

**WINCHESTER CITY COUNCIL**

**INVITATION TO TENDER FOR THE**

**CHESIL LODGE EXTRA CARE CATERING SERVICE CONTRACT**

### Comprising

**PART 1 – THE COUNCIL’S REQUIREMENTS**

The following sections set out Winchester City Council’s tendering, specification and contract requirements.

* Instructions to Tenderers Section 1
* Specification Section 2
* Contract & Lease Section 3
* Tender Assessment and Evaluation Section 4

Tenderers are asked to make their response to these requirements by completing and returning the Tender Documents in Part 2 of this Invitation to Tender.

**PART 2 – TENDER DOCUMENTS**

* Form of Tender Section 5
* Tendering (Collusion) Certificate Section 6
* Statement Relating to Mandatory and

Discretionary Grounds for Rejection Section 7

* Pricing Schedule Section 8
* Assessment of Financial Information and Service Standards Section 9
* Relevant experience – Reference Pro-Forma Section 10
* Checklist for a Complete Response Section 11

**PART 3 – RETURN DETAILS**

**Tender return date: 12.00 noon on 11th January 2017**

## **Section 1 – Instructions to Tenderers for the Chesil Lodge Extra Care Catering Service Contract**

### General Information and Instructions

* 1. The Council is seeking Tenders for the provision of a Catering Service (“the Service”). This Invitation to Tender sets out the Council’s requirements, and the requirements which Tenderers must comply with if they wish to submit Tenders for the Services.
  2. In this Invitation to Tender, terms defined in the Contract (Section 3) shall have the meaning set out therein.
  3. The Council intends to enter into a Contract with the successful Tenderer, for a period of two years (in accordance with this Invitation to Tender), commencing on or around 2nd October 2017 (the Commencement Date) with an option to extend for a further period of up to three years at the sole discretion of the Council.
  4. Tenders must be submitted in accordance with and subject to the terms of these Instructions and other documents comprising the Invitation to Tender. This tender has been advertised on the South East Business Portal and on Contracts Finder. Copies of the Invitation to Tender are available on Contracts Finder:

<https://www.contractsfinder.service.gov.uk/Search>

and on the South East Business Portal:

<https://procontract.due-north.com>

* 1. Tenders not complying with any mandatory requirement (or which cannot promptly be rendered compliant) will be rejected. A mandatory requirement is indicated by the word “shall” or “must”.
  2. Any queries about the tender documents or Tendering (Collusion) Certificate which may affect the preparation of the tender shall be raised in writing without delay (via the Contact Officer at the **email address** listed in 1.12 below). If the Council considers a query may have a material effect on the tendering process, all Tenderers will be notified without delay.
  3. If a Tenderer wishes the Council to treat a question or clarification as confidential and not issue the response to all Tenderers, it must state this when submitting the clarification. If, in the opinion of the Council, the clarification is not confidential, the Council will inform the Tenderer and it will have an opportunity to withdraw it. If the clarification is not withdrawn, the response will be issued to all Tenderers.
  4. All questions or requests for clarification must be submitted to the Contract Officer by no later than the date outlined in the timetable in 5.1 below.
  5. The Council reserves the right (but is not obliged) to seek clarification of any aspect of a Tenderer's Tender during the evaluation phase where necessary for the purposes of carrying out a fair evaluation. Tenderers are asked to respond to such requests promptly. Vague or ambiguous answers are likely to score poorly or render the Tender non-compliant.
  6. Tenderers are required to keep their tenders valid and open for acceptance by the Council for a period of ninety days from and including the date of their tenders.
  7. The Council will not be liable for any costs, expenditure, work or effort incurred by a Tenderer in proceeding with or participating in this Invitation to Tender, including if the procurement process is terminated or amended by the Council.
  8. The Contact Officer for this procurement is:

Sarah Turpitt, Sheltered & Extra Care Services Manager, Winchester City Council, Colebrook Street, Winchester, Hampshire SO23 9LJ.

e-mail: [cateringtender@winchester.gov.uk](mailto:cateringtender@winchester.gov.uk)

(Tenderers should note that, as per paragraph 1.6 above, all questions / points of clarification should be raised in writing via the **Contact Officer** at the email address above).

### Lots

### The Council has considered whether the Contract should be divided into lots. It has concluded that this is not appropriate.

### Confidential Nature of Tender Documentation and Submission

### Tenderers shall not discuss details of the tender they intend to submit other than with professional advisers or joint bidders who need to be consulted. Tenders shall not be canvassed for acceptance or discussed with the media or any other tenderer or Member or officer of the Council.

### Any breach of paragraph 3.1 above may result in the Council rejecting the Tender and not inviting the Tenderer to tender for future work.

### Preparation of Tender

### No alteration or addition shall be made to the Form of Tender, Pricing Schedule or any part of the Invitation to Tender except where expressly allowed or as provided below in paragraph 4.8 below.

### Tenders shall not be qualified or accompanied by statements that might be construed as rendering the Tender equivocal. Only unqualified Tenders will be considered. The Council’s decision as to whether or not a tender is in an acceptable form will be final.

### Tenderers must obtain for themselves all information necessary for the preparation of their Tender and satisfy themselves that the quality and standards specified by them or the Council are appropriate. Information supplied to Tenderers by the Council’s staff or contained in the Council’s publications is supplied only for general guidance in the preparation of the Tender. Tenderers must satisfy themselves as to the accuracy of any such information and no responsibility is accepted by the Council for any loss or damage of whatever kind and howsoever caused arising from the use by tenderers of such information.

### Tenders and supporting documents shall be in English and any contract subsequently entered into and its formation, interpretation and performance shall be subject to and in accordance with the law of England.

### All prices, rates, etc quoted are to be inclusive of Value Added Tax where required and in pounds sterling including, as appropriate, decimal fractions of a pound.

### Tenderers must declare if any current or former Councillor or employee of the Council is a director or, in the case of partnerships, is a partner or holds 20% or more of the shares or interest in the Tenderer’s business.

### If the Council considers that a Tender is abnormally low, it may require Tenderers to explain the price or costs proposed in the Tender. The Council may reject Tenders where an unsatisfactory explanation is given, and will reject Tenders where the tender is abnormally low due to breach of the Tenderer’s environmental, social or labour obligations, including obligations deriving from collective agreements.

### Where the Council determines that an amendment to the original Tender documents is required, and regards such amendment as significant, an extension of the closing date may, at the discretion of the Council, be given to all Tenderers.

### Timetable

### The key dates for this procurement are as follows:-

|  |  |
| --- | --- |
| Event | Date |
| Invitation to tender published on South East Business Portal and on Contracts Finder | Week commencing 21/11/16 |
| Deadline for receipt of clarifications | 12.00 Noon on 19/12/16 |
| Deadline for receipt of Tenders | 12.00 Noon on 11/1/17 |
| Evaluation of Tenders | Week commencing 16/1/17 |
| Short-listed Tenderers attend for interview | Week commencing 6/2/17 |
| Site visit to Tenderer with highest tender score | Week commencing 20/2/17 |
| Notification of contract award decision | Week commencing 27/3/17 |
| Standstill period | Complete by 28/4/17 |
| Confirm contract award and start of mobilisation period | 1/5/17 |
| Service commencement date | On or around 2/10/17 |

### Submission of Tender

### All Tender submissions shall comprise of the following documents:

1. Form of Tender (Section 5);
2. Tendering (Collusion) Certificate (Section 6);
3. Statement Relating to Good Standing and Discretionary Grounds for Rejection (Section 7);
4. Pricing Schedule (Section 8);
5. Assessment of Financial Information and Service Standards (Section 9);
6. Relevant experience – reference pro-forma (Section 10); and
7. Checklist for a complete response (Section 11).
   1. Tenderers should submit one electronic copy (on suitable media such as CD-Rom or USB stick) of the whole tender submission, together with one paper copy of the whole tender and two copies of all method statements. If a Tenderer’s financial statements are available free of charge on a relevant national database, Tenderers should state where these statements can be found instead of needing to submit electronic or hard copies.

### All Documents to be submitted as part of a Tender must be sealed in a suitable envelope or container and delivered to:-

### Head of Legal and Democratic Services (For the attention Of Dave Shaw)

### Winchester City Council,

### City Offices, Colebrook Street,

### Winchester, SO23 9LJ

### by 12.00 noon on 11th January 2017

**TENDERERS MUST ENSURE THAT THEY PRINT OFF THE YELLOW TENDER LABEL WHICH IS INCLUDED IN THE INVITATION TO TENDER DOCUMENTS (at end of Section 11), AND SECURELY AFFIX IT TO THE OUTSIDE OF THE ENVELOPE IN WHICH THE TENDER IS SUBMITTED.**

### Tenders should be delivered by post or by hand, or by courier delivery sealed as above. The envelope or container shall in no circumstances bear any name, mark or indication of the Tenderer on the envelope, but must have the yellow tender label affixed to the envelope in the top left hand corner.

* 1. Company franking infringes 6.4 above and should not be used. Tenderers should be aware that data post or private courier may also infringe 6.4 if the envelope or container identifies the sender and should ensure that if this method is used the Tenderer’s name is not identified on the packaging.

### Any Tender received after the deadline (or any extended deadline set by the Council) for receipt of tenders shall only be considered by the Council if in its opinion, taking into account relevant evidence, the failure to meet the deadline was due to circumstances beyond the control of the Tenderer.

### Tenders may be disqualified if documents are returned incomplete or if any variation, alteration or qualification is made to the Tender (other than as expressly permitted in the Tender Documents).

### The Form of Tender shall be submitted by the organisation which it is proposed will enter into a formal contract with the Council if awarded the contract. It shall be signed by persons authorised to submit tenders and make contracts for the Tenderer normally:

1. where the tenderer is a partnership, by two (2) duly authorised partners;
2. where the tenderer is a company, by two (2) directors or by a director and the secretary of the company, such persons being duly authorised for that purpose.

### If there appears to be an error or omission in a tender submission, the Council shall invite the Tenderer to confirm the tender price as submitted, including errors/omissions, or to amend and/or correct these errors/omissions by:

* + 1. providing the Tenderer with written details of the errors/omissions and affording it the opportunity to confirm their offer or amend to correct genuine errors/omissions; and

1. if the Tenderer amends the Tender to correct genuine errors/omissions, the Tender sum should be revised (corrected). This can involve amendment of rates.

### All amendments or confirmation of Tender must be confirmed in writing by the Tenderer.

### The Council reserves the right to disregard any Tender where:

1. in the opinion of the Council, there is sufficient doubt as to the Tenderer’s ability to perform the contract for the submitted price; or
2. it does not fulfil a mandatory or pass/fail requirement; or
3. it contains qualifications that conflict with these Instructions to Tenderers.

6.12 The Council reserves the right at its absolute discretion to accept or not accept any Tender submitted and/or to abandon this procurement at any time.

6.13 For the avoidance of doubt the Council shall have no liability whatsoever to any Tenderer should they elect not to accept any Tender or to abandon this procurement at any time.

### Evaluation of Tenders

* 1. The evaluation of the Tenders will be carried out as a three stage process as set out below.
  2. Stage 1 will assess Tenderers to ensure they meet the Council’s minimum requirements for economic and financial standing and mandatory standards relating to insurance, staff, health and safety and local presence as set out below and in Section 9. Tenders from Tenderers who do not meet these requirements will not be considered further. Tenderers who meet these requirements will pass to Stage 2a, when their Tenders will be formally assessed in accordance with the Tender Assessment and Evaluation criteria set out in Section 4.
  3. A short-list of up to 6 Tenderers who score highest at Stage 2a will be short-listed and invited to attend for interview at Stage 2b. Interviews will be assessed in accordance with Section 4. Stage 2b will consist of a set of pre-determined questions from a panel for all invited Tenderers to answer (one question requiring a presentation of which the topic will be provided before interview). The panel will then score all responses and these scores will be apportioned to the 10% available marks for this section (10% being the maximum score that can be achieved for the interview) and added to the overall marks. The scores of each of the interviewed Tenderers from the assessment of their written tenders and interview will be added together.
  4. The Tenderer with the highest score overall for their price and quality submissions will go on to Stage 3.
  5. Stage 3 will involve the Council undertaking a site visit of the Tenderer who has achieved the highest score to ensure the Council is satisfied with arrangements in place for the Tenderer to safely and appropriately carry out its responsibilities under this contract. The site visit will consist of the Council visiting a similar catering service currently operated by the Tenderer and assessment of this will consist of a pre-determined set of questions that confirm the Tenderer complies with mandatory aspects of the contract.
  6. If the highest scoring Tenderer is unable to assure the Council, as a result of the site visit, of its ability to carry out its responsibilities under the contract, the Council may decide to disqualify that Tenderer and in turn select the Tenderer with the second highest points total. If this is the case, the Council will request a site visit of the second place Tenderer with a view to offering the second placed Tenderer the contract subject to satisfactory compliance with mandatory aspects of the contract.

### Stage 1 – Assessed on a Pass/Fail Basis

### The Council will assess Tenderers’ responses to Section 9 Part 1 (Assessment of Financial Information and Mandatory Service Standards) and will evaluate the responses in accordance with the following.

* Economic and Financial Standing - Marking information for financial assessment. Please refer to Section 9 Stage 1 and complete the information required.
* Mandatory service standards – Details of Pass or Fail requirements. Please refer to Section 9 Stage 1 and complete the information required.

### The financial information supplied by the Tenderer will be used to assess the risk to the Council and/or public money which could result if a Tenderer bidding for the contract were to go out of business during the life of the contract, or have inadequate financial resources to perform the contract.

### Financial checks will be conducted by the Council and will be assessed as pass/fail using the following criteria:

* Turnover two times annual contract value (assumed annual contract value for evaluation purposes only £75,000)
* Turnover in relevant services two times annual contract value (assumed annual contract value for evaluation purposes only £75,000)
* The financial viability, the capacity and financial resilience of the Tenderer. This may include (but is not limited to) an assessment of Tangible Net Worth, Net Current Assets and ratio analysis. E.g. negative tangible net worth and/or negative net current assets and/or poor ratios will likely result in the application not proceeding to the next stage.

7.10 Where this financial analysis indicates a Tenderer’s current financial capacity would pose an unacceptable risk to the Council and/or public money, the potential provider will be disqualified from the procurement process.

**Compliance test**

### 7.11 Where in respect of any Tenderer there is evidence that a mandatory ground for exclusion (in accordance with regulations and directives outlined in this document) applies (from the response in Section 7 of the Invitation to Tender or otherwise), that Tenderer will be eliminated from the procurement process and will not progress to Stage 2.

### Where in respect of any Tenderer there is evidence that a discretionary ground for exclusion (in accordance with regulations and directives outlined in this document) applies (from the response in Section 7 of the Invitation to Tender or otherwise), the Council will consider relevant circumstances and decide whether or not to eliminate that Tenderer from the procurement process, or allow that Tenderer to continue to Stage 2.

### Stage 2 – Evaluation of Tender Response

### Tenders that pass Stage 1 will then to progress to Stage 2 and be scored. Any contract award will be based on the most economically advantageous tender (MEAT), as determined in accordance with the following award criteria.

**Cost 60% -** The lowest price tender will be awarded maximum points (60) and all other tenders awarded points in proportion. This will be done by dividing the lowest tender price by the bid under consideration then multiplying by the price weighting -

Price Score = lowest price divided by the price of tender being evaluated multiplied by price weighting (60).

**Quality 40% -** Each of the elements below will be assessed against the marking scheme and a total quality scored calculated. The percentages show how the 40% of total marks for quality are allocated to each element.

**Relevant experience** 6%

**Experience working with client group** 12%

**Continual improvement** 7%

**Added value** 5%

**Interview** 10%

Relevant Experience

In order to ensure that Tenderers have relevant experience of providing services of a similar nature to the Service, Tenderers must give details of three similar contracts or operations carried out within the last three years and ensure a reference for each of these three contracts is sent to the Contract Officer by the closing date for tender submissions (provided using the reference pro-forma contained within Section 10).

Full details of tender scoring assessment and evaluation are found in Section 4. Additional information on the requirements and submission of information to fulfil the ‘quality’ assessment methodology are found in Section 9.

### The Council is seeking the Most Economically Advantageous Tender that delivers the best quality service to service users and that remains affordable within budget constraints.

### Each of the Quality sections above will be scored based on the method detailed below:

| **Standard** | **Score** |
| --- | --- |
| Exceptional demonstration by the Tenderer of the relevant ability, understanding, skills, facilities & quality measures required to provide the services with evidence to support the response, where appropriate. | 5 – Excellent |
| Good demonstration by the Tenderer of the relevant ability, understanding, skills, facilities & quality measures required to provide the services with evidence to support the response, where appropriate. | 4 – Good |
| Satisfactory demonstration by the tenderer of the relevant ability, understanding, skills, facilities & quality measures required to provide the services with evidence to support the response, where appropriate. | 3 – Satisfactory |
| Contains minor shortcomings in the demonstration by the tenderer of the relevant ability, understanding, skills, facilities & quality measures required to provide the services with evidence to support the response, where appropriate and/or is inconsistent or in conflict with other proposals with little or no evidence to support the response. | 2 – Minor Reservations |
| Does not satisfy the requirement and raises considerable reservations of the Tenderer’s relevant ability, understanding, skills, facilities & quality measures required to provide the services, with little or no evidence to support the response. | 1 – Serious Reservations  **Submissions which receive a ‘1 – serious reservations’ will not be considered further** |
| No response provided. | 0 – no score – Fail  **Submissions that ‘Fail’ will not be considered further** |

**Interviews**

* 1. The Council plans to invite up to 6 short-listed Tenderers to an interview/presentation at the Council’s offices. This will contribute 10% to overall scores.
  2. The Council will review the tenders with the highest evaluation score being calculated on the basis of the highest overall score for price and quality aspects. The Tenderer who has provided the highest scoring tender will then be requested to host the Council at a site visit for the Council to satisfy itself that the Tenderer has processes in place to carry out the contract in a safe and appropriate manner.

