-type: none"> 1) invoices to be addressed to PSG, Shropshire Council at the address referred to above; and 2) submitted on the Contractor's business letterhead including the Contractor's name and address, and VAT registration number (where applicable); and 3) site location, property number and address to which payment relates; and 4) the Council's Official Order Number
'Working Day'	any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- 1.2.1 words importing any gender include every gender
- 1.2.2 words importing the singular number include the plural number and vice versa
- 1.2.3 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 1.2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.5 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.
- 1.2.6 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement
- 1.2.7 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule
- 1.2.8 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done
- 1.2.9 the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation
- 1.2.10 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.
- 1.2.11 where the word 'including' is used in this Agreement, it shall be

understood as meaning 'including without limitation'

1.2.12 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.

1.2.13 A reference to writing or written does not include e-mail, unless otherwise specifically agreed.

2. Term:

2.1 It is agreed between the Parties that this Agreement will be for the Initial Term commencing on the Commencement Date and ending on the Initial Expiry Date.

2.2 It is further agreed between the Parties that the Council may exercise its Option to Extend this Agreement at the expiry of the Initial Term for further periods of twelve months up to a maximum of four twelve month extensions from the Initial Expiry Date

2.3 If the Council decides to exercise its Option to Extend the Initial Term it shall notify the Contractor in writing at least 3 months in advance of the expiry date of the Initial Term. Where the Parties agree an extension of the Initial Term the provisions of this Agreement between the Council and the Contractor shall be the terms to be applied to the extended Agreement period, save for any agreed variations in writing by the Parties to the terms of this Agreement or the Fees to be paid which are to apply during the extension period.

2.4 If the Council decides that it does not wish to exercise its Option to Extend then this Agreement shall terminate on the Initial Expiry Date and the provisions of clause 39 (Consequences of Termination) shall apply

2.5 For the avoidance of doubt, the total duration of this Agreement shall not extend beyond 31st March 2025.

3. Estimated Annual Contract Value: Not Used

4. Services

4.1 The Contractor shall provide the Services to the Council in consideration for the Council paying the Fee(s) to the Contractor, subject to the provisions of this Agreement

- 4.2** The Contractor shall provide the Services in such places and locations as set out in Schedule 3 (Properties) (or as agreed by the Parties from time to time)
- 4.3** The Contractor shall use its best endeavours to complete/deliver the Services by the dates agreed by the Parties
- 4.4** The Services shall only be performed/delivered by the Contractor unless otherwise agreed in writing between the Parties
- 4.5** The Contractor shall provide the Services in accordance with the Specification with all due skill, care and diligence and in accordance with good industry practice. The Council reserves the right to reject work at the Contractors expense if the Council deems it to be unacceptable and not in accordance with good industry practice and the Specification.
- 4.6** The Contractor shall provide the Services in accordance with all current and relevant statutory provisions, regulations or other legislation from time to time in force relating to the provision of the Services
- 4.7** The Contractor shall during the Term ensure that every person employed by the Contractor in the provision of the Services is properly trained and instructed with regard to his/her tasks in relation to the Services
- 4.8** The Contractor shall carry out its own risk assessments relevant to the Services.
- 4.9** The Contractor shall have a written procedure for dealing with complaints about the Services in accordance with clause 33 (Complaints) hereof
- 4.10** before the Contractor engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Contractor must without limitation, complete the Employment Checks and any other checks required by the Disclosure and Barring Service
- 4.11** Prior to the engagement by the Contractor of any staff or sub-contractor engaged to provide any part of the Services where such individuals will have contact with children up to the age of eighteen years old or where the performance of the Services may involve contact with vulnerable adults (as defined in the Safeguarding Vulnerable Groups Act 2006) the Contractor shall procure in respect of all staff or potential staff or other

persons intended to perform any part of the Services:

4.11.1 that each person being considered for engagement be questioned as to whether he/she has any convictions; and

4.11.2 that the results of a Disclosure and Barring Service (DBS) check of the most extensive available kind is obtained in accordance with Part V of the Police Act 1997 (as amended) and that each DBS check should include a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Service may involve contact with children and/or Safeguarding Vulnerable Groups Act 2006 where the performance of the Service may involve contact with vulnerable adults.

4.11.3 that a copy of the DBS check results are notified to the Council

4.12 The Parties agree that there shall be, on dates to be agreed, regular informal reviews of the progress of the development of the Services between the Contractor and the Council to ensure that the Key Performance Indicators are being achieved.

4.13 In the event that an informal review reveals that the Services are not being delivered as required or that Key Performance Indicators are not being met, a formal Review meeting shall take place between the Parties upon 14 days written notice being given to the Contractor by the Council

4.14 The Review meeting shall record in writing any amendments to the Key Performance Indicators agreed between the Council and the Contractor.

4.15 Where following a Review, the Council acting reasonably determines that the Contractor has not delivered the Services as required or met the Key Performance Indicators the Council may:

4.15.1 serve the Contractor with a written notice (“Notice”) within one month of the Review meeting specifying which areas of the Services have not been delivered as required or which of the Key Performance Indicators it considers that the Contractor has not met or failed to achieve and giving the Contractor one calendar month from the date of the Notice to remedy the failure

4.15.2 if after one calendar month from the date of the Notice the Contractor has failed to remedy the failure specified in the Notice then this

will be considered to be a breach of the terms of this Agreement and the Agreement may be terminated in accordance with the provisions contained in clause 37 (Termination) herein

5. Use of the [describe premises] and Facilities: Not Used

6 Insurance

6.1 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) for each and every claim.

6.2 NOT USED

6.3 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

6.4 The Contractor warrants that it has complied with this clause 6 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. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required under this clause 6, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

6.5 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

6.6 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.

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

6.7.1 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

6.7.2 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.

7 Indemnity

7.1 The Contractor shall fully indemnify the Council against all liabilities, costs, expenses, damages losses and breach of its statutory duties or breach of an obligation under the Data Protection Legislation (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:

- (a) The performance, defective performance or otherwise of this

Agreement by the Contractor or the Contractor Personnel

(b) Any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the provision of the Services

(c) Any claim made against the Council by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Contractor or the Contractor Personnel; and

(d) Any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with the delivery of the Services and performance of this Agreement to the extent that the defective performance is attributable to the acts or omissions of the Contractor or the Contractor Personnel

7.2 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.

7.3 Nothing in this Agreement shall limit or exclude the liability of either Party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) the indemnities given in this clause 7

8. Fee rates based on time spent

Where the Fees calculated on the amount of time spent by the Contractor's Personnel, the following applies:

8.1 a 'day' will mean 7.4 hours. This will include the time spent in travelling to and from the place where the Services are performed. Where the work carried out in performing the Services exceeds the period of 7.4 hours, that period shall be charged at the pro-rated rate for a day;

8.2 where the Fees are based on an hourly rate, any time spent which is less than an hour is charged on a pro-rated basis.

8.3 For the avoidance of doubt, the Contractor shall only charge the Council

the Fees based on the actual time spent on-site carrying out the Services. The Contractor shall not charge any Fees with respect to mileage and travel time to and from the Properties unless expressly permitted by the Council in writing and in advance

9. Payment

9.1 Payment of the Fee(s) shall be made by the Council to the Contractor within 30 days of receipt of an undisputed Valid Invoice monthly⁷.

9.2 To assist payment of a Valid Invoice the Contractor shall also, where possible provide PSG with the following additional information:

9.2.1 Name of officer that placed the Order for works;

9.2.2 Date and time of when the Order was placed;

9.2.3 Date of visit;

9.2.4 Times of arrival and departure from the site;

9.2.5 Where applicable, sub-contractors details;

9.2.6 A list of materials used to complete the works together with the cost of each item and their mark-up;

9.2.7 signed worksheet; and

9.2.8 with respect to repair invoices: quotation/tender reference

9.3 The Parties agree that where the Contractor fails to submit a Valid Invoice, the Council shall be entitled to withhold payment until the Contractor submits the information required by the Council.

9.4 In the event of late payment relating to a Valid Invoice, interest thereon shall be charged at the prevailing statutory rate further to the Late Payment of Commercial Debts (Interest) Act 1998 above the National Westminster Bank base rate.. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after Judgment.

9.5 Other than is set out in this Agreement, the Contractor shall not be entitled to vary the Fee(s) during the existence of this Agreement unless with the prior written consent of the Council.

9.6 The Contractor shall not charge, and the Council shall not be liable, for any expenses, charges, costs, fees except the Fee(s) as set out in this

⁷ Delete words highlighted in green as applicable

Agreement. [For the avoidance of doubt, the Contractor shall only charge the Council the Fees based on the actual time spent on-site carrying out the Services. The Contractor shall not charge any Fees with respect to mileage and travel time to and from the Properties unless expressly permitted by the Council in writing and in advance]⁸

9.7 All amounts stated are exclusive of VAT which will be charged in addition at the rate in force at the time the Council is required to make payment

9.8 Unless otherwise agreed in writing by the Council, the Contractor will pay any of its appointed sub-contractors within the time period specified in the Sub-Contract but in any event no later than 30 days from receipt of an undisputed invoice.

10. The Council's Obligations

To enable the Contractor to perform its obligations under this Agreement the Council shall:

10.1 Co-operate with the Contractor and ensure that the Council's staff and agents co-operate with and assist the Contractor as is reasonable and appropriate

10.2 Provide the Contractor with any information reasonably required by the Contractor;

10.3 Comply with such other requirements as may be otherwise agreed between the parties.

10.4 Not Used

10.5 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Contractor by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

11. Authorised Officer and Contractor Representative:

11.1 The Authorised Officer shall be appointed by the Council to act in the name of the Council for the purposes of the contract evidenced by this Agreement.

11.2 The Contractor shall appoint a Contractor Representative to act in the

⁸ Delete this wording if clause 8 is retained

name of the Contractor for the purposes of the contract evidenced by this Agreement

- 11.3 The Parties shall notify each other in writing of any replacement Authorised Officer or Contractor Representative or if any person ceases to be either the Authorised Officer or Contractor Representative.
- 11.4 The Authorised Officer shall monitor on behalf of the Council, the provision of the Services supplied by the Contractor and act as liaison officer with the Contractor's Representative in respect of the operation of the Services. Any issues raised by the Authorised Officer with regard to the delivery of the Services shall in the first instance be addressed and dealt with by the Contractor's Representative on the Contractor's behalf.

12 Intellectual Property Rights

- 12.1 Any Project Materials 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. The Contractor, unless otherwise agreed in writing, assigns to the Council with full title guarantee all such copyright, design and other intellectual property rights.
- 12.2 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.
- 12.3 The Project Materials created in accordance with this Agreement shall be original works created by the Contractor and shall:
 - (a) not include intellectual property owned by or licensed to a third party except for intellectual property which the Contractor has the right to use (including the right to use the intellectual property for the purposes of this Agreement);
 - (b) not subject the Council to any claim for the infringement of any

intellectual property rights of a third party

- 12.4** The Contractor agrees at any time and from time to time on the written request of the Council to execute and deliver promptly to the Council any documents or instrument which the Council considers desirable, or which are required by law for obtaining the full benefits of the assignment in clause 12.1 and of the rights and powers granted by it.
- 12.5** Unless stated expressly in writing in this Agreement, neither Party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Agreement
- 12.6** The Contractor shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.
- 12.7** This provision shall survive the expiration or termination of the Agreement.

13. Confidentiality

- 13.1** 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.
- 13.2** 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.

- 13.3** NOT USED
- 13.4** The Contractor will keep confidential any information it becomes aware of by reason of the operation of this Agreement.
- 13.5** Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
- 13.5.1** treat the other party's Confidential Information as confidential; and
 - 13.5.2** not disclose the other party's Confidential Information to any other person without the owner's prior written consent
- 13.6** Clause 13.5 shall not apply to the extent that:
- 13.6.1** 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 clause 25 regarding Freedom of Information;
 - 13.6.2** such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 13.6.3** such information was obtained from a third party without obligation of confidentiality;
 - 13.6.4** such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 13.6.5** it is independently developed without access to the other party's Confidential Information.
- 13.7** 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.
- 13.8** 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
- 13.9** Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:

- 13.9.1** to any consultant, contractor or other person engaged by the Council;
- 13.9.2** for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council;
- 13.10** 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.
- 13.11** 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.
- 13.12** The provisions of this Clause shall survive the expiration or termination of this Agreement.
- 14. Agreement and Transparency**
- 14.1** Further to the Local Government Transparency Code 2015 the Council is obliged to publish details of expenditure exceeding £500. 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.
- 14.2** 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.
- 14.3** 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.
- 14.4** The Contractor shall assist and cooperate with the Council to enable the

Council to publish this Agreement and the Tender Submission.

