

## **UK-Shrewsbury: Ice cream and similar products.**

UK-Shrewsbury: Ice cream and similar products.

### **Section I: Contracting Authority**

#### **I.1) Name and addresses**

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

Contact: Procurement

Main Address: [www.shropshire.gov.uk](http://www.shropshire.gov.uk)

NUTS Code: UKG22

#### **I.2) Joint procurement**

The contract involves joint procurement: No.

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

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

#### **I.3) Communication**

The procurement documents are available for unrestricted and full direct access, free of charge, at: <https://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Ice-cream-and-similar-products/7497N62CBP>

Additional information can be obtained from: the abovementioned address

Tenders or requests to participate must be sent electronically via <https://www.delta-esourcing.com/tenders/UK-title/7497N62CBP> to the abovementioned address

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

Unrestricted and full direct access to these tools and devices is possible, free of charge, at:

<https://www.delta-esourcing.com/tenders/UK-title/7497N62CBP>

#### **I.4) Type of the contracting authority**

Regional or local authority

#### **I.5) Main activity**

General public services

### **Section II: Object**

#### **II.1) Scope of the procurement**

II.1.1) Title: DMCV 010 - The Supply of Ice Cream to Theatre Severn, Shrewsbury

Reference Number: DMCV 010

II.1.2) Main CPV Code:

15555000 - Ice cream and similar products.

II.1.3) Type of contract: SUPPLIES

II.1.4) Short description: To supply Theatre Severn with regular deliveries of required ice cream stock at reasonable and fair prices to be sold to audiences at Theatre Severn. To support the team selling the goods through equipment, maintenance and a point of sale.

The contract will be for an initial period of 3 years commencing on the 1st April 2021 with the option to extend for a further period of up to 2 years.

II.1.5) Estimated total value:

Value excluding VAT: 225,000

Currency: GBP

II.1.6) Information about lots:

This contract is divided into lots: No

#### **II.2) Description**

II.2.2) Additional CPV codes:

15555000 - Ice cream and similar products.

II.2.3) Place of performance:

UKG22 Shropshire CC

II.2.4) Description of procurement: To supply Theatre Severn with regular deliveries of required ice cream stock at reasonable and fair prices to be sold to audiences at Theatre Severn. To support the team selling the goods through equipment, maintenance and a point of sale.

Essential requirements:

- Reasonable range of ice creams at competitive prices
- Price marked /RRP items not accepted
- Easy ordering system
- Delivery at least twice a week.
- Customer care and support, personal connection with account manager and area managers - fair and loyal customer service
- Speed of response and problem solving
- Ability to change orders if incorrect providing prompt credit notes
- To be within easy and immediate contact
- To keep us up to date with new products, changes in pricing etc
- Regular discounts/offers and promotions on stock
- Alternative products if original stock item ordered is not available and delivery
- Of original product item as soon as its back in stock
- To be able to provide Public Liability Insurance Certificate
- To abide by Shropshire Council's payment terms of 30 days

Desirable:

- The same delivery drivers each week to build up a better relationship so that there is more trust with deliveries
- Same day/Next day delivery
- To provide appropriate equipment and fittings
- To provide point of sales materials, information etc free of charge where practical
- Advice on pricing
- Set delivery times (between 2 hour time frame)
- Advice on popular brands
- Invoice to be provided with delivery

The contract will be for an initial period of 3 years commencing on the 1st April 2021 with the option to extend for a further period of up to 2 years.

II.2.5) Award criteria:

Criteria below

Quality criterion - Name: Quality / Weighting: 60

Cost criterion - Name: Price / Weighting: 40

II.2.6) Estimated value:

Value excluding VAT: 225,000

Currency: GBP

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

Start: 01/04/2021 / End: 31/03/2026

This contract is subject to renewal: Yes

Description of renewals: The contract will be for an initial period of 3 years commencing on the 1st April 2021 with the option to extend for a further period of up to 2 years.

II.2.10) Information about variants:

Variants will be accepted: No

II.2.11) Information about options:

Options: No

Description of options: Not provided

II.2.12) Information about electronic catalogues:

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

II.2.13) Information about European Union funds:

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

Identification of the project: Not provided

II.2.14) Additional information: The Estimated value is £135,000 for 3 years - £225,000 for 3 years with the 2 year extension

### Section III: Legal, Economic, Financial And Technical Information

#### III.1) Conditions for participation

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

List and brief description of conditions:

Please see tender documentation.

#### III.1.2) Economic and financial standing

List and brief description of selection criteria:

Please see tender documentation.

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

Please see tender documentation.

#### III.1.3) Technical and professional ability

List and brief description of selection criteria:

Please see tender documentation.

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

Please see tender documentation.

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

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

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

#### III.2) Conditions related to the contract

##### III.2.2) Contract performance conditions

Please see tender documentation.

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

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

### Section IV: Procedure

#### IV.1) Description OPEN

##### IV.1.1) Type of procedure: Open

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

The procurement involves the establishment of a framework agreement - NO

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

##### IV.1.6) Information about electronic auction:

An electronic auction will be used: No

Additional information about electronic auction: Not provided

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

The procurement is covered by the Government Procurement Agreement: No

#### IV.2) Administrative information

##### IV.2.1) Previous publication concerning this procedure:

Notice number in the OJ S: Not provided

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

Date: 26/02/2021 Time: 12:00

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

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

##### IV.2.7) Conditions for opening of tenders:

Date: 26/02/2021

Time: 12:00

Place:  
Shrewsbury

Section VI: Complementary Information

VI.1) Information about recurrence

This is a recurrent procurement: Yes

Estimated timing for further notices to be published: 5 years

VI.2) Information about electronic workflows

Electronic ordering will be used No

Electronic invoicing will be accepted No

Electronic payment will be used No

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

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

<https://www.delta-esourcing.com/tenders/UK-UK-Shrewsbury:-Ice-cream-and-similar-products./7497N62CBP>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/7497N62CBP>

VI.4) Procedures for review

VI.4.1) Review body:

Shropshire Council

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

Tel. +44 1743252992, Email: [procurement@shropshire.gov.uk](mailto:procurement@shropshire.gov.uk)

VI.4.2) Body responsible for mediation procedures:

Not provided

VI.4.3) Review procedure

Precise information on deadline(s) for review procedures:

Not Provided

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

Shropshire Council

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

Tel. +44 1743252992

VI.5) Date Of Dispatch Of This Notice: 27/01/2021

Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
Shropshire SY2 6ND

Date: 27<sup>th</sup> January 2021  
My Ref: DMCV 010  
Your Ref: DMCV 010

Dear Bidder

**DMCV 010 - THE SUPPLY OF ICE CREAM TO THEATRE SEVERN, SHREWSBURY  
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)
- Pricing Schedule (for completion and return)
- Draft Form of 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 26<sup>th</sup> February 2021** any tenders received after this time will not be accepted
- Tenders are to be submitted through Delta, our electronic tender portal
  - **Please ensure that you allow yourself at least two hours when responding prior to the closing date and time**, especially if you have been asked to upload documents. If you are uploading multiple documents you will have to individually load one document at a time or you can opt to zip all documents in an application like WinZip. Failure to submit by the time and date or by the method requested will not be accepted.
  - **Once you upload documentation ensure you follow through to stage three and click the 'response submit' button. Failure to do so, will mean the documents won't be viewable by the Council.**

Tenders **cannot** be accepted if:

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

### Freedom of Information

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

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

### Other Details

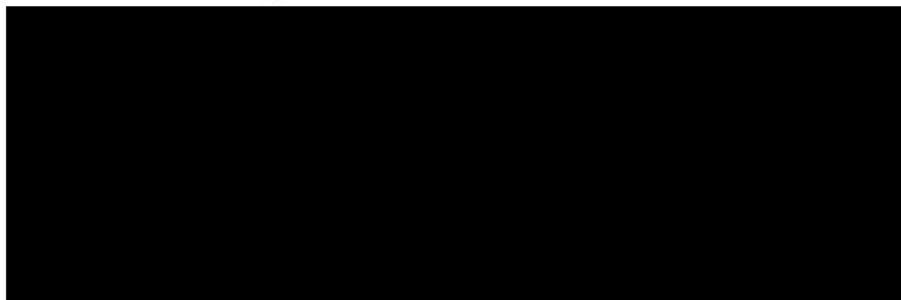
Please note that if supplementary questions are raised by any tenderer prior to the closing of tenders and Shropshire Council decides that the answers help to explain or clarify the information given in the Tender Documents, then both the questions and the answers will be circulated to all enterprises invited to submit a tender. Please raise all clarification questions before the deadline of **19<sup>th</sup> February 2020**.

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

Please also note that Shropshire Council is committed to achieving Social Value outcomes through maximising the social, economic and/or environmental impact of all its procurement activity. Specific requirements for this contract are set out within the Tender Response Document and in addition for your further information the council's Social Value Framework guidance can be found at [www.shropshire.gov.uk/doing-business-with-shropshire-council](http://www.shropshire.gov.uk/doing-business-with-shropshire-council).

If you have any queries relating to this invitation to tender, please contact us through the Delta e-tendering portal.

