

**GB-Shrewsbury: DONV 024 - The Delivery of a Business Case and Implementation Plan for the River Clun Special Area of Conservation Catchment Area**

Competitive Contract Notice

1. Title: GB-Shrewsbury: DONV 024 - The Delivery of a Business Case and Implementation Plan for the River Clun Special Area of Conservation Catchment Area

2. Awarding Authority:

Shropshire Council

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

  
Contact: Procurement, Attn: Procurement

3. Contract Type: Services

Sub Type: Other services.

4. Description: Natural resources management or conservation strategy planning services. A commission to prepare a business case and implementation plan for a commercially beneficial model of delivery for Shropshire Council, using mitigation measures for residential development in the River Clun Special Area of Conservation (SAC) catchment to drive wider service delivery benefits. Whilst focused on unlocking development, the work will also need to demonstrate how wider social and environmental benefits linked to Shropshire Council's statutory responsibilities and corporate needs might be achieved alongside mitigation delivery. The aim is to identify the best way to finance and implement mitigation in the river Clun catchment in a way which also provides Shropshire Council with a holistic and cost-effective management approach which utilises rural growth and resilience.

5. CPV Codes:

90712400 - Natural resources management or conservation strategy planning services.

6. NUTS Codes :

UKG22 - Shropshire CC

7. Main Site or Location of Works, Main Place of Delivery or Main Place of Performance: Shropshire CC,

8. Reference Attributed by the Awarding Authority: DONV 024

9. Estimated Value of Requirement: Category I: 50K to 100K

Currency: GBP

10. Deadline for Expression of Interest: 21/09/2023 12:00:00

11. Address to which they must be sent:

Not Provided

12. Other Information:

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

<https://www.delta-esourcing.com/tenders/UK-GB-Shrewsbury:-DONV-024---The-Delivery-of-a-Business-Case-and-Implementation-Plan-for-the-River-Clun-Special-Area-of-Conservation-Catchment-Area/47PWJ58EUG>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/47PWJ58EUG>

Suitable for VCO: Yes

Procedure Type:OPEN

Period of Work Start date: 09/10/2023

Period of Work End date: 09/03/2024

Is this a Framework Agreement?: no

Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
Shropshire SY2 6ND

Date: 31<sup>st</sup> August 2023

Ref: DONV 024

Dear Bidder

**DONV 024 - THE DELIVERY OF A BUSINESS CASE AND IMPLEMENTATION PLAN FOR THE RIVER CLUN SPECIAL AREA OF CONSERVATION CATCHMENT AREA**

**SHROPSHIRE COUNCIL**

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

- Instructions for Tendering (for completion and return)
- Tender Response Document (for completion and return)
- Specification
- Draft Contract

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 21<sup>st</sup> September 2023** 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 or email
- Tenders are received after **12 noon on the given deadline**



[www.shropshire.gov.uk/doing-business-with-shropshire-council](http://www.shropshire.gov.uk/doing-business-with-shropshire-council)





## **INSTRUCTIONS FOR TENDERING**

**DONV 024 - THE DELIVERY OF A  
BUSINESS CASE AND IMPLEMENTATION  
PLAN FOR THE RIVER CLUN SPECIAL  
AREA OF CONSERVATION CATCHMENT  
AREA**

## Shropshire Council Instructions for tendering

### **Contract Description:**

A commission to prepare a business case and implementation plan for a commercially beneficial model of delivery for Shropshire Council, using mitigation measures for residential development in the River Clun Special Area of Conservation (SAC) catchment to drive wider service delivery benefits. Whilst focused on unlocking development, the work will also need to demonstrate how wider social and environmental benefits linked to Shropshire Council's statutory responsibilities and corporate needs might be achieved alongside mitigation delivery. The aim is to identify the best way to finance and implement mitigation in the river Clun catchment in a way which also provides Shropshire Council with a holistic and cost-effective management approach which utilises rural growth and resilience.

Please see the specification included in the tender documentation for further information.

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## **1.0 Invitation to Tender**

- 1.1 You are invited to tender for the the delivery of a business case and implementation plan for the River Clun special area of conservation catchment area as detailed in the Tender Response Document. The contract will be for a period of 6 months.
- 1.2 Tenders are to be submitted in accordance with the draft contract 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 contract 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, 21<sup>st</sup> September 2023**.

**4.2** No unauthorised alteration or addition should be made to the Specification and Tender Response Document, or to any other component of the Tender document. If any such alteration is made, or if these instructions are not fully complied with, the Tender may be rejected.

**4.3** Qualified tenders may be submitted, but the Council reserves the right not to accept any such tender. The Council's decision on whether or not a Tender is acceptable will be final.

**4.4** Tenderers should note that their Tender must remain open and valid and capable of acceptance for a period of at least 90 days.

**4.5** Tenderers should note that Tenders and supporting documents must be written in English and that any subsequent contract, which may or may not be entered into, its formation, interpretation and performance, shall be subject to and in accordance with the laws of England and subject to the jurisdiction of the Courts of England and Wales.

**4.6** Where Tender submissions are incomplete the Council reserves the right not to accept them.

## **5.0 Variant Bids**

**5.1** The Council is interested in alternative solutions which would provide and develop opportunities for savings in service costs, service improvement or other financial benefits. In particular, the Council wishes to encourage solutions which also deliver benefits and added value to the local economy, residents and the business community.

**5.2** Tenderers may submit, at their discretion, a Tender offering a different approach to the project as a “Variant Bid”. However, to permit comparability, at least one bid must be submitted strictly in accordance with the Invitation to Tender Documents( the “Compliant Tender”) . Any Tender variant proposed must clearly state how it varies from the requirements of the Compliant Tender Documents, and be explicit in demonstrating the benefits that will accrue to the Council from adopting this approach. Tenderers will be required to identify which submission, in their view, demonstrates best value to the Council.

**5.3** Variant Bids must contain sufficient financial and operational detail to allow any Variant Bid to be compared with the standard Tender, permitting its considerations in written form.

## **6.0 Tender Evaluation**

**6.1** The Tenderers may be called for interview to seek clarification of their tender or additional or supplemental information in relation to their tender. The presentations will not carry any weighting to the final score achieved by Tenderers, but will be used to clarify and moderate issues raised in the Tenderer’s submissions. Any areas of discrepancy between submissions and information gained from the presentations will be reviewed and scores previously awarded will be amended if necessary.

**6.2** If the Council suspects that there has been an error in the pricing of a Tender, the Council reserves the right to seek such clarification, as it considers necessary from the Tenderer in question.

## **7.0 Clarifications**

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

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

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

**7.4** All queries should be raised as soon as possible (in writing), in any event not later than **14<sup>th</sup> September 2023**.

**7.5** All information or responses that clarify or enhance the tendering process will be supplied to all Tenderers on a uniform basis (unless expressly stated otherwise). These responses shall have the full force of this Instruction and where appropriate the Conditions of Contract. If a Tenderer wishes the Council to treat a question as confidential this must be expressly stated. The Council will consider such requests and will seek to act fairly between the Tenderers, whilst meeting its public law and procurement duties in making its decision.

**7.6** Except as directed in writing by the Authorised Officer, and confirmed in writing to a Tenderer, no agent or officer or elected Member (Councillor) of the Council has any express or implied authority to make any representation or give any explanation to Tenderers as to the meaning of any of the Tender Documents, or as to anything to be done or not to be done by a Tenderer or to give any warranties additional to those (if any) contained in the ITT or as to any other matter or thing so as to bind the Council in any way howsoever.

## **8.0 Continuation of the Procurement Process**

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

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

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

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

## **9.0 Confidentiality**

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

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

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

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

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

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

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

**9.5** Tenderers may disclose, distribute or pass this Invitation to tender to their professional advisors, sub-contractors or to another person provided that:

**9.5.1** this is done for the sole purpose of enabling an Invitation to tender to be submitted and the person receiving the Information undertakes in writing to keep the Invitation to Tender confidential on the same terms as if that person were the Tenderer; or

**9.5.2** the Tenderer obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the Invitation to Tender; or

**9.5.3** the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement or to any Contract(s) which may arise from it; or

**9.5.4** the Tenderer is legally required to make such a disclosure.

**9.6** The Council may disclose detailed information relating to the Invitation to Tender to its officers, employees, agents, professional advisors or Governmental organisations and the Council may make any of the Contracts and procurement documents available for private inspection by its officers, employees, agents, professional advisors, contracting authorities or Governmental organisations.