15 Council Data

- 15.1** The Contractor shall not delete or remove any copyright or proprietary notices contained within or relating to the Council Data.
- 15.2** 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.
- 15.3** 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.
- 15.4** 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.
- 15.5** The Contractor shall ensure that any system on which the Contractor holds any Council Data, including back-up data, is a secure system to include, but not limited to, the following requirements:
- a) Access to the system is restricted to Contractor Personnel with a legitimate need to access the Council Data; and
 - b) The system is kept up to date with the latest versions of operating system and anti-virus updates; and
 - c) Transfer of data to and from the system is conducted in a secure manner.
- 15.6** 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:
- 15.6.1** require the Contractor (at the Contractor's expense) to restore or procure the restoration of Council Data as soon as practicable; and/or

- 15.6.2** 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's Data.
- 15.7** 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.
- 15.8** 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.
- 15.9** Any cost arising out of the actions of the parties taken in compliance with the provisions of sub-clause 15.8 above shall be borne by the parties as follows:
- 15.9.1** 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
- 15.9.2** 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).
- 16. Not Used**
- 17. Not Used**
- 18. Data Protection**
- 18.1** Both parties will comply with all applicable requirements of the Data Protection Legislation and agree to take account of any guidance issued by the Information Commissioner's Office. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 18.2** where there is any conflict, ambiguity or inconsistency between this clause

(including any associated definitions) and the remainder of this Agreement, this clause 18 shall take precedence.

- 18.3** The parties acknowledge that for the purposes of the Data Protection Legislation and for the remainder of this clause 18 where the context so admits, the Council is the Data Controller and the Contractor is the Data Processor. The only processing that the Data Processor is authorised to do in respect of such Personal Information is as listed in Schedule 6 by the Data Controller and may not be determined by the Data Processor.

Data Processor's Obligations

- 18.4** The Data Processor shall notify the Data Controller immediately if it considers that any of the Data Controller's instructions infringe the Data Protection Legislation.

- 18.5** The Data Processor shall provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Data Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 18.6** The Data Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 6 unless the Data Processor is required to do otherwise by Law. If it is so required the Data Processor shall promptly notify the Data Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are

appropriate to protect against a Data Loss Event, which the Data Controller may reasonably reject (but failure to reject shall not amount to approval by the Data Controller of the adequacy of the Protective Measures), having taken account of the

- (i) the nature of the data to be protected;
- (ii) the harm that might result from a Data Loss Event;
- (iii) the state of technological development; and
- (iv) the cost of implementing any measures;

(c) ensure that :

(i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 6);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Data Processor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Data Processor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(E) are obliged to keep the Personal Data confidential; and

(F) shall not store any Personal Data on any portable device or media unless that device is encrypted; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:

(i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in

accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and

(iv) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;

(e) at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Agreement unless the Data Processor is required by Law to retain the Personal Data.

18.7 Subject to clause 18.8, the Data Processor shall notify the Data Controller immediately if it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

18.8 The Data Processor's obligation to notify under clause 18.7 shall include the provision of further information to the Data Controller in phases, as details become available.

- 18.9** Taking into account the nature of the processing, the Data Processor shall provide the Data Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 18.7 (and insofar as possible within the timescales reasonably required by the Data Controller) including by promptly providing:
- (a) the Data Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Data Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Data Controller following any Data Loss Event;
 - (e) assistance as requested by the Data Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Data Controller with the Information Commissioner's Office.
- 18.10** The Data Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Data Controller determines that the processing is not occasional;
 - (b) the Data Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Data Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.11** The Data Processor shall allow for audits of its Data Processing activity by the Data Controller or the Data Controller's designated auditor.
- 18.12** Each Party shall designate its own Data Protection Officer if required by

the Data Protection Legislation.

18.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Data Processor must:

- (a) notify the Data Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Data Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 18.13 such that they apply to the Sub-processor; and
- (d) provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.

18.14 The Data Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

18.15 The Data Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

18.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Data Controller may on not less than 30 Working Days' notice to the Data Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

19. Council Data and Personal Information Audits

19.1 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:

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

19.1.2 to review the Contractor's compliance with the Data Protection Legislation, 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;

- 19.2** 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.
- 19.3** 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:
- 19.3.1** all information requested by the Council within the permitted scope of the audit;
- 19.3.2** 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;
- 19.3.3** access to Contractor Personnel
- 19.4** The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services.
- 19.5** The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its intention to conduct an audit.
- 19.6** The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 19.7** 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.
- 20. Assignment, Transfer and Sub-contracting**
- 20.1** Neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other Party PROVIDED that the Council may,
- (a) assign any of its rights under this Agreement; or
- (b) transfer all of its rights or obligations by novation, to another person.

without the Contractor's consent where such assignment, transfer or novation is to an Associated Person of the Council;

- 20.2** Any consent required under Clause 20.1 must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.
- 20.3** 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 the Contractor Personnel and using its own equipment.
- 20.4** In the event that consent is given by either Party to the other Party to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the sub-contracting Party to the consenting Party immediately it is issued and sub-contracting shall only be permitted to another contractor on the Council's approved list and may only be on a short term basis and in no circumstances shall it constitute the sub-contraction of more than 10% of the total scheduled contract works.
- 20.5** Subject to clause 20.1, in the event that either Party wishes to assign its rights and obligations under this Agreement, the assignor must obtain a written undertaking from the assignee to the consenting Party that it will be bound by the obligations of the assignor under this Agreement.
- 20.6** Notwithstanding the Contractor's right to sub-contract pursuant to this clause 20, 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 and shall be responsible for the work of the Sub-Contractor whose work shall be undertaken to the same standard as stated in the Specification.

21. Public Interest Disclosure ('Whistleblowing')

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.

22. Publicity

The Contractor will not make any press or other release or public announcement in relation to this Agreement without the prior approval of the Council

23. Prevention of Bribery

23.1 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.

23.2 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 23 and provide such supporting evidence of compliance with this clause 23 by the Contractor as the Council may reasonably request.

23.3 If any breach of clause 23.1 is suspected or known, the Contractor must notify the Council immediately.

23.4 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 23.1, 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.

23.5 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 23.1. At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 23.5, 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 Council; 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.

23.6 Any notice of termination under clause 23.5 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.

23.7 Despite clause 34 (Disputes), any dispute relating to:

- a) the interpretation of this clause 23; 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.

23.8 Any termination under clause 23.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

24. Warranties, liability and indemnities

The Contractor warrants, represents and undertakes that:

24.1 it will carry out the work by the Expiry Date

- 24.2** it will perform the Services with all due skill and diligence and in a good and workmanlike manner, and in accordance with the Best Practice within the industry of the Contractor and will have adequate numbers of Contractor Personnel to provide the Service
- 24.3** its Contractor Personnel will have the necessary skill, professional qualifications and experience to deliver the Services in accordance with the Specification and Best Practice
- 24.4** NOT USED
- 24.5** it has full capacity and authority to enter into this Agreement
- 24.6** it has obtained all necessary and required licences, consents and permits to provide the Services
- 24.7** it shall be responsible for all costs, fees, expenses and charges for training necessary or required for the Contractor Personnel to perform the Services
- 24.8** NOT USED
- 24.9** The Contractor shall where appropriate take account of the Human Rights Act 1998 and shall not do anything in breach of it.
- 24.10** The Contractor will at all times in providing the Services 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 and:
- 24.10.1** The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of this Agreement.
- 24.10.2** The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at any of the Properties which may affect the Contractor in the performance of this Agreement.
- 24.10.3** The Contractor shall make itself aware of and will comply with any health and safety measures implemented by the Council with respect to Properties under its control and to health and safety measures implemented by the managers/owners of Properties which are not under the control of the Council
- 24.10.4** The Contractor shall report all accidents and/or injuries relating to the provision of the Services to the Council immediately.

- 24.10.5** The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council upon request.
- 24.11** The Contractor warrants that none of its current Directors have been involved in liquidation or receivership or have any criminal convictions.
- 24.12** If the Contractor performs the Services (or any part thereof) negligently or in breach of this Agreement (“defaulting works”), then if requested by the Council, the Contractor will re-perform the Services or relevant part thereof at no additional cost to the Council. The Council’s request must be made within 6 months of it becoming aware of the defaulting works or in any event within 6 months of the Expiry Date or termination of this Agreement whichever is the later and the Contractor shall respond to such requests in accordance with paragraph 1.16 (Recalls) of the Specification
- 24.13** the Contractor warrants that the signing of this Agreement on its behalf has been validly authorised and the obligations expressed as being assumed by the Contractor under this Agreement constitute valid legal and binding obligations of the Contractor enforceable against the Contractor in accordance with their terms.
- 24.14** The Contractor acknowledges and confirms that:
- 24.14.1** it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;
 - 24.14.2** it has received all information requested by it from the Council pursuant to sub-clause 24.14.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;
 - 24.14.3** it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to sub-clause 24.14.2;
 - 24.14.4** it has raised all relevant due diligence questions with the

- Council before the Commencement Date; and
- 24.14.5** it has entered into this Agreement in reliance on its own diligence
- 24.14.6** as at the Commencement Date, the Contractor warrants and represents that all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement AND shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services
- 24.14.7** The Contractor shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Contractor in accordance with sub-clause 24.14.6 save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Council and the Contractor could not reasonably have known that the information incorrect or misleading at the time such information was provided.
- 24.15** The Contractor agrees that where requested in writing during the term of this Agreement 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
- 24.16** In performing its obligations under this Agreement, the Contractor shall and shall ensure that each of its sub-contractors shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from

time to time in force including but not limited to the Modern Slavery Act 2015

25. Freedom of Information Act 2000 & Environmental Information Regulations 2004

25.1 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.

25.2 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.

25.3 The Contractor shall and shall procure that its Sub-contractors shall:

25.3.1 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;

25.3.2 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

25.3.3 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.

25.4 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.

- 25.5** In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 25.6** The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Department of Constitutional Affairs' 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:
- 25.6.1** in certain circumstances without consulting the Contractor; or
- 25.6.2** following consultation with the Contractor and having taken their views into account;
- provided always that where sub-clause 25.6.1 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.
- 25.7** 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.
- 25.8** 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.

26 **Not Used**

27. **Equalities**

- 27.1** 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

- a) in the supply and provision of Services under this Agreement, and
- b) in its employment practices.

27.2 Without prejudice to the generality of the foregoing, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or other relevant legislation, or any statutory modification or re-enactment thereof).

27.3 In addition, the Contractor and any Sub-Contractor or person(s) employed by or under the control of 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

27.4 The Contractor and any Sub-Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by Equality and Human Rights Commission, which give practical guidance to Councils on the elimination of discrimination.

27.5 In the event of any finding of unlawful discrimination being made against the Contractor and any Sub-Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equality and Human Rights Commission over the same period, the Contractor and any Sub-Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

27.6 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.

28. Non-compliance

- 28.1.** If the Council identifies areas of the Services through its RAG System which do not comply with the requirements of this Agreement (including any Schedules to this Agreement) it may send the Contractor a non-compliance notice referred to as an “Improvement (Amber) Notice” detailing
- (i) the areas of non-compliance;
 - (ii) the action to be taken; and
 - (iii) the date by which the action must be taken (which for the avoidance of doubt must not be a date less than 14 days from the date of the notice).
- 28.2** If the Contractor fails to take any or all of the necessary action by the date given in the Improvement (Amber) Notice, the Council may send the Contractor a second non-compliance notice referred to as a “Registration of Concern (Amber) Notice” detailing the outstanding:
- (i) areas of non-compliance;
 - (ii) actions to be taken;
 - (iii) a requirement for an immediate response to the matters raised and reasons given for poor performance; and
 - (iv) if considered necessary by the Council, a requirement for the Contractor to attend a formal meeting to explain its reasons for poor performance and to provide mitigation.
- 28.3** If, in the reasonable opinion of the Council, the Contractor fails to undertake all of the remedial actions in the Registration of Concern (Amber) Notice within the time period stated it may then issue the Contractor with a final non-compliance notice referred to as a “Warning (Red) Notice which shall:
- (i) detailing the areas of non-compliance; and
 - (ii) setting out the actions still required to be taken; and
 - (iii) notification that failure to adhere to the Warning (Red) may lead to termination of the contract
- 28.4** Failure to comply with the Warning (Red) Notice may be considered a material breach of this Agreement and the Council shall be entitled to take either of the following steps depending on the seriousness of the non-

compliance (which in the event of dispute shall be determined in accordance with clause 34 (Disputes):

(a) to make arrangements to take its own corrective action either itself or through the appointment of another Contractor and to either:

(i) deduct all costs in connection therewith from any sums due or to become due to the Contractor under the terms of this Agreement;

or

(ii) to recover such sums from the Contractor as a debt;

And/or

(b) issue a Termination (Red) Notice to terminate the Agreement in accordance with clause 38 Termination

29. Waiver

The failure by either Party to enforce at any time or for any period any one or more of the 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.