### Bond and Parent Company Guarantee

### Tenderers’ attention is drawn to Rule 20.6 of the Council’s Contracts Procedure Rules in the Council’s Constitution which states,

### *“In respect of every contract exceeding £125,000 and in every other case where the Council so decides, the Council shall require and take sufficient security for the due performance of any such contract by taking a bond for 10% of the total cost or such other percentage as the Head of Finance approves. The bondsman shall be such as must be approved by the Head of Finance. The Head of Finance may approve a suitable alternative form of security, such as a parent company guarantee, or a stakeholder arrangement involving retention of monies due to a contractor.”*

### Tenderers will be required to obtain a letter from a bank, insurance company or other similar organisation confirming that a bond will be provided to the Council in respect of the performance of the Tenderer in the event that the Contract is awarded. The value of the bond should be 10% of the annual Tender sum (the highest priced option) and the wording of the proposed bond should be included in the Tender submission. Where the Council decides to accept a Tender and also requires a bond, acceptance of the Tender will be conditional upon such a bond being produced by contract signature (or an undertaking from the bondsman to produce it within 14 days of contract signature).

### As a separate matter from the bond, the Council may seek a parent company guarantee. Again, if the Council requires this, the parent company guarantee must be in place at contract signature.

### Award Process

### The Council expects to make its decision as to whether or not to award a contract within 90 days of the closing date for submission of tenders (see paragraph 5 above). Tenders shall remain open for acceptance for a minimum of 90 days from the date of the tenders. The Council may, if necessary, extend the 90-day period for completing the award process.

### The Council reserves the right to:

(a) conduct post tender clarifications; or

* + 1. reject all of the tenders received and invite further tenders based on a revised requirement.

### Tenderers will be notified simultaneously and as soon as possible of any decision made by the Council during the tender process, including its decision as to the contract award.

### Acceptance of the tender by the Council shall be in writing and shall be communicated to the winning Tenderer. Upon such acceptance the Contract shall thereby be constituted and become binding on both parties and, notwithstanding that, the winning Tenderer shall upon request of the Council execute a formal contract in the form contained in the Contract Documents (Section 3).

### The successful Tenderer must not commence provision of the Service without first having executed a formal agreement with the Council in the form contained in the Section 3. No substantial amendments or alterations to the Contract will be permitted. No payments will be made to the successful Tenderer under the contract until such contract has been executed.

### The successful Tenderer will be required to work with the Council from the date of award to the Commencement Date (the “Mobilisation period”) to ensure the contract can be safely and fully mobilised the Commencement Date. Tenderers will not be paid under this contract for services provided until the Commencement Date (after Mobilisation period has been completed) so should build in costs for activities during this period into their overall price submission for the contract period. The Council will not pay the successful Tenderer additional sums for work carried out during the Mobilisation period.

### Tenderers Warranties

### In submitting its Tender, each Tenderer warrants, represents and undertakes to the Council that:

1. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Tenderer, its staff or agents in connection with or arising out of the Tender are true, complete and accurate in all respects, both as at the date communicated and as at the date of tender submission;
2. it has made its own investigations and research and has satisfied itself in respect of all matters (whether actual or contingent) relating to the Tender and that it has not submitted the Tender and will not be entering into the contract (if the same be awarded to the Tenderer by the Council) in reliance upon any information, representation or assumption which may have been made by or on behalf of the Council;

(c) it has full power and authority to enter into the contract and perform the obligations specified in the Contract Documents and will, if requested, produce evidence of such to the Council;

(d) it is of sound financial standing and has and will have sufficient working capital, skilled staff, equipment and other resources available to it to perform the obligations specified in the Contract Documents;

1. it will not at any time during the Contract Period or at any time thereafter claim or seek to enforce for the purposes of this contract any lien, charge, or other encumbrance over property of whatever nature owned or controlled by the Council and which is for the time being in the possession of the Tenderer.

### Freedom of Information Act

### Information in relation to this application may be made available on request in accordance with the requirements of the Freedom of Information Act 2000 (the ‘FoIA’). Where a Tenderer considers any information submitted to be commercially sensitive, the Tenderer should:

* clearly identify such information as commercially sensitive;
* explain the potential implications of disclosure of such information; and
* provide an estimate of the period of time during which the Tenderer believes that such information will remain commercially sensitive.

### The Council will endeavour to maintain confidentiality, but Tenderers should note that, even where information is identified as commercially sensitive, the council might be required to disclose such information in accordance with the FoIA. It is also important to note that information may be commercially sensitive for a time (e.g. during a tender process) but afterwards it may not be. Accordingly, the Council cannot guarantee that any information marked ‘commercially sensitive’ will not be disclosed.

## **Section 2 – Service Specification**

### SPECIFICATION FOR General Service Requirements

**Chesil Lodge Extra Care Scheme Restaurant Facility Specification**

|  |  |
| --- | --- |
| **Management Agreement** | Agreement to be entered into between Winchester City Council (the ‘Council’) and the successful Catering Provider (the ‘Contractor’).  The Contract will start on or close to 2nd October 2017 (the Commencement Date). The Contractor will be expected to propose and adhere to an agreed implementation plan and transition period from date of contract award in the lead up to the delivery of the services starting on the Commencement Date.  The Council intends to enter into a Contract with the Provider for a period of two years commencing on the commencement date, with an option to extend for a further period of up to three further years at the sole discretion of the Council.  In normal circumstances the contract may be terminated by either the Council or the Provider giving at least 6 months written notice to the other.  It may be possible for the Contractor to be able to use the kitchen facilities for the provision of other business interests offsite as long as priority is given in the first instance to the needs of Chesil Lodge and other services as outlined in this service specification. This would need to be negotiated and agreed with the Council. |
| **Overview** | Extra care provides a safe and secure environment where older people can live as independently as possible with the support of 24/7 on site care and support team, in a community of other older people.  Each household has their own self-contained apartment (1 or 2-bed property), with facilities including their own bedroom/s, bathroom, lounge / diner, kitchen, balcony or patio.  Each resident also has access to communal areas within the scheme, including a lounge, gardens, laundry, hairdressing salon as well as the restaurant.  It is recognised that as residents get older, their ability to live independently reduces due to physical and mental health needs. The provision of an on-site restaurant facility means that residents can access good cooked food and interact with others without the need to move into residential care.  Chesil Lodge will also offer a dedicated day centre facility for around 15 users (non-residents) nominated by Hampshire County Council (HCC) to attend for activities and lunch each day Monday to Friday inclusive.  The overall aim of the catering service is to encourage good nutrition and social interaction through provision of good quality cooked food, prepared from base ingredients on site within the scheme facilities, with the aim of a restaurant feel rather than institutional canteen.  Chesil Lodge is a new venture for the Council and therefore the successful Contractor needs to work with the Council, residents and day centre users to tailor the service to meet the vision and individual food needs. |
| **Service Standards** | Contractor to work with Care & Support Provider (appointed by Hampshire County Council – HCC) and the Council in delivering excellence in food quality and customer service.  Care & Support Provider to assist residents to get to and from the restaurant and support with eating where required.  Contractor to employ staff to manage use of dining area by all relevant customers. To help customers with choice of food, prepare and serve food, clear tables and keep dining area clean and well presented. Recognition of need to form good customer relations with residents and other diners, valuing their custom and feedback.  Contractor to provide similar lunch time menu to Day Centre users as to residents of Chesil Lodge. |
| **Staff Team** | Contractor to ensure these services are provided by suitably qualified, experienced and numbers of staff.  Save as otherwise directed by the Authorised Officer the Contractor shall ensure that all its staff engaged in directly providing the Services shall be paid at a rate no less than:   * the Living Wage or * any statutory minimum wage or statutory national living wage   whichever is the higher.    Due to the Council’s commitment to the community, the Contractor will need to employ and manage at least 1 Apprenticeship position throughout the provision of this contract. |
| **Target Market** | * Residents of Chesil Lodge – 52 apartments (households will be mix of 1 and 2 bedrooms). * Users of the Day Centre – approximately 15 guests per day (Monday to Friday). * Residents’ guests / visitors. * Other older people living in the local community. * Council staff / guests or staff of onsite care provider.   Objective that residents / visitors take lunch meals in dining area of Chesil Lodge and the day centre for users of the day centre. Home delivery (Chesil Lodge residents only) to be provided where resident not well and can be explored if older person in local community requests this offsite service.  Households will generally consist of 1 adult but couples will live within the portfolio and therefore actual capacity will fluctuate. |
| **Opening Times** | Chesil Lodge service provision - 7 days a week in main scheme, lunch time focus initially but opportunity for Contractor to explore widening this as required, in consultation with the Council – eg: feedback may confirm a need to provide early evening service as well as breakfast.  Day Centre to comprise of lunch time meals, Monday to Friday only. |
| **Menu** | Varied rotating menu, reviewed periodically with residents - 2 course plus tea/coffee, lighter options for those who request this. Option to prepare a meal to be taken to resident’s Chesil Lodge apartment later (eg: where resident has an appointment at lunch time).  Themed events for specific times of the year (eg: Christmas, Chinese New Year, Indian events). To cater for all specific dietary needs whether medical or choice based to give residents confidence to use the restaurant knowing their needs have been taken into account (eg: diabetic, wheat-free and/or vegetarian). |
| **Kitchen Facilities** | Equipped catering kitchen for use by Contractor including separate office space with broadband / telephone facility. The responsibility for the account for line rental and charges will sit with the Contractor as will provision of furniture in office space.  The Contractor will also have access to a separate WC/Changing Room for their staff.  *\*A copy of the plans for this area of the scheme as well as the whole ground floor of Chesil Lodge is available to provide information on layout and dimensions.*  The Council will be responsible for providing agreed utility supplies, waste disposal services, and providing / maintaining fixed equipment and other agreed key equipment required in provision of meals at no cost to the Contractor.  *\*Inventory of equipment will be confirmed in lead up to Commencement Date of contract.*  Contractor to be responsible for provision of own bespoke equipment required (that is not included in the Council’s equipment inventory) and for good housekeeping in the operation of a commercial kitchen (including cleaning of kitchen, dining areas, own staff office, toilet and changing areas and anti-vermin controls). |
| **Charging Model** | There will be the following charging structures:   1. Residents to be charged for food costs only by the Contractor when purchasing a meal (other kitchen and associated costs covered within Council’s own rental charges to residents – which include: kitchen staff employment costs, cleaning materials, waste removal, utility costs, production of all the related menus and scheme promotional materials, specified equipment purchase and servicing / maintenance). 2. Day Centre users & non-residents (such as residents’ guests, staff or older people in local community) to be charged an additional contribution by the Contractor on top of residents’ charge to contribute to full cost of providing meals, including food and all kitchen and associated costs to include: kitchen staff employment costs, cleaning materials, waste removal, utility costs, specified equipment purchase and servicing / maintenance, office costs, marketing materials. Income from this source to be collected by the Contractor. Contractor then to pass the additional contribution to the Council to use this to offset future charges to residents or invest in improvements to the scheme.   Contractor to confirm price indications to the Council for each of the charging options to cover Contractor’s costs.  Contractor to collect payments for meals taken direct from residents, visitors and guests at Chesil Lodge. Contractor to invoice HCC for meals taken by day centre users in day centre facility.  Contractor to prepare for service mobilisation from contract award and will be allowed access to the kitchen and dining areas to do this ahead of agreed Commencement Date, at no cost to the Council.  Contractor to be paid on a quarterly basis in arrears by the Council from the date the service starts being provided on site to residents. Quarterly dates are 30th September, 31st December, 31st March, 30th June and so on.  Contractor to keep prices fixed (including any elements of VAT) during each financial year, with a review to take place during each period to agree any changes with the Council in time for implementation each April. First review in time for 1st April 2018, then on an annual basis thereafter.  Contractor to invoice the Council quarterly in arrears for fixed contract price with a credit/deduction for the non-residents additional contribution from sales of meals to non-residents (including day centre users), which will in turn be used to contribute towards running costs of scheme. |
| **Local Presence** | Contractor to have use of office on site at Chesil Lodge but also to have a management presence in an office base within 120 miles of the Council’s Colebrook Street offices to enable easy access to face-to-face meetings throughout duration of contract. |
| **Feedback & Continual Improvement** | Customers to be able to feedback and influence quality of food, service and overall experience. Provider needs to be part of collaboration to ensure restaurant provision is a success. |
| **Insurance** | Contractor will need to ensure that has minimum £10m Public Liability Insurance and £10m Employers liability insurance whilst operating all related activities for this service, providing copies of polices as requested by the Council.  Contractor will cover deterioration of stock and be responsible for quality and replacement of stock should equipment malfunction, at no cost to the Council. |
| **Health & Safety (including fire safety)** | Contractor required to produce risk assessments for key activities in the safe operation of a facility such as this, with practices to be consistent with Council policy and procedure. |
| **Communications** | Contractor to be responsible for the design and supply of own suitable marketing materials including leaflets / brochures confirming menus, at no additional cost to the Council. |
| **Key Performance Indicators (KPIs)** | Contractor performance to be measured through the use of a range of measures, including:   * Attendance at contract review meetings with the Council * Number of complaints * Invoice accuracy * Number of meals provided * Number of meals provided on time * Attendance at review meetings with the Council * Customer satisfaction * Variety of menu * Adherence to relevant fire, health & safety and food hygiene / environmental standards. * The Council’s equality standards and safeguarding protocols. |
| **References** | The Contractor will need to provide names of 3 suitable referees whom the Council can contact which will provide feedback on previous performance with a similar restaurant style service. |
| **Implementation Plan** | Contractor to submit an implementation plan confirming the steps it plans to take in establishing and maintaining this service if awarded the initial 2 year contract. |

## **Section 3 – Contract & Lease**

# 



**Fixed Price Catering Services Agreement between:**

**(1) Winchester City Council; and**

**(2) [Catering Provider].**

**CONTENTS**

[1 DEFINITIONS AND INTERPRETATION 22](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751733)

[2 DURATION 27](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751734)

[3 THE COUNCIL’S OBLIGATIONS 27](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751735)

[4 THE CONTRACTOR’S OBLIGATIONS 29](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751736)

[5 INSURANCE 30](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751737)

[6 PRICE AND PAYMENT 31](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751738)

[7 VAT 33](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751739)

[8 INTEREST 34](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751740)

[9 LIMITING LIABILITY 34](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751741)

[10 TERMINATION 35](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751742)

[11 FORCE MAJEURE 17](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751744)

[12 GOVERNANCE, ISSUE ESCALATION AND MEDIATION 36](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751745)

[13 FOOD SAFETY AND HEALTH AND SAFETY 37](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751746)

[14 CONFIDENTIALITY 38](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751747)

[15 BRANDING 20](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751748)

[16 GENERAL 39](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751749)

**SCHEDULES**

[Schedule 1 The Services 44](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751750)

[Schedule 2 The Service Standards & Specification 45](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751751)

[Schedule 3 Governance 46](file:///C:\Users\Patrick\Documents\Pat%20work%20&amp;%20courses\Navig8%20Consultancy%20Services\Winchester%20CC%20(client)\Catering%20contract%20tender\WCC%20catering%20draft%20documents\Latest%20drafts%20catering\WCC%20Chesil%20Lodge%20Catering%20Contract%20FINAL.docx#_Toc347751752)

This Agreement is made on 2017 between:

(1) Winchester City Council, with registered office address at City Offices, Colebrook Street, Winchester, Hampshire, SO23 9LJ (the **“Council”**); and

1. [Catering Provider], company number [ ], with registered office address at [………….] (the **“Contractor”**).

**BACKGROUND**

1. The Contractor carries on the business of the provision of catering services.
2. The Council wishes to engage the Contractor to provide certain catering services and the Contractor is willing to provide certain catering services to the Council on the terms of this Agreement.

**OPERATIVE PROVISIONS:**

**DEFINITIONS AND INTERPRETATION**

* 1. In this Agreement the following words and expressions have the following meanings:

|  |  |
| --- | --- |
| **Accounting Period** | means the period commencing on the Commencement Date and ending on the last Quarter Day in which the Commencement Date falls, each consecutive quarter period thereafter and any shorter period commencing on a day following the end of a quarter and ending on termination of this Agreement; |
| **Agency Services** | means those services set out in Schedule 1 Part 1; |
| **Authorised Officer**  **Bank Account** | means the Council’s Head of Housing Management or equivalent as notified by the Council to the Contractor;  means the Contractor’s bank account at […….], sort code [……] and account number [……..] or such other account as the Contractor shall nominate from time to time; |
| **Business Day** | means any day, other than Saturday, Sunday or a bank or public holiday in England and Wales; |
| **Cash Sales Proceeds** | means any and all amounts received or receivable from the Residents and/or Customers in respect of the Services, via the Till System, including but not limited to cash, cheque and/or credit or debit card payments and for the avoidance of doubt, excluding the Management Charge; |
| **Change in Law** | means an amendment, issue, extension, enactment or re-enactment of any statute or any law or legislation, regulation, directive or code, whether primary, delegated or sub-ordinate; |
| **Commencement Date** | means **[*2nd October 2017*]**,or such other date as shall be communicated in writing by the Council to the Contractor in the event of a delay in the refurbishment of the Venue by the Council giving a minimum of 5 days’ notice; |
| **Confidential Information** | means all information of a confidential nature in any form whatsoever, disclosed to the other party (**“Receiving Party”**) by or on behalf of the disclosing party (**“Disclosing Party”**) including, but not limited to, the business and/or technical affairs of the Disclosing Party including:  (a) the identity and business, financial and/or technical affairs of the Disclosing Party’s business contacts, including customers and suppliers; and  (b) all financial information of the Disclosing Party. |
| **Contract Year** | means the twelve month period beginning on the Commencement Date and each subsequent period of 12 months during the Term; |
| **Customers** | means users of the restaurant facilities including but not limited to the Residents/Day Centre Users/guests/employees and visitors of the Council located at the Premises as well as residents at other schemes owned by the Council; |
| **Day Centre User** | means an individual using the Day Centre attached to the Premises to which the Contractor must also provide a lunch time meal under this contract. |
| **Dedicated Employees** | means the employees of the Contractor or of a subcontractor of the Contractor dedicated to providing the Services; |
| **Financial Year** | The period as confirmed by the Council as the 12 month period from April to March the following year. |
| **Fixed Charge** | the fixed charge of [***INSERT QUARTERLY FIXED CHARGE*** ] inclusive of VAT per Accounting Period, (an element of which equals the Contractor’s actual costs in respect of labour used in the provision of the Services for that Accounting Period, an element of which equals the Contractor’s charges for sundries and an element of which equals a Management Charge in relation to the provision of the Services) as may be adjusted from time to time in accordance with the provisions of clause 1.24 and clause 1.28; |
| **FOIA** | means The Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any related guidance or codes of practice issued by The Information Commissioner or any successor body; |
| **Food** | means all food, beverages (including alcoholic beverages), raw materials and ingredients for food and every substance in whatever state of preparation supplied or to be supplied by the Contractor under the terms of this Agreement in the provision of the Services; |
| **Food Charge** | means £[ ] payable by each Chesil Lodge Resident, or £[ ] payable by each Day Centre User or £[ ] payable by each Chesil Lodge Visitor/Guest to the Contractor for meals taken during for each day of each Financial Year (subject to the provisions of clauses 1.24 and 1.28); |
| **Food Safety Legislation** | means the Food Safety Act 1990 (as amended), The General Food Regulations 2004, The Food Hygiene (England) Regulations 2006, The Food Hygiene (Wales) Regulations 2006, The Food Hygiene (Scotland) Regulations 2006, The Food Hygiene (Northern Ireland) Regulations 2006 (as applicable) and any other legislation, regulation or guidance from government or other competent authority relating to food safety, food hygiene or environmental health relevant to the obligations assumed by the Contractor under this Agreement including but not limited to any Act or Statutory Instrument made pursuant to EU Regulations 178/2002, 852/2004 and 853/2004; |
| **Force Majeure Event** | means any cause beyond the reasonable control of the Contractor including (but not limited to) strikes, lock outs or other industrial dispute, fire, reduction or unavailability of power or other services, substantial building works or alterations undertaken by the Council, act of God, government actions, war, riot, hostilities, armed conflict, terrorist activity, nuclear chemical or biological contamination, civil commotion, invasion, malicious damage, compliance with any law or governmental order, rule regulation or direction, accident, computer breakdown, breakdown of plant or machinery, storm, disease, epidemic, default of suppliers or sub-contractors, difficulties or increased expenses in obtaining raw materials, labour fuel parts or machinery, or failure by the Council to comply with Health and Safety Legislation in respect of the Premises and/or the facilities at the Premises and/or the equipment at the Premises; |
| **Group Company** | means in respect of a party to this Agreement, a holding company or subsidiary of that party from time to time and any subsidiary of such holding company from time to time, where the expressions "subsidiary" and "holding company" shall have the meanings ascribed to them in Section 1159 of the Companies Act 2006; |
| **Health and Safety Legislation** | means any Legislation designed to minimise, prevent, penalise or remedy the consequences of actions or omissions that damage or threaten the environment or human, animal or plant health and safety; |
| **Heavy Equipment** | means all equipment provided by the Council to the Contractor for use in the provision of the Services by the Contractor; |
| **Incoming Contractor** | means a supplier who provides the Services or services substantially similar thereto of the Services immediately after the expiry or termination of this Agreement; |
| **Intellectual Property Rights** | means patents, trademarks, service marks, copyrights, design rights, rights to extract information from a database, rights to use software, know how, trade secrets and all rights of a similar nature which may subsist anywhere in the world, whether or not registered and including applications for registration of any of them; |
| **Issue** | means a question, dispute or difference between the parties; |
| **Legislation** | means any law, statute, regulation, rule, ordinance, order or decree of any governmental authority which (a) has the force or effect of law in the United Kingdom or (b) is entitled under English law to be enforced; |
| **Light Equipment** | means all tableware and crockery, cutlery and glassware, barware, kitchen utensils, cooking and bake ware, food storage vessels, display equipment and any other light equipment; |
| **Living Wage** | means the living wage as set by the Living Wage Foundation |
| **Negotiation Period** | means the period of 14 days from receipt by the Council of notice from the Contractor in accordance with the provisions of clause 1.25; |
| **Premises** | means those parts of the Venue which the Contractor requires at its disposal, in order to provide the Services; |
| **Principal Services**  **Quarter Day** | means those services set out in Schedule 1 Part 2;  means 30th September, 31st December, 31st March and 30th June. |
| **Request for Information** | means a request for information under the FOIA; |
| **Residents** | means the tenants of the Council residing at the Venue; |
| **Review Date** | means 31 March each year throughout the Term; |
| **Service Standards & Specification** | means the standards relating to the performance of the Services as set out in Schedule 2; |
| **Services** | means the Agency Services and the Principal Services ; |
| **Tariffs** | means the prices paid by the Customers for food and beverages supplied by the Contractor as part of the Services; |
| **Term** | means the period commencing on the Commencement Date and, subject to the provisions for earlier termination set out in clause 0 below, continuing for a period of 2 Contract Years with an option to extend for a period of a further 3 years at the sole discretion of the Council; |
| **Termination Date** | means the date of termination or expiry of this Agreement (howsoever caused); |
| **Till System** | means the electronic point of sale system or similar system for recording the level of Cash Sales Proceeds manned by the Contractor’s employees; |
| **VAT Memorandum** | means the current memorandum of understanding on VAT practice which has been agreed between the Contract Caterer’s Forum of the British Hospitality Association and HM Revenue and Customs on the application of VAT to the contract catering industry to the extent applicable and in force at the time of the relevant supply; and |
| **Venue** | means the facilities owned by the Council located at ***[Chesil Lodge, Chesil Street, Winchester SO23 0HU]***, including but not limited to, the Premises. |

* 1. In this Agreement, unless the context otherwise requires:

any recitals and schedules form part of this Agreement and references to this Agreement include them;

words importing a gender shall include every gender, references to the singular include the plural and vice versa and words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies and vice versa;

references to any statute or statutory provision are to be construed as references to that statute or statutory provision as amended from time to time including a reference to any subordinate legislation in force at the date of this Agreement;

references to clauses and Schedules are to clauses and schedules of this Agreement;

headings and contents table are for convenience only and shall not affect the interpretation of this Agreement;

the schedules are part of this Agreement save that if there should be any conflict between the terms of the schedules and the rest of this Agreement the latter shall prevail; and

any phrase introduced by the terms “other”, "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**DURATION**

* 1. The Services shall commence on the Commencement Date and shall continue throughout the Term.

**THE COUNCIL’S OBLIGATIONS**

* 1. The Council grants to the Contractor the sole and exclusive right to provide the Services or any catering services similar to the Services (in particular any food or beverage services) at or from (in relation to any take away supplies) the Venue during the Term and shall:

allow the Contractor and its authorised employees, agents, suppliers and subcontractors access to all parts of the Premises and the Venue and their access routes as are reasonably required by the Contractor for the purposes of providing the Services and fulfilling its obligations under the terms of this Agreement;

keep the Premises in good repair and condition including, but not limited to, the structure and interior and exterior decoration;

at the Council’s cost, provide and maintain in compliance with all relevant laws the following which shall be at the Contractor’s disposal throughout the Term:

all Heavy Equipment;

all Light Equipment;

all dining accommodation and equipment;

kitchen facilities (adequately ventilated and equipped);

storage and refrigeration facilities;

an office or desk space with telephone and broadband access;

cloakroom and washing facilities;

first aid and firefighting equipment; and

such other plant or equipment as may be agreed in writing between the Council and the Contractor or as may be reasonably required by the Contractor for the provision of the Services;

and further the Council shall repair, renew and/or replace such items where reasonably requested to do so by the Contractor to enable the Contractor to provide the Services and fully comply with the terms of this Agreement (including, but not limited to, where such repair, renewal or replacement is as a result of fair wear and tear);

at the Council’s cost, provide all utilities (including but not limited to, water, heating, lighting, electricity, gas and any other fuel required, together with sewerage and refuse collection facilities) at the Venue;

to pay and discharge all taxes, charges and other outgoings whatsoever now or hereafter assessed, charged or imposed upon the Venue or upon their owner or occupier including business rates and any tax payable by the Council, the owner or occupier;

at the Council’s cost, clean the Venue (other than that which is the responsibility of the Contractor as set out in clause 0), including the cleanliness of walls above the level of 2 metres from floor level, deep cleaning, windows, ceilings, lighting and ventilation fittings and floor surfaces and furniture in dining areas;

be responsible for pressure vessel testing, PAT testing of all electrical items and pest control and extermination of vermin and pests at the Venue; and

comply with Food Safety Legislation and Health and Safety Legislation where applicable and in accordance with the Contractor’s obligations pursuant to this Agreement in respect of the Venue and the facilities and equipment listed under clause 0;

such of the above matters to be undertaken or provided at the Council’s expense (including the cost of telephone calls) and subject to all relevant Legislation.

* 1. The Council shall not carry out or permit any activity (nor enter into any arrangement with any third party) whereby sales of food or drinks which are part of the Services are provided at the Venue or allow the same to continue in breach of clause 1.4.
  2. The Council has provided to the Contractor information in connection with the Council’s requirements, including but not limited to, information relating to the Venue, floor space occupied by the Contractor, Resident numbers and Customer numbers prior to the Commencement Date. The Council warrants and represents that the information it has disclosed to the Contractor (in whatever form) is accurate and is all the information that the Contractor requires to enable it to provide the Services and fulfil its obligations under the terms of this Agreement.
  3. The Council warrants that the Heavy Equipment shall be present at the Premises in good working order on the Commencement Date and is owned by the Council free from any encumbrances.
  4. The Council shall indemnify the Contractor and keep the Contractor indemnified in full against any and all costs, claims, threatened claims, demands, charges, penalties, interest, liabilities, expenses, losses and fees (including without limitation legal and other professional fees on a full indemnity basis), actions, proceedings, judgements awarded and damages suffered or incurred by the Contractor arising as a result, directly or indirectly, out of or in connection with:

the Council’s breach of the warranties in clauses 3.3 and 3.4;

any and all negligent or wilful acts or omissions of the Council, its employees or subcontractors;

any increases in the Contractor’s costs of providing the Services by reason of any modification or alteration to any Government legislation, taxation, duties or levies or other statutory payments (including but not limited to National Insurance and/or VAT) and/or the introduction or alteration of minimum / living wage legislation and increase in the minimum / living wage;

in respect of any liability for any VAT payable on any supplies of goods and Services provided by the Contractor pursuant to this Agreement; and

any loss of the Contractor’s revenue arising due to the act or omissions of the Council, its employees, agents or contractors.

**THE CONTRACTOR’S OBLIGATIONS**

* 1. During the Term the Contractor shall:

act as agent of the Council in the provision of Agency Services. Title and risk in the Food and other supplies required by the Contractor in connection with the delivery of the Services shall remain with the Contractor and shall pass to the Council immediately before preparation and provision of the prepared Food to the Residents and, where applicable, the Customers by the Contractor as agent for and on the Council’s behalf;

act as principal in the provision of the Principal Services;

provide to the Council at the Premises the Services materially in accordance with the Service Standards or as may otherwise be agreed in writing between the Contractor and the Council from time to time;

store all Food in the storage and refrigeration facilities at the Premises, subject to such facilities being in good working order;

after prior consultation with the Council, be responsible for the choice, variety and preparation of all meals and refreshments supplied as part of the Agency Services;

clean the kitchen floor, kitchen apparatus, equipment and relevant stores and surfaces up to 2 metres from floor level and clean the surfaces of the dining tables, chairs and flooring comprising the dining area;

provide employees as may be required for the provision of the Services which, for the avoidance of doubt, may be permanent employees of the Contractor, relief teams of employees from alternative sites operated by the Contractor and/or temporary employees and manage, organise and control such employees and work as required for the provision of the Services; and

be responsible for compliance with all Food Safety Legislation relating to the provision of the Services.

save as otherwise directed by the Authorised Officer the Contractor shall ensure that all its staff engaged in directly providing the Services shall be paid at a rate no less than:-

a) the Living Wage or

b) any statutory minimum wage or statutory national living wage

whichever is the higher.

* 1. In substitution for all rights which the Council would or might have but for this Agreement, the Contractor agrees that if the Services are performed in a defective or erroneous manner then it will at its own discretion and acting reasonably in the circumstances either credit to the Council a reasonable sum to compensate the Council for such defective or erroneous Services or re-perform the defective or erroneous Services.
  2. In order to exercise its rights under clause 1.10 the Council must inform the Contractor within 24 hours of the time when such defect or error appeared in the Services setting out full details in writing of the defect or error concerned.
  3. Nothing herein shall impose any liability upon the Contractor in respect of any defect in the Services arising out of the acts, omissions, negligence or default of the Council, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Council to comply with any recommendations of the Contractor.

**INSURANCE**

* 1. The Contractor shall take out and maintain and shall cause any Sub-Contractor to take out and maintain, such insurances as are necessary to cover the liability of the Contractor or, as the case may be, of such Sub-Contractor in respect of personal injury or death arising out of or in the course of or caused by the performance of the Contract by the Contractor and in respect of injury or damage to property, real or personal, arising out of or in the course of or by reason of the performance of the Contract by the Contractor.
  2. The minimum liability limits shall be for not less than £10 million for Public Liability and not less than £10 million for Employers Liability, unlimited liability in respect of death or bodily injury to any person, and £5 million for liability in respect of loss of, or damage to property for any one occurrence or series of occurrences arising out of the same event.
  3. As and when the Contractor is reasonably required to do so by the Council, the Contractor shall produce and shall cause any Sub-Contractor to produce for inspection by the Council, documentary evidence that the insurances required pursuant to Conditions 12.2 and 12.3 are properly maintained, but on any occasion the Council may (but not unreasonably or vexatiously) require to have produced for its inspection the Policy or Policies and premium receipts in question.
  4. Should the Contractor or any sub-Contractor make default in insuring or in continuing or in causing to insure as provided herein, the Council may itself insure against any risk with respect to which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any money due or to become due to the Contractor or such amount shall be recoverable from the Contractor by the Council as a debt.
  5. The Contractor shall immediately notify the Council and the Contractor’s Insurers of any happening or event which may give rise to a claim, demand, proceeding, damage, cost or charge whatsoever arising out of the performance of the Services and the Contractor shall indemnify the Council against any loss whatsoever which may be occasioned to the Council by the Contractor’s failure to give such notification.

**PRICE AND PAYMENT**

* 1. The Contractor shall be entitled to:

after prior consultation with the Council (in respect of any maximum Tariffs only) set the appropriate Tariffs;

receive the Cash Sales Proceeds as agent for and on behalf of the Council in relation to the Agency Services;

retain all supplier related income and discounts; and

charge the Residents, Day Centre Users and non-Residents the relevant Food Charge.

* 1. As soon as practicable after the end of every Accounting Period the Contractor shall issue to the Council invoices (including VAT as appropriate) for:

the Fixed Charge for that Accounting Period; and

any charges incurred by the Contractor in addition to the Food Charge referred to in clause 1.27 in relation to ad hoc food and refreshment requirements required during the day in accordance with the provisions of Schedule 1 Part 1; and

any additional charges incurred in accordance with clause 1.27 for the previous Accounting Period.

* 1. As soon as is practicable after the end of every Accounting Period the Contractor shall confirm the number of Day Centre User and non-Resident meals served in that period and the associated income to be passed to the Council. The Council shall invoice the Contractor for this sum.
  2. Within 30 days from the end of the first and each subsequent Accounting Period, the Council shall pay the Fixed Charge into the Contractor’s Bank Account by way of bank transfer and the Contractor shall pay the associated income from Day Centre User’s and non-Resident’s meals to the Council by way of bank transfer.
  3. The Council shall settle the balance of each invoice (if any) (or in the event of a disputed invoice, the undisputed amount of that invoice) in relation to the amounts referred to in clause 0 within 30 days of the date of the relevant invoice by bank transfer to the Bank Account without any set off, deduction or counterclaim whatsoever.
  4. In the event that the Council does not settle the balance of each invoice when due the Contractor shall be entitled to set off any monies due from the Council from any monies due from the Contractor to the Council (including for the avoidance of doubt any monies held by the Contractor on trust for the Council and any Cash Sales Proceeds from non-Residents).
  5. The Fixed Charge payablehereunder have been calculated on the basis of Information submitted to the Contractor and is subject to the Contractor providing the Services in accordance with the Service Standards and Specification. Without prejudice to the provisions of clause 1.28, the Fixed Charge and/or the Food Charge per Resident / non-Resident shall be subject to renegotiation between the Contractor and the Council in the event that any Force Majeure Event causes the cessation of or a substantial interference with the provision of the Services for a period in excess of 7 days.
  6. In the event that the Contractor believes that any of the events specified in clause 1.24 has occurred then it shall serve written notice on the Council. During the Negotiation Period the parties shall use all reasonable endeavours to renegotiate in good faith the Fixed Charge and/or the Food Charge per Resident per day.
  7. During the Negotiation Period, the Contractor shall continue to be entitled to receive the Fixed Charge and the Food Charge per Resident per day payable hereunder.
  8. If, at the request of the Council, the Contractor agrees to provide catering or other services which are not included within the Services (including for the avoidance of doubt, meals, beverages and/or catered products sold at no cost to the Residents and/or Customers) the Council agrees to pay to the Contractor such charges in relation to such additional services as agreed between the Council and the Contractor in writing in accordance with the payment terms set out above.
  9. The Fixed Charge (inclusive of VAT) and the Food Charge per Resident / non-Resident (inclusive of VAT) payable hereunder shall be subject to re-negotiation between the Contractor and the Council between the period three months prior to the Review Date and the Review Date, such renegotiated Fixed Charge and the Food Charge per Resident / non-Resident to apply for the twelve month period after the Review Date. The Contractor and the Council shall take into account during such re-negotiation increases in the market conditions, including but not limited to any actual or anticipated increases in the Contractor’s costs of providing the Services by reason of any actual or proposed modification or alteration to any Government legislation, and/or any actual or anticipated increases in the Contractor’s costs of providing the Services as notified to the Contractor by its suppliers from time to time. In the event that the Contractor and the Council are unable to reach an agreement for the renegotiated Fixed Charge and the Food Charge per Resident / non-Resident, the Fixed Charge and the Food Charge per Resident / non-Resident effective from each Review Date shall be the Fixed Charge and the Food Charge per Resident / non-Resident applicable prior to the Review Date as adjusted by the percentage change in the Consumer Prices Index by The Office for National Statistics or any successor or replacement index three months preceding the relevant Review Date.
  10. Unless otherwise advised by the Council, the Contractor shall submit invoices for the Services:

by email to: [Invoices@winchester.gov.uk](mailto:Invoices@winchester.gov.uk)

Or by post to

Exchequer Services

Winchester City Council

City Offices,

Colebrook Street,

Winchester,

Hampshire,

SO23 9LJ

**VAT**

* 1. In relation to the Services, the Contractor shall be responsible for the correct accounting treatment in relation to sales of Food, including qualifying take away food (including but not limited to cold sandwiches, salads and fresh fruit) sold from the Premises as zero rated and charging VAT on standard rated items.
  2. In relation to the Agency Services, the Council shall be responsible for accounting for VAT in respect of the Services and making the relevant payments to HM Revenue and Customs in accordance with the relevant regulations in force at the time of making the relevant taxable supply. The Council will notify the Contractor immediately if the Council’s VAT status changes.
  3. In relation to the Principal Services, the Contractor shall be responsible for accounting for VAT and making the relevant payments to HM Revenue and Customs in accordance with the relevant regulations in force at the time of making the relevant supply.
  4. In relation to the Agency Services, the Contractor shall treat the amount of wages (including without limitation sickness and holiday payments) to be paid by the Council as part of the Fixed Charge in accordance with clause 0 as a non-VATable transaction pursuant to the current memorandum of understanding on VAT practice which has been agreed between the Contract Caterer’s Forum of the British Hospitality Association and HM revenue and Customs on the application of VAT to the contract catering industry (to the extent applicable and in force at the time of the relevant supply), provided that:

the employees concerned are engaged by the Contractor or a Group Company of the Contractor which is part of the same VAT group as the Contractor solely in relation to the Council (and do not work for any other clients of the Contractor);

the employees concerned are not temporary employees but are permanent employees of the Contractor or are agency employees of a Group Company of the Contractor, provided that in relation to agency employees any fee, mark up, commission or similar charge is shown separately to wages on any invoice from the Contractor as such a charge does not fall within the VAT Memorandum; and

the employee’s wages are clearly identified in the invoices to the Council.