Yours faithfully





# **INSTRUCTIONS FOR TENDERING**

**DMCV 010 – THE SUPPLY OF ICE  
CREAM TO THEATRE SEVERN**

## Shropshire Council Instructions for tendering

### **Contract Description/Specification:**

To supply Theatre Severn with regular deliveries of required ice cream stock at reasonable and fair prices to be sold to audiences at Theatre Severn. To support the team selling the goods through equipment, maintenance and a point of sale.

Essential requirements:

- Reasonable range of ice creams at competitive prices
- Price marked /RRP items not accepted
- Easy ordering system
- Delivery at least twice a week.
- Customer care and support, personal connection with account manager and area managers - fair and loyal customer service
- Speed of response and problem solving
- Ability to change orders if incorrect providing prompt credit notes
- To be within easy and immediate contact
- To keep us up to date with new products, changes in pricing etc
- Regular discounts/offers and promotions on stock
- Alternative products if original stock item ordered is not available and delivery of original product item as soon as its back in stock
- To be able to provide Public Liability Insurance Certificate
- To abide by Shropshire Council's payment terms of 30 days

Desirable:

- The same delivery drivers each week to build up a better relationship so that there is more trust with deliveries
- Same day/Next day delivery
- To provide appropriate equipment and fittings
- To provide point of sales materials, information etc free of charge where practical
- Advice on pricing
- Set delivery times (between 2 hour time frame)
- Advice on popular brands
- Invoice to be provided with delivery

The contract will be for an initial period of 3 years commencing on the 1st April 2021 with the option to extend for a further period of up to 2 years.

## Index

<b><u>Section</u></b>	<b><u>Description</u></b>	<b><u>Page</u></b>
1.0	Invitation to Tender	3
2.0	Terms and Conditions	3
3.0	Preparation of Tenders	4
3.1	Completing the Tender Response Document	4
3.2	Tender Preparation and Cost	4
3.3	Parent Company Guarantee	5
3.4	Warranty	5
4.0	Tender Submission	5
5.0	Variant Bids	6
6.0	Tender Evaluation	6
7.0	Clarifications	6
8.0	Continuation of the Procurement Process	7
9.0	Confidentiality	7
10.0	Freedom of Information	9
11.0	Disqualification	9
12.0	E-Procurement	10
13.0	Award of Contract	10
13.1	Award Criteria	11
13.2	Award Notice	11
13.3	Transparency of Expenditure	11
14.0	Value of Contract	11
15.0	Acceptance	11
16.0	Payment Terms	11
17.0	Liability of Council	12
18.0	Attendance at Committee	12
19.0	Declaration	12

## **1.0 Invitation to Tender**

- 1.1** You are invited to tender for the supply of ice cream to Theatre Severn, Shrewsbury as detailed in the Tender Response Document. The contract will be for an initial period of **3 years** commencing on the **1<sup>st</sup> April 2021** with the option to extend for a further period of up to 2 years.
- 1.2** Tenders are to be submitted in accordance with the Draft Terms and Conditions of Shropshire Council and the instructions outlined within this document.
- 1.3** Tenders must be submitted in accordance with the following instructions. Tenders not complying in any particular way may be rejected by Shropshire Council (the Council) whose decision in the matter shall be final. Persons proposing to submit a Tender are advised to read the Invitation to Tender documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their Tender is accepted.
- 1.4** The Invitation to Tender documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Invitation to tender document other than on an “in confidence” basis to those who have a legitimate need to know or who they need to consult for the purpose of preparing the tender as further detailed in these Instructions for Tendering.
- 1.5** Tenderers shall not at any time release information concerning the invitation to tender and/or the tender documents for publication in the press or on radio, television, screen or any other medium without the prior consent of the Council.
- 1.6** The fact that a Tenderer has been invited to submit a tender does not necessarily mean that it has satisfied the Council regarding any matters raised in the pre-tender questionnaire submitted. The Council makes no representations regarding the Tenderer’s financial stability, technical competence or ability in any way to carry out the required services. The right to return to any matter raised in any pre-tender questionnaire submitted as part of the formal tender evaluation is hereby reserved by the Council.
- 1.7** The Invitation to Tender is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a tenderer to submit a tender or enter into a Contract or any other contractual agreement.
- 1.8** Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council’s involvement.

## **2.0 Terms and Conditions**

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

- 2.2** The Tenderer is advised that in the event of their Tender being accepted by the Council, they will 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, 26<sup>th</sup> February 2021**.
- 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 19<sup>h</sup> February 2021.
- 7.5** All information or responses that clarify or enhance the tendering process will be supplied to all Tenderers on a uniform basis (unless expressly stated otherwise). These responses shall have the full force of this Instruction and where appropriate the Conditions of Contract. If a Tenderer wishes the Council to treat a question as confidential this must be expressly stated. The Council will consider such requests and will seek to act fairly between the Tenderers, whilst meeting its public law and procurement duties in making its decision.
- 7.6** Except as directed in writing by the Authorised Officer, and confirmed in writing to a Tenderer, no agent or officer or elected Member (Councillor) of the Council has any express or implied authority to make any representation or give any explanation to Tenderers as to the meaning of any of the Tender Documents, or as to anything to be done or not to be done by a Tenderer or to give any warranties additional to those (if any) contained in the ITT or as to any other matter or thing so as to bind the Council in any way howsoever.

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

- 8.1** The Council shall not be committed to any course of action as a result of:
- i) issuing this Invitation to Tender;
  - ii) communicating with a Tenderer, a Tenderer's representative or agent in respect of this procurement exercise;
  - iii) any other communication between the Council (whether directly or through its agents or representatives) and any other party.
- 8.2** The Council reserves the right at its absolute discretion to amend, add to or withdraw all, or any part of this Invitation to Tender at any time during the tendering stage of this procurement exercise.
- 8.3** At any time before the deadline for receipt of tender returns the Council may modify the Invitation to Tender by amendment. Any such amendment shall be numbered and dated and issued by the Council to all participating tenderers. In order to give prospective Tenderers reasonable time in which to take the amendment into account in preparing its Tender return, the Council may in its sole

discretion, extend the deadline for submission of the tender returns. The Council reserves the right to amend, withdraw, terminate or suspend all or any part of this procurement process at any time at its sole discretion.

## **9.0 Confidentiality**

- 9.1** All information supplied by the Council in connection with or in these Tender Documents shall be regarded as confidential to the Council unless the information is already within the public domain or subject to the provisions of the Freedom of Information Act 2000.
- 9.2** The Contract documents and publications are and shall remain the property of the Council and must be returned upon demand.
- 9.3** Tenderers shall ensure that each and every sub-contractor, consortium member and/or professional advisor to whom it discloses these papers complies with the terms and conditions of this ITT.
- 9.4** The contents of this Invitation to Tender are being made available by the Council on condition that:
  - 9.4.1** Tenderers shall at all times treat the contents of the Invitation to tender and any related documents as confidential, save in so far as they are already in the public domain and Tenderers shall not, subject to the provisions relating to professional advisors, sub-contractors or other persons detailed below, disclose, copy, reproduce, distribute or pass any of the contents of the Invitation to tender to any other person at any time or allow any of these things to happen;
  - 9.4.2** Tenderers shall not use any of the information contained in this Invitation to tender for any purpose other than for the purposes of submitting (or deciding whether to submit) the tender; and
  - 9.4.3** Tenderers shall not undertake any publicity activity within any section of the media.
- 9.5** Tenderers may disclose, distribute or pass this Invitation to tender to their professional advisors, sub-contractors or to another person provided that:
  - 9.5.1** this is done for the sole purpose of enabling an Invitation to tender to be submitted and the person receiving the Information undertakes in writing to keep the Invitation to Tender confidential on the same terms as if that person were the Tenderer; or
  - 9.5.2** the Tenderer obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the Invitation to Tender; or
  - 9.5.3** the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement or to any Contract(s) which may arise from it; or
  - 9.5.4** the Tenderer is legally required to make such a disclosure.
- 9.6** The Council may disclose detailed information relating to the Invitation to Tender to its officers, employees, agents, professional advisors or Governmental organisations and the Council may make any of the Contracts and procurement

documents available for private inspection by its officers, employees, agents, professional advisors, contracting authorities or Governmental organisations.

## **9.7 Transparency of Expenditure**

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

## **10.0 Freedom of Information**

**10.1** Please note that from 1 January 2005 under the provisions of the Freedom of Information Act 2000, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. One of the consequences of those new statutory responsibilities is that information about your organisation, which Shropshire Council may receive from you during this tendering process may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.

**10.2** In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the Act, Shropshire Council may consider it appropriate to ask you for your views as to the release of any information before we make a decision as to how to respond to a request. In dealing with requests for information under the Act, Shropshire Council has to comply with a strict timetable and it would therefore expect a timely response to any such consultation within five working days.

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

**10.4** Shropshire Council will not be able to accept that trivial information or information which by its very nature cannot be regarded as confidential should be subject to any obligation of confidence.

**10.5** In certain circumstances where information has not been provided in confidence, Shropshire Council may still wish to consult with you as to the application of any other exemption such as that relating to disclosure that will prejudice the commercial interests of any party. However the decision as to what information will be disclosed will be reserved to Shropshire Council.