30. Sustainability

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

31. Audit And Monitoring

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

32. Safeguarding NOT USED

33. Complaints Procedure

33.1 The Contractor shall operate a complaints procedure in respect of any services or works provided under this Agreement to deal with any complaint received about the standard of services or the manner in which any services have been supplied or work has been performed or any other matter connected with the performance of the Contractor's obligations

under this Agreement (“the Complaints Procedure”). For the avoidance of doubt any complaint or issue that the Council has in respect of the Contractor’s performance of this Agreement shall be dealt with in accordance with the remainder of this Agreement.

33.2 The Contractor’s Complaints Procedure shall comply with applicable Law and the requirements of any regulatory body to which the Contractor is subject or which are applicable to the service being provided (including any change in such requirements) and shall meet the following minimum standards:

33.2.1 is easy for complainants to access and understand

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

33.2.3 provides confidential record keeping to protect employees under this Agreement and the complainant

33.2.4 provides information to the Contractor’s management so that services can be improved

33.2.5 provides effective and suitable remedies

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

33.3 The Contractor shall inform any users of the services or works provided under this Agreement of the existence of the complaints procedure and how to access it and will make its Complaints Procedure available on request.

33.4 The Contractor shall investigate and deal with any complaints it receives about the services or works, whether direct from the public or services users, or referred to it by the Council, in accordance with its published complaints procedure.

33.5 The Contractor shall ensure that:

33.5.1 it promptly, and within a maximum of 10 days of receiving the complaint, notifies the complainant that the Contractor is dealing with the complaint

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

complaint.

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

33.5.4 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

33.5.5 it deals with the complaint fully, expeditiously and fairly and shall use its reasonable endeavours to resolve the complaint within 21 Working Days of receiving the complaint

33.5.6 where a complaint is received by the Contractor relating to the policy or decisions of the Council rather than the Contractor's delivery of its obligations under this Agreement, the Contractor shall promptly, and within two Working Days, refer the complaint to the Council for investigation.

33.6 The Contactor shall ensure that all its employees and persons employed under this Agreement 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

33.7 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 within 5 Working Days of being requested or at 12 monthly intervals in any event.

33.8 Where the Council is investigating a complaint the Contactor is required to participate fully in all investigations within the timescales requested by the Council.

33.9 The Contractor should note that if a complaint is made to the Council by a third party relating to the services or works provided, the Local Government Ombudsman has the power to investigate such a complaint and the Council requires the Contractor to fully to 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.

34. Disputes

34.1 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:-

34.1.1 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

34.1.2 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 and the Contractor or other authorised officer whose details have been notified to the Council, 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

34.1.3 If the dispute cannot be resolved in accordance with the preceding sub-clause then it shall be referred to a single arbitrator to be agreed between the Parties and failing such agreement within 14 days of the request of one Party to the other in writing that the matter be referred to arbitration such reference shall be to a single arbitrator appointed for that purpose on the written request of either Party by the President for the time being of the Law Society of England and Wales and any reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the relevant Arbitration Acts and it is further agreed that if any matter is referred to arbitration then each Party will bear it's own costs of such referral

35. Force Majeure

35.1 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:-

35.1.1 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

35.1.2 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.

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

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

35.2.2 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.

35.3 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):-

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

35.3.2 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.

36. Rights of Third Parties

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 (or any amendment or re-enactment thereof).

37. Notices

37.1 Unless otherwise communicated to the Party in writing any notice to be given by either party to the other may be served by email, 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

37.2 A Notice sent by email shall be deemed to be received providing receipt is acknowledged and confirmed, 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

38. Termination

38.1 Either Party may terminate this Agreement by giving to the other Party at least 3 months' notice in writing

38.2 Either Party may terminate this Agreement by notice in writing to the other if:

38.2.1 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.

38.2.2 the other Party commits a series of minor breaches which, when taken together, amount to a material breach;

38.2.3 the other Party commits a material breach of this Agreement which cannot be remedied under any circumstances;

38.2.4 The Council may terminate this Agreement forthwith by notice where the Contractor commits a material breach

resulting from a failure to comply with the non-compliance notices issued in accordance with clause 28 (Non-Compliance).

38.2.5 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;

38.2.6 the other Party ceases to carry on its business or substantially the whole of its business; or

38.2.7 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.

38.3 Where notice to terminate is given pursuant to this clause 38, this Agreement shall terminate with effect on the date specified in the notice

39. Consequences of Termination

39.1 Other than as set out in this Agreement, neither Party shall have any further obligations to the other under this Agreement after its termination

39.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect

39.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies obligations or liabilities of the Parties existing at termination

39.4 Notwithstanding its obligations in this clause 39, if a Party is required by law, regulation, or government or regulatory body to retain any documents or materials containing the other Party's Confidential Information, it shall notify the other Party in writing of such retention, giving details of the documents and/or materials it must retain.

39.5 upon termination of this Agreement for any reason, the Contractor shall, at its own cost, deliver, and require that its employees, agents and sub-contractors deliver, to the Council all Project Materials information and any

other property of the Council which are in the possession or control of the Contractor or the Contractor's employees, agents or Sub-Contractors at the date of termination.

40. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

The Parties agree that the provisions of Schedule 4 shall apply to any Relevant Transfer of staff under this Agreement

41. Staffing Security– NOT USED

42. Security Requirements – NOT USED

43. Governing Law And Jurisdiction

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 Courts

44. Severance

If any provision of this Agreement prohibited by law or judged by any court of competent jurisdiction to be unlawful, void, invalid or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

45. Parent Company Guarantee⁹ – NOT USED

It is a condition of this Agreement that if the Contractor is a subsidiary company 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.

46. Amendments

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

47. Agency, Partnership etc

This Agreement shall not constitute or imply any partnership, joint venture,

⁹ Delete this clause if no parent company guarantee is required. Replace text highlighted in green with words "not used"

agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

48. Conflict of Terms

If there is any ambiguity or inconsistency in or between the Contract Documents the Council shall determine, at its sole discretion, the priority of the documents.

49. Entire Agreement

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.

IN WITNESS of this Agreement

Signed by and on behalf of

Shropshire Council

..... Director of Legal & Democratic
Services

..... Legal Services Manager

Signed by and on behalf of

(Contractor)¹⁰

.....
Signature of authorised signatory

.....
Position in Company

Or

.....
Director

.....
Director/Company Secretary

Print Name (s).....

¹⁰ Insert the contractors name

SCHEDULE 1
SPECIFICATION



RMCB 032.

PPM/SC/M02/2019.

CONTRACT SPECIFICATION DOCUMENT.

MAINTENANCE OF AND REPAIR OF
BOILER/BURNER PLANT, MISCELLANEOUS GAS
EQUIPMENT AND BIOMASS BOILERS.

Prepared by:
Shropshire Council
Property Services Group
July 2019

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1. GENERAL CONDITIONS

1.1 Definitions

The following definitions are in addition to the definitions contained in the main body of this Agreement:

“**Budget Holder**” refers to the person/s responsible for the individual budget assigned to each Property. The Council has delegated responsibility for most of the Properties

covered under the scope of this Agreement, however it remains the Contractors responsibility to determine the individual arrangements for each Property.

Contract Administrator: means the officer appointed by the Council to manage the contract evidenced by this Agreement

“COSHH”: means Control of Substances Hazardous to Health Regulations 2002

“Method Statement”: means a documented statement detailing how the task will be undertaken and what controls measures will be put in place to address identified hazards.

“MEWPs”: means mobile elevated working platform – i.e. scissor lift.

“Normal Working Hours”: are defined as being between 08:00 and 17:00 Monday to Friday excluding any bank holidays

“Out of Hours”: refers to beyond the Normal Working Hours of Monday to Friday 08:00 to 17:00

Performance Monitoring System: means the RAG system adopted by the Council as more particularly described in this Specification and clause 28 of this Agreement

“Property” and “Properties”: – refers to the sites listed in Schedule 3 at which the Services shall be delivered and within the context of this Specification means in each case the entire premises where the inspection or repair work is to take place. This also covers the externals and roof of the Property or Properties.

“RAMS”: means risk assessment and method statement document.

“Service Personnel” refers to those members of the Contractor’s Personnel executing the Services on site.

“Skilled Person” refers to a person who possesses, as appropriate to the nature of the works to be undertaken, adequate education, training and practical skill, and who is able to perceive risks and avoid hazards involved in the delivery of the works encompassed by this contract.

1.2 General Contract Performance

The Council will operate a Performance Monitoring System under this contract as referred to in clause 28 of this Agreement, to enable the monitoring of the Contractor’s performance in respect of its obligations with regard to performance, price and quality.

The system will be a RAG (Red, Amber, and Green) traffic light system for any works done under the scope of the contract, this is also to include day works. Where the Contractor performs adequately and in accordance with the Council's requirements it will be recorded as 'Green', the Contractor will start with a Green status by default.

The monitoring areas will generally be, but are not restricted to:

1. Health and Safety/Insurance
2. Quality of Workmanship
3. Programme
4. Cost
5. Attendance

Examples of issues that could lead to an Improvement, Registration of Concern or Warning Notice being raised are repeated instances of:- H & S lapses on sites, Failures to produce timely H & S Plans/Manuals, unacceptable work, poor workmanship, use of non-specified materials without authorisation, inadequate control of sub-contractors, lack of adequate services commissioning, insufficient provision of resources, inadequate programming, failure to adhere to timescales/sectional completions, failure to provide financial information, untimely provision of final accounts.

A rating status can be notified at any time during the project but one will be recorded as a minimum at Practical Completion (if it is an Amber or Red, otherwise a Green will be assumed).

The system process steps are as set out in clause 28 of this Agreement.

Under exceptional circumstances an issue may be notified and recorded which would warrant an immediate "Red" notification being issued, similarly two notifications in the same monitoring area can result in the same action.

The RAG system will form part of the feedback process that will provide input into the Council's Key Performance Indicator system (KPI) together with Council Satisfaction feedback and Contract Administrator/Employers Agent evaluation.

1.3 General

The Contractor shall provide the Council with information to allow the Council to assess the competency of the Contractor and individual personnel carrying out the Services.

This shall include as a minimum requirement the names of the specific persons who may carry out the work. It shall also include details of the quality system operated by the Contractor.

The Contractor will obtain agreement from the Council before substituting alternative personnel before or during the contract.

All hazardous or inflammable materials brought onto site must be notified to the Council in compliance with the 'Control of Substances Hazardous to Health Regulations, 2002'. All hazardous waste generated during sampling must be removed from site by the Contractor in compliance with the 'Health and Safety at Work etc. Act 1974'.

All work and procedures shall be undertaken with due care to avoid damage to the contents and fabric of a Property

Results of the outcome of the Services may only be divulged to the Council's representative and other persons nominated by the Council.

1.4 Important Notes

The Contractor shall be responsible for visiting each Property to take its own measurements, site surveys, necessary particulars and shall make arrangements with each Property manager for gaining access to the relevant areas. Damage caused to any Property by the Contractor in gaining access to it or as a consequence of carrying out the Services shall be made good at the Contractor's own expense to the satisfaction of the Council and where applicable (if a Property is not under the control of the Council) the relevant Property site manager.

The Contractor shall have the means to comply with the terms of the contract, bearing in mind that the equipment within each Property will be of a differing manufacture.

The Contractor shall ensure that its Service Personnel shall carry a range of tools, suitable access equipment, equipment access keys, calibrated test instruments and any other necessary equipment to perform the Contractor's duties under this contract satisfactorily.