* 1. The Contractor shall ensure, where reasonably possible, that clauses 0 to 0 above are applicable. For the avoidance of doubt, it is acknowledged that labour costs for any agency staff required for the provision of the Services (as agreed by the Council) shall not have the benefit of the memorandum of understanding referred to above.
  2. Any supplies of goods and services by the Contractor to any person pursuant to this Agreement shall be on a VAT exclusive basis. The Council shall pay any VAT due in respect of any supplies of goods and/or services provided by the Contractor pursuant to this Agreement within 14 days of demand.

**INTEREST**

* 1. If one party fails to pay any amount due in full on the due date, without prejudice to any other right or remedy, that party agrees to pay interest on the overdue amount from the date when payment becomes due until the actual date of payment before and after any judgment at the rate of 2% per annum above the base rate from time to time of NatWest Bank plc.

**LIMITING LIABILITY**

* 1. Subject to clauses 1.38 and 1.39, the maximum liability of the Contractor in any Contract Year for all claims (whether such liability arises in contract, tort (including, without limitation, negligence) or breach of statutory duty or otherwise) under the terms of this Agreement shall not exceed the total of the amounts paid and payable in that Contract Year by the Council to the Contractor in connection with the provision of Services.
  2. Subject to clause 1.39, the Contractor shall not be liable for any:

consequential, special or indirect loss or damage whatsoever, even if the Contractor was advised in advance of the possibility of such loss or damage;

any damage to goodwill and/or reputation; or

any loss of business, business opportunity, income, business interruption, interest, contracts, use, profit, anticipated profit, revenues, anticipated savings and/or goodwill.

* 1. Nothing in this Agreement shall exclude or limit the liability of either party for:

death or personal injury caused by its negligence;

fraudulent misrepresentation; or

any other liability which it is not permitted to exclude or limit as a matter of law.

**TERMINATION**

* 1. The Council may terminate the Contract, upon serving not less than two (2) months’ prior notice in writing, should the Contractor repeatedly and without reasonable cause, fail to operate the Services in accordance with the Service Specification and/or the KPIs and/or to the entire satisfaction of the Council.
  2. The Council may also terminate the Contract with immediate effect if the Contractor:

commits a Prohibited Act; or

consistently breaches the Contract or commits a serious breach of Contract. A failure to perform a substantial part of the Services for a period of seven days without reasonable cause beyond the Contractor’s control, will be regarded as a serious breach of the Contract. In this event the Council may arrange for replacement provision to be provided by another contractor and reserves the right to recover from the Contractor any additional costs incurred as a result thereof.

ceases or threatens to cease to carry on business

transfers assigns or sub-lets the Contract in whole or in part in breach of Condition 16.4.

* 1. Should either party (“the defaulting party”):

commit a material breach of the Contract, and fail to remedy such breach immediately upon notification by the other party to do so; or

effect or attempt to effect a compromise or composition with its creditors; or

be provisionally or finally liquidated or be placed in judicial management, whether provisionally or final; or

cease or threaten to cease to carry on its normal line of business;

then the innocent party may, at its discretion, terminate the Contract, upon serving not less than two (2) months prior notice in writing, to the defaulting party, in which event such termination shall be without prejudice to any claims which the innocent party may have for damages against the defaulting party occasioned by the termination of the Contract in terms of this Condition.

* 1. If either party wishes to terminate this Contract for any other reason than is detailed in Conditions 10.1 10.2 and 10.3, this may be done by giving the other a minimum of six months’ notice in writing. Upon termination any outstanding balance is to be paid and there shall be no further obligation by either party.
  2. On termination of the Contract for any reason, all amounts due to the Contractor for the Services or any part thereof rendered prior to termination shall become due and payable after the Contractor provides the Council with an invoice.
  3. Upon termination, cancellation or expiry of the Contract:

the provision of all Services shall forthwith cease;

the Council shall be entitled to employ other contractors to complete the outstanding Services at the cost of the Contractor;

the Contractor shall immediately return to the Council, in a secure, safe, serviceable and clean condition, all Equipment and materials owned by the Council.

* 1. Termination of the Contract shall not affect the enforceability of the provisions which are intended to operate after such expiry or termination.

**FORCE MAJEURE**

* 1. Neither party shall be liable for any failure to fulfil its obligations under the Contract if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to flood, fire, earthquake, war, tempest, hurricane, government restrictions or acts of God.
  2. Should any event of force majeure arise, the affected party shall notify the other party without delay and the parties shall meet within seven (7) days of such notice to negotiate in good faith alternative methods of fulfilling its obligations in terms of the Contract, if any. In addition the Contractor shall continue to provide and the Council shall continue to pay for those Services not affected by the event of force majeure.
  3. Should either party be unable to fulfil a material part of its obligations under the Contract for a period in excess of sixty (60) days due to circumstances of force majeure, the other party may at its sole discretion cancel the Contract forthwith by written notice.

**GOVERNANCE, ISSUE ESCALATION AND MEDIATION**

* 1. The relationship between the parties will be maintained at a peer to peer level between the Council and the Contractor via scheduled meetings and informal communication. The representatives for the Council and the Contractor are set out in Schedule 3.
  2. Any changes to any of the Council’s representatives or the Contractor’s representatives shall be notified to the other party within 14 days of such change taking effect.
  3. The parties shall use reasonable endeavours to resolve by agreement any dispute between them with respect to any matter relating to the Contract.
  4. In the event of there being a dispute over any part of the Contract the matter shall firstly be referred to the Contract Manager and the Authorised Officer (“the representatives”).
  5. In the event that the representatives are unable to resolve any dispute the matter shall be referred to the Council’s Assistant Director (Environment) or his/her representative and a principal officer of the Contractor.
  6. In the event that a dispute cannot be resolved by agreement the parties may agree to refer the dispute to an independent person to be agreed between the parties. Any charge made and expenses reasonably incurred by an independent person so appointed shall be paid for by the parties in equal shares unless the independent person determines that a greater share should be borne by one of the parties. Such independent person shall be given all information and assistance by the parties in carrying out his duties and the parties may agree that such independent person shall have the duty to recommend or approve terms for the settlement of the dispute.
  7. Any dispute which cannot be resolved under Condition 12.6 including failure to agree on an independent person shall, unless the parties agree otherwise, be referred to arbitration under the provisions of the Arbitration Act 1996 by a single arbitrator to be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators.
  8. The costs of any arbitration will be borne by the unsuccessful party, unless otherwise determined by the parties or the arbitrator, irrespective of which party referred the dispute to the expert or to arbitration.
  9. This Condition is severable from the rest of the Contract and shall remain valid and binding on the parties notwithstanding any termination of the Contract.

**FOOD SAFETY AND HEALTH AND SAFETY**

* 1. The Contractor shall in performing the Services ensure that its employees, or any other person acting on its behalf:

materially comply with all Food Safety Legislation and Health and Safety Legislation;

implement and operate to the Contractor’s food safety management system to protect the safety of Food from the point of delivery through to the provision of the Services; and

implement and operate to the Contractor’s safe systems of work and risk assessments to protect its employees, the employees of the Council, visitors, contractors and any other persons including members of the public who may be affected by the Contractor’s activities pursuant to this Agreement.

* 1. The Contractor shall:

display within the Premises and regularly review and display a food safety policy statement and a health and safety policy statement signed by the Chief Executive Officer of the Contractor; and

provide the Council with a copy of such policy statements and shall comply with any reasonable changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Contractor’s operating procedures.

**CONFIDENTIALITY**

* 1. The parties shall ensure that they shall at all times during the period of this Appointment comply with the provisions and obligations imposed by the Data Protection Act 1998 (the **DPA**) and shall indemnify each other and keep each other indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of this Condition 14 by one party which causes the other party to be in receipt of any actions, claims, demands, proceedings and/or incur any damages, costs, charges and/or expenses (including reasonable legal expenses).
  2. Each of the parties shall ensure that, to the extent that it stores and processes data in connection with this agreement, it shall comply with the provisions and obligations imposed on it by the DPA.
  3. The Council will:

act in the capacity of Data Controller (as defined in the DPA) of any Council or third party data accessed and/or processed by the Contractor in the performance of the Services; and

be responsible to third parties for such data, including the individuals to whom the data relates.

* 1. As Data Processor (as defined in the DPA) the Contractor shall at all times in respect of data for which the Council is Data Controller:

warrant and undertake to comply with the seventh principle in schedule 1 of the DPA; and

process data only in connection with the Service and only in accordance with the lawful and reasonable instructions of the Council unless the Contractor is of the opinion that to act on such instructions would be unlawful.

* 1. The Contractor shall also comply fully with all applicable guidelines and codes of practice issued by the Information Commissioner in the UK from time to time.
  2. The Council shall on giving reasonable notice to the Contractor be entitled to audit the procedures of the Contractor (which shall include the right to enter the Contractor's premises and/or view the Contractor's systems) for the purposes of ensuring compliance with this Condition 14 and to take any reasonable steps to satisfy itself that the Contractor is so complying.
  3. The Contractor will at the Council’s request from time to time prepare a report as to the Contractor’s technical and organisational procedures in place to protect third party personal data.
  4. In the event that the Contractor becomes aware that it, or any of its staff, agents or sub-Consultants is processing data in contravention of this Condition 14 or has breached the DPA in relation to the data it is processing on behalf of the Council, the Contractor shall promptly give written notice to the Council with full details of such contravention.
  5. The Contractor will provide all data in its possession as requested by the Council from time to time in accordance with the timescale specified by the Council in the event of the Council receiving a data subject access request. Where the Council requests data for the purpose of complying with a request, including a data subject access request under the DPA, the Contractor will retrieve the relevant data and provide a full copy of such to the Council as soon as is possible but in any event within five (5) Working Days of such a request being made.
  6. The Contractor will co-operate and provide reasonable assistance with any proceedings or inquiry by the Council, an affected data subject and/or the Information Commissioner or other body authorised by statute which are concerned with the DPA.
  7. The Contractor will on termination or expiry of this Appointment and at the request of the Council either return to the Council or destroy the data (and all copies of such data) in the Contractor’s possession or other as directed by the Council.

**BRANDING**

* 1. The Contractor shall have the right to manage and control the trade names, brand names, trademarks, designs and logos used at the Premises in connection with the Services.
  2. Neither party’s Intellectual Property Rights shall transfer to the other in connection with the performance of this Agreement. In the event that Intellectual Property Rights are created in connection with the supply of the Services, such Intellectual Property Rights shall vest in the Contractor.
  3. The Contractor may, in its sole discretion, make available to the Council from time to time certain branded items, including but not limited to signage, literature, equipment, menus, manual and uniforms for use in connection with the provision of the Services. Such items will belong to the Contractor (or relevant third party) and to the extent that the Contractor makes such items available, the Contractor grants to the Council a licence to use such items to enable the Contractor to provide the Services throughout the Term (or for such shorter time period as the Contractor shall from time to time prescribe).

**GENERAL**

* 1. Where the Council receives a Request for Information howsoever relating to the Contractor or this Agreement (Protected Information) it shall promptly and in any event no later than 5 days following receipt, notify the Contractor in writing of such request, the nature and extent of the information requested and the identity of the requestor.
  2. The Contractor shall be given all reasonable opportunities to make representations to the Council if it believes that the information requested should not be disclosed. The Council undertakes to reasonably consider such representations before making a decision on whether to disclose the information. The Council shall, if permitted by the FOIA, follow the Contractor’s recommendations.
  3. If there is a Change in Law (including but not limited to a change in the law applying to VAT) which materially and adversely changes or affects the supply of the Services, the Contractor may increase the Management Charge only in line with Conditions 6.7 and 6.11.
  4. The Contractor shall not transfer assign or sub-let the Contract or any part without the prior written consent of the Council. Sub-letting the Contract or any part thereof shall not relieve the Contractor of any of his responsibilities under the Contract. The Contractor must ensure that any Sub-Contractor complies with the Contract and that any sub-contract contains the same or equivalent provisions to the terms of this Contract. Failure to obtain the Council’s consent under Condition 16.4 shall constitute a material breach of contract for the purposes of Condition 10. The Contractor shall immediately notify the Council, in writing, of any intended change of ownership, company status or company name. Such changes include:

Company name,

Company status e.g. Sole Trader/Partnership/Limited Company/Association,

Address,

Telephone Number/Fax Number,

Bank Account details,

Insurance details,

Licence details,

VAT Registration/Deregistration

If the transfer of ownership or change of status of a company involves the transfer of the Contract this must be agreed, in writing, with the Council before the transfer takes place. The transfer of Contracts will be made by legal agreement (novation agreement), and must be signed by both the existing Contractor and the new Contractor. If the existing Contractor fails to notify the Council, in advance, of any such changes, the Council reserves the right to terminate the Contract with immediate effect. In such cases, the Council may recover from the Contractor any additional costs incurred as a result of the provision of replacement Services. Upon each occasion that such written request is made the Contractor shall supply to the Council all such details as specified in Condition 16.4 as may be required and shall ensure that it has the right to provide the details to the Council for onward transmission to prospective tenderers (including ensuring that they have the employees’ consent to such disclosure). Failure to comply with Condition 16.4 will constitute a breach of contract for which the Council will be entitled to recover any additional costs it incurs as a result of that breach.

* 1. The parties hereby choose for all purposes under the Contract the addresses set out in Condition 1.
  2. Either party may by giving written notice to the other, change its address to any other address, provided that such change shall take effect fourteen (14) days after delivery of such written notice.
  3. Notice will be deemed given:

if delivery by hand marked for the attention of the Authorised Officer during Business Hours to the designated physical address, on the date of delivery;

if sent by pre-paid special delivery, post in a correctly addressed envelope to the designated postal address, on the second (2nd) Business Day after the date of posting; and

notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.

* 1. Subject to clause 1.83 and except as otherwise expressly provided, all rights and benefits under this Agreement are personal to the parties and may not be sub licensed, assigned, transferred or otherwise disposed of, in whole or in part, without the prior written consent of the other party.
  2. The Contractor shall be permitted to assign and/or novate its rights and/or obligations under this Agreement and/or any document entered into pursuant to it at any time without the prior written consent of the Council to any Group Company. References to a party in this Agreement shall include its successors and permitted assignees.
  3. Nothing herein shall be deemed to constitute, evidence or compromise a partnership between the parties nor to constitute either party the agent of the other.
  4. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.
  5. No variation of this Agreement shall be of any effect unless it is agreed in writing and signed by or on behalf of each party.
  6. This Agreement may be varied by agreement between the parties to this Agreement and/or rescinded or terminated by the Contractor in accordance with the provisions of this Agreement and the consent of any person who is not a party to this Agreement shall not be required for any such variation, rescission or termination.
  7. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any proposals, previous agreements, understandings or arrangement between the parties relating to the subject matter of this Agreement.
  8. Except as expressly stated in this Agreement, all conditions, warranties, stipulations or other statements whatsoever that would otherwise by implied or imposed by statute, at common law, by a course of dealing or otherwise howsoever are excluded to the fullest extent permitted by law.
  9. No waiver by any party of any breach or non-fulfilment by any other party of any provisions of this Agreement shall be deemed to be a waiver or any subsequent or other breach of the same or any other term or condition of this Agreement. No failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver of that right or remedy.
  10. Each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect this Agreement and or each document referred to in it.
  11. Each party warrants to the other that it will not use any information provided to it by the other under this Agreement for any purpose other than in the performance of obligations under this Agreement and that, to the extent that any such information relates to an identified or identifiable natural person, it will at all times comply with all relevant requirements or the Data Protection Act 1998.
  12. Each of the provisions of this Agreement is severable and distinct from the others. If any provision is or becomes illegal, invalid or unenforceable in any respect, in whole or in part, under the law of any jurisdiction, the legality, validity or enforceability is that jurisdiction of the remaining provisions of this Agreement shall not in any way be affected or impaired by it.
  13. This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all counterparts together shall constitute a single Agreement.
  14. The provisions of this Agreement which are expressly or impliedly intended to survive the termination or expiry of this Agreement (howsoever caused) shall survive such termination or expiry including, without limitation clauses 1.8, 1.36, 0, 0, 11, 13, 14, 1.95, 16.21 and 16.22.
  15. The Contract shall be considered as a Contract made in England and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit. The Contract is binding on the Contractor and its successors and assignees.
  16. The Contractor hereby consents to the use by the Council of its name and a general description of the Services undertaken by the Council in terms of the Contract in any Proposals or other similar such documents which the council may issue or submit from time to time.
  17. The Contractor shall in all matters arising in the performance of the Contract conform to the provisions of the Equality Act 2010 and any regulations made thereunder. The cost to the Contractor in meeting the requirements of this Condition shall be deemed to be included in the Fixed Charge.