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

## **11.0 Disqualification**

**11.1** The Council reserves the right to reject or disqualify a Tenderer's Tender submission where:

**11.1.1** The tenderer fails to comply fully with the requirements of this Invitation to tender or is in breach of clause 15 of the Council's General Terms and Conditions relating to Bribery and Corruption or is guilty of a serious or intentional or reckless misrepresentation in supplying any information required; or

**11.1.2** The tenderer is guilty of serious or intentional or reckless misrepresentation in relation to its tender return and/or the procurement process.

**11.1.3** The tenderer directly or indirectly canvasses any member, official or agent of the Council concerning the award of the contract or who directly or indirectly obtains or attempts to obtain information from any such person concerning any other Tender or proposed Tender for the services. The Canvassing Certificate must be completed and returned as instructed.

**11.1.4** The Tenderer :

a) Fixes or adjusts the amount of his Tender by or in accordance with any agreement or arrangements with any other person; or

b) Communicates to any person other than the Council the amount or approximate amount of his proposed Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for preparation of the Tender for insurance purposes); or

c) Enters into an agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender to be submitted; or

d) Offers or agrees to pay or give or does pay or gives any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any Tender or proposed Tender for the services any act or omission.

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

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

## **12.0 E-Procurement**

As part of its procurement strategy Shropshire Council is committed to the use of

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

### **13.0 Award of Contract**

#### **13.1 Award Criteria**

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

#### **13.2 Award Notice**

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

#### **13.3 Transparency of Expenditure**

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

### **14.0 Value of Contract**

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

### **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 Terms and Conditions of Contract, the Tender Response document, these Instructions to Tender, together with the formal written acceptance by the Council will form a binding agreement between the Contractor and the Council.

**15.3** The Tenderer shall be prepared to commence the provision of the supply and services on the start date of the contract being **1<sup>st</sup> April 2021**.

## **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.

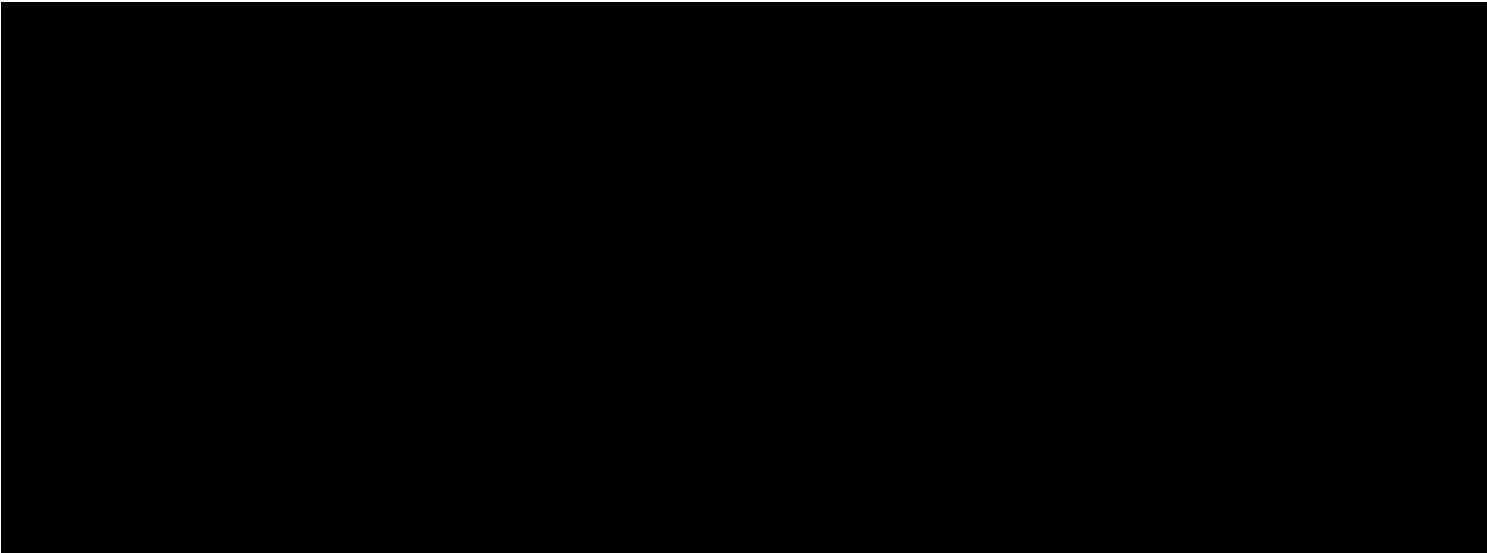
**17.4**     The Council shall not be liable for any costs or expenses incurred by any Tenderer in connection with the preparation of a Tender return for this procurement exercise, its participation in this procurement whether this procurement is completed, abandoned or suspended.

**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 these Instructions to Tender as creating a contract between ourselves and the Council. We hereby acknowledge that any departure from the Instructions to Tender may cause financial loss to the Council.



Stock Item	Quantity	Price per unit
Marshfields Vanilla Tubs x12 per box		
Marshfields Chocolate Tubs x12 per box		
Marshfields Strawberry Tubs x12 per box		
Marshfields Lemon Sorbet x12 per box		
Classic Magnum x20 per box		
White Magnum x20 per box		
Double Caramel Magnum x20 per box		
Mint Magnum x20 per box		
Double Raspberry Magnum x20 per box		
Orange Calippo x24 per box		

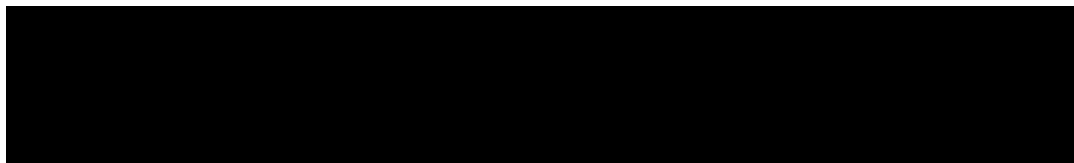




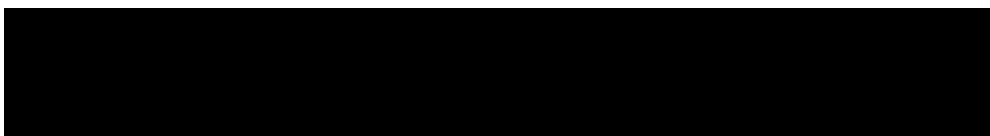
# **Tender Response Document**

## **DMCV 010 - THE SUPPLY OF ICE CREAM TO THEATRE SEVERN, SHREWSBURY**

Name of TENDERING  
ORGANISATION  
(please insert)



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



## Shropshire Council Tender Response Document

### Contract Description/Specification:

To supply Theatre Severn with regular deliveries of required ice cream stock at reasonable and fair prices to be sold to audiences at Theatre Severn. To support the team selling the goods through equipment, maintenance and a point of sale.

#### Essential requirements:

- Reasonable range of ice creams at competitive prices
- Price marked /RRP items not accepted
- Easy ordering system
- Delivery at least twice a week.
- Customer care and support, personal connection with account manager and area managers - fair and loyal customer service
- Speed of response and problem solving
- Ability to change orders if incorrect providing prompt credit notes
- To be within easy and immediate contact
- To keep us up to date with new products, changes in pricing etc
- Regular discounts/offers and promotions on stock
- Alternative products if original stock item ordered is not available and delivery of original product item as soon as its back in stock
- To be able to provide Public Liability Insurance Certificate
- To abide by Shropshire Council's payment terms of 30 days

#### Desirable:

- The same delivery drivers each week to build up a better relationship so that there is more trust with deliveries
- Same day/Next day delivery
- To provide appropriate equipment and fittings
- To provide point of sales materials, information etc free of charge where practical
- Advice on pricing
- Set delivery times (between 2 hour time frame)
- Advice on popular brands
- Invoice to be provided with delivery

The contract will be for an initial period of 3 years commencing on the 1st April 2021 with the option to extend for a further period of up to 2 years.

### **Instructions for the completion of this document**

1. This document must be completed in its entirety with responses being given to all questions. If you are unsure of any section/question and require further clarification, please contact us via our Delta Tenderbox. You are recommended to keep a copy of all tender documents and supporting documents for your own records.
2. Tenderers must also complete and sign the four certificates in Sections A1 to A4. These must be signed;
  - a) Where the tenderer is an individual, by that individual;
  - b) Where the tenderer is a partnership, by two duly authorised partners;
  - c) Where the tenderer is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose.
3. All questions require specific responses from you relating to the organisation named in Section B Question 1.1 (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 the electronic copy of your Tender Response Document.