The Contractor shall provide supervisory staff to regularly monitor the performance and quality of the work of its Service Personnel.

The Contractor must ensure that all of its Contractor Personnel and Service Personnel exercise politeness, confidentiality and discretion during the course of carrying out the Services and behave in a responsible and respectful manner to all employees of the

Properties or any persons attending the Properties. The Contractor Personnel and Service Personnel shall wear suitable, respectable clothing and identity passes at all times.

The Services will be delivered on active Council sites and as such the normal operation of the site(s) shall not be interfered with by the Contractor and/or its Service Personnel. The Contractor shall at all times co-operate and liaise with the site manager of any Property about intended work schedules and limitations of access.

The Contractor shall ensure that it and its Contractor Personnel and Service Personnel report to the main office of a Property or main reception whenever they are visiting a site to 'book-in', and shall ensure that they 'book-out' when leaving a site on all occasions.

Asbestos Management Regulation –

The Contractor shall be aware that there is a mandatory requirement to read and sign the on-site Asbestos Register prior to the commencement of any work. All Service Personnel delivering the Services must be in possession of valid asbestos awareness training and copies of such training records must be submitted to the Council in advance of any work commencing on site at the Properties. The Contractor and its Service Personnel shall exercise extreme caution and remain vigilant when working on equipment, as existing asbestos inspection reports may not always reveal the presence of asbestos in internal units

1.5 Hours of Work

The Contractor shall not charge any Out of Hours rates to the Council for the delivery of Services where it has been notified in advance that the Services are required to be delivered to Properties outside of the defined Normal Working Hours

1.6 Identity Passes

The Contractor shall ensure that all of its Contractor Personnel and Service Personnel shall, at the Contractor's own expense, be provided with identification passes which meet the minimum acceptable standards of the Council. The identification passes shall contain:

- i) a current photograph of the wearer together with his/her name; and
- ii) the name of the company employing the wearer; and

iii) bearing an authorisation signature, provided by a senior manager/director of the wearer's employer; and

iv) the wearer's DBS number

The identity passes shall be encapsulated for protection and be available for inspection by Property staff or representatives of the Council, at any time while the Contractor Personnel and/or Service Personnel are on site.

1.7 General Health and Safety

Each working area of a Property shall be kept free of any litter or debris. The Contractor shall ensure that all public areas and pathways are left clear and free from hazards at all times and shall leave each Property clean and tidy on completion of the Services.

The Contractor shall provide its own suitable first aid facilities on site.

The Contractor shall ensure that all Contractor Personnel are provided with, and instructed to wear, proprietary personal protective equipment (PPE) where and whenever there is considered a potential risk of injury.

The Contractor shall at all time adopt the working practices as defined in the RAMS.

1.8 Legislation

The Contractor shall adhere to the following legislation (as a minimum) while carrying out the Services:

- The Health and Safety at Work Act 1974 (HASAWA)
- Workplace (Health, Safety and Welfare) Regulations 1992 (WHSWR)
- Management of Health & Safety at Work Regulations 1999 (MHSWR)
- Construction and Design Management Regulations 2015 (CDM)
- Lifting Operations & Lifting Equipment Regulations 1998 (LOLER)
- Personal Protective Equipment at Work Regulations 1992
- Personal Protective Equipment Regulations 2002
- Health and Safety (First Aid) Regulations 1981
- Control of Substances Hazardous to Health Regulations 2002 (COSHH)
- Electricity at Work Regulations 1989
- Regulatory Reform (Fire Safety) Order 2005 (RRFSO)
- Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013
- Manual Handling Operations Regulations 1992

- Provision & Use of Work Equipment Regulations 1998 (PUWER)
- Control of Noise at Work Regulations 2005
- Environmental Protection Act 1990
- The Control of pollution Act 1989
- Confined Space Regulations 1997
- Working at Height Regulations 2005 (WAHR)
- The Control of Asbestos Regulations 2012
- F-Gas Regulations 2015
- Regulatory Reform (Fire Safety) Order 2005 (RRO)
- The Gas Safety (Installation and Use) Regulations 1998

This is not a complete list of the relevant legislation and is presented only as a guide to assist the Contractor.

1.9 Risk Assessments and Method Statements

The Contractor shall carry out a detailed and recorded “Risk Assessment” and ‘Method Statement’ for the works.

The Contractor’s risk assessment shall identify what measures the Contractor needs to take to comply with the requirements and obligations imposed by the above-mentioned Health and Safety legislation. The Contractor shall provide a Method Statement with regard to:

- i) its means of access to allow for inspection and testing;
- ii) sequence and method of work; and
- iii) how it will deal with hazardous operations; and
- iv) for the following works;

- Demolition
- Steel erection
- Entry into confined spaces
- Handling and removal of asbestos
- Use of explosives (including cartridge tools)
- Roof works and other overhead work
- Contaminated sites or buildings
- Other high risk activities may also require a Permit to Work

In many instances method statements can form the control measures required by risk assessment and the document can be accepted as such.

All works forming part of the Services shall be carried out in strict accordance with the requirements of "The Work at Height Regulations 2005.

The Contractor shall ensure that all Contractor Personnel are suitably trained and experienced and competent to work at height.

1.10 Construction Phase Health and Safety Plan (CPP)

The Contractor shall provide a sufficiently detailed CPP that will demonstrate how the servicing element of the contract will be managed safely across all Properties encompassed by the contract. Individual CPPs will not normally be required where the delivery of Services is to be undertaken at more than one location

For all works that fall under the scope of Construction (i.e. outside of servicing), as defined under the CDM regulations, the Contractor shall ensure that a specific CPP is available on site and reflects the safety arrangements relevant to that site. For example, protection of the public, exposure to asbestos, electricity and confined spaces, etc.

In addition, suitably developed RAMS will routinely be required for the servicing element and any additional works identified by servicing. These will be available on site.

1.11 Control of Substances Hazardous To Health

All chemicals to be used as part of the servicing and cleaning process of the delivery of the Services shall be advised to the Contract Administrator complete together with all relevant COSHH Assessments and copy of the manufacturers Hazard Data Sheets for prior approval.

1.12 Data Protection

In addition to clause 18 of this Agreement, the Contractor shall:

- 1) adopt the British Standard for the secure destruction of confidential material (BS EN 15713:2009) applies to confidential information in all its forms. It requires companies to dispose of confidential information by shredding or disintegration. Confidential materials include paper records, computer hard drives and CDs/DVDs.
- 2) comply with BS EN 15713:2009 when transporting, storing and destroying documents.

3) Upon receipt of at least 7 days' notice, allow access to any relevant premises owned or controlled by the Contractor to inspect its data protection procedures and will, on the Council's request, prepare a report to the Council as to the Contractor's current technical and organisational measures used to protect any personal data.

1.13 Business Continuity

The Contractor shall have fully considered Business Continuity arrangements and shall develop robust Business Continuity Plans to minimise any effects on the delivery of the Services in the event that the Contractor's resources or operations are compromised as a result of an unplanned event or Force Majeure event as described in clause 35 of this Agreement. The Contractor shall make available upon request for inspection its Business Continuity plans which, as a minimum, shall detail contingencies in the event of the loss of, or reduction in, its staff, office facilities or IT infrastructure and craft operatives and/or sub-contractors and shall also give consideration to its supply chain management

1.14 Access to Plant and Equipment

The Contractor shall supply all suitable equipment, including ladders, platforms, MEWPs and mobile units etc., to gain access to all plant & equipment at each of the Properties at its own cost.

1.15 Transport

The Agreed Prices shall be deemed to include all transport and mileage costs for Contractor Personnel delivering Services

1.16 Recalls

Where the Council's Contract Administrator, following an inspection and test of the works and at its sole discretion, deems it necessary for the Contractor to repeat the Services, the Contractor shall ensure that it returns to the applicable Property to undertake the requested works within 28 days of being requested to do so at its own expense

1.17 Hazardous Situations

The Contractor shall notify the Contract Administrator's attention by telephone on Shrewsbury (01743 281052) in the event that a hazardous situation occurs or is likely to occur to the occupants of any Property.

1.18 Additions / Deletions of Properties

The Council may, during the Term, wish to add or delete Properties from Schedule 3 - Properties. Any such additions or deletions shall be effected by giving the Contractor one months' notice in writing and shall be effected without penalty to the Council. The floor area of a Property, if given, may also alter due to building or demolitions.

1.19 Contract Adjustments

For the purpose of additions and deletions of Properties, the amounts payable shall be adjusted by the tendered contract rates.

1.20 Authorisation of Work

All work to be carried out by the Contractor beyond the scope of this Specification shall be authorised in advance by the Council and Budget Holder before the work is undertaken.

The Council reserves the right to seek competitive alternative quotations for any works that fall outside the scope of this Agreement

1.21 Inspection of Work

The Contractor shall be required from time to time to partially dismantle and re-assemble any items of equipment upon request, as far as is reasonably practicable, to demonstrate the nature of the servicing work carried out and that the Services have been completed in accordance with the manufacturers and Council requirements. This is to include making available any faulty items or items replaced for inspection indicating the nature of the fault. No costs shall be incurred to the Council for this element of the contract.

1.22 Service Routines

The service routines outlined in the Servicing Schedule (Appendix A) are to be read in conjunction with British Standards and industry guidelines. These defined routines prescribe the base standard and shall not preclude any requirements of relevant legislation, regulations, guidance and manufactures instructions

1.23 Site Protection

The Contractor shall be responsible for the protection of the site, the works and the public against all theft, damage or injury and shall allow for all necessary watching and

lighting for the security of the works and protection of the public at each Property where it undertakes the Services.

The Contractor shall also erect and maintain any necessary temporary barriers or other means to protect and prevent accidental or unauthorised approach to potentially hazardous areas, such as incomplete plant or partially dismantled work platforms, unfenced drops, treated floor areas, hot or chemical processes etc. and remove on completion.

1.24 Taking of Photographs

Where the taking of photographs is necessary, the Contractor shall advise the Head teacher of school and college sites that its Service Personnel will be taking photographs, for inclusion with the formal servicing report. The Contractor shall ensure that it has obtained consent in writing from the relevant school or college Head teacher before any photographs are to be taken.

1.25 Items under warranty

If during the course of the delivery of the Services at a Property, the Contractor's inspection of the Property reveals items of new plant defective or incorrectly installed, the Contractor shall notify the Council as soon as reasonably practicable to enable the Council to advise the original installing contractor and to request that such defects be rectified under warranty.

1.26 Electrical Works

Any electrical work or work servicing and repairing electrical controls, components and wiring, shall be carried out by a Skilled Person in a manner to comply with B.S. 7671 Requirements for Electrical Installations – IEE wiring regulations as amended to date and BS5839-1 as amended to date.

All electrical works shall be in accordance with the Councils Standard Electrical Specification SP(E).

2. SPECIFIC REQUIREMENTS

2.1 Scope of Contract

The delivery of this Contract by the Contractor shall enable the Council to discharge their responsibilities under The Gas Safety (Installation and Use) Regulations 1998 in relation to boiler/burner plant and miscellaneous gas equipment.

The contract shall comprise of twice yearly inspection and maintenance of oil, gas (NG & LPG) fired and biomass boilers/burners, together with listed ancillary equipment and other miscellaneous oil and gas fired equipment installed on Council controlled premises along with those of other external clients to the Council, to ensure that they are maintained in a safe condition so as to prevent injury to any person or damage to any property.

It shall further comprise the provision of a breakdown service.

The inspection and maintenance service is intended to demonstrate compliance with:

1. Gas Safe Register
2. HSE Approved Code of Practice L56 Safety in the installation and use of gas systems and appliances Gas Safety (Installation and Use) Regulations 1998
3. Gas Safety (Management) Regulations 1996
4. Gas Appliances (Safety) Regulations 1995
5. Institute of Gas Engineers IGE/UP/11 Gas installations for educational establishments
6. Institute of Gas Engineers IGE/UP/1A Strength testing, tightness testing and direct purging of small low pressure industrial and commercial Natural gas installations
7. B.S. 5482 Code of practice for domestic butane and propane gas burning installations
8. The Health and Safety at Work etc. Act 1974
9. OFTEC Regulations
10. The Workplace (Health, Safety and Welfare) Regulations 1992
11. The Control of Pollution (Oil Storage) Regulations 2001

The visits to be within the months shown in the Schedule of Properties at Schedule 3 of this Agreement and shall not lapse the date given. Inspections are permitted to be undertaken up to 2 weeks early.