Signed )

for and on behalf of the **WINCHESTER CITY COUNCIL** )

by its duly authorised signatory in the presence of )

Witness Signature:

Witness Name:

Address:

Occupation:

Signed )

for and on behalf of the **CONTRACTOR** )

by its duly authorised signatory in the presence of )

Witness Signature:

Witness Name:

Address:

Occupation:

**Schedule 1  
  
The Services**

**Part 1**

**The Agency Services**

The Contractor shall act as agent on behalf of the Council in relation to the provision of the following catering and food services for the benefit of the Customers in accordance with this Agreement in return for payment for such Services from the Council through the Cash Sales Proceeds, Fixed Charge, Management Charge and other invoiced amounts.

Residents, visitors, guests and staff of the Venue

Lunch: [12:00 noon – 2.00 pm] [365 days per year, 7 days per week]

Day Centre Users

Lunch: [12:00 noon – 2.00 pm] [5 days per week, Monday to Friday]

Services (including hospitality services) may be provided outside of the above times at additional cost to the Council, where requested by the Council, or the Contractor where proposed by the Contractor. Such costs borne by the Council to be negotiated and agreed in advance in writing between the Council and the Contractor prior to the provision taking place.

**Part 2**

**The Principal Services**

The Contractor shall act as principal in relation to:

1. the procurement of and payment for all Food and other supplies required for the performance of the Services, which shall be procured from the Contractor’s nominated suppliers wherever possible, such that:

* 1. contracts with suppliers shall be entered into by the Contractor in the name of [**INSERT NAME OF CONTRACTOR**] or another Group Company of the Contractor;
  2. the Contractor shall pay all suppliers with whom the Contractor shall enter into contracts; and
  3. any contractual rights of action against such suppliers (including but not limited to breach of contract or for defective services) shall vest with the Contractor; and

1. the supply to the Council of the Food and all other supplies procured by the Contractor in accordance with Schedule 1 Part 2, paragraph 1 above.
2. any other services that are not Agency Services.

**Schedule 2  
  
The Service Standards & Specification**

* The Contractor shall provide a professional service with the due diligence, reasonable skill and care which reputable competent catering providers normally practice in the performance and management of similar work.
* The Contractor shall ensure that its employees maintain a professional appearance at all times.
* All foods will be produced as freshly as possible and service provision will be as close as possible to the agreed time of service.
* In the event of any complaint in respect of the Services by Residents and/or Customers, every endeavour shall be made to resolve this amicably between the parties.
* The Council and Contractor adhere to the agreed Service Specification, which provides more detail regarding the Service to be provided at the Premises:

**Schedule 3** **Governance**

|  |  |  |  |
| --- | --- | --- | --- |
| **Council’s Representative** | | **Contractor’s Representative** | |
| **Name** | **Title** | **Name** | **Title** |
|  |  |  |  |
|  |  |  |  |
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**DATED\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2017**

Winchester City Council (1)

XX (2)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**LEASE**

**of property known as**

**CHESIL LODGE, CHESIL STREET, WINCHESTER SO23 0HU**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**THIS LEASE** is made on 2017

**BETWEEN**:

(1) Winchester City Council, with registered office address at City Offices, Colebrook Street, Winchester, Hampshire, SO23 9LJ (the "**Landlord**")

(2) XX(company number) whose registered office is at XX (the "**Tenant**")

1. **DEFINITIONS**

In this lease, unless the context otherwise requires, the following terms and expressions have the following meanings:

|  |  |
| --- | --- |
| **Authorised Person** | anyone deriving title from the Tenant, and anyone at the Property with the express or implied authority of the Tenant, or of such person so deriving title; |
| **Authority** | any statutory, public, local, or other authority, and any court of law and any government department; |
| **Base Rate** | the base lending rate from time to time of the NatWest Bank or such other bank as the Landlord may nominate (or, if at any time during the Term base lending rate is abolished or no longer published, or cannot reasonably be ascertained, then such other comparable rate reasonably specified by the Landlord); |
| **Basic Rent**  **Building** | One peppercorn per annum;  the building (of which the Property forms part) known as Chesil Lodge located within the Estate and refers to each and every part of the Building; |
| **Break Date** | the date upon which the Tenant’s contract with the Landlord to provide catering services in the Building can terminate if this date is before the end of the Term. For the purposes of this lease, the first break date is 18 months from the commencement of this lease. |
| **Break Notice** | written notice to terminate this lease on the Break Date specifying the Break Date. |
| **The Estate** | That part of the Landlord’s property registered at the Land Registry under title number HP696749 as is shown for the purposes of identification only edged blue on the Plan and known as Chesil Lodge Chesil Street Winchester SO23 0HU (formerly known as Chesil Street Surface Car Park Winchester); |
| **Common Parts** | the entrances, passages, refuse areas, staircases, lifts, landscaped areas, service roads, service yards, walls, fences and other boundary and ornamental structures within the curtilage of the Landlord’s Estate and Building and other amenities in the Building from time to time designated by the Landlord or provided for the use of the tenants or occupiers of the Building and their visitors; |
| **Conduits** | sewers, drains, pipes, wires, cables, ducts, gutters, optic fibres, channels, culverts and any other medium for the passage or transmission of soil, waste, water, gas, electricity, air, smoke, light, telecommunications and any other information, together with radiators, tanks and cisterns and all other ancillary fixings equipment and structures; |
| **Contractual Term** | a term of five years running from and including the date hereof; |
| **EPC** | an energy performance certificate and recommendation report, as defined in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007; |
| **Insured Risks** | fire, storm, tempest, lightning, explosion, flood, earthquake, aircraft and other aerial devices and articles dropped therefrom (in time of peace), impact by road vehicles, riot, civil commotion, malicious damage, bursting and overflowing of water tanks, apparatus and pipes (but there is excluded such of those risks as cannot reasonably be insured against by the Landlord on satisfactory terms or as the Landlord's insurers or underwriters have refused to insure against) and such other risks against which the Building is from time to time insured by the Landlord under the provisions of this lease; |
| **Interest** | interest at 4% above Base Rate calculated on a daily basis during the period beginning on the first day on which the relevant sum is due and ending on the date on which the payment is made, whether before or after any judgment, and compounded on the usual quarter days; |
| **Lettable Areas** | any areas within the Building which are designed for and capable of beneficial occupation; |
| **Legal Obligation** | any obligation (whether to do or refrain from doing something) relating to the Property or the Building or the Estate, or its or their occupation or use, or for the benefit of employees or visitors, which is imposed by any present or future statute or any statutory instrument, regulation or order made under it or by any EU Directive or by any Authority; |
| **Permitted Use** | the use of the Property as kitchen and office in the designated area from which to provide catering services under contract with the Landlord in the designated areas to the Tenant’s Service Agreement at the Property; |
| **Planning Acts** | the Town and Country Planning Act 1990; the Planning (Listed Buildings and Conservation Areas) Act 1990; the Planning (Hazardous Substances) Act 1990; the Planning (Consequential Provisions) Act 1990; the Planning and Compensation Act 1991; the Planning and Compulsory Purchase Act 2004 and any other Act of Parliament containing provisions relating to town and country planning in force at any time during the Term; |
| **Plan** | the plan attached to this lease marked Plan; |
| **Plant** | any plant, equipment or machinery from time to time in or serving the Property or the Building including without limitation any lifts, hoists, generators, boilers, and also equipment for air-conditioning, ventilation, heating, cooling, fire safety, communication, and security; |
| **Property** | the property which is more fully described in schedule 1; |
| **Rent Commencement Date** | the date hereof; |
| **Retained Parts** | all parts of the Building excluding the Property including (but not limited to):   1. the Common Parts; 2. any Plant rooms and storage areas; 3. Conduits and Plant within or serving the Building except any within and exclusively serving a Lettable Area; and   the foundations, roof, exterior and structure of the Building; |
| **Service Agreement** | a Service Agreement dated the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2017 and made between the Landlord and the Tenant which relates to the provision of services by the Tenant in the Building |
| **Superior Landlord** | any person who at any time has title to the Property in reversion mediately or immediately expectant upon the termination of the title of the Landlord; |
|  |  |
| **Tenant’s Proportion** | such fair proportion as conclusively determined (save in the case of manifest error) by the Landlord's surveyor, which proportion will be based, in the absence of special circumstances, primarily on the proportion which the net internal area of the Property bears to the net internal area of all the Lettable Areas at the relevant time; |
| **Term** | the Contractual Term; |
| **VAT** | Value Added Tax as defined in the Value Added Tax Act 1994, or other substituted tax of a similar nature; |
| **the 1925 Act** | the Law of Property Act 1925; |
| **the 1954 Act** | the Landlord and Tenant Act 1954; |
| **the 1995 Act** | the Landlord and Tenant (Covenants) Act 1995; |
| **the 2002 Act** | the Land Registration Act 2002; |
| **the 2003 Order** | the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. |

1. **INTERPRETATION** 
   1. **General interpretation**

In this lease:

* + 1. covenants and obligations expressed to be made or assumed by a party comprising more than one person are made and are to be construed as made by all such persons jointly and severally;
    2. covenants and obligations made or assumed by any party are binding on and enforceable against his or her personal representatives;
    3. references to the Landlord includes the person or persons from time to time entitled to the reversion immediately expectant upon the determination of the Term, and references to the Tenant includes its successors in title and assigns in whom this lease is for the time being vested;
    4. references to this lease include any licence, variation, addition, qualification or supplemental document relating to it made between the Landlord and the Tenant (whether or not any person who is a Guarantor is a party to it);
    5. words denoting one gender include the other genders, and words denoting persons include firms and corporations and vice versa, and any reference to a company includes a limited liability partnership or other body corporate;
    6. words importing the singular number include the plural and vice versa;
    7. any obligation of the Tenant not to do, or omit to do anything includes an obligation not to allow that thing to be done or omitted to be done by an Authorised Person, and (unless the context otherwise requires) in any reference in this lease to an act, omission or default of the Tenant, the reference to the Tenant is to be construed as incorporating reference to any Authorised Person;
    8. except for any reference to the Town and Country Planning (Use Classes) Order 1987 (which is taken to mean that Order as it is enacted at the date of this lease), a reference to a statute or a statutory instrument includes any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and a reference to a statute includes statutory instruments and regulations made pursuant to it;
    9. references to the determination of the Term include the ending of the tenancy created by this lease whether before, on, or after the expiry of the contractual term of it.
  1. **Clauses, references, contents and headings**
     1. The clause, paragraph and schedule headings are not to be taken into account in the construction and interpretation of this lease.
     2. Any reference in this lease to a page, clause, or schedule (and to a paragraph within a schedule) which is not otherwise attributed is to be taken as a reference to a page, clause, or schedule (or paragraph within a schedule) of this lease.
  2. **Rights of entry**
     1. References to any right of the Landlord to have access to the Property is to be construed as extending to any mortgagee of the Landlord and any Superior Landlord and to all persons authorised by the Landlord and any mortgagee of the Landlord and any Superior Landlord (including agents professional advisers contractors workmen and others).
     2. Rights to enter the Property are (unless otherwise specified) to be exercised at reasonable times and after reasonable notice, but extend (if reasonably justified by the circumstances) to entry after a shorter period of notice or to entry without notice.
     3. Any person exercising rights of entry conferred or reserved in this lease is to cause as little damage to the Property and as little inconvenience as possible and must make good any damage caused to the Property, but the Landlord will not be liable to the Tenant for any loss damage or claim arising from noise, dust, vibration, noxious fumes, odours, loss of trade or nuisance caused to the Tenant or to any other person in connection with the exercise of those rights PROVIDED THAT they do not materially adversely affect the use and enjoyment of the Property for the Permitted Use.
  3. **Indemnities**

Indemnities given by the Tenant are to be construed as obligations to keep the Landlord or other specified persons indemnified against all losses, damages, costs, expenses, penalties, demands, claims, proceedings and liability of any kind (including all consequential fees, expenditure and VAT) arising as a result of the relevant act omission or default of the Tenant or an Authorised Person.

* 1. **Severance**

If any provision of this lease is held to be invalid or unenforceable then such provision is (so far as invalid or unenforceable) to be given no effect and is deemed not to be included in this lease but without invalidating any of the remaining provisions of this lease.

1. **DEMISE**

The Landlord demises the Property to the Tenant for the Contractual Term, together with the rights set out in schedule 2, but except and reserving as set out in schedule 3 and subject to all rights easements quasi-easements restrictive covenants and liabilities affecting the Property including (but not limited to) those mentioned in schedule 4, the Tenant paying to the Landlord as rent throughout the Term (and proportionately for any part of a year):

* 1. the Basic Rent by equal quarterly instalments in advance annually;
  2. all other sums due from the Tenant to the Landlord at any time.

1. **TENANT'S COVENANTS**

The Tenant covenants with the Landlord to comply with the following provisions throughout the Term:

* 1. **Rents**

To pay to the Landlord:

* + 1. the Basic Rent, without any deduction or set-off, at the times and in the manner stated and (if required by the Landlord at any time) to make any or all of such payments by bankers’ standing order or direct debit;
    2. on demand Interest which accrues in respect of any sums due (whether or not demanded in the case of Basic Rent) from the Tenant to the Landlord under this lease which remain unpaid for more than seven days after becoming due, and the Tenant will remain liable to pay such Interest notwithstanding that the Landlord may have refused to accept payment of such sums so as not to waive any breach of covenant.
  1. **Outgoings**
     1. The Tenant will pay all costs associated with the broadband and telephone service at the Property and will provide and maintain any furniture, IT and telephony equipment it requires.
     2. Not without the consent of the Landlord (which is not to be unreasonably withheld or delayed) to agree with any Authority any rating or other assessment in respect of the Property and to consult with, and have due regard to the views of, the Landlord in all relevant negotiations.
  2. **Repair and decoration**
     1. To keep all Landlord's fixtures, fittings and appurtenances of whatever nature affixed or fastened to the Property in good clean and tidy order (damage by the Insured Risks excepted, unless and to the extent that the policies of insurance in respect of the Insured Risks effected by the Landlord are vitiated or the policy monies are withheld by reason of any act, omission, neglect or default of the Tenant or an Authorised Person).
     2. To clean the Property regularly and maintain it at all times in a clean and tidy condition and to clean the inside of all windows of the Property at least once a month.
  3. **Permit entry**
     1. To permit the Landlord and its agents and all persons authorised by them with or without workmen appliances and equipment to enter upon the Property for any of the following purposes:
        1. to ascertain whether or not the covenants of this lease have been observed and performed;
        2. to examine the state of repair and condition of the Property, and its energy efficiency, and (where necessary in order to do so) to open up floors and other parts of the Property;
        3. to repair, maintain, and execute any work upon the Retained Parts or any part of them, and any Landlord's fixtures and fittings and any Plant therein (including the installation of additional, or the extension or improvement of existing Plant therein), or to cleanse, empty, repair or renew any Conduits where such works cannot reasonably be carried out without entry onto the Property;
        4. to take a schedule of the Landlord's fixtures and fittings and any Plant in the Property;
        5. for any other proper purpose connected with the interest of the Landlord in the Building;
        6. to estimate the current value of the Building for insurance purposes;
        7. to exercise any of the rights herein excepted and reserved;

without payment of compensation for any nuisance, annoyance, inconvenience or damage caused to the Tenant, but subject to the Landlord (or other person so entering) exercising such right in a reasonable manner and making good any damage caused to the Property without unreasonable delay and causing as little interruption and interference as reasonably possible.

* + 1. If during such an inspection any breach of covenant is found for which the Tenant is liable then, upon notice by the Landlord to the Tenant, and to the reasonable satisfaction of the Landlord, to execute all repairs, works, replacements or removals required within two months (or sooner if reasonably necessary) after the service of such notice. If the Tenant defaults, the Landlord may enter upon the Property (with all necessary workmen, appliances and equipment) and execute such repairs, works, replacements or removals, and all reasonable and proper expenses so incurred by the Landlord must be repaid by the Tenant to the Landlord forthwith on demand with Interest from the date of expenditure until the date they are paid by the Tenant to the Landlord (such expenses and Interest to be recoverable as if they were rent in arrear).
  1. **Alterations**
     1. Not to make any alterations, additions, or improvements to the Property
        1. without the Landlord’s prior written consent such consent not to be unreasonably withheld or delayed;
        2. except in accordance with the plans and specifications of the proposed works previously supplied to the Landlord in triplicate and approved in writing by the Landlord; and
        3. subject to the Tenant entering into such covenants and obligations as the Landlord requires relating to the carrying out of alterations or additions
     2. Not to make any alterations or additions to the electrical installations in the Property without the Landlord’s prior consent (such not to be unreasonably withheld) and then only in accordance with the terms and conditions for the time being laid down by the Institution of Electrical Engineers and the regulations of the electricity supply authority.
  2. **Use** 
     1. Not to use the Property for any purpose other than the Permitted Use.
     2. Not to:
        1. use the Property for any purpose or do anything there which is illegal, immoral, hazardous, noisy, noxious, dangerous, or offensive, or which may be or become a nuisance to or cause damage to the Landlord or any other person or property, or which might be harmful to the Property;
        2. enter into with any person (other than the Landlord), nor require from any person, a covenant which has the effect of restricting the use of the Property further than it is already restricted by this lease;
        3. overload the structure of the Property;
        4. use the Conduits beyond their capacity or in a manner which may block or damage them and in particular will not permit oil, grease or other deleterious substance or fluid of a poisonous or noxious nature to enter any drain or sewer, nor pollute the waters of any stream or river, nor stop up or obstruct any drain or sewer;
        5. do anything which interferes with any heating, cooling or ventilation equipment in the Property which imposes an additional load on any such equipment, or which adversely impacts upon the energy efficiency of the Building provided that use of the Property for the Permitted Use shall not be deemed to be a breach of this clause;
        6. bring into or store at the Property anything which is or may become hazardous, dangerous, or inflammable;
        7. leave the Property continuously unoccupied for more than one day without notifying the Landlord and providing such security arrangements as the Landlord and its insurers may require; nor
        8. install or use in or on the Property any machinery or apparatus causing noise or vibration that can be heard or felt outside the Property or that may cause damage;
     3. To observe and perform any reasonable rules and regulations from time to time made by the Landlord and notified in writing to the Tenant in connection with the conduct management or security of the Building.
  3. **Legal obligations**
     1. At its own cost, to observe and perform all Legal Obligations relating to the Property, or to its use of it.
     2. If the Tenant receives from an Authority formal notice of a Legal Obligation then as soon as reasonably practicable to produce a copy to the Landlord and at the Landlord’s cost to make such objection to or representation against it as the Landlord may reasonably require.
     3. Where a Legal Obligation requires the carrying out of works then, so far as that Legal Obligation permits, the Landlord will carry out the works with good quality materials and in a good and workmanlike manner to the reasonable satisfaction of the Tenant, and to complete them before the determination of the Term whether or not those works are otherwise required to be carried out by that time.
     4. If and when called upon to do so, to produce to the Landlord all plans, documents and other evidence which the Landlord may reasonably require in order to satisfy itself that these requirements have been complied with.
     5. The Tenant must not obtain an EPC for the Property, or any part of it, unless required by a Legal Obligation, and only then with the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed).
  4. **Fire Safety**

The Tenant must undertake a Fire Risk Assessment as well as any other duties required under the Fire Safety (Regulatory Reform) Order 2005.