### **Contents**

Section	Description	Page
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	13
B Part 2 Section 2	Grounds for <u>Mandatory</u> Exclusion	17
B Part 2 Section 3	Grounds for Discretionary Exclusion	19
Section C	Tender and Pricing Schedule	28

## **Evaluation Criteria**

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

### **Selection Criteria Pass/Fail Questions (Sections B Part 1 – Part 3)**

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

Section / Question No.	Selection Criteria
Section B Part 1	Supplier Information– For information only
Section B Part 2 Section 2	Grounds for <u>Mandatory</u> Exclusion
Section B Part 3 Section 3	Grounds for Discretionary Exclusion

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

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

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

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

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

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



### **Award Criteria – Weighted Marked Questions**

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

Section / Question No.	Award Criteria	Weighting / Max Marks Available
<b>Price 60% (600 marks)</b>		
Section C / Q 1	Price	600 max marks
<b>Total for price</b>		<b>600 max marks</b>
<b>Quality 40% (400 marks)</b>		
Section C / Q 2.1	Operation of stock	6 / 60 max marks
Section C / Q 2.2	Ordering process and delivery	6 / 60 max marks
Section C / Q 2.3	Promotions and Discounts	4 / 40 max marks
Section C / Q 2.4	Information sharing processes	4 / 40 max marks
Section C / Q 2.5	Payment systems	4 / 40 max marks
Section C / Q 2.6	Equipment offered and servicing	5 / 50 max marks
Section C / Q 2.7	Quality of account management	3 / 30 max marks
Section C / Q 2.8	Complaints procedure and escalation	4 / 40 max marks
Section C / Q 2.9	Social Value	4 / 40 max marks
<b>Total for quality</b>		<b>40 / 400 max marks</b>

### **Quality Questions/ Scoring Scheme**

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

Assessment	Mark	Interpretation
<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 Price Evaluation will be based on your completed Pricing Schedule. This will be evaluated by using the price per unit inserted multiplied by the monthly unit price to give a total annual price (based on the usage information contained in the pricing schedule) and totalled to give an overall basket cost.

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

You must provide a price against all products listed on the pricing schedule – if you fail to provide a price for any of the products the highest tendered price received for that product will be inserted and used for evaluation purposes.

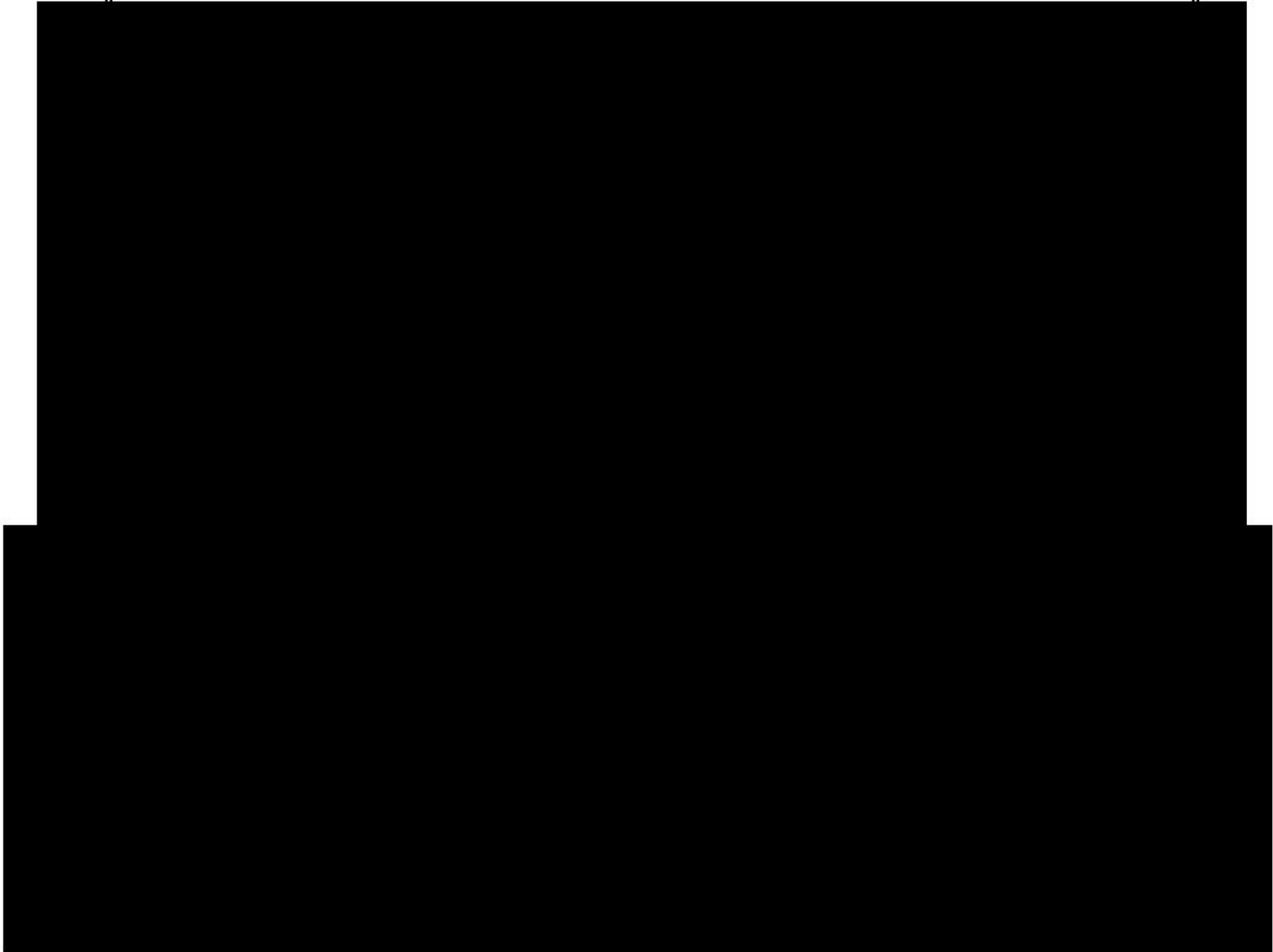
**Section A:**  
**1. Form of Tender**

Form of Tender

**Shropshire Council**

Tender for the supply of ice cream for Theatre Severn, Shrewsbury

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



**Section A:**  
**2. Non – Canvassing Certificate**

Non-Canvassing Certificate

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

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

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

Non-collusive Tendering Certificate

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

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

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

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

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

## 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?

If yes, please give details:

Name	Relationship

**Please note:**

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

## **SECTION B**

### **Standard Selection Questionnaire**

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

The standard Selection Questionnaire is a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion. If there are grounds for exclusion (there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning). For the list of exclusion please see

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/551130/List\\_of\\_Mandatory\\_and\\_Discretionary\\_Exclusions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf)

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

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

#### **Supplier Selection Questions: Part 3**

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

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

#### **Consequences of misrepresentation**

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

## Notes for completion

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

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

## Part 1: Potential supplier Information

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

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

1.1(k)	Trading name(s) that will be used if successful in this procurement.
1.1(l)	Relevant classifications (state whether you fall within one of these, and if so which one) a) Voluntary Community Social Enterprise (VCSE) b) Sheltered Workshop c) Public Service Mutual
1.1(m)	Are you a Small, Medium or Micro Enterprise (SME) <sup>2</sup> ?
1.1(n)	Details of Persons of Significant Control (PSC), where appropriate: <sup>3</sup> - Name; - Date of birth; - Nationality; - Country, state or part of the UK where the PSC usually lives; - Service address; - The date he or she became a PSC in relation to the company (for existing companies the 6 April 2016 should be used); - Which conditions for being a PSC are met; - Over 25% up to (and including) 50%, - More than 50% and less than 75%, - 75% or more. (Please enter N/A if not applicable)
1.1(o)	Details of immediate parent company: - Full name of the immediate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable) - Head office VAT number (if applicable) (Please enter N/A if not applicable)
1.1(p)	Details of ultimate parent company: - Full name of the ultimate parent company - Registered office address (if applicable) - Registration number (if applicable) - Head office DUNS number (if applicable) - Head office VAT number (if applicable) (Please enter N/A if not applicable)

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

<sup>2</sup> See EU definition of SME - [https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)

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

[REDACTED]


**Contact details and declaration**

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

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

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

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

I am aware of the consequences of serious misrepresentation.

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



## Part 2: Exclusion Grounds

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

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

	Cleaning)
2.3(a)	<b>Regulation 57(3)</b> Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions?
2.3(b)	If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines.

Please Note: The authority reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

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

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



## Part 3: Selection Questions

Section 4	Economic and Financial Standing	
Question number	Question	Response
4.1	Are you able to provide a copy of your audited accounts for the last two years, if requested? If no, can you provide <b>one</b> of the following: answer with Y/N in the relevant box.	
	(a) A statement of the turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of Financial Position and Statement of Cash Flow for the most recent year of trading for this organisation.	
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	
	(c) Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	
4.2	Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering 'Yes' or 'No' that you meet the requirements set out.	

Section 5	If you have indicated in the Selection Questionnaire question 1.2 that you are part of a wider group, please provide further details below:	
Name of organisation		
Relationship to the Supplier completing these questions		

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



[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]

[REDACTED]

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

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

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



## 8. Additional Questions

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

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

### 8.2 – Compliance with equality legislation

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

1.	In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in any jurisdiction other than the UK)?	
2.	<p>In the last three years, has your organisation had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds or alleged unlawful discrimination?</p> <p>If you have answered “yes” to one or both of the questions in this module, please provide, as a separate Appendix, a summary of the nature of the investigation and an explanation of the outcome of the investigation to date.</p> <p>If the investigation upheld the complaint against your organisation, please use the Appendix to explain what action (if any) you have taken to prevent unlawful discrimination from reoccurring.</p> <p>You may be excluded if you are unable to demonstrate to the Authority’s satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring.</p>	
3.	If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?	