The Services shall also include remedial works required to repair existing equipment if found to be faulty subject to the prior approval of the Budget Holder and the Council in accordance with paragraph 2.8 of this Specification

The Contractor shall identify & report on all gas fittings which could potentially create a risk to health. Where a serious and immediate risk to health and safety is identified or suspected the Contractor shall:

1. Where an “At Risk” situation is encountered inform the Council at the earliest opportunity prior to implementing the Gas Industry Unsafe Situations Procedure.
2. Implement the Gas Industry Unsafe Situations Procedure without delay where and “Immediately Dangerous” situation exists and inform the Council at the earliest opportunity.

2.2 Agreed Prices

The Agreed Prices shall remain valid for the period of 1st December 2019 – 31st March 2021, thereafter the Contractor shall be entitled to submit a cost adjustment to the tendered figure on an annual basis that is in line with the Retail Price Index, and which is subject to the approval by the Council. The Council reserves the right to negotiate with the Contractor any proposed annual increase to its rates if in the Council's opinion the proposed increases are not justified.

Call Out Unit Cost

The fixed rates charged are to account for traveling to and from site, including any mileage costs, in addition to the first hour on site. These rates shall be fixed in accordance with this paragraph 2.2

The number of Call Out unit costs charged to each breakdown call shall be kept to a minimum by ensuring that relevant spares are carried by Service Personnel attending site.

Obtaining materials

No costs shall be charged for the time taken to obtain materials, with the exception of emergency repairs.

2.3 Programme of Work:

The maintenance of and repair of boiler/burner plant, miscellaneous gas equipment & biomass inspection shall be undertaken simultaneously. The visits shall be undertaken at the dates shown in Schedule 3 – Properties

The Service Programme shall comprise the following:

- Two service visits to each scheduled property, with a minimum period of 5 months between each service, together with complete equipment checks and cleans.
- One overhaul visit, together with a complete equipment check, boiler flue-way and combustion chamber clean. This shall be known as the **Summer Service**. It shall be carried out during the period 1st April to 30th September to a programmed agreed in advance with the Council.
- One inspection and service visit together with an equipment check. This shall be known as the **Winter Service**. It shall be carried out when equipment and plant is in use, during the period 1st October to 31st March, to a programme agreed in advance with the Council.
- Frequency of biomass boilers to go along the same lines as the above **Summer Service** and **Winter Service** can increase on the Council's choice.

2.4 Access

The Contractor shall make access arrangements at least two working weeks in advance with the Head or Manager of each Property, giving notification that access to the Property is required and to ensure that access will be available for the time required to undertake the Services.

The Contractor shall make access arrangements for all breakdown / repair calls they receive with the Property before attending site to ensure access can be granted. Failure to comply with this requirement shall result in the non-payment of abortive visit charges. The Contractor shall keep a record of the arrangements made and with whom to enable the Council to agree payment of abortive visit charges. Other than emergency call-outs, all work referred to in this Specification shall be carried out during Normal Working Hours unless local arrangements are made. Such local arrangements shall not incur Out of Hours payments or additional costs to the Council.

2.5 Abortive Visit Charges

In line with the requirements of paragraph 2.4 of this Specification, abortive visits shall only be charged in line with the Agreed Prices) and shall normally consist of a Call Out unit cost.

2.6 Spare Parts and Renewals

Rectification of highlighted defects shall only be undertaken in accordance with paragraph 1.20

The Contractor shall use only new genuine manufacturer's spares, except where otherwise directed, with all removed equipment to be removed from site and correctly disposed of at the Contractor's expense in line with relevant legislation. Reconditioned parts are not acceptable, except in circumstances where it is no longer possible to obtain equivalent new parts.

Random checks of replaced parts may be carried out by the Council. The Contractor shall reimburse the Council for any parts that are found to have been changed or replaced without good reason.

The Council reserves the right to request copies of supplier's invoices to verify cost mark-up against trade price of materials used against the values stated in the Tender.

The Contractor shall ensure that it sources all materials at the most competitive rates currently available to ensure best value to the Council at all times.

2.7 Live Working

A robust safe system of works shall be adopted at all times, as defined in produced RAMS, to minimise the dangers of any live working required during the delivery of the Services

The guidance contained within the Health and Safety Executive's guidance document HSG85 shall be adhered to at all times as a minimum.

2.8 Repairs at Time of Service

The Contractor shall, subject to obtaining the Budget Holders permission, undertake remedial works to correct non-functioning equipment up to a financial limit of £250 ("financial limit") at the time of a service visit. Repairs beyond this threshold will need to be subject to a written quotation as per paragraph 3.3. Any invoices received for repair works undertaken exceeding the threshold without prior written consent will be rejected and will not be paid.

The Contractor shall not undertake works to equipment at the time of carrying out a service where such equipment does not comply with current standards. Any works required to be carried out to such equipment shall be subject to paragraph 3.3 below.

The following Properties will not fall subject to the financial limit and will require a quotation submitting for **all** repairs works required:

- 1300 - Longlands Primary School ,Linden Way, Fairfields, MARKET DRAYTON, TF9 1QU
- 1880 - Grange Primary School ,Bainbridge Green, SHREWSBURY, SY1 3QR.
- 3610 - Shrewsbury Academy - Corndon Crescent Campus ,Corndon Crescent, SHREWSBURY, SY1 4LL
- 3620 - Shrewsbury Academy - Worcester Road Campus Worcester Road, SHREWSBURY, SY1 3LP
- 3622 - Shrewsbury Academy Headquarters Worcester Road, SHREWSBURY, SY1 3HY

3. SERVICE REPORTS

The Contract Administrator may, during the Term wish to amend the method of service reporting – i.e. uploading to the cloud. The Contractor agrees to comply with any revised method of reporting at no extra cost to the Council

3.1 Service Reports

The Contractor shall submit electronically within 7 days of the service a typed report containing the following information to the Contract Administrator:

1. Contractor's name and address and emergency contact details
2. Property number
3. Property name
4. Type of service
5. Date of service
6. Make, model and serial number of equipment
7. Location of equipment
8. Defects found
9. Defects corrected
10. Detailed description of parts fitted
11. Note if follow up quotation required for further works
12. Name and Signature of service engineer
13. Signature of a Responsible Officer on site

Hand written reports will not be accepted

3.2 Repair Works

For all repair works executed, the Contractor shall submit with their invoice a worksheet detailing the works undertaken, accompanied with any required report forms as recommended in the relevant British Standards: i.e. Modification Certificate from BS5839-1:2017; Minor Works Certificate from BS7671; etc.

3.3 Quotations

For all works that fall outside of the scope of the Services – i.e. repairs required which are not undertaken at the time of service (subject to the requirements of 1.20 and 2.8), the Contractor shall submit with its service reports an itemised quotation.

The quotation must include a full breakdown of costs, showing individual costs for materials and labour, to enable the quotation to be fully evaluated.

Subject to Budget Holder approval, the Council will issue the Contractor with an official order number to proceed if deemed necessary.

The Contractor shall use the agreed day rates when preparing quotations to ensure best value to the Council and to enable procurement without seeking alternative quotations.

Notwithstanding the above, the Council reserves the right to seek alternative quotations to monitor the Contractors performance and competitiveness. The Council reserves the right to place orders with other suppliers for repair works if their quotations are deemed to offer preferential rates.

4. INSPECTION PROCEDURES

The Services shall be carried out in accordance with the relevant British Standards and industry guidance.

The requirements of the inspection regime are detailed in the Servicing Schedule document (Appendix A). The Servicing Schedule prescribes the base standard and shall not preclude any additional requirements of relevant legislation, regulations, guidance and manufactures instructions. Where relevant legislation, regulations, guidance and manufactures instructions are more onerous, they shall be adhered to at no extra cost to the Council.

5. CALL OUTS AND EMERGENCY REPAIRS

The Contractor shall be required to provide a 24 hour 365 day per year emergency breakdown service. Answer phone services are not acceptable.

The Contractor shall be able to respond to instructions to attend an emergency breakdown by attending a site within **two hours** from the receipt of a request from the Council.

Breakdowns shall be given priority over planned service visits and must be completed within 24 hours from the receipt of a request from the Council unless otherwise agreed with the Council.

For breakdowns reported during Normal Working Hours the Contractor will be issued verbally with an order number, followed by an official order via email within 5 working days.

For breakdowns reported Out of Hours the Contractor shall obtain an order number from the Council on the next Working Day.

The charges and rates for breakdowns and emergency breakdowns i.e. labour rates, materials and travelling rates, together with any special conditions, shall be as agreed in the Agreed Prices.

The Contractor shall provide details of its Out of Hours Contract Personnel engaged to be available for the Out of Hours breakdown service. The details to be provided shall include names & contact numbers and shall be available at the Commencement Date. The Contractor shall update such details to reflect any revisions immediately following any such revisions. The Contractor shall also re-confirm the contact details prior to each annual extension of this Agreement and prior to times of public holidays e.g. Easter, Christmas etc.

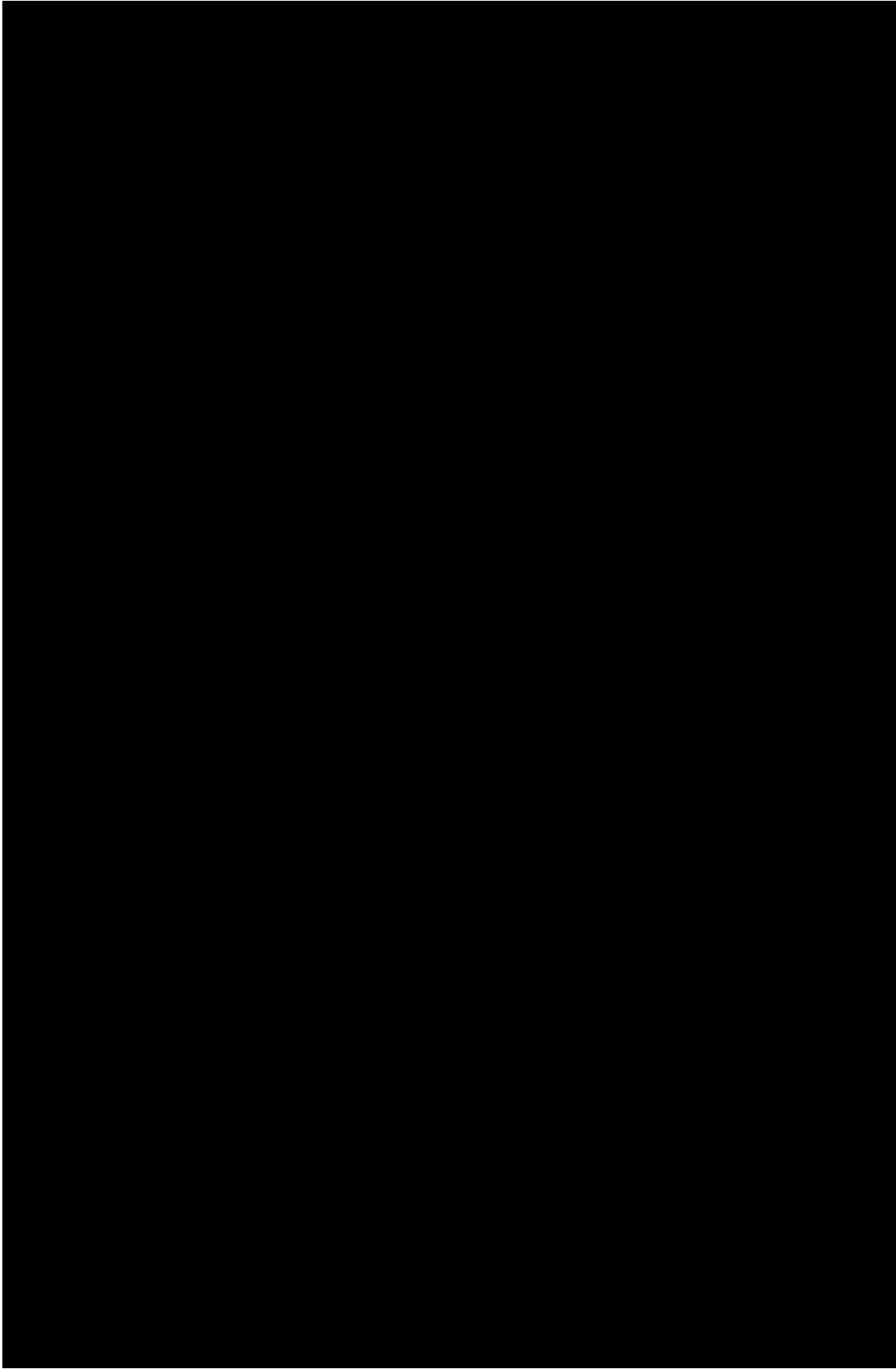
In the event of an Out of Hours call-out, the Contractor shall report to the person in charge of a Property to advise if they are unable to complete a repair and inform that person of the course of action that will be taken to remedy the situation i.e. obtaining replacement parts.