## **9.7 Transparency of Expenditure**

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

## **10.0 Freedom of Information**

**10.1** Please note that from 1 January 2005 under the provisions of the Freedom of Information Act 2000, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. One of

the consequences of those new statutory responsibilities is that information about your organisation, which Shropshire Council may receive from you during this tendering process may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.

- 10.2** In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the Act, Shropshire Council may consider it appropriate to ask you for your views as to the release of any information before we make a decision as to how to respond to a request. In dealing with requests for information under the Act, Shropshire Council has to comply with a strict timetable and it would therefore expect a timely response to any such consultation within five working days.
- 10.3** If, at any stage of this tendering process, you provide any information to Shropshire Council in the expectation that it will be held in confidence, then you must make it clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as “commercial in confidence” will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be given.
- 10.4** Shropshire Council will not be able to accept that trivial information or information which by its very nature cannot be regarded as confidential should be subject to any obligation of confidence.
- 10.5** In certain circumstances where information has not been provided in confidence, Shropshire Council may still wish to consult with you as to the application of any other exemption such as that relating to disclosure that will prejudice the commercial interests of any party. However the decision as to what information will be disclosed will be reserved to Shropshire Council.

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

## **11.0 Disqualification**

- 11.1** The Council reserves the right to reject or disqualify a Tenderer's Tender submission where:
  - 11.1.1** The tenderer fails to comply fully with the requirements of this Invitation to tender or is in breach of clause 15 of the Council's General Terms and Conditions relating to Bribery and Corruption or is guilty of a serious or intentional or reckless misrepresentation in supplying any information required; or
  - 11.1.2** The tenderer is guilty of serious or intentional or reckless misrepresentation in relation to its tender return and/or the procurement process.
  - 11.1.3** The tenderer directly or indirectly canvasses any member, official or agent of the Council concerning the award of the contract or who directly or indirectly obtains or attempts to obtain information from any such person concerning any other Tender or proposed Tender for the services. The Canvassing Certificate must be completed and returned as instructed.
  - 11.1.4** The Tenderer :
    - a) Fixes or adjusts the amount of his Tender by or in accordance with any agreement or arrangements with any other person; or

- b) Communicates to any person other than the Council the amount or approximate amount of his proposed Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for preparation of the Tender for insurance purposes); or
- c) Enters into an agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender to be submitted; or
- d) Offers or agrees to pay or give or does pay or gives any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any Tender or proposed Tender for the services any act or omission.

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

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

**12.0 E-Procurement**

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

**13.0 Award of Contract**

**13.1 Award Criteria**

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

**13.2 Award Notice**

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

**13.3 Transparency of Expenditure**

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

#### **14.0 Value of Contract**

Shropshire Council cannot give any guarantee in relation to the value of this contract [only include next paragraph if the contract is a framework; to be awarded under this framework arrangement. Additionally, there is no guarantee that an individual framework supplier will be awarded any business under this agreement].

#### **15.0 Acceptance**

**15.1** Tenders must be submitted strictly in accordance with the terms of the Council's Invitation to Tender documentation and acceptance of the tender shall be conditional on compliance with this Tender Condition.

**15.2** The Tender documentation including the Council's draft form of contract, the Tender Response document and these Instructions to Tender shall form the basis of the final binding agreement between the Contractor and the Council.

**15.3** The Tenderer shall be prepared to commence the provision of the supply and services on the start date of the contract being 9<sup>th</sup> October 2023.

#### **16.0 Payment Terms**

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

#### **17.0 Liability of Council**

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

**17.2** The Council does not accept any responsibility for any pre-tender representations made by or on its behalf or for any other assumptions that Tenderers may have drawn or will draw from any pre-tender discussions.

**17.3** The Council shall not be liable to pay for any preparatory work or other work undertaken by the Tenderer for the purposes of, in connection with or incidental to this Invitation to Tender, or submission of its Tender response or any other communication between the Council and any other party as a consequence of the issue of this Invitation to Tender.



**17.4** The Council shall not be liable for any costs or expenses incurred by any Tenderer in connection with the preparation of a Tender return for this procurement exercise, its participation in this procurement whether this procurement is completed, abandoned or suspended.

**17.5** Whilst the Tender Documents have been prepared in good faith, they do not purport to be comprehensive nor to have been formally verified. Neither the Council nor any of its staff, agents, elected Members, or advisers accepts any liability or responsibility for the adequacy, accuracy or completeness of any information given, nor do they make any representation or given any warranty, express or implied, with respect to the Tender Documents or any matter on which either of these is based (including, without limitation, any financial details contained within the Specification and Contract Documentation). Any liability is hereby expressly disclaimed save in the event of fraud, or in the event of specific warranties provided within the Contract Documentation.

**18.0** The Contractor agrees that where requested in writing during the term of any Agreement for the supply Goods Works or Services it will ensure that an appropriately authorised representative of the Contractor shall attend a Committee meeting of the Council upon being invited to do so by the Council

**19.0** **Declaration**

We, as acknowledged by the signature of our authorised representative, accept that we have read and understood these Instructions to Tender and agree to be bound by them when submitting our tender response. We confirm that all the responses provided within our tender response are true and accurate and acknowledge and accept that, if successful in being appointed as the Contractor, our tender responses shall be included as part of the final binding agreement between the Contractor and the Council.



## **Tender Response Document**

**DONV 024 - THE DELIVERY OF A BUSINESS  
CASE AND IMPLEMENTATION PLAN FOR  
THE RIVER CLUN SPECIAL AREA OF  
CONSERVATION CATCHMENT AREA**

# Shropshire Council Tender Response Document

## **Contract Description/Specification:**

A commission to prepare a business case and implementation plan for a commercially beneficial model of delivery for Shropshire Council, using mitigation measures for residential development in the River Clun Special Area of Conservation (SAC) catchment to drive wider service delivery benefits. Whilst focused on unlocking development, the work will also need to demonstrate how wider social and environmental benefits linked to Shropshire Council's statutory responsibilities and corporate needs might be achieved alongside mitigation delivery. The aim is to identify the best way to finance and implement mitigation in the river Clun catchment in a way which also provides Shropshire Council with a holistic and cost-effective management approach which utilises rural growth and resilience.

Please see the specification included in the tender documentation for further information.

## **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**

<b>Section</b>	<b>Description</b>	<b>Page</b>
A1	Form of Tender	7
A2	Non-Canvassing Certificate	8
A3	Non-Collusive Tendering Certificate	9
A4	Declaration of Connection with Officers or Elected Members of the Council	10
<b>You must sign all 4 certificates in sections A1 to A4</b>		
B Part 1	Supplier Information– For information only	11
B Part 2	Grounds for Discretionary Exclusion	12
C	Tender and Pricing Schedule	15

## **Evaluation Criteria**

Tenders will be evaluated on the answers provided in this 'Tender Response Document'.

The evaluation will be undertaken in a three-stage process.

1. Stage 1 This is made up of pass/fail selection criteria and will determine whether tenders will be moved onto the stage 2 award evaluation.
2. Stage 2 (a) Specific capability evaluation. This information will be provided to assess capability for the innovation and commercial thinking needed for this work and will be judged on a pass or fail basis.
3. Stage 2 (b) award criteria evaluation which focuses on the detailed response to the scope of required services.

### **Stage 1 Selection Criteria Pass/Fail Questions (Section B Part 1 &2)**

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	Grounds for Discretionary Exclusion

For 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.

### **Stage 2 (a) Specific capability evaluation (Section B Part 3)**

This information will be provided to assess capability for the innovation and commercial thinking needed for this work and will be judged on a pass or fail basis. Applicants must pass this section to demonstrate their proven experience in taking business case approaches to local service delivery. Only applicants that pass this section will be taken forward for evaluation in the Stage 2 (b) Award criteria evaluation

### **Stage 2 (b) 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 'and show each criteria is to be weighted against each other is shown below.