### 8.3 – 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 this question is "Yes", please provide details in a separate Appendix of the conviction or notice and details of any remedial action or changes you have made as a result of conviction or notices served.</p> <p>The Authority will not select bidder(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the Authority is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches.</p>
2.	<p>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?</p>

#### 8.4 – Health & Safety

1.	<p>Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements.</p>
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.	<p>If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?</p>







Notes to this form:

Text highlighted in yellow is where details need to be inserted

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

DATED:                                  day of                                  20..

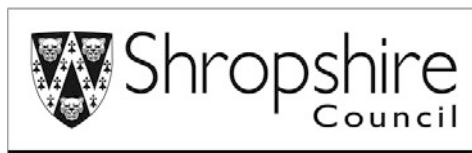
BETWEEN

SHROPSHIRE COUNCIL (1)

[.....] (2)<sup>1</sup>

Contract Ref: DMCV 010

Contract for the supply of ice cream to Theatre Severn, Shrewsbury



LEGAL AND DEMOCRATIC SERVICES  
The Shirehall Abbey Foregate Shrewsbury SY2 6ND  
DX 702024 Shrewsbury 2

---

<sup>1</sup> Insert Contractor's name

BETWEEN:

- WHEREAS:

- NOW IT IS AGREED as follows:

## 1. Definitions

- '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

<sup>5</sup> Delete from "Or" and subsequent words in square brackets if the Contractor is not an individual

'Authorised Officer'	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. means the representative appointed by the Council to manage the Contract on its behalf
'Best Practice'	means in accordance with the best practice within the industry of the Contractor
'Bribery Act'	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
<b>'Commencement Date'</b>	
'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;
'Conditions'	means these terms and conditions and any other special terms and conditions agreed in writing between the Council and the Contractor;
'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, and the Commercially Sensitive Information;
'Contract'	Means this contract between the Council and the Contractor for the purchase of Goods;
'Contractor'	means the party named above and includes its employees, servants and agents acting on its behalf
'Contract Documents'	means all of the documents annexed to, contained and referred to within this Contract
'Contractor Personnel'	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor paid or unpaid;
'Contractor's Representative'	means 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
'Data Protection Legislation'	means: <ul style="list-style-type: none"> <li>i) all applicable Law about the processing of personal data and privacy; and</li> <li>ii) The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 including if applicable legally binding guidance and codes of practice issued by the Information Commissioner; and</li> <li>iii) to the extent that it relates to processing of personal data and privacy, any Laws that come into force which amend, supersede or replace</li> </ul>

	existing Laws including the GDPR, the (LED Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time including the DPA 2018
'Delivery Date'	means the date specified by the Council in the Order when the Goods are to be delivered by the Contractor
'Delivery Location/s'	means Theatre Severn and Old Market Hall, Shrewsbury, Shropshire
'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 Contract or otherwise relating to the parties to this Contract which potentially falls within an exemption to FOIA (as set out therein)
'Expiry Date'	Shall be the later of either: i) the Initial Expiry Date; or ii) the last day of any agreed extension period further to clause 2 below; or iii) such other date as this Contract is terminated in accordance with its terms
'FOIA'	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning

in this clause

‘FOIA notice’

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

‘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, 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.

GDPR

Means the General Data Protection Regulation in force in the UK with effect from 25<sup>th</sup> May 2018

‘Goods’

Means the Goods (including any part or parts of them) which the Contractor is to provide to the Council pursuant to the Order in accordance with these Conditions

‘Goods Legislation’

Means an applicable statutory rule, order, directive, regulation or other instrument having the force of law (including any directive or order promulgated by any competent supra-national body) all British and European standards, UKAS (United Kingdom Accreditation Service) and all other legislation for the time being in force relating without limitation to the manufacturer (including raw materials or chemicals used in the production process), preparation, packaging, delivery, carriage, storage, installation and use of the Goods and any hazards in relation to such manufacture, packaging, preparation, delivery, carriage, storage, installation and use of the Goods

‘Initial Expiry Date’

‘Initial Term’

means a period of two years commencing on the Commencement Date and expiring on the Initial Expiry Date

‘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
'Option to Extend'	means the Council's option to extend the Initial Term by a period of up to two years commencing from
'Order'	means an official order placed by the Council to the Contractor for the supply of Goods in accordance with the terms of this Conditions
'Order Number'	means the reference number to be applied to an Order by the Council
'Parties'	the Contractor and the Council and 'Party' shall mean either one of them
'Prohibited Act'	<p>the following constitute Prohibited Acts:</p> <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 or activity;</li> </ul> </li> <li>(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 Contract;</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act;</li> <li>(ii) under legislation creating offences concerning fraudulent acts;</li> <li>(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council;</li> </ul> </li> <li>or</li> <li>(d) defrauding, attempting to defraud or conspiring to defraud the Council.</li> </ul>

‘Public body’	as defined in the FOIA 2000
‘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
‘Receiving Party’	means a party to this Contract 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 Contract 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
‘Specification’	means the Council’s specifications or stipulations for the Goods notified in writing to the Contractor;
‘Special Conditions’	means the conditions set out at Schedule 1 (if any);
‘Sub-contract’	any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Goods or any part thereof, or facilities or services necessary for the provision of the Goods or any part of the Goods
‘Sub-Contractor’	Means the third parties that enter into a Sub-Contract with the Contractor
‘Tender’	means the tender dated <b>[insert date]</b>

	submitted by the Contractor and accepted by the Council annexed to this Contract in Appendix 1
'Term'	Means the period commencing on the Commencement Date and expiring on the Expiry Date
'Working Day'	means any day other than a Saturday, Sunday or public holiday in England and Wales

## 1.2 Interpretation

In this Contract unless the context otherwise requires:

### 1.2 Interpretation

In this Contract 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 Contract
- 1.2.7 reference in any schedule to this Contract 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 Contract 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 Contract, it shall be understood as meaning 'including without limitation'
- 1.2.12 Where any statement is qualified by the expression so far as the Contractor is aware or to the Contractor's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.2.13 A reference to writing or written includes faxes but not e-mail, unless otherwise specifically agreed.

**2. Term:**

- 2.1 It is agreed between the Parties that this Contract will be for the Initial Term commencing on the Commencement Date and ending on the Initial Expiry Date Expiry Date.
- 2.2 It is further agreed between the Parties that the Council may exercise its Option to Extend this Contract at the expiry of the Initial Term for a further period of up to two years commencing on ..... 2023
- 2.3 If the Council decides to exercise its Option to Extend the Initial Term it shall notify the Contractor in writing at least 3 months in advance of the expiry date of the Initial Term. Where the Parties agree a further extension after the Initial Term the provisions of this Contract between the Council and the Contractor shall be the terms of the extended Contract, save for any variations agreed between the Parties to apply to the extended contract term.
- 2.4 If the Council decides that it does not wish to exercise its Option to Extend then this Contract shall terminate on the Initial Expiry Date and the provisions of clause 33 (Consequences of Termination) shall apply

**3. Basis of Contract**

- 3.1 The Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Contractor purports to apply under any quotation, sales offer, order acknowledgement or any other document issued by the Contractor or in correspondence).
- 3.2 No Order shall be capable of acceptance by the Contractor unless it is in writing on the Council's official order form and is signed by an Authorised Officer or other representative on behalf of the Council.
- 3.3 The Council reserves to itself in its absolute discretion the right to purchase or order any goods whether specified in the Order or not from any person other than the Contractor.

**4. Supply of the Goods**

- 4.1 During the Term, the Contractor shall supply, and the Council shall purchase, such quantities of Goods as the Council may order under clause 7 in accordance with the Conditions.
- 4.2 During the Term, the Contractor shall provide the Council with such

marketing materials and training as described in the Tender or as agreed by the Parties.

**5. Delivery**

- 5.1** Delivery of the Goods shall take place on the Delivery Date strictly in accordance with the Council's delivery instructions given in the Order
- 5.2** Each delivery must be clearly marked in accordance with the Specification/Special Conditions and/or the Order. If the Goods or any part of the Goods are incorrectly delivered the Contractor shall be responsible for any additional cost incurred in the delivery of them to their correct destination.
- 5.3** Time of delivery is of the essence of the Contract unless the Council in the Order specifies otherwise. The Council shall be under no obligation to accept delivery of the Goods or any part of the Goods before the specified delivery time but reserves the right to do so.
- 5.4** The Council reserves the right to cancel or vary the whole of any part of the Order, if the Goods are not delivered on time for any reason whatsoever. In the event that the Council cancels the whole or part of an Order, then if the Council so requires and without prejudice to the Council's other remedies the Contractor shall promptly collect any Goods which have been delivered.
- 5.5** The Council shall have the right to change its delivery instructions at any time on giving 7 (seven) days' notice to the Contractor.
- 5.6** The Council shall not be obliged to accept quantities of the Goods, which vary from those specified in the Specification or the Order.
- 5.7** The Goods shall be properly packed and secured in such a manner as to reach their destination undamaged and in good condition. The Council shall not be obliged to return to the Contractor any packaging materials for the Goods save for any empty returnable containers marked as such and with the Contractor's name and address on an address label affixed to each such container, which shall be returned to the Contractor at the Contractor's cost and risk.
- 5.8** All Goods must be accompanied by a detailed delivery note stating:-
  - 5.8.1** The Contractor's name and address
  - 5.8.2** The delivery point address
  - 5.8.3** The Order Number
  - 5.8.4** The date of delivery
  - 5.8.5** A description of the Goods being delivered including where applicable the number or weight of each item and (as appropriate) a warning "Do Not Re-freeze"; and
  - 5.8.6** Where the Goods are being delivered by instalments, the outstanding balance of the Goods to be delivered
- 5.9** An Authorised Officer must sign the delivery note on behalf of the Council

when the Goods are delivered. One copy of the delivery note is to be retained by the representative of the Council authorised to accept delivery. The other copy is to be signed and returned to the Contractor by the said representative.