* 1. **Planning**
     1. Not to apply for planning consent under the Planning Acts without the prior consent of the Landlord and to indemnify the Landlord against all charges payable in respect of any such application and against anything which may become payable in consequence of any planning consent.
     2. If a planning consent is granted to the Tenant then the Tenant will immediately supply a copy to the Landlord and if the consent has been granted with modifications, conditions or restrictions to which the Landlord objects then before implementing the consent the Tenant will take such action as the Landlord requires (including making an appeal where necessary) to secure their removal.
     3. Unless the Landlord directs otherwise, to carry out before the determination of the Term any works required to be carried out as a condition of any planning permission implemented by or on behalf of the Tenant or by any person deriving right or title through the Tenant (whether or not those works are otherwise required to be carried out by that time). Any works to be carried out as a result of obtaining planning permission are to be carried out in compliance with all other covenants in this lease.
     4. If the Tenant receives any compensation in respect of its interest under this lease as a result of any restriction placed upon the use of the Property under any legislation (including but not limited to the Planning Acts), then to pay the Landlord a just and equitable proportion of such compensation on the determination of the Term, and if that proportion is not agreed by the Landlord and Tenant it is to be determined by an Expert.
     5. To give the Landlord a copy of every drawing, application, notice, consent or licence which the Tenant may submit or receive in connection with any application for planning consent under the preceding provisions of this clause.
  2. **Signs****, masts etc.**
     1. Not to fix any sign, hoarding, showcase, signboard, bill, plate, fascia, poster or advertisement to the Property except for a non-illuminated non-moving sign which specifies the name of the Tenant and the business carried on at the Property and which is to be of a size and colour approved by the Landlord (acting reasonably and without undue delay), and to remove any such sign on the determination of the Term (unless requested not to do so by the Landlord).
     2. Not to erect or permit the erection of any pole or mast or any television or radio aerials or in or upon the Property without the prior written consent of the Landlord
     3. Not to install at the Property any telecommunications apparatus (within the meaning specified in Schedule 2 to the Telecommunications Act 1984) of a kind in respect of which the Landlord's rights to require removal of the apparatus is restricted by virtue of paragraph 21 of the Telecommunications Code (as set out in Schedule 2 to the Telecommunications Act 1984).
  3. **Easements and encroachments**
     1. To preserve all rights of light and other easements belonging to the Property or the Building and not to give any acknowledgement that they are enjoyed by consent nor to do or to omit anything which might subject the Property to any new easements, and to notify the Landlord without undue delay of any encroachment which might have that effect.
     2. Not to assert any claim to light or air over any adjacent or neighbouring land or building.
  4. **Notices received**

Forthwith on receipt of any notice or communication affecting or which may affect the Property or the Building, the rating assessment or valuation for rating purposes of the Property or the Building, or the nature or value of the interest of the Landlord to:

* + 1. give a copy to the Landlord; and
    2. at the request and cost of the Landlord make, or join with the Landlord in making, objections and representations against the notice and taking all steps in relation to it as the Landlord (acting reasonably) deems fit.
  1. **Costs**

To pay the Landlord on demand, and on a full indemnity basis, all reasonable and proper costs expenses losses and liabilities incurred by the Landlord as a result of or in connection with:

* + 1. any breach by the Tenant of any of its covenants or obligations in this lease and/or the enforcement (carried out, attempted, or contemplated) of those covenants and obligations by the Landlord;
    2. any application for Landlord's consent, whether or not it is granted, including any case in which the application is withdrawn;
    3. the preparation and service of any notice and the conduct of any proceedings under sections 146 or 147 of the 1925 Act even if forfeiture is avoided otherwise than by relief granted by the court;
    4. the preparation and service of any notice of any schedule of dilapidations, whether served before or within 3 months after the determination of the Term;
    5. the preparation and service of any notice pursuant to section 17 of the 1995 Act; and
    6. putting the Property in the state in which they should have been left on the determination of the Term as required by this lease.
  1. **Title matters**

To observe and perform the agreements, covenants, restrictions and stipulations referred to in the title register of title number HP696749 so far as they relate to the Property (excluding financial charges).

* 1. **Indemnity**

To indemnify the Landlord against:

* + 1. any act, neglect, default or omission of the Tenant or an Authorised Person; and
    2. any breach of any covenant or other provision of this lease to be observed or performed by the Tenant.

PROVIDED THAT the Landlord:-

(a)     gives notice to the Tenant of any claim, loss or liability in respect of which it seeks an indemnity as soon as reasonably practicable after receiving notice of the same;

(b)     provides to the Tenant on request any information and assistance in relation to such claim as the Tenant may reasonably require;

(c)      takes all responsible steps to mitigate any loss; and

(d)      does not make any settlement or compromise in relation to any claim without the prior consent of the Tenant (such consent not to be unreasonably withheld or delayed).

AND PROVIDED that the Tenant shall not be required to indemnify the Landlord to the extent that any claim may be covered by insurance effected by the Landlord.

* 1. **Yield up**
     1. On the determination of the Term to yield up the Property to the Landlord with vacant possession and in a state of repair, condition and decoration which is in accordance with the proper performance of the Tenant's covenants in this lease, and to deliver to Landlord the keys to the Property, and the original Lease and all other title deeds and documents relating to the Property within the Tenant’s possession.
     2. Immediately before the determination of the Term to remove all tenant’s and trade fixtures and (unless required not to do so by the Landlord) to remove all signs and all alterations, additions or improvements made to the Property during the Term and to make good all damage caused to the Property as a result.
     3. If on the determination of the Term the Property is not left in the state required by this lease then to pay to the Landlord on demand an amount equivalent to the reasonable and proper cost to the Landlord of putting the Property into the state in which it should have been left.
  2. **Mortgages**

Not to mortgage or charge the whole of the Property.

* 1. **Dealings with the Property**

Not to assign, under-let, mortgage, charge or part with possession of part only of the Property.

* 1. **Assignment**

The Tenant shall not assign the whole or part of the Property.

* 1. **Under-letting**

The Tenant shall not under-let the whole or part of the Property

* 1. **VAT**

Where by virtue of any of the provisions of this lease the Tenant is required to pay repay or reimburse to the Landlord or any person or persons any rent, premium, cost, fee, charge, insurance premium, expense or other sum in respect of the supply of any goods and/or services by the Landlord or any other person or persons to the Tenant then upon receipt of a valid VAT invoice addressed to the Tenant to pay in addition by way of additional rent:

* + 1. the amount of any VAT as and when charged in respect of such supply to the Tenant;
    2. the amount of VAT as and when charged on any other person (or charged to the Landlord in the case of supplies which the Landlord is deemed to make itself) in respect of supplies the cost of which is included in the calculation of the sums which the Tenant is required to pay repay or reimburse to the Landlord save to the extent that such VAT is recoverable by the Landlord;

and for the avoidance of doubt the Landlord shall not be under a duty to exercise or not exercise any option or right conferred on it by the legislation relating to VAT so as to reduce or avoid any liability to VAT.

1. **LANDLORD'S COVENANT**
   1. The Landlord covenants with the Tenant that, subject to the Tenant paying the Basic Rent and other sums due under this lease and complying with its covenants, the Tenant may peaceably and quietly hold and enjoy the Property without any interruption or disturbance by the Landlord or by any person claiming under or in trust for the Landlord.
   2. The Landlord shall:
      1. keep the Retained Parts and the Property in good and substantial repair, order and decorative condition (including remedying any inherent defect) and (where appropriate) well and properly lit, heated and (excluding the Property) cleaned;
      2. pay all utility charges (gas/water/electricity/waste removal) and all existing and future rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever (save those payable by the Tenant in accordance with clauses 4.2.1 and 6.3.7) associated with the Property during the Contractual Term.
      3. keep the exterior of the Property and all of the Common Parts painted or otherwise appropriately decorated and treated to a high standard as deemed necessary by the Landlord in accordance with its planned maintenance programme;
      4. install, inspect, maintain, operate, repair and renew all Plant in the Building, and all escape routes, signs and noticeboards in, on, or forming part of, the Common Parts as are from time to time deemed necessary by the Landlord;
      5. Provide heating to the Property to such temperatures during such hours and between such dates as the Landlord deems appropriate, and providing hot water to the Property and the lavatories in the Common Parts throughout the year;
      6. clean all the glass in all doors and windows of the Building except for glass which is the responsibility of the occupier of any Lettable Area;
      7. provide soap, drying facilities and lavatory paper to all lavatories in the Common Parts;
      8. remove all refuse from the Common Parts and providing, maintaining, and renewing any refuse disposal systems for the Building;
      9. effect and maintain insurance of all Plant, apparatus, equipment and other items from time to time used or kept in the Common Parts against the risks deemed necessary by the Landlord in such sums as the Landlord deems adequate.
2. **INSURANCE**

**6.1 Landlord’s insuring obligations**

6.1.1 The Landlord covenants with the Tenant subject to clause 6.1.2 to keep the Building (excluding tenant’s fixtures and fittings) insured against:

6.1.1.1 damage or destruction by the Insured Risks in a sum equal to the full reinstatement cost of the Building (taking into account estimated increases in building costs) and VAT;

6.1.1.2 an appropriate sum for professionals’ fees, demolition and site clearance costs, and VAT;

6.1.1.3 the Landlord’s liability to third parties.

6.1.2 The Landlord’s insuring and other related obligations are subject to the availability of insurance cover on reasonable commercial terms, and to the excesses and limitations imposed by the insurers, and will cease to be enforceable if the insurance effected becomes void or voidable owing to any act, neglect, omission or default of the Tenant or an Authorised Person.

6.1.3 Any commission paid by the insurers belongs to the Landlord absolutely.

6.1.4 The Landlord covenants with the Tenant at the request and cost of the Tenant to produce to the Tenant (but not more frequently than once in any period of twelve months) full details of the Landlord’s insurance of the Building and evidence of payment of the current year’s premium, and to notify the Tenant in writing of any material changes in the terms of cover;

* 1. **Reinstatement**
     1. The Landlord covenants with the Tenant that (subject to clause 6.2.2 and clause 6.5) if the Building and the Property is destroyed or damaged by any of the Insured Risks the Landlord will expend all the insurance proceeds received (except for any in respect of loss of rent, fees or liability to third parties) in rebuilding or repairing the Property with all due speed, and after all requisite consents and approvals have been obtained, but subject to and in compliance with all the applicable statutory provisions and regulations and to the provisions of such consents and approvals.
     2. The Landlord is not obliged to repair or rebuild if the insurance has been prejudiced or the policy money wholly or partly withheld as a result of any act or default of the Tenant or an Authorised Person, or if prevented from doing so by any matter beyond its control, in which case any policy money will belong to the Landlord absolutely.
     3. On any reinstatement following the occurrence of an Insured Risk the Landlord is not obliged to reinstate tenant’s fixtures and fittings, nor to rebuild in accordance with the previous plans, elevations and specifications, but only to restore to the Tenant accommodation substantially equivalent to the Property and its access, amenities and services as previously existed.
  2. **Tenant’s obligations regarding insurance policies**

The Tenant covenants with the Landlord throughout the Term:

* + 1. not to do anything which causes any policy of insurance on the Building to become void or voidable or which may cause the premiums on the Building or on any adjoining or adjacent land of the Landlord to be increased;
    2. that if owing to the act or default of the Tenant or an Authorised Person the premiums on the Building or on any adjoining or adjacent land of the Landlord are increased then on demand to pay and indemnify the Landlord against all such increased premiums;
    3. that if a claim is made under the Landlord’s insurance policy relating to the Property then the Tenant will pay to the Landlord on demand the Tenant’s Proportion of the amount of any excess required to be borne by the insured;
    4. that if the Building is destroyed or damaged and, owing solely to the act or default of the Tenant or an Authorised Person, the insurance money is wholly or partly withheld, then the Tenant will immediately pay to the Landlord the whole or (as appropriate) the irrecoverable portion of the cost of completing the rebuilding and reinstating the Building, including reasonable and proper professional fees and all reasonable and proper costs and expenses and VAT;
    5. to comply with all the requirements and reasonable recommendations of the Landlord’s insurers;
    6. not without the Landlord’s prior consent to effect any insurance of the Property except for the plate glass and third party risks, but without prejudice to that prohibition if at any time the Tenant is entitled to the benefit of any insurance on the Property then immediately to apply all the proceeds in making good the loss or damage in respect of which they have been received; and
    7. to keep in force insurance, in respect of the Property and for the benefit of the Landlord as well as the Tenant, against liability to third parties for injury to or death of any person or damage to any property in such sum and on such terms as the Landlord (acting reasonably) approves.
  1. **Rent suspension**

If the Building and/or Property is destroyed or damaged by any of the Insured Risks so as to render the Property unfit for occupation and use or inaccessible then, provided that no insurance effected by the Landlord has been prejudiced and that no policy money has been withheld owing to any act or default of the Tenant or an Authorised Person, the Basic Rent, and any other sums due under this Lease or a fair proportion of it or them according to the nature and extent of the damage will be suspended until the Property has been rebuilt or reinstated and is accessible or (if shorter) until a period of one year from the date of the damage or destruction has expired. Any dispute about the extent proportion or period of such suspension is to be determined by the Expert.

* 1. **Termination after damage**
     1. If the Property is destroyed or damaged so as to render it unfit for occupation or use or inaccessible then, without prejudice to any right of action or remedy of either party in respect of any earlier breach:
        1. the Landlord may, in the circumstances set out in clause 6.5.3, terminate this lease by giving not less than 3 months written notice to the Tenant within one month of the destruction or damage; and
        2. either the Landlord or the Tenant may terminate this lease by giving to the other not less than one months' notice if the reinstatement of the Property or its access has not been completed so as to render the Property fit again for occupation and use and accessible after the expiration of the period of twelve months from the date of the destruction or damage, such notice to be given at any time after the expiration of that period;
     2. and on termination any insurance money payable will belong absolutely to the Landlord.
     3. In any of the following cases the Landlord may terminate:
        1. when reinstatement is prevented for reasons beyond the control of the Landlord including (but not limited to) the circumstance that consents necessary for reinstatement are not forthcoming either at all or within a reasonable period after they are requested or on terms satisfactory to the Landlord; or
        2. when in the Landlord’s opinion reinstatement is impractical or uneconomic; or
        3. where the damage or destruction occurs within the last three years of the contractual term of this lease and in the Landlord’s opinion reinstatement will not be practicable before the expiry of it; or
        4. the Landlord’s insurance has been prejudiced or any policy money has been wholly or partly withheld owing to an act or default of the Tenant or an Authorised Person.

1. **FORFEITURE**

**7.1 Right to forfeit**

The Landlord may forfeit this lease by re-entering the whole or any part of the Property:

7.1.1 whenever any of the sums reserved as rent by this lease is left unpaid for more than 14 days (whether or not formally demanded); and

7.1.2 in any of the circumstances specified in clause 7.2;

but re-entry does not prejudice any rights of the Landlord in respect of any previous breaches of covenant by the Tenant

* 1. **Forfeiture triggers**

The circumstances referred to in the preceding clause 7.1 are whenever eitherthe Tenant

* + 1. has not materially complied with any of the terms of this lease; or
    2. ceases to carry on its business or suffers distress or execution to be levied on its goods at the Property; or
    3. becomes insolvent or unable to pay its debts as they fall due; or
    4. enters into any deed or scheme of arrangement or composition with its creditors or any application or proposal is made for a voluntary arrangement in respect of either of them under the Insolvency Act 1986 or the Insolvent Partnerships Order 1994; or
    5. (if an individual, and, if more than one, any of them) is adjudicated bankrupt or an interim receiver of his property is appointed or he dies; or
    6. (if a body corporate and, if more than one, any of them) has a receiver or manager appointed (including an administrative receiver), or a resolution or determination to wind-up is passed or made in relation to it, or a provisional liquidator is appointed in relation to it, or goes into liquidation (unless the liquidation has the Landlord’s approval and is solely for the purpose of amalgamation or reconstruction when solvent); or
    7. (if a body corporate and, if more than one, any of them) has an application for an administration order made, or a notice of appointment of an administrator filed at court, or an administration order made in respect of it.

1. **GENERAL PROVISOS**
   1. **Notices**
      1. All applications, notifications, consents, approvals and notices under this lease must be in writing.
      2. Unless the receiving party acknowledges receipt, a notice is valid only if it is given by hand, sent by special or recorded delivery and served:
         1. at its registered office where the receiving party (whether Landlord or Tenant) is a company incorporated in the United Kingdom; or
         2. where the receiving party is the Tenant, at the Property; or
         3. where the receiving party is the Landlord, at that party’s address shown in this lease, or at an address specified in a notice given by that party to the other parties.
      3. Unless it is returned through the postal service undelivered, a notice sent by special delivery or recorded delivery is to be treated as served on the third working day after posting, whenever (and whether or not) it is received.
      4. For the purposes of this clause a working day is any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a statutory bank holiday.
   2. **Disputes as to rights**

Any dispute between the Tenant and any other occupier of the Building or any adjoining or adjacent land of the Landlord, which relates to any easement or right in favour of, or affecting, the Property, or to party or other walls separating the Property from any other property, or to any other matter arising out of this lease, must (where the Landlord is not a party) be referred to the Landlord and will be determined by the Landlord.