In the event of spares/parts not being available from stock or local suppliers the Contractor shall arrange for overnight delivery direct from the manufacturer to its agents.

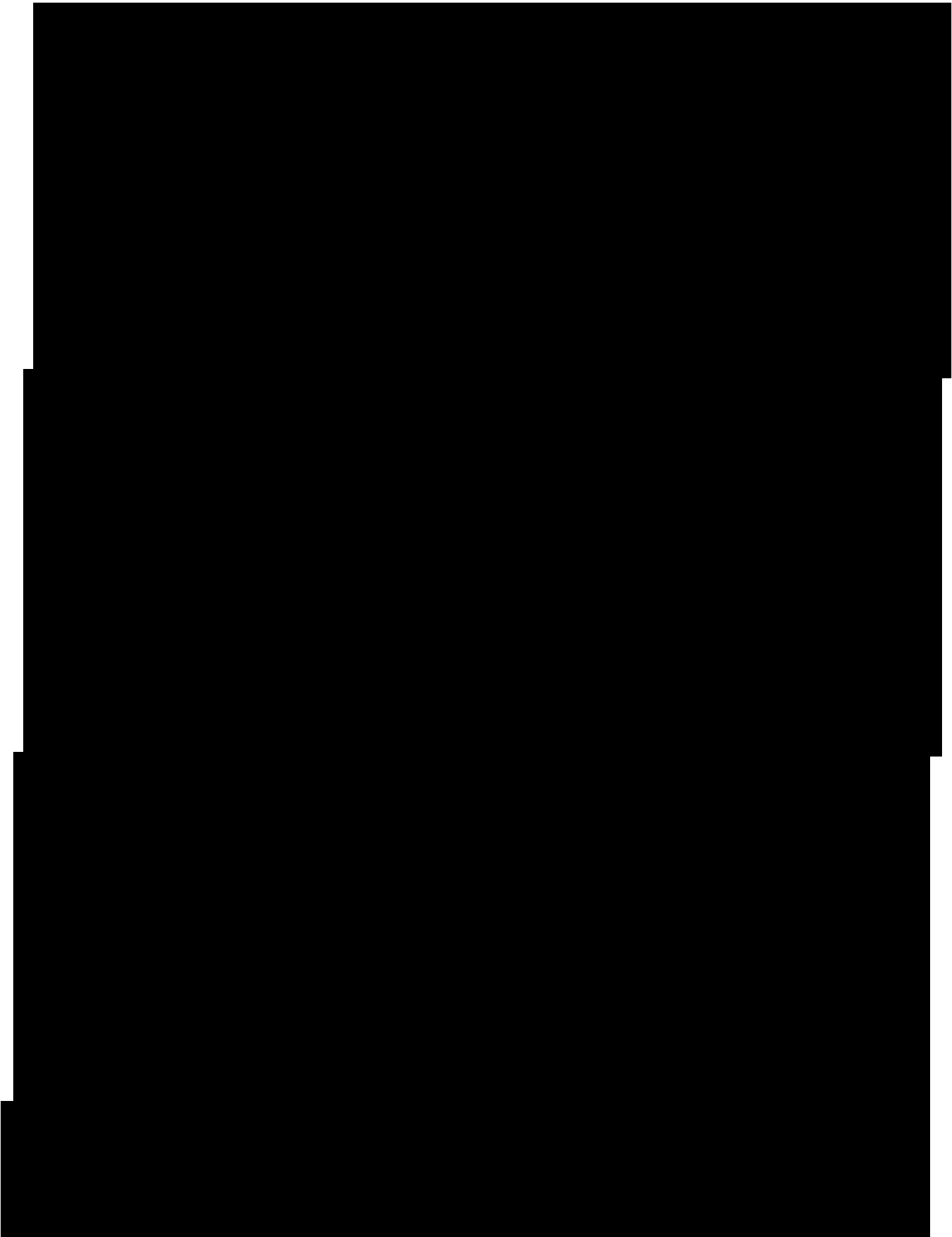
Schedule 2
Agreed Prices

[insert agreed rates from tender response]

Schedule 3
Schedule of Properties













[REDACTED]

[REDACTED]

[REDACTED]





SCHEDULE 4

TUPE AND PENSION CLAUSES

Section 1 EMPLOYMENT PROVISIONS

Unless otherwise stated in each Section, the following definitions shall apply:

Contractor Personnel: all directors, officers, employees, agents, consultants and contractors of the Contractor and/or any Sub-contractor engaged in the performance of the Contractor's obligations under this Contract;

Contractor's Final Personnel List: a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

Contractor's Provisional Personnel List: a list prepared and updated by the Contractor of all Contractor Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor and who are expected, if they remain in the employment of the Contractor or of any sub-contractor as the case may be until immediately before the termination date or the expiry date of the (as appropriate), would be Transferring Contractor Employees;

Data Protection Legislation means:

- i) all applicable Law about the processing of personal data and privacy; and
- ii) 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 including if applicable legally binding guidance and codes of practice issued by the Information Commissioner; and
- iii) to the extent that it relates to processing of personal data and

privacy, any Laws that come into force which amend, supersede or replace existing Laws including the GDPR, the (LED Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time including the DPA 2018

Direct Loss all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of reasonably and necessarily incurred legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from any Former Provider to the Contractor or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Contractor or Sub-Contractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11 of the Employment Regulations :

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Contractor arising out of the employee's employment with the transferor;
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive

Former Provider: a Contractor supplying services to the Council before the Service Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Contractor (or any sub-contractor of any such sub-contractor);

Indirect Losses means loss of profits (other than profits directly and solely attributable to carrying on of the Business), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

Notified Sub-contractor: a Sub-contractor identified in Annex D to whom Transferring Former Provider Employees will transfer on a Relevant Transfer Date;

Redundancy Costs: statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Contractor to the Redundant Transferring Employees, but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

Relevant Transfer: a transfer of employment to which the Employment Regulations applies;

Replacement Services: any services which are the same as or substantially similar to the Services and which the Council receives in substitution for any of the Services following the expiry or termination of Partial Termination of this Contract, whether those services are provided by the Council internally and/or by any third party;

Replacement Provider: any third party provider of Replacement Services appointed by the Council from time to time (or where the Council is providing replacement Services for its own account, the Council);

Replacement Sub-contractor: a sub-contractor of the Replacement Provider to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

Retendering Information: as defined in paragraph 6.10;

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-contractor to a Replacement Provider or a Replacement Sub-contractor;

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Contractor or Sub-Contractor to the Council or any Replacement Provider giving rise to a Relevant Transfer;

Staffing Information: in relation to all persons identified on the Contractor's Provisional Personnel List or Contractor's Final Personnel List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the Data Protection Legislation, but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other Employee Liability Information

Sub-Contractor: the contractors engaged by the Contractor to provide goods, services or works to, for or on behalf of the Contractor for the purposes of providing the Services to the Council.

Transferring Former Provider Employees: employees of a Former Provider whose contracts of employment transfer with effect from the Effective Date to the Contractor or Sub-Contractor by virtue of the application of the Employment Regulations. An indicative list of the Transferring Former Provider Employees, as at the date of execution of the Agreement, is attached at Annex C.

Transferring Contractor Employees: those employees of the Contractor and/or the Contractor's Sub-contractors wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry date or the termination date of the Contract to whom the Employment Regulations will apply

on the Service Transfer Date whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Service Provider

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Former Provider, Replacement Provider or Replacement Sub-contractor, as the case may be.

3. TRANSFER OF EMPLOYEES TO THE CONTRACTOR ON THE EFFECTIVE DATE

3.1 The Council and the Contractor agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Former Provider Employees shall transfer to the Contractor or Sub-Contractor. The Contractor shall comply and shall procure that each Sub-Contractor shall comply with their obligations under the Employment Regulations. The first Relevant Transfer shall occur on the Effective Date.

3.2 Not Used

3.3 Not Used

3.4 The Contractor shall be liable for and indemnify and keep indemnified the Former Provider against any Employment Liabilities arising from or as a consequence of:

- (i) any proposed changes to terms and conditions of employment the Contractor or Sub-Contractor may consider taking on or after the Effective Date;
- (ii) any of the employees informing the Former Provider they object to being employed by the Contractor or Sub-Contractor; and
- (iii) any change in identity of the Transferring Former Provider Employees' employer as a result of the operation of the Employment Regulations or as a result of any proposed measures the Contractor or Sub-Contractor may consider taking on or after the Effective Date.

3.5 The Contractor shall be liable for and indemnify and keep indemnified the Former Provider against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Former Provider Employees, and

any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.

3.6 The Contractor shall immediately on request by the Council and/or the Former Provider provide details of any measures that the Contractor or any Sub-Contractor of the Contractor envisages it will take in relation to any Transferring Former Provider Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Contractor will give confirmation of that fact, and shall indemnify the Council and any Former Provider against all Employment Liabilities resulting from any failure by it to comply with this obligation.

4. NOT USED

5. PROCUREMENT OBLIGATIONS

Where in this schedule the Council accepts an obligation to procure that a Former Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Council's contract with the Former Provider contains a contractual right in that regard which the Council may enforce, or otherwise so that it requires only that the Council must use reasonable endeavours to procure that the Former Provider does or does not act accordingly.

6. RETENDERING AND PRE-SERVICE TRANSFER OBLIGATIONS

6.1 The Contractor agrees that within 20 Working Days of the earliest of:

(a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer;

(b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;

(c) the date which is 12 months before the end of the Term; and

(d) receipt of a written request of the Council at any time (provided that the Council shall only be entitled to make one such request in any six month period),

it shall provide at no cost to the Council and in a suitably anonymised format so as to comply with the Data Protection Legislation, the Contractor's Provisional Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Personnel List and it shall provide an updated Contractor's Provisional Personnel List at such intervals as are reasonably requested by the Council.

6.2 At least 28 Working Days prior to the Service Transfer Date, the Contractor shall provide to the Council or at the direction of the Council to any Replacement Provider and/or any Replacement Sub-contractor:

- (a) the Contractor's Final Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
- (b) the Staffing Information in relation to the Contractor's Final Personnel List (insofar as such information has not previously been provided).

6.3 The Council shall be permitted to use and disclose information provided by the Contractor under clause 6.1 and clause 6.2 for the purpose of informing any prospective Replacement Provider and/or Replacement Sub-contractor.

6.4 The Contractor:

- (a) shall promptly notify the Council forthwith in writing of any material changes to the information provided pursuant to clause 6.1 and clause 6.2 as and when such changes arise; and
- (b) warrants, for the benefit of the Council, any Replacement Provider, and any Replacement Sub-contractor that all information provided pursuant to clause 6.1 and clause 6.2 shall be true and accurate in all material respects at the time of providing the information.

6.5 From the date of the earliest event referred to in clause 6.1(a), clause 6.1(b) and clause 6.1(c), the Contractor agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Personnel List and shall not without the approval of the Council (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Personnel List other than where any replacement is of

equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

(b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Contractor Personnel (including any payments connected with the termination of employment);

(c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;

(d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Personnel List;

(e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

(f) terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Personnel List save by due disciplinary process, and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Council or, at the direction of the Council, any Replacement Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Contractor or relevant Sub-contractor or received from any persons listed on the Contractor's Provisional Personnel List regardless of when such notice takes effect.

6.6 During the Term, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

6.7 The Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Council, any

Replacement Provider and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Council or, at the direction of the Council, to any Replacement Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Contractor's Final Personnel List who is a Transferring Contractor Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

6.8 The Council regards compliance with this paragraph 6 as fundamental to the Agreement. In particular, failure to comply with paragraphs 6.1 and 6.2 in respect of the provision of accurate information about the Transferring Contractor Employees shall entitle the Council to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 6.8 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Contractor's failure to comply with paragraphs 6.1 or 6.2, as the case may be.