**6. Acceptance**

- 6.1** The Council shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery or after any latent defect has become apparent. For the avoidance of doubt no inspection or testing by the Council, whether before or after delivery of the Goods nor the signing of any delivery note or other document acknowledging physical receipt of any Goods on behalf of the Council shall be deemed to constitute evidence of acceptance or approval of the Goods for the purposes of the Sale of Goods Act 1979 (as amended) nor be deemed to be a waiver of the Council's rights either to cancel or return all or any part thereof where the Goods are found to be defective or not in accordance with the Contract, Order, Specification or written instructions of the Council.
- 6.2** The Council may (in its absolute discretion) employ an expert to examine the Goods and if such Goods are determined by the expert not to be in accordance with the Order, Specification and Special Conditions, written instruction of the Council or this Contract then the expense of such expert examination shall be borne by the Contractor.
- 6.3** The Contractor shall promptly keep the Council informed of any matter of which it is or reasonably should as supplier of the Goods be aware relating to the storage, transportation, handling, assembly or use of the Goods by the Council (including legislation or advice from responsible or professional or legal bodies in respect of raw or processed materials used in the manufacture of the Goods) and the actions it has taken or proposes to take and those that the Authority should take in relation to such matters.
- 6.4** Without prejudice to any other rights in these Conditions the Council shall be entitled to reject the Goods if they are in breach of any condition or warranty implied by any Goods Legislation.
- 6.5** If any Goods are rejected by the Council due to a breach of these Conditions or a breach of any conditions or warranty implied by any Goods Legislation then the Council may require the Contractor to remove the Goods at the Contractor's expense.
- 6.6** If the Council requires the Contractor to remove the Goods pursuant to Clause 6.5 above then the Council shall not be responsible for any damage occasioned whilst the Goods are at the Council's premises (how so ever occasioned) or caused in removing the Goods nor for any delay.
- 6.7** If the Parties dispute whether any Goods comply with the Conditions, either Party may invoke the dispute resolution procedures set out in clause 34 (Disputes).

**7. Orders and Goods**

**7.1** The Contractor shall supply the Goods in accordance with the Council's Order(s). Each Order shall:

**7.1.1** be given in writing or, if given orally, shall be confirmed within three Working Days. If no such confirmation is received by the Contractor within three days, the Contractor should notify the Council accordingly

**7.1.2** specify the type and quantity of the Goods ordered

**7.1.3** The Council shall not be responsible or be liable for payment for Goods unless they are requisitioned by an official Order signed by an authorised officer of the Council

**7.2** The Council shall assign an Order Number to each Order received from the Council and notify such Order Numbers to the Council. Each Party shall use the relevant Order Number in all subsequent correspondence relating to the Order

**8. Title/Risk**

**8.1** The Goods shall be at the risk of the Contractor until they are delivered in accordance with the Contract when without prejudice to any right of rejection, which the Council may have under the Contract or by law, title to and risk in the Goods shall pass to the Council, provided however that if the Council pays for the Goods prior to delivery title to (but not risk in) the Goods shall pass to the Council when payment is made. In the event of title to the Goods passing to the Council before delivery of the Goods to the Authority, then if the Goods or any part of the Goods are lost or damaged in transit to the Council, the Contractor shall promptly replace the damaged or lost Goods free of charge to the Council and shall, if so required by the Council, remove any damaged Goods promptly.

**9. Prices**

**9.1** The price of Goods shall be stated in the Order. The price shall be inclusive of all packaging, packing, labelling, insurance, delivery, installation costs and all other costs incurred by the Contractor in relation to the Goods and their delivery unless otherwise specified in the Order.

**9.2** All price decreases will be passed on immediately as and when they occur by the Contractor to the Council

**9.3** The Council shall be entitled to the Contractor's standard discount for prompt payment.

**9.4** All sums payable under the Contract are exclusive of VAT unless otherwise stated and in all such cases VAT shall be added if appropriate at the rate

prevailing at the relevant tax point.

- 9.5** The Contractor may only invoice the Council on or after delivery of the Goods and an invoice submitted early shall be deemed received on the date of delivery of the Goods. An invoice shall state the Order number, the delivery note number and the date and if relevant the number of any delivery schedule, the Contractor's BACS details, the amount of VAT applicable to each item. The invoice shall also contain a sufficiently detailed description of the Goods to enable the Council to identify the Goods and be in such form as the Council may specify from time to time. Invoices should be addressed to the Council for the attention of the Finance & Business Manager, Theatre Severn, Frankwell Quay, Shrewsbury SY3 8FT

**10 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

**11 Payment Terms:**

- 11.1** Payment shall be made by the Council to the Contractor within 30 days of receipt of an undisputed invoice
- 11.2** The Contractor shall not charge, and the Council shall not be liable, for any expenses, charges, costs, or fees except as set out in this Contract
- 11.3** 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.
- 11.4** If a Party fails to make any payment due to the other under this Contract by the due date for payment ("due date") then, without limiting the other Party's remedies under clause 32 (Termination) the defaulting Party shall pay interest on the overdue amount 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 on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after Judgment. The defaulting Party shall pay interest together with the overdue amount.
- 11.5** If the Council disputes any invoice or statement or monies due, the Council shall immediately notify the Contractor in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Contractor shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within 30 days of the Council giving notice to the Contractor, the

dispute shall be resolved in accordance with clause 34 (Disputes). Where only part of an invoice is disputed, the un-disputed amount shall be paid on the due date as set out in clause 11.1.

**11.6 NOT USED**

**11.7** All payments payable to the Contractor or the Council under this Contract shall become due immediately on its termination. This clause 11.7 is without prejudice to any right to claim for interest under the law or under this Contract

**12 The Council's Obligations**

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

- a) Co-operate with the Contractor and ensure that the Council's staff, agents and representatives co-operate with and assist the Contractor as is reasonable and appropriate;
- b) Provide the Contractor with any information reasonably required by the Contractor;
- c) Comply with such other requirements as may be otherwise agreed between the Parties.

**12.2** Save as provided in this Contract, 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.

**13. Authorised Officer and Contractor Representative:**

**13.1** 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 Contract.

**13.2** The Contractor shall appoint a Contractor Representative to act in the name of the Contractor for the purposes of the contract evidenced by this Contract

**13.3** 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.

**13.4** The Authorised Officer shall monitor on behalf of the Council the supply of Goods by the Contractor and act as liaison officer with the Contractor's Representative in respect of the operation of the contract. Any issues raised by the Authorised Officer with regard to the supply of the Goods shall in the first instance be addressed and dealt with by the Contractor's Representative on the Contractor's behalf.

**14. Insurance**

**14.1** 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 Contract, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS) for each and every claim..

**14.2** If appropriate and requested in writing, the Contractor may also be required to provide Product Liability insurance of at least £5,000,000 (FIVE MILLION POUNDS) cover for any one claim.

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

**14.4** The Contractor warrants that it has complied with this clause 14 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 Contract and annually thereafter during the Term.

**14.5** 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

**14.6** 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 Contract.

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

**14.7.1** if a claim or claims which do not relate to this Contract 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

**14.7.2** 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 Contract 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 Contract; 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.

**15 Indemnity**

- 15.1** The Contractor shall indemnify the Council against all liabilities, costs, expenses, damages and losses (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 Contract 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 supply or use of the Goods
  - (c) Any claim made against the Council by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract 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, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Contractor or the Contractor Personnel
- 15.2** 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 Contract.
- 15.3.** Nothing in this Contract shall limit or exclude the liability of either Party for:
- (a) death or personal injury resulting from negligence; or
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) breach of section 2 of the Consumer Protection Act 1987; or
  - (c) the indemnities given in this clause 15

**16 Confidentiality**

- 16.1** The Contractor will keep confidential the Confidential Information and any other information it becomes aware of by reason of the operation of this Contract and shall not use divulge or communicate the same to any third party without the consent in writing of the Council. The Contractor shall implement appropriate organisational and technical measures to ensure the integrity and security of information obtained and shall at all times comply with the provisions of the Data Protection Legislation and shall provide the Council with evidence of such measures upon request. The

Contractor shall use its reasonable endeavours to prevent the unauthorized publication or disclosure of any such information or documents. The Contractor shall ensure that its Contractor Personnel are aware of and comply with this clause and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of confidence by such persons mentioned above.

- 16.2** In the event that product specifications are required by the Council, the Contractor will provide the requested specifications upon receipt of a signed Data Use Contract. The Contractor will not give any warranty in respect of product data received by it from third party manufacturers.
- 16.3** All pricing, terms and conditions between the Council and the Contractor are confidential between the Parties and may not be disclosed to any third party without the express permission of both Parties.
- 16.4** Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Contract are granted to the other Party or to be implied from this Contract. In particular, unless otherwise expressly agreed in this Contract no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other Intellectual Property Right held, made, obtained or licensable by either Party now or in the future.
- 16.5** The provisions of this clause shall survive the expiration or termination of this Contract.