* 1. **Tenant’s goods left in the Property**

8.4.1 The Landlord will not be responsible for the security of any items kept in the Property by the Tenant or Authorised Persons and the Tenant shall be responsible for ensuring it has adequate insurance in respect of any loss, theft or damage to such items and the Tenant shall secure facilities in the Property where the Tenant may keep the daily takings from the provision of the services (as defined in the Service Agreement) overnight before banking.

8.4.2 The Landlord will not be responsible for the security of any monies kept at the Property by the Tenant or Authorised Persons and the Tenant shall be responsible for ensuring it has adequate insurance in respect of any loss or theft of monies;

8.4.3 If the Tenant fails to remove any of its belongings from the Property within seven days after the determination of the Term then:

8.4.3.1 the Landlord may sell such property as the agent of the Tenant and the Tenant will indemnify the Landlord against any liability to any third party whose property is sold by the Landlord in the mistaken belief held in good faith (which is to be presumed unless the contrary is proved) that such property belonged to the Tenant; and

8.4.3.2 if the Tenant claims the sale proceeds within six months after the determination of the Term, the Landlord will pay or account to the Tenant on demand for the sale proceeds (but not any interest on them) less any costs of storage and sale reasonably incurred by the Landlord, but otherwise the Landlord may retain the sale proceeds absolutely.

* 1. **Delegation of Landlord’s powers**

The Landlord may delegate any power or right to determine any matter to its surveyor who may be the surveyor appointed to collect the rent.

* 1. **Limitation on Landlord’s liability**
     1. The Landlord is not liable to the Tenant or to any other person for any accident, loss or damage caused to the Tenant, or any other person, or to the Property, or to any goods or property of the Tenant, or of any other person occurring as a result of:
        1. any act neglect default or omission of any kind on the part of any person (other than the Landlord its servants agents or invitees); or
        2. the carrying out of inspections, repairs, decorations, alterations or other works which may appear to the Landlord to be necessary or desirable to the Retained Parts; or
        3. any fire or leakage or overflow from any pipes taps mains cisterns or other appliances in or near the Property, or
        4. any defect in the Building
     2. The Landlord is not liable to any person who is not a party to this lease to perform any of the covenants in this lease (whether express or implied) insofar as such covenants impose obligations going beyond the common duty of care imposed by the Occupiers Liability Acts 1957 and 1984 or the Defective Premises Act 1972.
     3. The Landlord is not liable in respect of:
        1. any breach of a landlord covenant of this lease occurring at a time when the Landlord is not entitled to the reversion immediately expectant upon the determination of the Term;
        2. any loss arising out of a failure by the Tenant to register this lease or any of the rights granted in this lease at the Land Registry.
  2. **No planning warranties**

Nothing in this lease or in any consent granted by the Landlord under this lease constitutes any warranty by the Landlord that the Property is authorised under the Planning Acts or otherwise for use for any specific purpose.

* 1. **Landlord’s consent**

Nothing in this lease is to be construed as implying that the consent or approval of any Superior Landlord or mortgagee will not be unreasonably withheld, and whenever the consent or approval of any Superior Landlord or mortgagee is requested but refused then it is reasonable for the Landlord to withhold consent or approval.

* 1. **No implied easements**

Except for such rights expressly granted to the Tenant in Schedule 2, this lease does not operate to create or convey in favour of the Tenant any rights, privileges or easements over the Building or any other property, and to that extent any rights implied by section 62 of the 1925 Act are excluded.

* 1. **Third party rights**

Save as expressly provided none of the provisions of this lease are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this lease.

* 1. **Waiver**

The demand for and/or acceptance of rent by the Landlord or its agents shall not constitute a waiver of any breach of the covenants on the part of the Tenant or of the Landlord's remedies for their non-performance or non-observance.

* 1. **Compensation**

Any statutory right of the Tenant to claim compensation from the Landlord whether on vacating the Property or otherwise, is excluded to the extent that the law allows.

* 1. **Jurisdiction**

This lease is governed by and interpreted in accordance with the laws of England and (except where there is a valid submission to arbitration under English law in accordance with this lease) the parties submit to the non-exclusive jurisdiction of the courts of England.

* 1. **Exclusion of security of tenure**
     1. The Tenant confirms that before the date of this lease:
        1. the Landlord served on the Tenant a notice dated \_\_\_\_\_\_\_\_\_\_\_\_2017 in relation to the tenancy created by this Lease (“**the Notice**”) in a form complying with the requirements of Schedule 1 of the 2003 Order;
        2. the Tenant or a person duly authorised by the Tenant in relation to the Notice made a statutory declaration (“**the Declaration**”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_2017 in a form complying with the requirements of Schedule 2 of the 2003 Order.
     2. The Tenant further confirms that where the Declaration was made by a person other than the Tenant the declarant was duly authorised by the Tenant to make the Declaration on the Tenant’s behalf.
     3. The Landlord and the Tenant confirm that there is no agreement for lease to which this lease gives effect.
     4. The Landlord and Tenant agree to exclude the provisions of sections 24 to 28 (inclusive) of the 1954 Act in relation to the tenancy created by this lease].
  2. **Termination and Break Clause**

8.15.1 If the Service Agreement is terminated in its entirety then upon the termination date as that is determined in accordance with the terms stated in the Service Agreement the Term shall immediately cease and determine but without prejudice to the respective rights of either party in respect of any antecedent claim or breach of covenant

8.15.2 Either the Landlord or the Tenant may terminate this lease by serving a Break Notice on the other party at least 6 months before the Break Date.

8.15.3. A Break Notice served by the Tenant shall be of no effect if, at the Break Date vacant occupation of the whole of the Property is not given.

8.15.4 Subject to clause 8.15.3, following service of a Break Notice this lease shall terminate on the Break Date.

8.15.5 Termination of this lease on the Break Date shall not affect any other right or remedy that either party may have in relation to any earlier breach of this lease.

8.15.6 Within 15 working days of termination of this lease pursuant to this clause 8.15 the Landlord shall pay to the Tenant any sums paid in advance by the Tenant to the Landlord for any period after the date of such termination.

**EXECUTED** as a deed and delivered on the date shown at the beginning of it.

**SCHEDULE 1**

**The Property**

The Property forming part of the Building and shown for the purpose of identification only edged red on the Plan, including all additions and improvements made to it, and also including:

1. the floor and ceiling finishes, the flooring, raised floors and floor screeds down to the joists or other structural parts supporting the flooring;
2. any internal walls which are not loadbearing and which are wholly within the area edged red;
3. the inner half (severed medially) of the internal non-loadbearing walls which divide the area edged red from any other Lettable Area or from the Retained Parts;
4. the interior plaster and decorative finishes of all walls bounding the area edged red;
5. the doors, door frames, windows, and window frames, including all ancillary furniture and fittings;
6. Conduits and Plant to the extent that they are within and exclusively serve the area edged red; and
7. fixtures and fittings whenever fixed except those which are generally regarded as tenant’s or trade fixtures and fittings;

but excluding the structural parts, loadbearing framework, roof, foundations, joists and external walls, and the Conduits and Plant within but not exclusively serving the area edged red.

**SCHEDULE 2**

**Rights Granted**

The rights granted to the Tenant are granted only in so far as the Landlord is able to grant them and (except for any expressed to be exclusive to the Tenant) are rights in common with the Landlord and all others for the time being authorised by the Landlord or otherwise entitled, and are granted for the benefit of the Tenant and any Authorised Person.

The rights granted are as follows:

1. to pass and repass over and along all parts of the Common Parts designed for access and egress on foot for the purpose of obtaining access to and egress from the Property and exercising the rights granted by this lease, but not for any other purpose;
2. to connect to and use all Conduits from time to time serving the Property;
3. to use any lavatories within the Building designated from time to time by the Landlord;
4. of support and protection for the benefit of the Property.

5. to use such area within the Building designated by the Landlord as counter space in such area designated by the Landlord at the Landlord’s discretion within the Building as a dining area to enable the Tenant to use a cash till and laptop;

6. to use an area designated in the Building by the Landlord as a restaurant / dining area subject to the Tenant always maintaining the dining area in a clean state commensurate with optimizing the food service and meeting all statutory health and safety requirements. This shall include a thorough daily vacuuming and cleaning of the dining area (including dining table and chair surfaces) by the Tenant’s contracted cleaning staff;

**SCHEDULE 3**

**Exceptions and Reservations**

The rights reserved to the Landlord are, where appropriate, reserved for the benefit of, and are exercisable by the Landlord and all persons authorised by the Landlord and are set out in the following paragraphs of this schedule.

The rights reserved are as follows:

1. The right to carry out works to the Building, the Estate, or any other adjacent or adjoining land of the Landlord, and to use all and any such land in any manner, and to consent to others doing so, whether or not the access of light and air to the Property, or any other amenity from time to time enjoyed by them, is affected in any way (but not so as to interfere with any rights expressly granted in schedule 2 unless required to do so by a Legal Obligation).
2. The right to connect to and use all Conduits from time to time within or forming part of the Property.
3. The right to enter the Property for any of the purposes specified in this lease.
4. The right to build, rebuild, alter, or demolish in any manner any buildings or erections on any adjacent or adjoining land of the Landlord; and to sell or let such land for any purpose or otherwise deal with it, whether or not the light or air to the Property, the Building or the Estate is in any case diminished or any other liberty right or easement enjoyed by the Property is diminished or prejudicially affected as a result.
5. All rights of light, air, support, shelter and protection and all other easements, quasi-easements rights and benefits belonging to, enjoyed or intended to be enjoyed by the other parts of the Property.

**SCHEDULE 4**

**Title Matters**

All matters contained or referred to in the Property and Charges Registers (excluding financial charges) of Title Number HP696749 to the extent that they apply to the Property.

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Executed as a Deed  
By Affixing The Common  
Seal of WINCHESTER   
CITY COUNCIL IN  
THE PRESENCE OF:

---------------------------------.

**Section 4 – Tender Assessment and Evaluation**

The information in this section provides the detail of how Tenders will be evaluated. All Tenders will be assessed on both price and quality. The final score awarded to a Tender will be calculated on the following basis:

Price 60%

Quality 40%

Each tender option will be assessed individually for price.

Each tender option will be given a score for Quality based on a) the references received (6%), b) the submitted Quality Method Statements as detailed in Part 5 of Section 9 (24%) and c) the Interview where short-listed for this part of the process (10%).

The Council is seeking the Most Economically Advantageous Tender in terms of price 60% and quality 40% that delivers the best quality service to service users and that remains affordable within budget constraints.

**Part A – Assessment of price**

This contract will be evaluated by:

1. The ‘Fixed Charge’ costs of providing two-course lunch-time meals 7 days a week to meet the core contract relating to the residents and visitors to Chesil Lodge and the day centre, and
2. The ‘Food Charge’ of a two-course meal (food costs only) per day for residents living in Chesil Lodge and users of the Chesil Lodge day centre.

The items included in each of these ‘charge’ submissions are confirmed in the service specification to this contract.

* Tenderers must submit a Fixed Charge per annum exclusive of VAT.
* Tenderers must submit a Food Charge inclusive of VAT for residents and day centre users no lower than £2.50 per two-course meal per day and no higher than £3.10 per two-course meal per day. If Tenderers submit a price per unit per week outside of these levels, their submission will be disqualified.
* Tenderers submitting a Fixed Charge equal to the lowest submitted Fixed Charge per annum will be awarded 50 points with other tenders receiving proportionally lower scores according to the difference between the lowest price and the Tender price in question.
* Tenderers submitting a Food Charge equal to the lowest possible Food Charge per two-course meal per day for residents and day centre users will be awarded 10 points with other tenders receiving proportionally lower scores according to the difference between the lowest price and the Tender price in question.
* The points for each submission will be added together for each Tenderer to give their overall price score.

The Council will confirm to the Tenderer, after contract award, the additional contribution to be added on top of the food charge per two-course meal for non-residents of Chesil Lodge (visitors and guests to the scheme), which will be returned to the Council by the Contractor as a contribution to the scheme running costs.

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|  | | | | | |  | |  | | |
| **Example of Price Assessment 1** | | | | | |
| **(Fixed Charge)** | | | | | |
|  | | |  | |  |  | |  | | |
| **Tender** | | | **Price of Fixed Charge per annum (exclusive of VAT)** | | **Price Score = lowest price / price of tender being evaluated \* price weighting** | | | **Points (max 50)** | | |
| **£** | |  | | |
| A | | | 69,000.00 | | =(60000/69000)\*50 | | | 43.48 | | |
| B | | | 61,000.00 | | =(60000/61000)\*50 | | | 49.18 | | |
| C | | | 60,000.00 | | lowest price | | | 50 | | |
|  | | |  | |  |  | |  | | |
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| **Example of Price Assessment 2** | | | | | |
| **(Food Charge)** | | | | | |
|  | | |  | |  |  | |  | | |
| **Tender** | | | **Price per resident / day centre user per two-course meal per day (inclusive of VAT)** | | **Price Score = lowest price / price of tender being evaluated \* price weighting** | | | **Points (max 10)** | | |
| **£** | |  | | |
| A | | | 3.00 | | =(250/300)\*10 | | | 8.33 | | |
| B | | | 2.80 | | =(250/280)\*10 | | | 8.93 | | |
| C | | | 2.50 | | lowest price | | | 10 | | |

**Example of Overall Price Assessment**

|  |  |  |  |
| --- | --- | --- | --- |
| **Tender** | **Fixed Charge Score**  **(max 50)** | **Food Charge Score**  **(max 10)** | **Total Price Score (max 60)** |
|  |  |
| A | 43.48 | 8.33 | 51.81 |
| B | 49.18 | 8.93 | 58.11 |
| C | 50 | 10 | 60 |

**Part B – Assessment of Quality**

The following items will be evaluated:

* **Relevant experience** through receipt of three references(as supplied by contractors already working with Tenderers) – with each reference providing a maximum of 2% towards a Tenderer’s overall score (6% in total).
* **Quality Method Statements**, which form part of the tender documents (24% in total). Tenderers must achieve the minimum scores for certain questions as detailed below.
* **Interviews**, which up to 6 short-listed Tenderers will be invited to attend (10% of total marks). Tenderers reaching this stage must achieve at least 5% marks for the interview otherwise they will be disqualified.

Each category will receive an individual score according to the following scheme;

|  |  |
| --- | --- |
| **Assessed standard for each tender:** | **Marks** |
| Excellent standard | 5 |
| Good standard | 4 |
| Satisfactory standard | 3 |
| Minor Reservations | 2 |
| Serious Reservations | 1 |

Part 7.14 of Section 1 gives information of the assessment standard criteria. Tenderers should note that **submissions which receive a ‘1 – serious reservations’ will not be considered further.**

Where a tenderer has the majority of quality scores classifications as ‘2 – minor reservations’ the Council reserves the right to reject the bid as being of insufficient overall quality to meet the aspirations of the Service.

|  |  |  |  |
| --- | --- | --- | --- |
| **Document** | **Category** | **Percentage of total marks available** | **Minimum scores required to be considered for short-listing for interviews** |
| References | Relevant experience | 6% | 4% |
| Quality Method Statements | Experience working with client group | 12% | 6% |
| Continuous improvement | 7% | No minimum score required |
| Added value | 5% | No minimum score required |
|  | Interview | 10% | 5% |

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| --- | --- | --- | --- | --- |
| **Example of Quality Assessment** | | |  |  |
|  | | |
|  |  |  |  |  |
| **Tender** | **Quality Score**  **(max 30)** | **Interview Score**  **(max 10)** | | **Total Quality Score**  **(max 40)** |
|  |  |
| A | 21.00 | 7.00 | | 28.00 |
| B | 18.00 | 8.00 | | 26.00 |
| C | 20.00 | 8.00 | | 28.00 |

**Part C – Final Overall Score**

The final scores for price and quality will then be added together to provide an overall score for each tender.

**Example of Final Overall Score**

|  |  |  |  |
| --- | --- | --- | --- |
| **Tender** | **Total Price Score**  **(max 60)** | **Total Quality Score**  **(max 40)** | **Total Overall Score**  **(max 100)** |
|  |  |
| A | 51.81 | 28.00 | 79.81 |
| B | 58.11 | 26.00 | 84.11 |
| C | 60 | 28.00 | 88.00 |

The highest evaluation score will be calculated on the basis of the highest overall score, combining Price and Quality (including interview) scores. In the example table above Tender C has the highest score overall.

**PART 2 – TENDER DOCUMENTS**

**Notes to Tenderers**

1. Tenderers are asked to make their response to the Council’s requirements by completing the following six sections (numbered 5 to 10).
2. To assist Tenderers a checklist for a complete response is provided at the end of this Tender Document (see Section 11).
3. Tenderers must number each page that they submit as part of their tender response and make a note of this on the checklist for easy cross referencing at the evaluation stage.
4. Tenderers should complete this Tender Document, and insert it at the beginning of their tender submission where it can be easily found and identified.
5. Tenderers should cross reference any other documents submitted with their Tender to the applicable section in this Tender Document so that it is easy for the evaluation team to identify the Tenderers full response to each requirement.

## **Section 5 – Form of Tender**

**UNCONDITIONAL AND IRREVOCABLE OFFER TO WINCHESTER CITY COUNCIL**

***Re: Invitation to Tender for Catering Service Contract***

To: Winchester City Council

City Offices

Colebrook Street

Winchester

Hampshire

SO23 9LJ

Having read and carefully considered the Invitation to Tender together with all of the documents listed and supplied therewith:

We offer to provide the Service in accordance with the Specification and the prices set out in the Pricing Schedule (Section 8).

We confirm that if our Tender is accepted we will, upon demand, sign a formal Agreement.

1. We agree that this Tender shall constitute an irrecoverable, unconditional offer which may not be withdrawn for a period of 90 days from this date.
2. Unless and until a formal Agreement is prepared and executed this Tender, together with your written acceptance thereof, shall constitute a binding contract between us.
3. We understand that the Council is not bound to accept any tender it receives and you will not pay any expenses incurred by us in connection with the preparation and submission of this Tender and that the Council may abandon this procurement at any time
4. We declare that no current or former Councillor or employee of the Council is a director or, in the case of partnerships, is a partner or holds 20% or more of the shares or interest in the business.

**Any tenders received after the closing date and time of 12.00 Noon on 11th January 2017 will only be considered in exceptional circumstances.**

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Director

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Director/Secretary

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Role in Organisation \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tel No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Section 6 – Tendering (Collusion) Certificate**

**TO: WINCHESTER CITY COUNCIL**

In recognition of the principle that the essence of selective tendering is that the client shall receive bona fide competitive tenders from all those tendering WE CERTIFY THAT:

The Tender submitted herewith is a bona fide Tender intended to be competitive.