Section / Question No.	Award Criteria	Weighting / Max Marks Available
<b>Price 40% (240 marks)</b>		
Section C 1.1	Price - Fee Proposal	200 max marks
Section C 1.2	Price - Work Programme	40 max marks
<b>Total for price</b>		<b>240 max marks</b>
<b>Quality 50% (300 marks)</b>		
Section C 2.1	Review of delivery models	8 / 80 max marks
Section C 2.2	Proposed business case demonstrating a commercial mindset	8 / 80 max marks
Section C 2.3	Delivery of implementation plan	8 / 80 max marks
Section C 2.4	Demonstration of innovative approach	3 / 30 max marks
Section C 2.5	Demonstration of wider systems thinking	3 / 30 max marks
<b>Total for quality</b>		<b>30 / 300 max marks</b>
<b>Social Value 10% (60 marks)</b>		
Section C 3	Social Value proposals	6 / 60 max marks
<b>Total for Social Value</b>		<b>6 / 60 max marks</b>

## Quality Questions/ Scoring Scheme

Questions within the section shown above will be scored using the following scoring scheme:

Assessment	Mark	Interpretation
<b>Excellent</b>	<b>10</b>	<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>
	<b>9</b>	
<b>Good</b>	<b>8</b>	<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>
	<b>7</b>	
<b>Acceptable</b>	<b>6</b>	<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>
	<b>5</b>	
<b>Minor Reservations</b>	<b>4</b>	<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>
	<b>3</b>	
<b>Serious Reservations</b>	<b>2</b>	<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>
	<b>1</b>	
<b>Unacceptable</b>	<b>0</b>	<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 300 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**

### **Section C Question 1.1 - Fee Proposal**

The most competitively priced tender will receive the maximum mark for price being **200**. **Less competitive tenders** will receive a % of the maximum mark that represents the difference in cost between that tender and the most competitively priced tender. The total fee should be calculated based on delivery of the three outputs: a preferred delivery model report, business case and implementation plan against the milestones set with the project timescale.

**Section C Question 1.2 - Work Programme** will be scored using the Scoring Scheme above. The tender receiving the highest initial mark for Work Programme overall will receive the full **40** marks available. 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.

## **Social Value Evaluation and Scoring**

Proposals for delivery of Social Value in accordance with Shropshire Council's Social Value Framework will be scored using the scoring scheme applied to responses in the 'Quality' section of this tender response. Where we have not set out any particular measures for you to consider we will take into account the nature and proportionality of your Social Value commitment in relation to this contract. Where we have set out measures for you to consider we will take into account the extent to which your response meets these particular requirements.

The tender receiving the highest initial mark for Social Value overall will receive the full **60** marks available for Social Value. 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 Social Value overall.

**Section A:**  
**1. Form of Tender**

Form of Tender

**Shropshire Council**

Tender for the delivery of a business case and implementation plan for the delivery of mitigation measures to enable residential development in the River Clun special area of conservation catchment area

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 delivery of a business case and implementation plan for the delivery of mitigation measures to enable residential development in the River Clun special area of conservation catchment area 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 of any other Tender or proposed Tender for the Services and that no person employed by me/us or acting on my/our behalf has done any such act.

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



Non-collusive Tendering Certificate

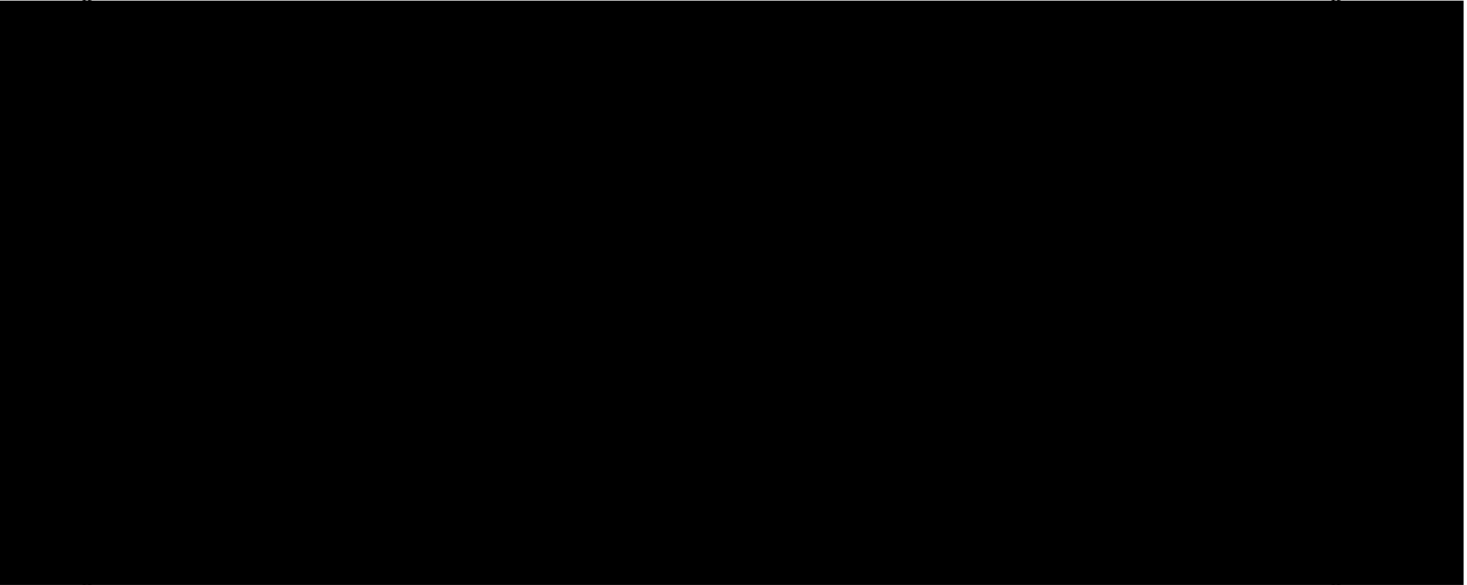
**To: Shropshire Council (hereinafter called “the Council”)**

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.

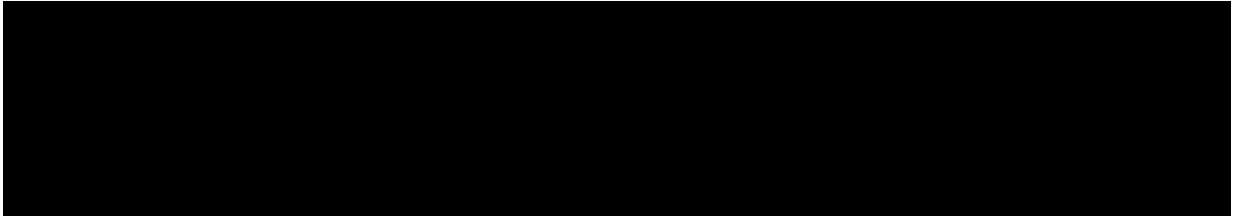


Name of tendering organisation:

**Section A:**

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

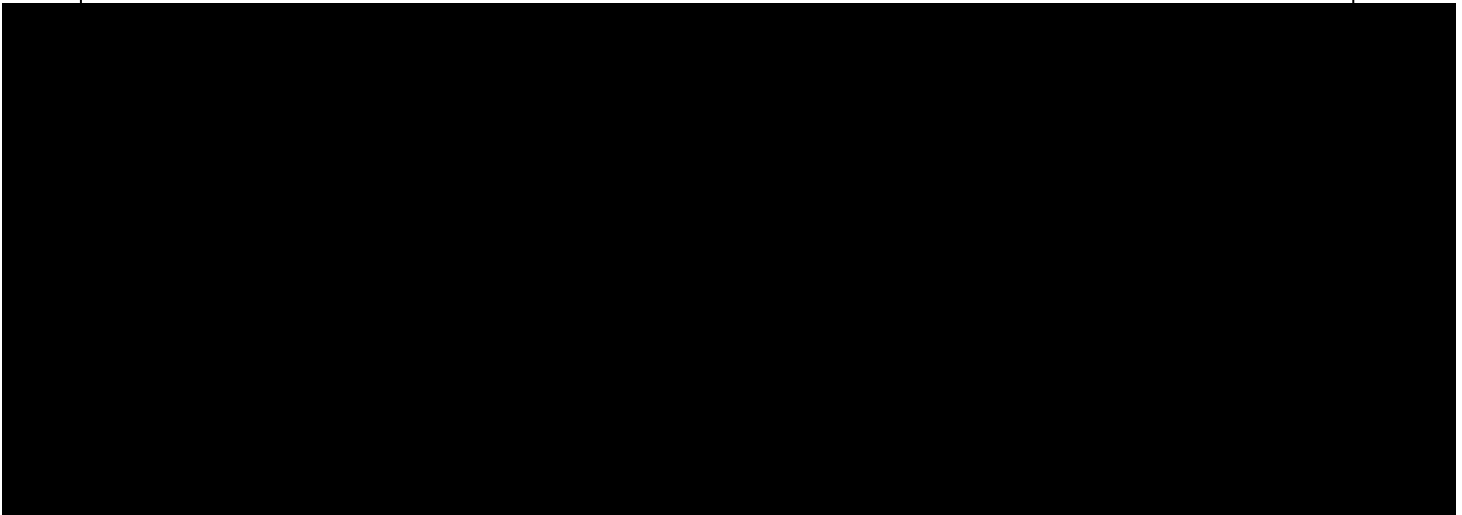
Are you or any of your staff who will be affected by this invitation to tender related or connected in any way with any Shropshire Council Elected Councillor or Employee?