**17. Agreement and Transparency**

- 17.1** Further to the Local Government Transparency Code 2014 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 Contract and any associated tender documentation provided by the Contractor (the Tender Submission)<sup>6</sup> is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract or the Tender Submission<sup>7</sup> is exempt from disclosure in accordance with the provisions of the FOIA.
- 17.2** Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Council to publish this Contract and the Tender Submission<sup>8</sup> in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 17.3** 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.
- 17.4** The Contractor shall assist and cooperate with the Council to enable the Council to publish this Contract and the Tender Submission<sup>9</sup>.

<sup>6</sup> Delete if there is no tender

<sup>7</sup> As above

<sup>8</sup> As above

<sup>9</sup> As above

**18. Assignment, Transfer and Sub-Contracting**

- 18.1** Neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other Party PROVIDED that the Council may,
- (a) assign any of its rights under this Contract; 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;
- 18.2** Any consent required under Clause 18.1 must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.
- 18.3** The Contractor will not, without the written consent of the Council, sub-contract its right or obligations under this Contract
- 18.4** 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
- 18.5** Subject to clause 18.1, in the event that either Party wishes to assign its rights and obligations under this Contract, 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 Contract.
- 18.6** Notwithstanding the Contractor's right to sub-contract pursuant to this clause 18, 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.

**19. Publicity**

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

**20. Prevention of Bribery**

**20.1** The Contractor:

- a) shall not, and shall procure that all Contractor Personnel shall not, in connection with this Contract 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 Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

**20.2** 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 19 and provide such supporting evidence of compliance with this clause 19 by the Contractor as the Council may reasonably request.

**20.3** If any breach of clause 20.1 is suspected or known, the Contractor must notify the Council immediately.

**20.4** If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 20.1, 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 Contract.

**20.5** The Council may terminate this Contract 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 20.1. At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 20.5, the Council shall give consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

- a) with the authority; or,
- b) with the actual knowledge;  
of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or
- c) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.

**20.6** Any notice of termination under clause 20.5 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 Contract will terminate.

**20.7** Despite clause 33 (Disputes), any dispute relating to:

- a) the interpretation of clause 20; 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.

**20.8** Any termination under clause 20.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

**21      Warranties, liability and indemnities**

21.1      The Contractor undertakes, represents and warrants to the Council that the Goods and their packaging and label shall:-

21.1.1 be accompanied with accurate, complete and comprehensible instructions for the treatment, assembly, use and/or storage of the Goods;

21.1.2 if the Goods are hazardous be marked as such with the appropriate international danger symbols displayed and with the name of the hazardous material in English, transportation or other documents shall include a declaration of the hazard and name of the material and the Goods must be accompanied by emergency information in the form of written instructions, labels or markings;

21.1.3 conform to the Specification and with any written instructions of the Council and shall otherwise meet the requirements of the Order and this Contract.

21.1.4 be of satisfactory quality, free from defects in materials and workmanship and fit for their intended purpose (whether such purpose is implied or expressly stated in the Specification Order or Contract).

21.1.5 be free from design and other inherent defects (save to the extent that the Goods have been supplied in accordance with the designs of the Council).

21.1.6 comply with all Goods Legislation (in particular all food safety and hygiene legislation) and Good Industry Practice.

21.2      The Contractor undertakes warrants and represents to Council that the Contractor shall, as soon as reasonably practicable, replace all or any Goods, which are or become defective during the period of 12 months from being put into service or 18 months from delivery, whichever shall be the shorter, where such defects occur under proper usage and are due to faulty design, erroneous instructions as to use, handling or storage, inadequate or faulty materials or any breach of the warranties in Clause 21.1. Any repairs or replacements pursuant to this Clause 20.2 then shall themselves be subject to the obligation imposed by this Clause 21.2 for a period of 12 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement.

21.3      The Contractor shall use its best endeavours to transfer or assign to the Authority or otherwise obtain for the benefit of the Council any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods in respect of the Goods (or part of the Goods) to the extent the same is capable of such transfer or assignment to the Council or otherwise providing such benefit

- for the Council.
- 21.4 Where there is any breach of the Contractor's warranty in Clause 20.1 or 21.2 above or if any obligation, warranty or requirement imposed by given or stated in this Contract in respect of the Goods is not complied with or the Goods or any instalment of the Goods are not delivered at the Delivery Date or the Goods delivered are damaged, then in each such case the Council shall be entitled at its sole and absolute discretion without liability to the Contractor (arising out of such action) and without prejudice to any other right or remedy of the Council to take one or more of the following actions:
- 21.4.1 cancel the Contract and treat the Contract as having never been entered into by the Contractor and/or
  - 21.4.2 reject the relevant Goods (in whole or in part) and any Goods already delivered which cannot be effectively and commercially used by reason of the non-delivery of any undelivered Goods and/or
  - 21.4.3 refuse to accept any subsequent delivery of the Goods and/or
  - 21.4.4 recover from the Contractor any costs reasonably incurred by the Council in obtaining substitute goods from another supplier and/or
  - 21.4.5 require the Contractor at its sole cost to replace or repair the Goods or carry out such work as is necessary within 14 days so that the Goods conform to the Contract Order and Specification and any written instructions of the Council and/or
- (a) treat this Contract as discharged by the Seller's breach and:
  - (b) delay payment of the price for the Goods until the requirements of this Contract (including the Order Specification and any written instructions of the Council) are entirely fulfilled,
  - (c) refuse to make payment of the price of the Goods, or
  - (d) require the repayment of any part of the price of the Goods which the Council has already paid whether or not the Council has previously required the Contractor to supply any replacement Goods, and/or
- 21.4.6 claim such damages as may have been incurred by the Council as a result of the Contractor's breach of the Contract.
- 21.5 If the Council claims that an Order has not been fulfilled or has been incorrectly fulfilled the Contractor shall be deemed to accept the validity of the claim, unless it serves written notice on the Council disputing the claim by the Authority and stating the reason for its dispute within seven (7) days of the date of the claim by the Council.
- 21.6 If the Council exercises any right under these Conditions, which is mentioned in Clause 5.4,6.4,21.4 or 32.1 the Council may, at its absolute discretion, require the Contractor to collect the relevant Goods forthwith.
- 21.7 The Council's rights under these Conditions are in addition to any statutory remedies available to the Council.
- 21.8 The Contractor warrants, represents and undertakes that:

- 21.8.1** it will supply the Goods 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
- 21.8.2** the Contractor's employees and agents will have the necessary skill, professional qualifications and experience to deliver the Goods in accordance with the Specification and Best Practice
- 21.8.3** it has full capacity and authority to enter into this Contract
- 21.8.4** it has obtained all necessary and required licences, consents and permits to provide the Goods
- 21.9** The Contractor shall where appropriate take account of the Human Rights Act 1998 and shall not do anything in breach of it.
- 21.10** The Contractor will at all times in supplying the Goods 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.
- 21.11** The Contractor warrants that none of its current Directors have been involved in liquidation or receivership or have any criminal convictions.
- 21.12** The Contractor agrees that where requested in writing during the term of this Contract 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
- 22. Product Recall**
- 22.1** The Contractor shall immediately notify the Council in writing providing all relevant details if it discovers that there is:
- 22.1.1 any defect in the Goods which have been delivered to the Council at any time or;
- 22.2 any error or omission in the instructions for the use, handling, storage and/or assembly of the Goods  
(whether or not any such defect, error or omission represents a breach of any of these Conditions) which causes or may cause any risk of death, injury or damage to property.
- 22.2** The Contractor shall immediately notify the Council of any information, which shall become available to the Contractor regarding any potential hazard known or believed to exist in relation to the transport, handling or use of the Goods
- 23 Freedom of Information Act 2000 & Environmental Information Regulations 2004**
- 23.1** The Council will have regard to the relevant provisions of the FOIA and EIR in considering Freedom of Information requests. If a Contractor considers any information it supplies is either commercially sensitive or confidential in nature, this should be highlighted and the reasons for its sensitivity specified. The Contractor however acknowledges that any lists or schedules so provided are of indicative value only and that the Council

may nevertheless be obliged to disclose such confidential information.