6.9 Any change to the Staffing Information which would increase the total employment costs of the staff in the six months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

6.10 The Contractor shall indemnify and shall keep indemnified in full the Council and at the Council's request any Replacement Provider against all Direct

Losses arising from any claim by any party as a result of the Contractor or sub-contractor failing to provide or promptly to provide the Council and/or any Replacement Provider where requested by the Council with any information required under this Clause 6.1 to 6.4 inclusive (“the Retendering Information”) and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply to the extent that such information was originally provided to the Contractor or any sub-contractor by the Council and was materially inaccurate or incomplete when originally provided.

7. EMPLOYMENT REGULATIONS EXIT PROVISIONS

7.1 The Council and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Provider and/or a Replacement Sub-contractor. Such change in the identity of the Contractor of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Council and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Provider and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.

7.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees and other

employees or former employees of the Contractor or each Sub-contractor (who had been engaged in the provision of the Services) arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Provider and/or Replacement Sub-contractor.

7.3 Subject to clause 7.4, the Contractor shall indemnify the Council and/or the Replacement Provider and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission of the Contractor or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on and before the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to the Council and/or Replacement Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on or before the Service Transfer Date;

(e) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);

(f) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Transferring Contractor Employee for whom it is alleged the Council and/or the Replacement Provider and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

(g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Council and/or Replacement Provider to comply with regulation 13(4) of the Employment Regulations.

7.4 The indemnities in clause 7.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the

Replacement Provider and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

(a) arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

(b) arising from the Replacement Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

7.5 If any person who is not a Transferring Contractor Employee claims, or it is determined in relation to any person who is not a Transferring Contractor Employee, that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Provider and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

(a) the Council shall procure that the Replacement Provider shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Contractor; and

(b) the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Provider and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

7.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Council shall procure that the Replacement Provider shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

7.7 If after the 15th Working Day period specified in clause 7.5(b) has elapsed:

(a) no such offer of employment has been made;

- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Council shall advise the Replacement Provider and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

7.8 Subject to the Replacement Provider and/or Replacement Sub-contractor acting in accordance with the provisions of clause 7.5 to clause 7.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Provider and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of clause 7.7 provided that the Replacement Provider takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

7.9 The indemnity in clause 7.8:

(a) shall not apply to:

- (i) in any case in relation to any alleged act or omission of the Replacement Provider and/or Replacement Sub-contractor, any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
- (ii) any claim that the termination of employment was unfair because the Replacement Provider and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in clause 7.5(a) is made by the Replacement Provider and/or Replacement Sub-contractor to the Contractor within six months of the Service Transfer Date.

7.10 If any such person as is described in clause 7.5 is neither re-employed by the Contractor or any Sub-contractor nor dismissed by the Replacement Provider and/or Replacement Sub-contractor within the time scales set out in clause 7.5 to clause 7.7, such person shall be treated as a Transferring Contractor Employee

and the Replacement Provider and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

7.11 Not Used.

7.12 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Council and any Replacement Provider and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Council, the Replacement Provider and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Council shall procure that the Replacement Provider and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-contractor in writing such information as is necessary to enable the Contractor and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

7.13 Subject to clause 7.14, the Council shall procure that the Replacement Provider indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Contractor Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Provider and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Provider and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Contractor Employees which the Replacement Provider and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Replacement Provider and/or Replacement Sub-contractor to comply

with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

(d) any proposal by the Replacement Provider and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees on or after their transfer to the Replacement Provider or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Replacement Provider or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;

(f) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising after the Service Transfer Date;

and

(ii) in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising after the Service Transfer Date;

(g) a failure of the Replacement Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other

benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period from (and including) the Service Transfer Date; and

(h) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Replacement Provider or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

7.14 The indemnities in clause 7.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

7.15 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer to a Replacement Provider will be fulfilled.

7.16 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause 6 and 7, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Contractor or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

7.17 Despite clause 7.16, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Annex A. Admission Agreement – Not Used

Annex B. Transferring Council Employees – Not Used

Annex C. Transferring Former Provider Employees

Job Title	No Of eligible employees
Operations Manager	X 1
Senior Service Engineer	X 1
Service Engineer	X 1

(full details to be inserted upon award of contract)

Annex D. List of Notified Sub-contractors (details to be inserted upon award of contract)

Schedule 5
Key Performance Indicators

The Council shall monitor the performance of the Contractor's delivery of the contract.

The Contractor shall meet the following targets on delivery:

Item to be monitored	Target to be met
Adherence to schedule of delivery	95%
Reports received within 7 days of inspection	95%
Invoices received within 14 days of inspection	95%
Accuracy of report documentation	95%

The Council shall issue the Contractor, each calendar month, a report to highlight any overdue inspections based upon Schedule 3 - Properties .

Failure to achieve the required targets shall result in the Council evoking the procedures laid down in clause 28 of this Agreement

Schedule 6

Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Data Controller, who may take account of the view of the Data Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Data Controller's Data Protection Officer are: Information Governance Officer email: Information.Request@Shropshire.gov.uk
2. The contact details of the Data Processor's Data Protection Officer are: **[Insert Contact details]** **[To be inserted upon award of contract]**
3. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Data Controller and Data Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Contractor is the Data Processor in accordance with Clause 18.1.
Subject matter of the processing	The processing is needed in order to ensure that the Data Processor can effectively deliver the contract to provide a service to Property Services Group. The Data Processor will have access to names, phone numbers and email addresses.
Duration of the processing	Shall be for the Term of this Agreement
Nature and purposes of the processing	To enable services visits to be scheduled and to email service reports to be sent directly to the individual sites. To add and remove sites from the contract which will involve the addition and removal of personal data from the Schedule of Properties document.

Type of Personal Data	Name, telephone number, work address and email address.
Categories of Data Subject	Staff acting as contacts to the Contractor employed at the Properties
Plan for return and destruction of the data once the processing is complete UNLESS legal requirement to preserve that type of data	Data to be retained by the Contractor for the duration of the Term of this Agreement whereupon it is to be returned to the Data Controller upon termination.

Appendix A

Servicing Schedule

RMCB 032– PPM/SC/M02/2019 - MAINTENANCE OF BOILER/BURNER PLANT BIOMASS & MISCELLANEOUS GAS EQUIPMENT
SERVICING SCHEDULE

This Servicing Schedule details the servicing requirement of the Client in relation to the Provision of Maintenance of Gas Fired Catering Equipment, Gas Safety Checks, and Equipment Repairs. These requirements shall be read in conjunction with relevant industry standards and legislation. These defined routines prescribe the base standard and shall not preclude any requirements of relevant legislation, regulations and guidance. Where relevant legislation, regulations and guidance are more onerous, they shall be adhered to. If the Contractor is in any doubt of these requirements, they shall seek immediate clarification from the Client.

Item No.	Item	Action	Notes	Comments
1	General	<p>All gas related work shall be undertaken in accordance with the statutory provisions of The Gas Safety (Installation & use) Regulations 1998.</p> <p>The service work shall be carried out according to the provisions of the relevant ACOP, British Standards and industry guidance.</p> <p>The Service Programme shall comprise the following: -</p> <p>Two service visits to each scheduled property, with a minimum period of 5 months between each service, together with complete equipment checks and cleans.</p> <p>One overhaul visit, together with a complete equipment check, boiler flue-way and combustion chamber clean. This shall be known as the <u>Summer Service</u>. It shall be carried out during the period 1st April to 30th September to a programme agreed in</p>		

Item No.	Item	Action	Notes	Comments
		<p>advance with the Client.</p> <p>One inspection and service visit together with an equipment check. This shall be known as the <u>Winter Service</u>. It shall be carried out when equipment and plant is in use, during the period 1st October to 31st March, to a programme agreed in advance with the Client.</p> <p>Frequency of biomass boilers to go along the same lines as the above service <u>Summer Service</u> and <u>Winter Service</u> can increase at the client's discretion.</p>		
2	<p>Summer service Period 1st April to 30th September.</p> <p>Oil & gas fired boiler/burners and back boilers including associated equipment and miscellaneous gas equipment.</p>	<ol style="list-style-type: none"> 1. Strip down burner so that all parts can be examined & cleaned, with washers, gaskets and any worn or broken parts replaced. Reassemble boiler/burner. 2. Clean all combustion spaces including boiler, flue ways and transition pieces, removing by mechanical means all hard scale deposits, sulphur, soot and any other deposits. Remove all waste materials from site. 3. Remake loose or damaged flue pipe joints and/or damaged or worn boiler door joints. 4. Check operation of all emergency gas and oil 		

Item No.	Item	Action	Notes	Comments
		safety cut offs.		
		5. Check fuel lines for leaks and repair as necessary. A tightness test shall be carried out following repairs to gas pipework.		
		6. Check oil tanks, tank gauges & Watchman fill gauges for operation and leaks. Clean contents vision tube where fitted.		
		7. Inspect all thermostats, gauges and automatic air vents within the boiler house.		
		8. Check system performance and plant functions at high and low levels to ensure control integration is being obtained.		
		9. Inspect condition of insulation material within the boiler house and report any defective insulation. If insulation is damaged and thought to contain asbestos, then proceed in accordance with 'Control of asbestos regulations 2012' and notify the Client.		
		10. Run up to temperature burner/boiler on service and carry out complete combustion test using equipment approved by the Client but owned by the Contractor. Adjust the equipment to operate at maximum efficiency.		

Item No.	Item	Action	Notes	Comments
		11. Check for correct operation of all boiler control and limit thermostats and flame failure devices and report if defective.		
		12. Check flue stabiliser for correct operation and reset if necessary.		
		13. In the case of equipment listed in Equipment Schedule No. 2, i.e. Miscellaneous Gas Equipment, it will be sufficient to carry out a full service according to the equipment manufacturer's recommended service instructions, whilst incorporating as many of the tasks listed above as is practically possible.		
		14. Leave plant in a clean and tidy condition and report on service sheet any defects not rectified during the service visit.		
		15. Where installed, and provided adequate isolation valves are installed, strainers shall be stripped and cleaned appropriately and reassembled with new gasket if required	A separate unit cost shall be charged per strainer as per submitted tendered rates.	
		16. Where installed, and provided adequate isolation valves are installed, dirt separators shall be cleaned in line with manufacturers recommendation and gaskets replaced if required.	A separate unit cost shall be charged per separator as per submitted tendered rates.	