***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.*

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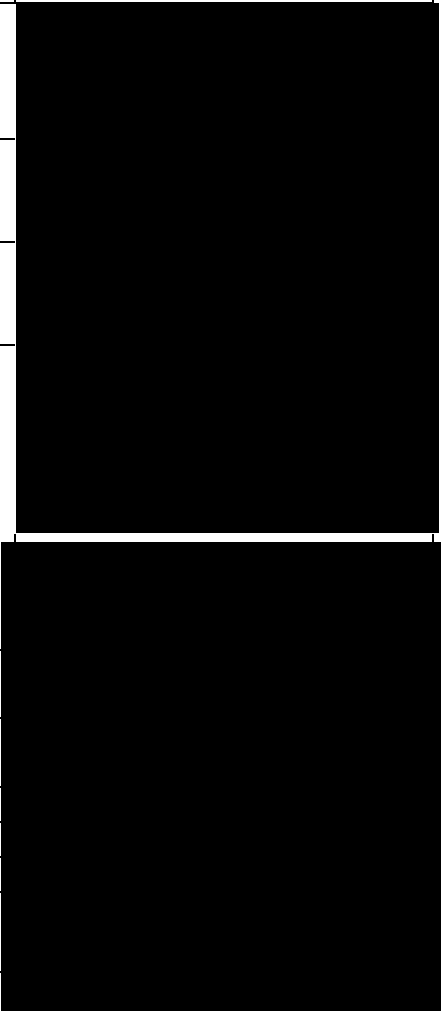


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Name of tendering organisation:

## Section B 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)	Are you a Small, Medium or Micro Enterprise (SME)?	

### 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	

## Section B 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 discretionary exclusion
	<b>Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015</b>
2.1	Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?
	If you have answered yes to question 3.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?

### 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.

Question number	Additional Questions
<b>3.1</b>	<b>Insurance</b>
	<p>Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:</p> <p style="background-color: black; color: black;">[REDACTED]</p> <p>Employer's (Compulsory) Liability Insurance = £5 Million</p> <p>Public Liability Insurance = £5 Million</p> <p>*It is a legal requirement that all companies hold Employer's (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders.</p>



<b>Skills and Apprentices 3.2 –</b>	
3.2 a.	Please confirm if you will be supporting apprenticeships and skills development through this contract.
3.2 b.	If yes, can you provide at a later stage documentary evidence to support your commitment to developing and investing in skills, development and apprenticeships to build a more skilled and productive workforce and reducing the risks of supply constraints and increasing labour cost inflation?

3.2 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/456805/27_08_15_Skills_Apprenticeships_PPN_vfinal.pdf)

### 3.3 – Compliance with equality legislation

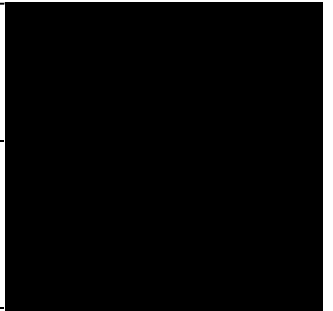
For organisations working outside of the UK please refer to equivalent legislation in the country that you are located.

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. 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?

### 3.4 – Environmental Management

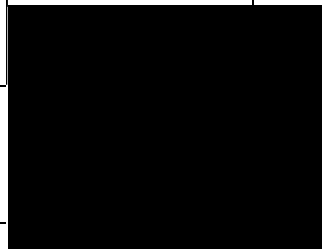
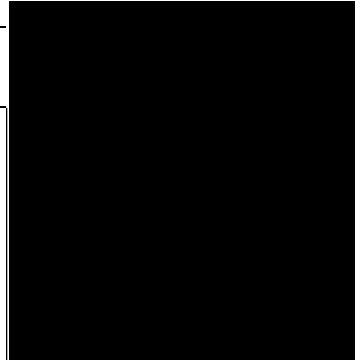
1.	<p>Has your organisation been convicted of breaching environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator or authority (including local authority)?</p> <p>If your answer to the this question is “Yes”, please provide details in a separate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



### 3.5 – Health & Safety

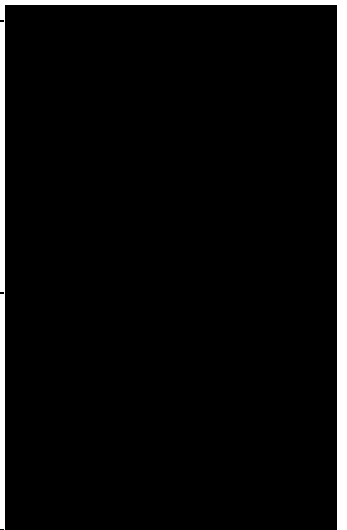
1.	Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements.
2.	<p>Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or 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?



### 3.6 Climate Impact / Carbon Reduction Plans

The Council has declared a climate emergency and is committed to achieving ‘net-zero’ carbon impact by 2030. Procured goods, works and services make up a significant proportion of the Council’s total carbon footprint. It is therefore important that all contractors take steps to understand the carbon impact of the goods, works or services they provide and are able to set out how they will work with the Council to help us achieve ‘net-zero’.

1.	<p>Please certify if your organisation has a Carbon Reduction / Climate Impact / Environmental Policy or Plan that aims to reduce your carbon footprint over the term of this contract.</p> <p>If your answer to this question was “Yes” and you are successful in this tender, we may ask you to submit a copy of your policy or plan.</p>
2.	<p>Does your organisation use a recognised tool to generate Climate Impact Statements and report the climate impact of your operations?</p> <p>If your answer to this question was “Yes” and you are successful in this tender, we may ask you to submit details of the reporting tool you use and any outputs from it.</p>



















- (C) The Contractor has the skills, background and experience in providing the Services required by the Council
- (D) The Contractor is willing to provide the Services as defined below and the Council is willing to appoint the Contractor to provide the Services in accordance with the provisions of this Agreement

NOW IT IS AGREED as follows:

1. **Definitions**

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

'Agreed Payment(s)'	Shall be the agreed amounts payable to the Contractor upon completion of each stage of the Services (Outcomes) in arrears as set out in the Tender
'Agreement'	means this Agreement
'Associated Person'	means in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest; 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
Brexit	Means the withdrawal of the United Kingdom from the European Union with effect from 31 <sup>st</sup> January 2020
'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.
'Budget'	Means the maximum amount of Funding in the sum of £75,000 (Seventy Five Thousand Pounds) inclusive of VAT available to the Council to fund the Services
'Business Continuity Plan'	means the Contractor's plan referred to in Clause 24.8 relating to continuity of the Services, as agreed with the Council and as may be amended from time to time
'Commencement Date'	9th October 2023
'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;
'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'	<p>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:</p> <p>(a) supplied to the Contractor by or on behalf of the Council; or</p> <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>
Covid 19	Means all forms and mutations of the viral infection (also known as Coronavirus) being the cause of a global pandemic prior to the Commencement Date and which may continue to have impacts upon general society during the term of this Agreement.
Covid 19 Safe Working Practices	Means working practices complying

	with all applicable guidance issued by the government from time to time with respect to safeguarding individuals from the spread of the Covid-19 virus
'Data Protection Legislation'	all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party
DEFRA	Department for Environment, Food and Rural Affairs
DLUHC	Department for Levelling Up, Housing and Communities
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.