- 23.2** When considering any response to a Request for Information the Council will consult with the Contractor before making a decision on disclosure or the application of any appropriate exemption but any such decision will be at the absolute discretion of the Council. The Contractor shall provide all necessary assistance requested by the Council (within any time scale specified as reasonable by the Council and at the Contractor's expense) to enable the Council to respond to a Request for Information within the time for compliance as set out in section 10 of the FOIA. In no circumstances shall the Contractor respond directly to the party making the Request for Information unless expressly authorised to do so by the Council or unless the Contractor is also a Public Body (see below)
- 23.3** The Contractor shall ensure that all information required to be produced or maintained under the terms of the Contract, or by law or professional practice or in relation to the Contract is retained for disclosure for at least the duration of the Contract plus one year together with such other time period as required by the Contract, law or practice and shall permit the Council to inspect such records as requested from time to time.
- 23.4** 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 of any information (including Exempt Information) whether relating to this Contract or otherwise relating to any other party.
- 23.5** Where the Contractor is a Public Body it acknowledges that such obligations and duties of the Council as set out above are reciprocal to the Contractor. The Council and the Contractor acknowledges and agrees that:
- a). as Public Bodies they are subject to legal duties under the FOIA and EIR which may require either party to disclose on request information relating to this Contract or otherwise relating to the other party.
  - b). they are required by law to consider each and every Request for Information made under FOIA.
  - c). that all decisions made by the other pursuant to a request under the FOIA are solely a matter for the Receiving Party and at the discretion of the Receiving Party.
- 23.6** Notwithstanding anything in this Contract to the contrary (including but without limitation any obligations or confidentiality), the Receiving Party shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Receiving Party shall consult the other party before making any such decision and shall not
- (a) Confirm or deny that information is held by the other party, or
  - (b) Disclose information required

to the extent that in the Receiving Party's opinion the information is eligible in the circumstances for an exemption and therefore the Receiving Party may lawfully refrain from doing either of the things described in part (a) and (b) of this clause.

**23.7** Each Party shall bear its own costs of:

- (a) assessing the application of any exemption under FOIA and/or
- (b) responding to any FOIA notice and/or
- (c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

**23.8** The Receiving Party shall in no circumstances be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA of any Exempt Information or other information whether relating to this Contract or otherwise relating to the other Party.

**23.9** The other Party shall assist the Party receiving the request as reasonably necessary to enable the Party receiving the request to comply with its obligations under FOIA.

**24. Equalities**

**24.1** 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 Contract, and
- b) in its employment practices.

**24.2** 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).

**24.3** 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

**24.4** 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.

**24.5** 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.

- 24.6** 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.

**25. Non-compliance**

- 25.1.** If the Council identifies areas of the Services which do not comply with the requirements of this Contract (including any Schedules to this Contract) 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).

- 25.2** 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).

- 25.3** 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 Contract 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 Contract;

or

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

And/or

- (b) to terminate the Contract in accordance with clause 32

**26 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 Contract.

**27     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

**28     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 Contract.

**29     Force Majeure**

**29.1** Neither the Council nor the Contractor shall be in breach of this Contract nor liable for any failure or delay in performing their obligations under this Contract where it is directly caused by a Force Majeure Event, provided that:-

**29.1.1** 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

**29.1.2** 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.

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

**29.2.1** 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

**29.2.2** it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Contract 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.

**29.3** 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 Contract and by law):-

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

**29.3.2** either Party may, if that delay continues for more than 5 weeks, terminate this Contract 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 Contract occurring prior to such termination.

### **30 Rights of Third Parties**

The parties to this Contract 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).

### **31 Notices**

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

### **32 Termination**

- 32.1** Either Party may terminate this Contract by giving to the other Party at least three months' notice in writing.
- 32.2** Either Party may terminate this Contract by notice in writing to the other if:
- 32.2.1** the other Party commits a material breach of this Contract 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 Contract.
  - 32.2.2** the other Party commits a material breach of this Contract which cannot be remedied under any circumstances;
  - 32.2.3** the other Party commits a series of minor breaches which, when taken together, amount to a material breach;
  - 32.2.4** the other Party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
  - 32.2.5** the other Party ceases to carry on its business or substantially the whole of its business; or
  - 32.2.6** the other Party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 32.3** Where notice to terminate is given pursuant to this clause 32, this Contract shall terminate with effect on the date specified in the notice

**33. Consequences of Termination**

- 33.1** Other than as set out in this Contract, neither Party shall have any further obligations to the other under this Contract after its termination
- 33.2** Any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect
- 33.3** Termination of this Contract, for any reason, shall not affect the accrued rights, remedies obligations or liabilities of the Parties existing at termination
- 33.4** Notwithstanding its obligations in this clause 33 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.
- 33.5** upon termination of this Contract 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 information and any other property of the Council which are in the possession or control of the Contractor or the Contractor's Personnel at the date of termination.

**34. Disputes**

- 34.1** If any dispute or difference shall arise between the parties as to the construction of this Contract or any matter or thing of whatever nature arising under this Contract 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 Chief Executive of the Council and the Contractor or other authorised officer whose details have been notified to the Council, with notice of the dispute and those officers shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice
- 34.1.3** If the dispute cannot be resolved in accordance with the preceding sub-clause then it shall be referred to a single arbitrator to be agreed between the Parties and failing such agreement within 14 days of the request of one Party to the other in writing that the matter be referred to arbitration such reference shall be to a single arbitrator appointed for that purpose on the written request of either Party by the President for the time being of the Law Society of England and Wales and any reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the relevant Arbitration Acts and it is further agreed that

if any matter is referred to arbitration then each Party will bear it's own costs of such referral

**35. 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. This clause 34 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

**36 Governing Law And Jurisdiction**

It is the responsibility of the Contractor to comply with all relevant European and English legislation. This Contract shall be governed by and construed in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts

**37 Severance**

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

**38 Parent Company Guarantee/ NOT USED**

It is a condition of this Contract that if the Contractor is a subsidiary company then its Ultimate Group/Holding Company must guarantee the performance of this contract and provide a letter to that effect signed by a duly authorised signatory of the Ultimate Group/Holding Company.<sup>10</sup>

**39 Amendments**

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

**40 Agency, Partnership etc**

This Contract 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 Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

**41 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.

---

<sup>10</sup> Delete text if no parent company guarantee required and mark "not used"

**42    Entire Agreement**

This Contract 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 Contract

Signed by and on behalf of  
**Shropshire Council**

..... Director of Legal & Democratic  
Services  
  
..... Legal Services Manager

Signed by and on behalf of  
**(Contractor)**

.....  
Signature of authorised signatory                      Position in Company

Or

.....  
Director                      Director/Company Secretary

Print Name (s).....

Witness:

Name:-----

Signature:-----

Address:-----

-----

-----

Occupation: -----

## SCHEDULE 1

### SPECIAL CONDITIONS

All Goods supplied under this Contract shall, in all respects, comply with the requirements of:

- (i) The Food Safety Act 1990
- (ii) The Trade Descriptions Act 1968
- (iii) The Weights and Measures Act 1985
- (iv) Food Labelling Regulations 1996
- (v) The Food and Environment Protection Act 1985
- (vi) All regulations made as a result of the requirements of EC Directives or Regulations including EC Regulations No 248/97 and 1139/98.
- (vii) Novel Foods and Novel Food Ingredients Regulations 1997,
- (viii) The Requirements for School Food Regulations 2014
- (ix) The Food Safety (General Food Hygiene) Regulations 2013
- (x) The Meat Products (England) Regulations 2003
- (xi) Food Information (Miscellaneous Amendment and Revocation) (England) Regulations 2013
- (xii) Food Labelling (Declaration of Allergens) (England) Regulations 2008

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



## Appendix 1

### **Tender and Tender Response Document<sup>11</sup>**

---

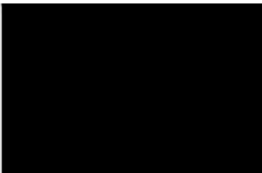
<sup>11</sup> Insert tender response document if applicable





Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
Shropshire SY2 6ND

Date:  
My Ref:  
Your Ref



Dear Bidder

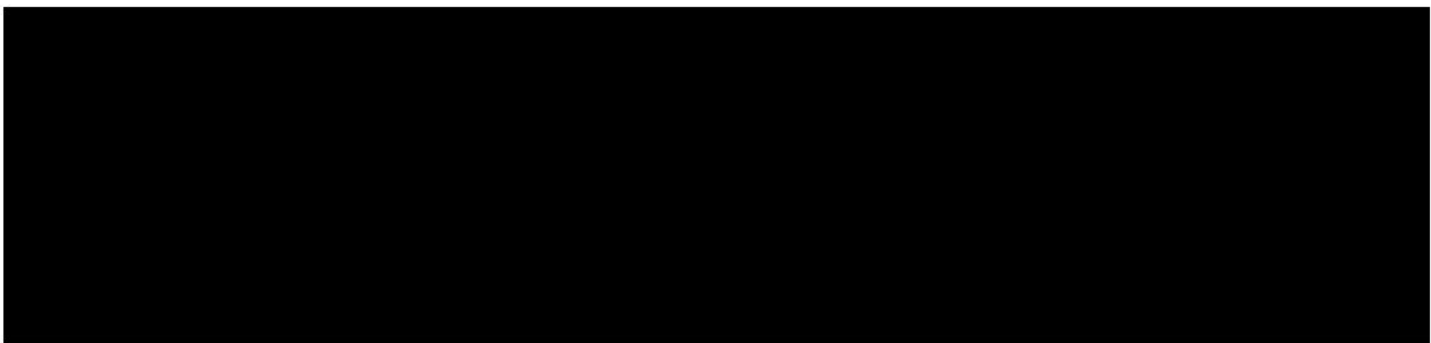
**DMCV 009 - THE SUPPLY OF ICE CREAM TO THEATRE SEVERN, SHREWSBURY  
SHROPSHIRE COUNCIL**

**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.

However, this letter is not, at this stage, a communication of Shropshire Council's formal acceptance of your bid. A "standstill" period is now in force; this period will end at midnight on 4<sup>th</sup> June 2021.



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