Item No.	Item	Action	Notes	Comments
3	Winter service Period 1st October to 31st March Oil & gas fired boiler/burners including associated equipment and miscellaneous gas equipment, excluding back boilers	1. Generally inspect boiler/burner and all accessible parts, clean nozzles, filters etc.		
		2. Check operation of all emergency gas and oil safety cut offs.		
		3. Check fuel lines for leaks and repair as necessary. A tightness test shall be carried out following repairs to gas pipework.		
		4. Inspect all thermostats, gauges and automatic air vents within the boiler house.		
		5. Inspect condition of insulation material within the boiler house and report any defective insulation. If insulation is damaged and thought to contain asbestos, then proceed in accordance with 'Control of asbestos regulations 2012' and notify the Client.		
		6. Carry out complete combustion test using equipment approved by the Client but owned by the Contractor. Adjust the equipment to operate at maximum efficiency.		
4	Biomass Service	1. Refectory Linings-Check condition		
		2. Boiler Flue way and Chamber-re-seal check for air leaks and seal as necessary		

Item No.	Item	Action	Notes	Comments
		3. Boiler –Reconnect test fire carry out adjust primary and secondary tertiary combustion checks. Test refit casing and thoroughly clean down.		
		4. Inspect, check for broken parts and clean conveyors, feeders, etc.		
		5. Clean off any clinker, report to client if any repairs are required.		
		6. Ash Removal-Inspect for wear and where operation automatic reset controls.		
		7. Automatic Ignition-Clean and Check Operation and reset.		
		8. General –Check all fuel supply valves for free operation.		
		9. Combustion Check-Start up system and carry out tests.		
		10. Thermostats, pressure sensors, altitude gauges and thermostats		
		11. Check for correct operation and settings.		
5	Gas Safety Checks	Undertake gas safety checks in accordance with the		

Item No.	Item	Action	Notes	Comments
		<p>procedures contained in, but not limited to IGEM/UP/10, IGEM/UP/11BS 6230:2011, BS 6644-2011, BS 6896-2011</p> <p>Deal with unsafe situations in accordance with IGEM/G/11</p> <p>The use of the CP series of certificate as per the format supplied by CorgiDirect is the preferred format. Others may be accepted at the Clients discretion.</p>		

Appendix B

Tender¹¹

¹¹ Delete if tender is not being attached



Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
Shropshire SY2 6ND

22nd October 2019

Dear Bidder

**RMCB 032 – MAINTENANCE & REPAIR OF BOILERS & BURNERS BIOMASS & OTHER
MISCELLANEOUS GAS EQUIPMENT**

SHROPSHIRE COUNCIL

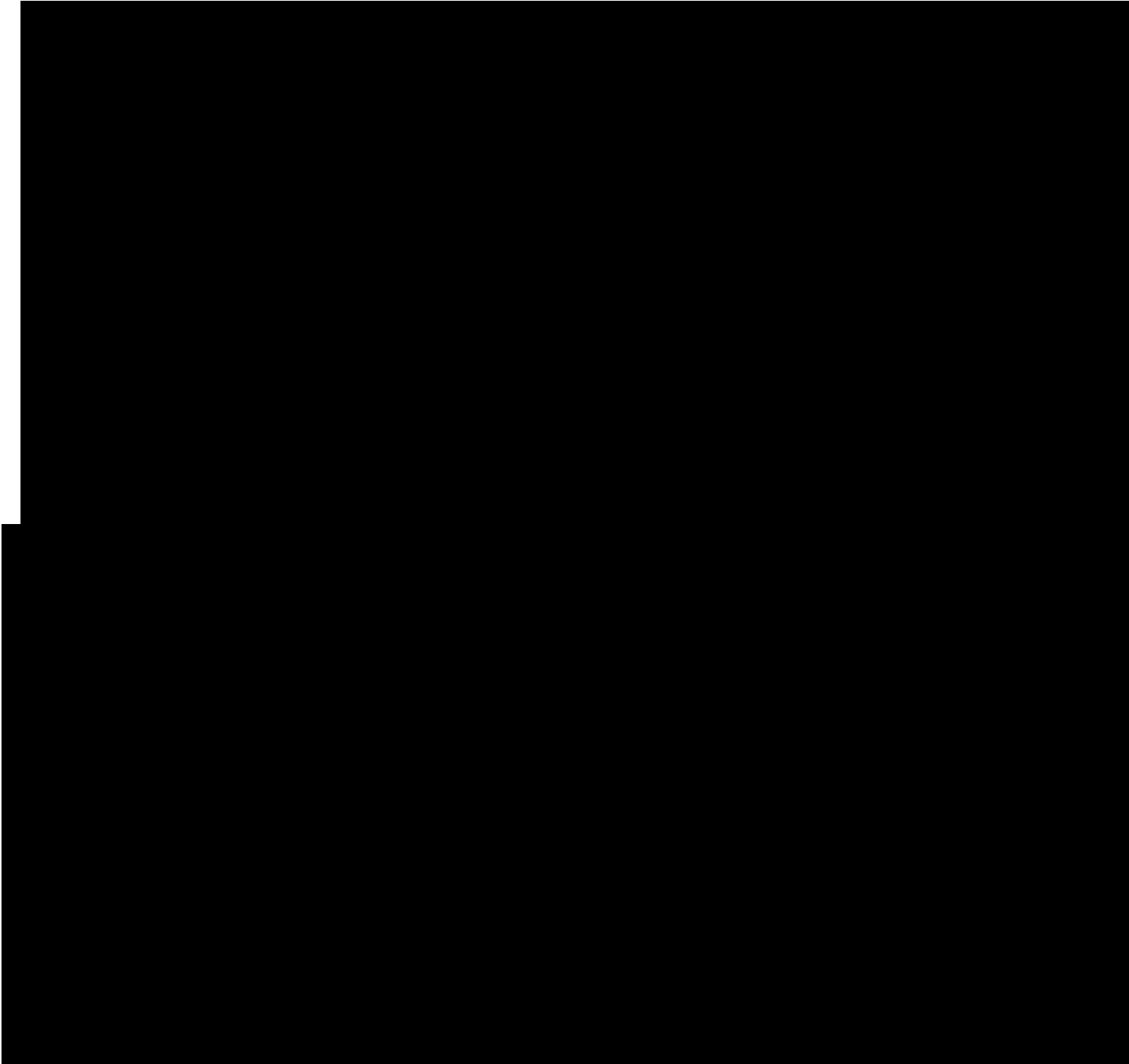
SUBJECT TO CONTRACT

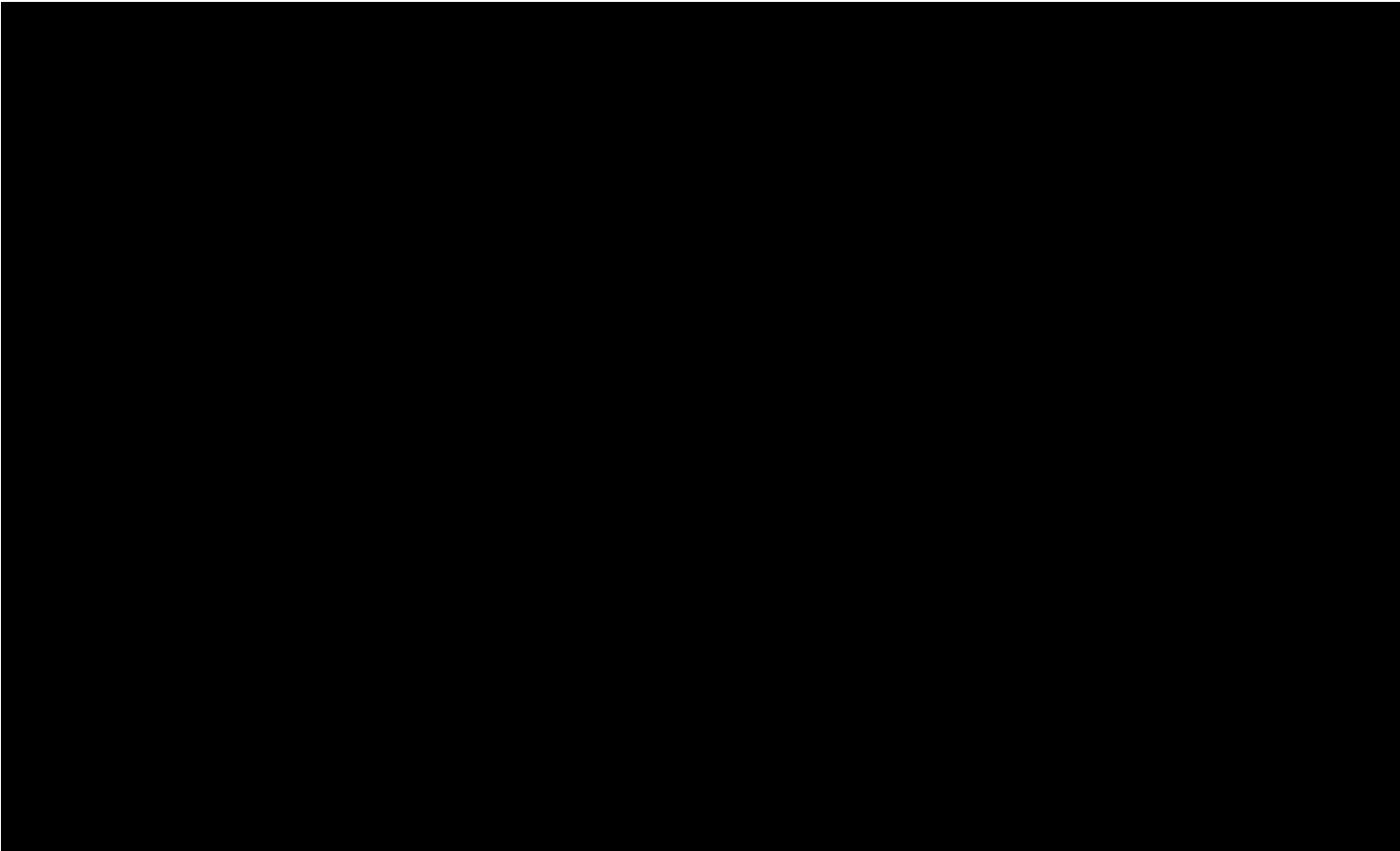
This is an Award Decision Notice pursuant to The Public Contracts Regulations 2015 (the "Regulations").

We are pleased to inform you that, following the evaluation process, Shropshire Council proposes to accept your offer in relation to the above Contract.



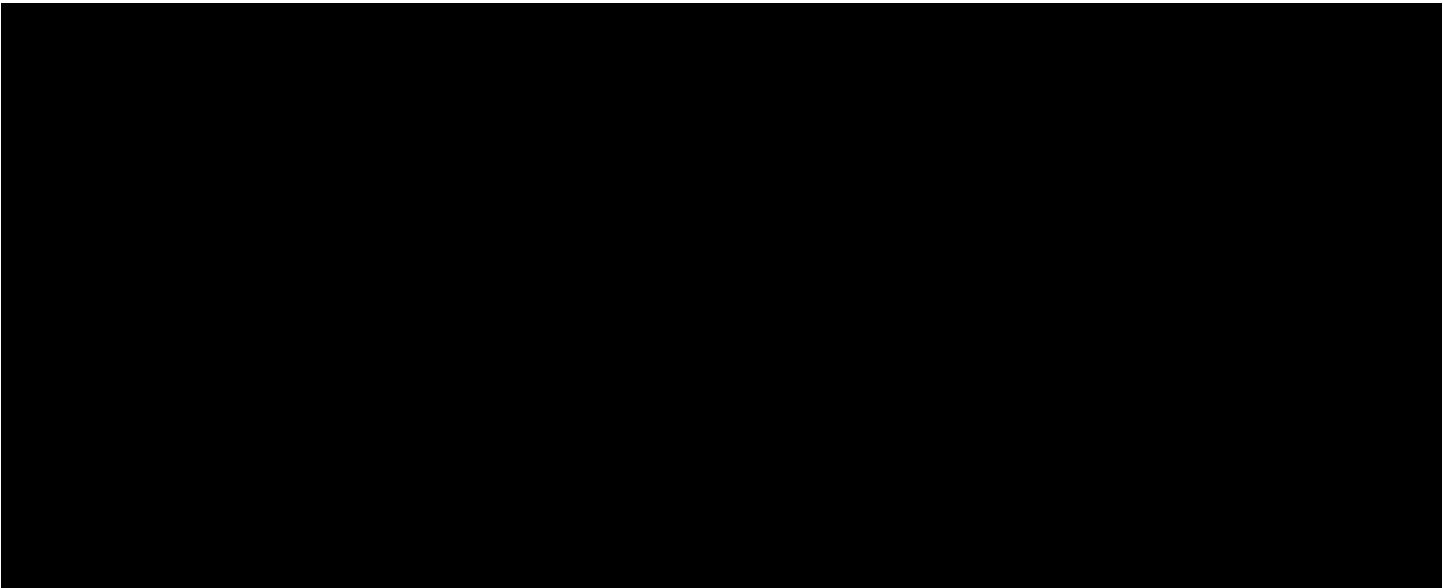
For your further information, we would confirm that your quality submission was scored against the published scoring scheme and the stated award criteria and received the marks set out:





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

Yours faithfully





Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
Shropshire SY2 6ND

Date: 6th November 2019

Dear Bidder

**RMCB 032 – MAINTENANCE & REPAIR OF BOILERS BURNERS BIOMASS & OTHER
MISCELLANEOUS GAS EQUIPMENT**

SHROPSHIRE COUNCIL

SUBJECT TO CONTRACT

I am pleased to inform you that, having received no notice of challenge during the mandatory standstill period that expired at midnight on 1st November 2019 Shropshire Council proposes to accept your offer for the Proposed Contract as set out in our previous letter to you dated the 22nd October 2019.

The information provided by the invitation to tender documentation and your tender response will form the basis of this contract. This contract is subject to the Form of Agreement included in the tender pack together with our invitation to tender documentation, copies of which you have already received and your tender response.

Yours faithfully

Commissioning Development & Procurement