‘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 such other date as this Agreement is terminated in accordance with its terms

‘Extension Period’

Means an extension to the duration of this Agreement as agreed between the Parties further to clause 2 of this Agreement

‘Fees’

shall be the Agreed Payments payable to the Contractor in arrears upon completion of each Outcome specified in the Specification subject to the limits of the Budget available

and inclusive of VAT and includes all expenses, materials, labour, plant, equipment, handling of materials and plant, tools and appliances, 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 Agreement

'FOIA notice'

means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner.

Force Majeure Event

means any circumstance not within a Party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or

breaking off of diplomatic relations;

- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- f) collapse of buildings, fire, explosion or accident; and
- g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on clause 35, or companies in the same group as that Party);
- h) non-performance by suppliers or subcontractors (other than by companies in the same group as the Party seeking to rely on this clause 35 (Force Majeure); and
- i) interruption or failure of utility service.

provided always that COVID-19 and Brexit and their impacts

including associated Government acts and regulations shall be treated as foreseeable by and within the control of the Parties

'Funding'

means the Funding provided to the Council by DEFRA and DLUHC

GDPR

Means the General Data Protection Regulation 2016/679 as they apply and are incorporated into UK law by UKGDPR

'Initial Term'

means a period of five calendar months commencing on the Commencement Date and expiring on the Initial Expiry Date

'Initial Expiry Date'

means 8th March 2024

'Intellectual Property Rights'

means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable

Law

means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, 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;

'Option to Extend'

means the Council's option to extend

	the Initial Term by a period of up to one calendar month commencing 9 <sup>th</sup> March 2024
Order Number	Means an order reference given by the Council to the Contractor which must be quoted on all Valid Invoices submitted for payment
'Outcomes'	means the targets, results or objectives set out in this Agreement and specified in the Specification
'Parties'	the Contractor and the Council and 'Party' shall mean either one of them
'PCR'	The Public Contracts Regulations 2015
Prevent Duty	Is the duty conferred upon the Council in the exercise of its functions to have due regard to the need to prevent people from being drawn into terrorism further to the Counter-Terrorism and Security Act 2015
'Prohibited Act'	the following constitute Prohibited Acts: <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function</li> </ul> </li> </ul>



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

‘Public body’

as defined in the FOIA 2000

‘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;
'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 Outcomes
'Services '	Means the preparation and delivery of a business case and implementation plan for the delivery of mitigation measures to enable residential development in the River Clun Special Area of Conservation catchment area 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

	<p>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.</p>
'Sub-Contractor'	<p>the third parties that enter into a Sub-Contract with the Contractor.</p>
'Tender'	<p>means the tender dated [.....]<sup>6</sup> submitted by the Contractor and accepted by the Council annexed to this Agreement in Appendix 1</p>
'Term'	<p>means the period commencing on the Commencement Date and expiring on the Expiry Date</p>
'Valid Invoice'	<p>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:</p> <p>1) invoices to be addressed to Shropshire Council at the address referred to above; and sent to <a href="mailto:Matthew.farmer@shropshire.gov.uk">Matthew.farmer@shropshire.gov.uk</a></p>

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<sup>6</sup> Where the tender is being annexed to this Agreement, please insert date of tender

- 2) submitted on the Contractor's business letterhead including the Contractor's name and address, and VAT registration number (where applicable); and
  - 3) details of the Outcome that has been completed and of the work undertaken to which payment relates; and
  - 4) the Council's official Order Number
- any day other than a Saturday, Sunday or public holiday in England and Wales.

'Working Day'

## **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'
- 1.2.10 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.
- 1.2.12 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 a further period of one calendar month commencing on 9<sup>th</sup> March 2024.
- 2.3** If the Council decides to exercise its Option to Extend the Initial Term it shall notify the Contractor in writing (which includes email) at least 2 weeks in advance of the expiry date of the Initial Term. Where the Parties

agree an Extension Period to the Initial Term the provisions of this Agreement between the Council and the Contractor shall be the terms to be applied to the Extension Period, SAVE FOR any agreed variations to such terms and/or to the Fees which shall be formalised in writing by way of a Variation Agreement and signed by the Parties in advance of the commencement of any agreed Extension Period.

- 2.4** If the Council decides that it does not wish to exercise its Option to Extend the Initial Term then this Agreement shall terminate on the Initial Expiry Date. Where an Extension Period has been agreed but the Council decides it does not wish to exercise its Option to Extend for any further Extension Periods then this Agreement will terminate on the last date of the applicable Extension Period. The provisions of clause 39 (Consequences of Termination) shall apply in each case

**3. Budget:**

- 3.1** The Council has allocated the Budget for the purposes of securing the delivery of the Services by the Contractor
- 3.2** The Parties agree that the Council is not bound to use all of the allocated Budget towards the delivery of the Services and that the Council shall not give any guarantee to pay all of the Budget to the Contractor or provide any guarantees as to the likely sums to be payable to the Contractor throughout the duration of this Agreement or any extension thereof. For the avoidance of doubt, the Fees payable to the Contractor shall not exceed the Budget.

**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 virtually or (subject to local or central government Covid-19 restrictions or guidance in place at the applicable time) in such places and locations as set out in the Specification and in accordance with Covid-19 Safe Working Practices
- 4.3** The Contractor shall use its best endeavours to deliver each of the agreed stages of the Services by the dates specified in the Specification

- 4.4** Not Used
- 4.5** The Services shall only be performed/delivered by the Contractor unless otherwise agreed in writing between the Parties
- 4.6** 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.
- 4.7** 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
- 4.8** 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
- 4.9** The Contractor shall carry out its own risk assessments relevant to the Services.
- 4.10** The Contractor shall have a written procedure for dealing with complaints about the Services in accordance with clause 33 (Complaints) hereof
- 4.11** 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
- 4.12** Not Used
- 4.13** 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 Services are being delivered as required and that the Outcomes are being achieved.
- 4.14** In the event that an informal review reveals that the Services are not being delivered as required or that Outcomes 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
- 4.15** The Review meeting shall record in writing any amendments to the Outcomes agreed between the Council and the Contractor.
- 4.16** Where following a Review, the Council acting reasonably determines that the Contractor has not delivered the Services as required or met the

Outcomes the Council may:

**4.16.1** 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 Outcomes 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

**4.16.2** 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 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. Unless otherwise agreed with the Council in writing such policy or policies of Public Liability and Employers Liability insurance shall provide for, in the case of Public Liability insurance, a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS) and in the case of Employer's Liability insurance a minimum indemnity limit of £10,000,000 (TEN MILLION POUNDS) for each and every claim.

**6.2** Not Used

**6.3** Where the Contractor is providing Services of a professional nature, or the Council otherwise specifies that professional indemnity insurance is required, the Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain policy cover which indemnifies the contractor for negligent acts arising out of the performance of this Agreement. To comply with its obligations under



this clause, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, Sub-Contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £2,000,000 (TWO MILLION POUNDS) in respect of each and every claim.

**6.3.1** The Contractor shall hold and maintain the insurances required under this clause 6.3 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 – NOT USED**

**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 in arrears following completion of each Outcome as set out in the three stages of the Services required in the Specification.
- 9.2** Not Used
- 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. The Council shall notify the Contractor within 5 Working Days of receipt of an invoice if such invoice is not considered to be a Valid Invoice.
- 9.4** In the event of late payment, 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** 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 Agreement
- 9.7** The Budget available is inclusive of VAT. Valid Invoices submitted for

payment by the Contractor shall be inclusive of VAT, charged 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 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** Subject to clause 13.2, the Parties shall keep confidential all matters relating to this Agreement and each Party shall use all reasonable endeavours to prevent their respective staff and Contractor Personnel from making any disclosure to any person of any matters relating hereto.

- 13.2** Clause 13.1 shall not apply to any disclosure of information:

**13.2.1** required by any applicable law, provided that clause 25.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;

**13.2.2** that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Agreement;

**13.2.3** where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 13.1;

**13.2.4** by the Council of any document to which it is a Party and which the Parties to this agreement have agreed contains no commercially sensitive information;

**13.2.5** to enable a determination to be made under clause 34 (Disputes);

**13.2.6** which is already lawfully in the possession of the Receiving Party, prior to its disclosure by the disclosing party;

**13.2.7** by the Council to any other department, office or agency of the Government; and

13.2.8 by the Council relating to this Agreement and in respect of which the Contractor has given its prior written consent to disclosure.

- 13.3 On or before the Expiry Date the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which relate to Personal Data of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.
- 13.4 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 – NOT USED**

**16. Not Used**

**17. Not Used**

**18. Data Protection**

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 and:

18.1 The Parties to this Agreement intend that all data shared between the Parties as part of the delivery of the Services shall be anonymised data and shall not constitute the sharing of Personal Data but:

- a) To the extent that any data constitutes Personal Data (or constitutes anonymised data, but then the data becomes Personal Data in the hands of the data recipient), the data recipient shall hold and process such Personal Data at all times:
  - (i) as Data Controller of the Personal Data;
  - (ii) in accordance with Data Protection Legislation; and
  - (iii) using appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, the Personal Data.

18.2 The Provider shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Council arising directly out of or in connection with the breach of the Data Protection Legislation by the Provider and/or its employees

**19. Council Data and Personal Data Audits – Not Used**

**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
- 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 Contractor; 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** it will use its best endeavours to achieve the Outcomes

**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** it shall comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans and must, unless otherwise agreed by the Parties in writing, maintain and regularly provide the Council with up-to-date copies of a Business Continuity Plan and must notify the Council as soon as reasonably practicable of its activation (if an interruption has a direct impact on the Council) and in any event no later than 5 Working Days from the date of such activation. Where, for whatever reason, there is a suspension of all or part of the Services the Contractor will, where applicable, implement the relevant parts of the Business Continuity Plan to ensure that there is no interruption in the availability of the relevant part of the Services
- 24.9** The Contractor and the Contractor Personnel shall where appropriate take account of the Human Rights Act 1998, be aware of it, respect the rights of colleagues, service users, carers and the public 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** NOT USED
- 24.10.3** NOT USED
- 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, 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 the Expiry Date or termination of this Agreement

**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 to discuss any issues arising from this contract
- 24.16** In performing its obligations under this Agreement, the Contractor shall and shall ensure that each of its sub-contractors shall :
- 24.16.1**
- i) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (“Anti-Slavery Laws”) including but not limited to the Modern Slavery Act 2015;
  - ii) include in contracts with its sub-contractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 24.16; and
  - iii) notify the Council as soon as it becomes aware of any actual or suspected breach of clause 24.16.1 or such actual or suspected breach of Anti-Slavery Laws by its sub-contractors and other participants in its supply chain and shall provide reasonable assistance to the Council, including

access to the Contractor's premises and staff, to allow the Council to carry out an audit of the Contractors anti-slavery and human trafficking procedures or those of its sub-contractors or participants in its supply chain.

- 24.16.2** The Contractor represents and warrants that neither it, nor any of its officers, employees or agents have been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 24.16.3** Breach of this clause 24.16 shall be deemed a material breach under clause 37 (Termination).
- 24.17** The Contractor shall at all times comply with the general duty imposed on local authorities by the Prevent Duty and observe the requirements of the statutory guidance issued by the government from time to time further to the Counter-Terrorism and Security 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 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 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 non-compliance notice, the Council may send the Contractor a final non-compliance notice detailing
- (i) the areas of non-compliance;
  - (ii) the action to be taken; and
  - (iii) the date by which 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).
- 28.3** If, in the reasonable opinion of the Council, the Contractor fails to undertake all of the remedial actions in the final non-compliance notice by the due date this 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) 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 Contractor'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 Contractor 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 Contractor 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 Contractor 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 the Centre for Effective Dispute Resolution or such other mediation body as the Parties shall agree and the Parties shall then seek to resolve the dispute or difference amicably by using an alternative dispute resolution ("ADR") procedure (other than arbitration) acceptable to both Parties before pursuing any other remedies available to them. Each Party shall pay its own costs of such a 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 one month's 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;

**38.3** The Council may terminate this Agreement forthwith by notice where the Contractor:

**38.3.1** is convicted of any offence the effect of which under the provisions of any legislation would prevent the Council from contracting with him or maintaining any existing contractual relationship

**38.3.2** is issued with a Notice from the Health and Safety Executive or Registration Body prohibiting it from operating

**38.3.3** assigns any of his obligations under this Agreement without the prior written consent of the Council



- 38.3.4** the Contractor 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.
- 38.3.5** the Contractor 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;
- 38.3.6** the Contractor ceases to carry on its business or substantially the whole of its business; or
- 38.4** This Agreement is contingent upon funding from government and the Council can in no way warrant represent or guarantee the continuation of this funding. In the event that the government withdraws funding the Council may terminate this Agreement in whole or in part by serving reasonable written notice on the Contractor
- 38.5** Where notice to terminate is given pursuant to this clause 38, this Agreement shall terminate with effect on the date specified in the notice
- 38.6 Termination in accordance with PCR Regulation 73**

The Council shall have the right to terminate this Contract where:

- 38.6.1** this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the PCR;
- 38.6.2** the Contractor has, at the time of award of the Contract, been in one of the situations referred to in Regulation 57(1) of the PCR including as a result of the application of Regulation 57(2) of the PCR, and should therefore have been excluded from the procurement procedure;
- 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)– NOT USED**

**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 Guarantee – NOT USED**

**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, 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.

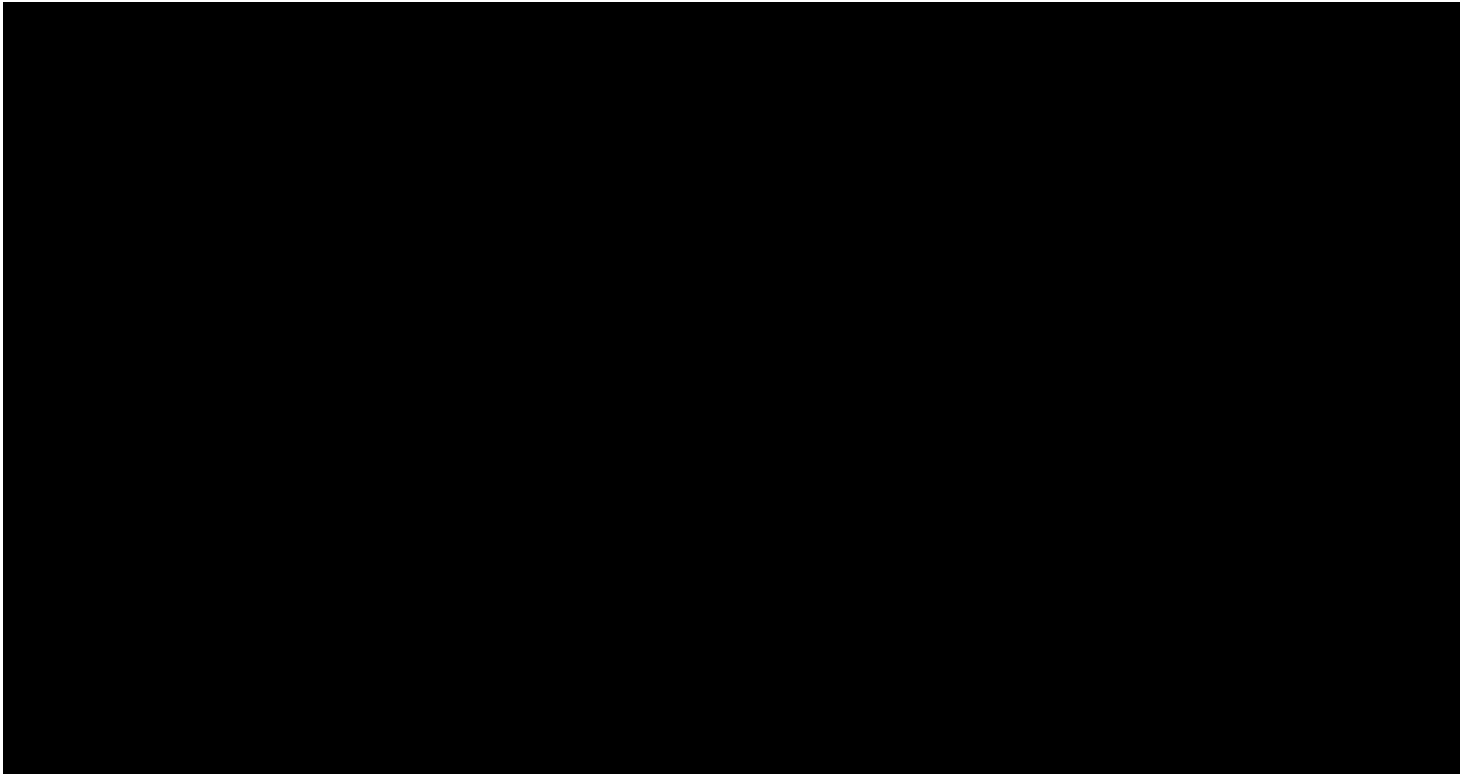
**49. Entire Agreement**

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**



<sup>7</sup> Insert the contractors name







































Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
Shropshire SY2 6ND

Date: 13<sup>th</sup> November 2023  
My Ref: DONV 024  
Your DONV 024  
Ref:

Dear Bidder

**DONV 024 - THE DELIVERY OF A BUSINESS CASE AND IMPLEMENTATION PLAN FOR THE RIVER CLUN SPECIAL AREA OF CONSERVATION CATCHMENT AREA**

**SHROPSHIRE COUNCIL**

**SUBJECT TO CONTRACT**

This is an Award Decision Notice.

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

A voluntary standstill period is now in force; this period will end at midnight on 23rd November 2023. Shropshire Council will not enter the proposed contract before this date.

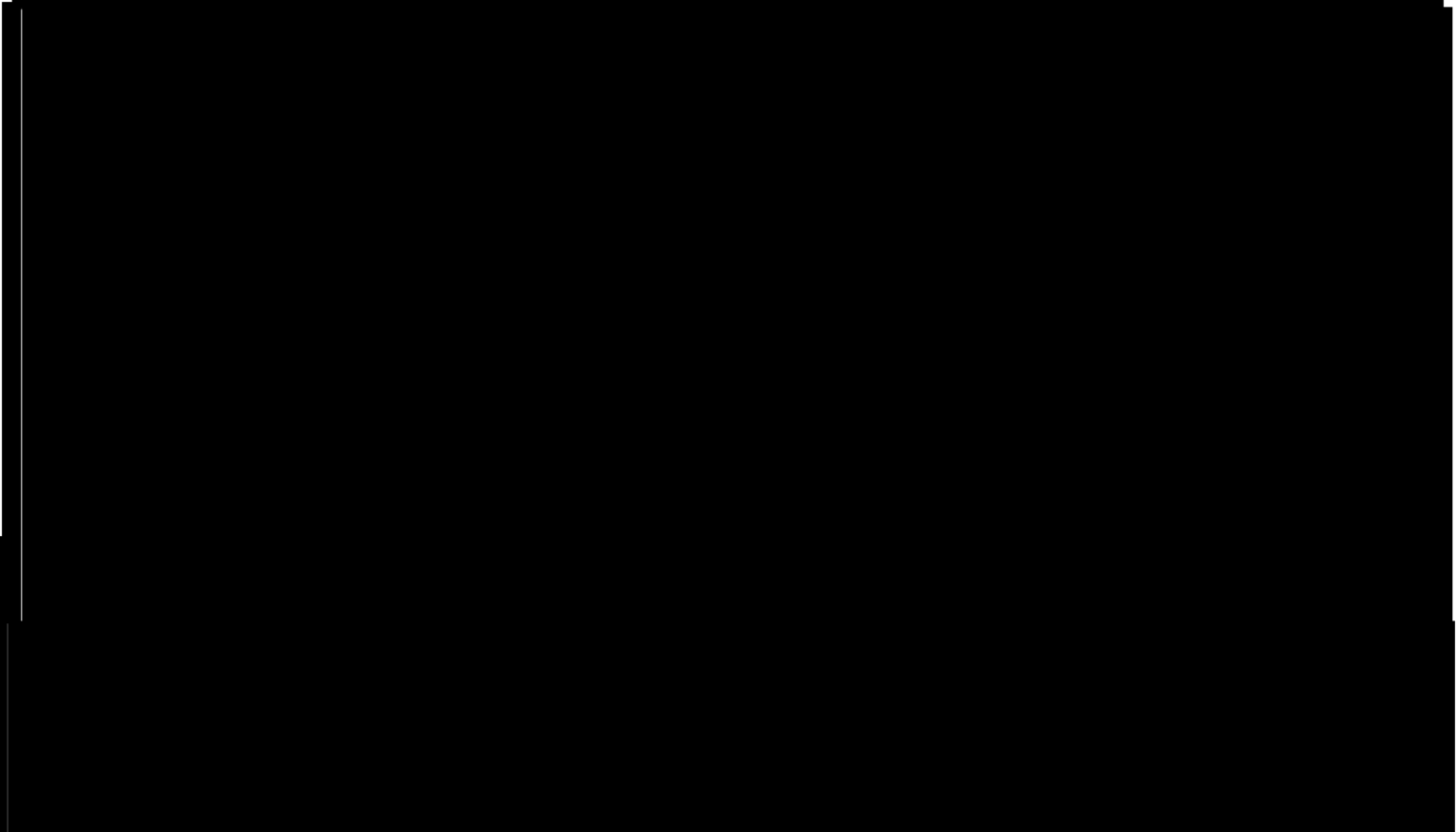
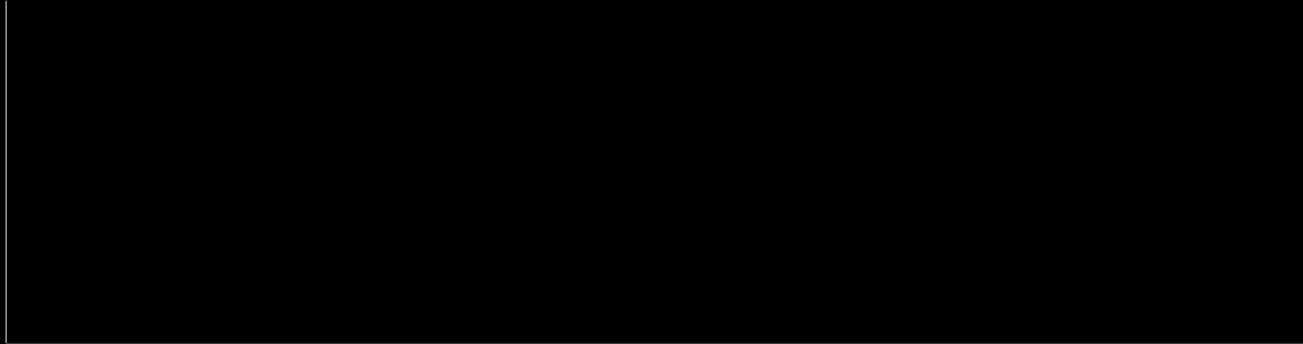
This letter is not, at this stage, a communication of Shropshire Council's formal acceptance of your bid.

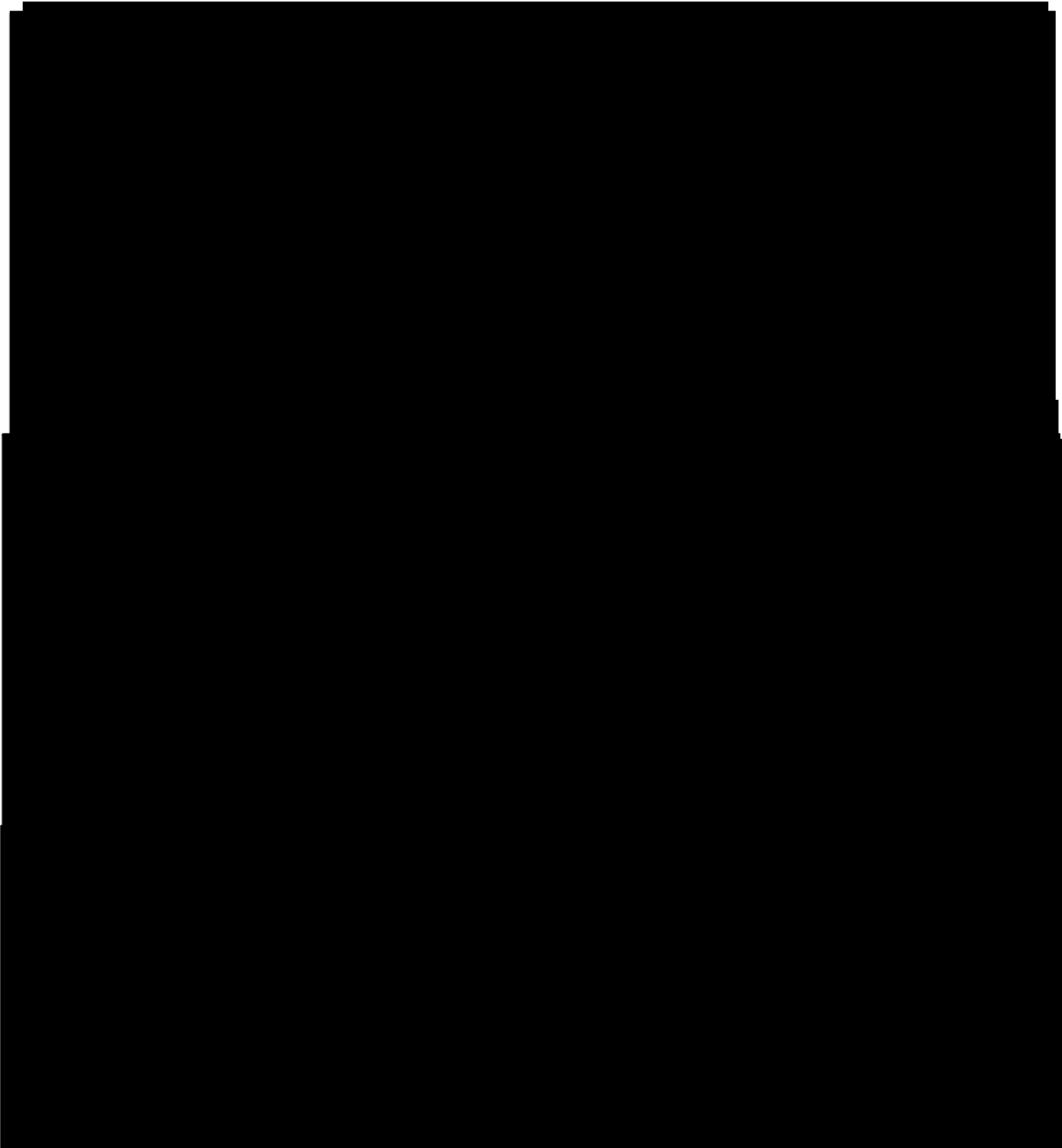
This award notification is subject to the executing of the contract document and you now providing copies of your relevant insurance certificates together with confirmation from your insurance brokers that:-

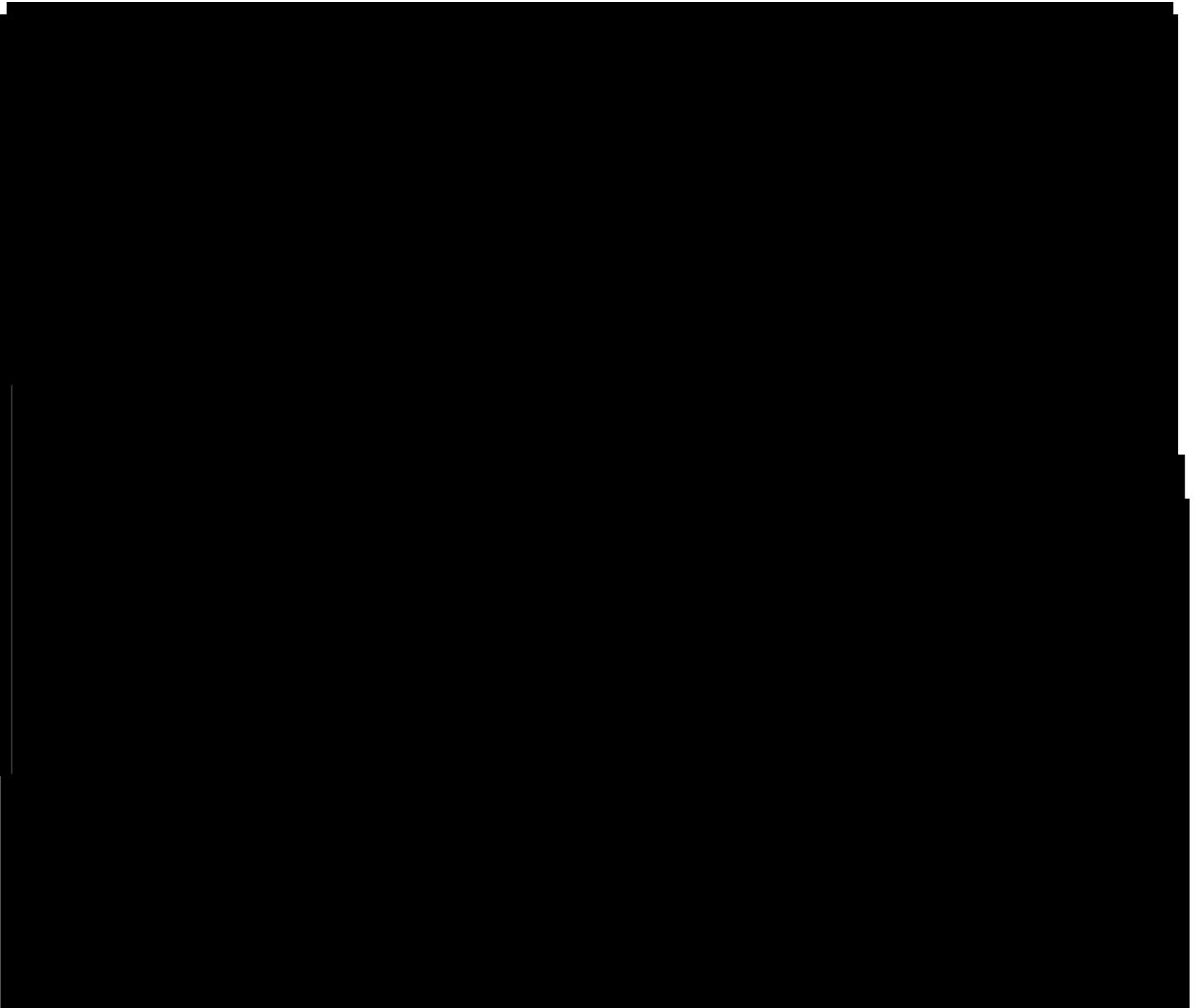
1. The insurance does not contain any exclusions, which would void the policy in relation to this contract.
2. Details within the insurance cover of any warranties, which need to be complied with to ensure that the cover remains in place.
3. Confirmation that there have been no erosion through claims made to the limits of indemnity.
4. Confirmation that all premiums due have been paid together with the date of renewal.

The award criteria for this contract were set out in full in Invitation to Tender with Price accounting for 40% of the total marks, Quality accounting for 50% of the total marks and Social Value accounting for 10% of the total marks.













GB-Shrewsbury: DONV 024 - The Delivery of a Business Case and Implementation Plan for the River Clun Special Area of Conservation Catchment Area

Competitive Contract Award Notice

1. Title: GB-Shrewsbury: DONV 024 - The Delivery of a Business Case and Implementation Plan for the River Clun Special Area of Conservation Catchment Area

2. Awarding Authority:

Shropshire Council

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

Contact: Procurement, Attn: Procurement

3. Contract Type: Services

Sub Type: Other services.

4. Description: Natural resources management or conservation strategy planning services. This is an award notice for a business case and implementation plan for a commercially beneficial model of delivery for Shropshire Council, using mitigation measures for residential development in the River Clun Special Area of Conservation (SAC) catchment to drive wider service delivery benefits.

5. CPV Codes:

90712400 - Natural resources management or conservation strategy planning services.

6. NUTS Codes :

UKG22 - Shropshire CC

7. Main Site or Location of Works, Main Place of Delivery or Main Place of Performance: Shropshire CC,

8. Reference Attributed by the Awarding Authority: DONV 024

9. Awarded to:

Is Awardee likely to subcontract?: No Awarded to SME?: No

10. Date of Contract Award: 27/11/2023

11. Number of Tenders Received: 3

12. Other Information:

Other Information: To view this notice, please click here:

<https://www.delta-esourcing.com/delta/viewNotice.html?noticeId=810811657>

Suitable for VCO: Yes

Procedure Type: OPEN

Period of Work Start date: 01/01/2024

Period of Work End date: 30/06/2024