We have not fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person.

We have not done and we undertake that we will not do any time before the hour specified for the return of the Tenders any of the following acts:

* + - 1. communicate to a person other than the person calling for this Tender the amount or approximate amount of the proposed Tender (except where the disclosure, in confidence, of the approximate amount of the Tender was essential to obtain insurance premium quotations required for the preparation of the Tender);
      2. enter into any agreement with any other person that they shall refrain from tendering or any arrangement as to the amount of any Tenders to be submitted; and

(c) offer or pay or give or agree to pay or give any sum of money 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 Tenders or proposed Tenders any act or thing of the sort described above.

In this Certificate:

“Person” includes any person and anybody or association corporate or incorporate.

2. “Any agreement or arrangement” includes any transaction of the sort described above, formal or informal and whether legally binding or not.

DATED this day of 201

…………………………………………………………………………………………………..

SIGNED (as in Tender)

duly authorised to sign

for and on behalf of …........................................…………………………..………………

**Section 7 – Statement Relating to Mandatory and Discretionary Grounds for Rejection**

**STATEMENT RELATING TO GOOD STANDING — GROUNDS FOR OBLIGATORY EXCLUSION (IN ELIGIBILITY) AND CRITERIA FOR REJECTION OF POTENTIAL CONTRACTORS**

**RE CATERING SERVICE**

We confirm that, to the best of our knowledge, our organisation is not in breach of the provisions of the following regulations / directives and in particular that the response to all the items listed below is “No”. If this is not the case, we have supplied details annexed to this statement:-

**Mandatory Exclusion Grounds**

**Public Contract Regulations 2015 R57(1), (2) and (3)**

**Public Contract Directives 2014/24/EU Article 57(1)**

**Participation in a criminal organisation**

Participation offence as defined by section 45 of the Serious Crime Act 2015

Conspiracy within the meaning of

* section 1 or 1A of the Criminal Law Act 1977 or
* article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983

where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;

**Corruption**

Corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

The common law offence of bribery;

Bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010, or section 113 of the Representation of the People Act 1983;

**Fraud**

Any of the following offences, where the offence relates to fraud affecting the European Communities’ financial interests as defined by Article 1 of the convention on the protection of the financial interests of the European Communities:

* the common law offence of cheating the Revenue;
* the common law offence of conspiracy to defraud;
* fraud or theft within the meaning of the Theft Act 1968, the Theft Act (Northern Ireland) 1969, the Theft Act 1978 or the Theft (Northern Ireland) Order 1978;
* fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;
* fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994;
* an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;
* destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968 or section 19 of the Theft Act (Northern Ireland) 1969;
* fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006;
* the possession of articles for use in frauds within the meaning of section 6 of the Fraud Act 2006, or the making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of that Act;

**Terrorist offences or offences linked to terrorist activities**

Any offence:

* listed in section 41 of the Counter Terrorism Act 2008;
* listed in schedule 2 to that Act where the court has determined that there is a terrorist connection;
* under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by the previous two points;

**Money laundering or terrorist financing**

Money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002

An offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996

**Child labour and other forms of trafficking human beings**

An offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004;

An offence under section 59A of the Sexual Offences Act 2003

An offence under section 71 of the Coroners and Justice Act 2009;

An offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994

An offence under section 2 or section 4 of the Modern Slavery Act 2015

**Non-payment of tax and social security contributions**

Breach of obligations relating to the payment of taxes or social security contributions that has been established by a judicial or administrative decision.

Where any tax returns submitted on or after 1 October 2012 have been found to be incorrect as a result of:

* HMRC successfully challenging the potential supplier under the General Anti – Abuse Rule (GAAR) or the “Halifax” abuse principle; or
* a tax authority in a jurisdiction in which the potential supplier is established successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or “Halifax” abuse principle;
* a failure to notify, or failure of an avoidance scheme which the supplier is or was involved in, under the Disclosure of Tax Avoidance Scheme rules (DOTAS) or any equivalent or similar regime in a jurisdiction in which the supplier is established

**Other offences**

Any other offence within the meaning of Article 57(1) of the Directive as defined by the law of any jurisdiction outside England, Wales and Northern Ireland

Any other offence within the meaning of Article 57(1) of the Directive created after 26th February 2015 in England, Wales or Northern Ireland

**Discretionary exclusions**

**Obligations in the field of environment, social and labour law.**

Where an organisation has violated applicable obligations in the fields of environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Directive (see copy below) as amended from time to time; including the following:-

* Where the organisation or any of its Directors or Executive Officers has been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years.
* In the last three years, where the organisation has 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 of alleged unlawful discrimination.
* In the last three years, where any finding of unlawful discrimination has been made against the organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or incomparable proceedings in any jurisdiction other than the UK).
* Where the organisation has been in breach of section 15 of the Immigration, Asylum, and Nationality Act 2006;
* Where the organisation has a conviction under section 21 of the Immigration, Asylum, and Nationality Act 2006;
* Where the organisation has been in breach of the National Minimum Wage Act 1998.

**Bankruptcy, insolvency**

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;

**Grave professional misconduct**

Guilty of grave professional misconduct

**Distortion of competition**

Entered into agreements with other economic operators aimed at distorting competition

**Conflict of interest**

Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure

**Been involved in the preparation of the procurement procedure.**

**Prior performance issues**

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.

**Misrepresentation and undue influence**

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 provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Additional exclusion grounds

**Breach of obligations relating to the payment of taxes or social security contributions.**

**ANNEX X Extract from Public Procurement Directive 2014/24/EU**

**LIST OF INTERNATIONAL SOCIAL AND ENVIRONMENTAL CONVENTIONS REFERRED TO IN ARTICLE 18(2) —**

* ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
* ILO Convention 98 on the Right to Organise and Collective Bargaining;
* ILO Convention 29 on Forced Labour;
* ILO Convention 105 on the Abolition of Forced Labour;
* ILO Convention 138 on Minimum Age;
* ILO Convention 111 on Discrimination (Employment and Occupation);
* ILO Convention 100 on Equal Remuneration;
* ILO Convention 182 on Worst Forms of Child Labour;
* Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
* Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
* Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention)
* Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

**Consequences of misrepresentation**

A serious misrepresentation which induces a contracting authority to enter into a contract may have the following consequences for the signatory that made the misrepresentation:-

* The potential supplier may be excluded from bidding for contracts for three years, under regulation 57(8)(h)(i) of the PCR 2015;
* The contracting authority may sue the supplier for damages and may rescind the contract under the Misrepresentation Act 1967.
* If fraud, or fraudulent intent, can be proved, the potential supplier or the responsible officers of the potential supplier may be prosecuted and convicted of the offence of fraud by false representation under s.2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both).
* If there is a conviction, then the company must be excluded from procurement for five years under reg. 57(1) of the PCR (subject to self-cleaning).

|  |  |
| --- | --- |
| **Organisation’s**  **name** |  |
| **Signed** |  |
| **Position** |  |
| **Date** |  |

## **Section 8 – Pricing Schedule**

I/We require payment of the following Fixed Charge per annum and Food Charge per resident and day centre user per two-course meal per day (the Tender Price) to operate the service in accordance with the Service Specification and Conditions of Contract set out herein:

\*\* This is the figure that will be used for the cost evaluation as per Section 1 Part 7.12.

Invoicing will be based on a quarterly invoice in arrears.

Note: Please ensure you have answered all boxes below.

|  |  |  |
| --- | --- | --- |
|  | **Fixed Charge**  **Total per Annum**  **(excluding VAT)**  **£** | **Food charge per resident / day centre user per two course meal**  **(within range £2.50 to £3.10 including VAT)**  **£** |
| **Winchester City Council Chesil Lodge Contract (see specification for details)** |  |  |
|  | | |
| **Organisation’s name** |  | |
| **Signed** |  | |
| **Position** |  | |
| **Date** |  | |

## **Section 9 – Assessment of Financial Information and Service Standards - Stages 1 & 2a**

**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).

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**

The procurement document will provide 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.

**[CHESIL LODGE CATERING CONTRACT]**

**[REFERENCE NUMBER: ECCATERING1]**

**[OPEN PROCUREMENT PROCEDURE]**

**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 – Stage 1** (for information only)

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)** | 1. Trading status 2. public limited company 3. limited company 4. limited liability partnership 5. other partnership 6. sole trader 7. third sector 8. 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? | Yes ☐  No ☐  N/A ☐ |
| **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? | Yes ☐  No ☐ |
| **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)   1. Voluntary Community Social Enterprise (VCSE) 2. Sheltered Workshop 3. Public service mutual |  |
| **1.1(m)** | Are you a Small, Medium or Micro Enterprise (SME)? | Yes ☐  No ☐ |
| **1.1(n)** | Details of Persons of Significant Control (PSC), where appropriate:  - 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. [[1]](#footnote-1)  (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.

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

|  |  |  |
| --- | --- | --- |
| **Section 1** | **Bidding model** | |
| **Question number** | **Question** | **Response** |
| **1.2(a) - (i)** | Are you bidding as the lead contact for a group of economic operators? | Yes ☐  No ☐  If yes, please provide details listed in questions 1.2(a) (ii), (a) (iii) and to 1.2(b) (i), (b) (ii), 1.3, Section 2 and 3.  If no, and you are a supporting bidder please provide the name of your group at 1.2(a) (ii) for reference purposes, and complete 1.3, Section 2 and 3. |
| **1.2(a) - (ii)** | Name of group of economic operators (if applicable) |  |
| **1.2(a) - (iii)** | Proposed legal structure if the group of economic operators intends to form a named single legal entity prior to signing a contract, if awarded. If you do not propose to form a single legal entity, please explain the legal structure. |  |
| **1.2(b) - (i)** | Are you or, if applicable, the group of economic operators proposing to use sub-contractors? | Yes ☐  No ☐ |
| **1.2(b) - (ii)** | If you responded yes to 1.2(b)-(i) please provide additional details for each sub-contractor in the following table: we may ask them to complete this form as well.   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | Name |  |  |  |  |  | | Registered address |  |  |  |  |  | | Trading status |  |  |  |  |  | | Company registration number |  |  |  |  |  | | Head Office DUNS number (if applicable) |  |  |  |  |  | | Registered VAT number |  |  |  |  |  | | Type of organisation |  |  |  |  |  | | SME (Yes/No) |  |  |  |  |  | | The role each sub-contractor will take in providing the works and /or supplies e.g. key deliverables |  |  |  |  |  | | The approximate % of contractual obligations assigned to each sub-contractor |  |  |  |  |  | | |

**Contact details and declaration**

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

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

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

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

I am aware of the consequences of serious misrepresentation.

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

**Part 2: Exclusion Grounds (Stage 1)**

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)** | **Regulations 57(1) and (2)**  The detailed grounds for mandatory exclusion of an organisation are set out on this [web page](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf), 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf). | |
|  | Participation in a criminal organisation. | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Corruption. | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Fraud. | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Terrorist offences or offences linked to terrorist activities | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Money laundering or terrorist financing | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Child labour and other forms of trafficking in human beings | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
| **2.1(b)** | 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. |  |
| **2.2** | If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning) | Yes ☐  No ☐ |
| **2.3(a)** | **Regulation 57(3)**  Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions? | Yes ☐  No ☐ |
| **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** | | **Response** |
| **3.1** | | **Regulation 57 (8)**  The detailed grounds for discretionary exclusion of an organisation are set out on this [web page](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf), which should be referred to before completing these questions.  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. | | |
| **3.1(a)** | | Breach of environmental obligations? | | Yes ☐  No ☐  If yes please provide details at 3.2 |
| **3.1 (b)** | | Breach of social obligations? | | Yes ☐  No ☐  If yes please provide details at 3.2 |
| **3.1 (c)** | | Breach of labour law obligations? | | Yes ☐  No ☐  If yes please provide details at 3.2 |
| **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? | | Yes ☐  No ☐  If yes please provide details at 3.2 |
| **3.1(e)** | | Guilty of grave professional misconduct? | | Yes ☐  No ☐  If yes please provide details at 3.2 |
| **3.1(f)** | | Entered into agreements with other economic operators aimed at distorting competition? | | Yes ☐  No ☐  If yes please provide details at 3.2 |
| **3.1(g)** | | Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure? | | Yes ☐  No ☐  If yes please provide details at 3.2 |
| **3.1(h)** | | Been involved in the preparation of the procurement procedure? | | Yes ☐  No ☐  If yes please provide details at 3.2 |
| **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? | | Yes ☐  No ☐  If yes please provide details at 3.2 |
| **3.1(j)**  **3.1(j) - (i)**  **3.1(j) - (ii)**  **3.1(j) –(iii)**  **3.1(j)-(iv)** | | Please answer the following statements  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.  The organisation has withheld such information.  The organisation is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.  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. | | Yes ☐  No ☐  If Yes please provide details at 3.2  Yes ☐  No ☐  If Yes please provide details at 3.2  Yes ☐  No ☐  If Yes please provide details at 3.2  Yes ☐  No ☐  If Yes please provide details at 3.2 |
| **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 ground for exclusion? (Self Cleaning) | |  | |

**Part 3: Selection Questions (Stage 1)**

**4. Financial Information (Economic and Financial Standing) - Stage 1**

|  |  |  |  |
| --- | --- | --- | --- |
| **Section 4** | **Economic and Financial Standing** | | |
|  | **Question** | **Response** | |
| **4.1** | Please indicate which of the following you have provided to demonstrate your economic / financial standing.  Are you able to provide a copy of your accounts for the last two years, (audited where available)?  If no, can you provide **one** of the following: answer with Y/N in the relevant box. | | Yes ☐  No ☐ |
| (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. | | Yes ☐  No ☐ |
| (b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position. | | Yes ☐  No ☐ |
|  | (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). | | Yes ☐  No ☐ |
| **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. | | Yes ☐  No ☐ |

|  |  |  |
| --- | --- | --- |
| **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? | Yes ☐  No ☐ |
| **5.2** | If yes, would the parent company be willing to provide a guarantee if necessary? | Yes ☐  No ☐ |
| **5.3** | If no, would you be able to obtain a guarantee elsewhere (e.g. from a bank)? | Yes ☐  No ☐ |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Section 6** | **Technical and Professional Ability** | | | | |
| **6.1** | **Relevant experience and contract examples**  Please provide details of up to three contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs may include samples of grant-funded work. Contracts for supplies or services should have been performed during the past three years. Works contracts may be from the past five years.  The named contact provided should be able to provide written evidence to confirm the accuracy of the information provided below.  Consortia bids should provide relevant examples of where the consortium has delivered similar requirements. If this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle is to be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member).  Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the main intended provider(s) or sub-contractor(s) who will deliver the contract.  If you cannot provide examples see question 6.3  **PLEASE NOTE** - Tenderers are required to ask the three contacts they have detailed below to complete and return to the reference pro-forma (Section 10) directly to the Contact Officer whose details are set out in 1.12 no later than the closing date for tender submissions. It is the Tenderer’s responsibility to ensure the Council receives all three references by the closing date. Tenderers will be awarded marks for each reference received, which will count towards its quality score in Stage 2a. Tenderers will be awarded zero marks for each reference not received by the Council by the closing date.  **PLEASE NOTE** – Tenderers cannot include reference to a contract with the Council or any Council employee or Councillor. | | | | |
|  | | | **Contract 1** | **Contract 2** | **Contract 3** |
| **Name of customer organisation** | | |  |  |  |
| **Point of contact in the organisation** | | |  |  |  |
| **Position in the organisation** | | |  |  |  |
| **E-mail address** | | |  |  |  |
| **Description of contract** | | |  |  |  |
| **Contract Start date** | | |  |  |  |
| **Contract completion date** | | |  |  |  |
| **Estimated contract value** | | |  |  |  |
| **6.2** | 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)  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) | | | | |
|  |  | | | | |
| **6.3** | | | 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. | | | |
|  | | |  | | | |

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| --- | --- | --- |
| **Section 7** | **Modern Slavery Act 2015:** **Requirements under Modern Slavery Act 2015[[2]](#footnote-2)** | |
| **7.1** | Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")? | Yes ☐  N/A ☐ |
| **7.2** | If you have answered yes to question 1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015? | Yes ☐  Please provide relevant the url …  No ☐  Please provide an explanation |

**8. Additional Questions - Compliance with Mandatory Service Standards – PASS or FAIL (Stage 1)**

Please confirm you can meet all the mandatory requirements of the contract as set out below and provide details where appropriate. Failure to meet any of these requirements will result in disqualification and prevent the Tenderer going on to Stage 2.

|  | **Contract Requirement** | **Yes/No as applicable** | **If ‘no’, or to provide more information, please give details or continue on separate sheet** |
| --- | --- | --- | --- |
| **8.1** | **Insurance**  Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:  Y/N  Employer’s (Compulsory) Liability Insurance = £10m  Public Liability Insurance = £10m  \*It is a legal requirement that all companies hold Employer’s (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders. | Yes ☐  No ☐  Yes ☐  No ☐ |  |
| **8.2** | **Staffing**   1. Please confirm that you will employ at least 1 apprentice as a member of the catering team throughout the delivery of this contract. | Yes ☐  No ☐ |  |
|  | 1. Please confirm that all staff directly providing the Services shall be paid at a rate no less than:- 2. the Living Wage or 3. any statutory minimum wage or statutory national living wage   whichever is the higher | Yes ☐  No ☐ |  |
| **8.3** | **Health & Safety**  **General:**  **Please provide copies of the following documents and mark them with the appropriate question numbers for ease of identification: (softcopy on disk or memory stick in PDF or Word format):**   * 1. Please submit your current Health and Safety Policy in accordance with section 2(3) of the Health and Safety at Work etc. Act 1974 (including the Responsibilities and Arrangements sections), along with the process and timescales for the review of the document.     **Note: An organisation must have a written safety policy where five or more persons are employed. Small businesses are required to submit written details of their safety procedures and arrangements.** |  |  |
|  | * 1. How is health and safety information e.g. policy, procedures and safe systems of work conveyed to the workforce? Please include details of how this is recorded. Please provide details of the Organisation’s procedures for monitoring and reviewing health and safety performance. |  |  |
|  | * 1. Please outline your process for undertaking, recording and disseminating risk assessments in accordance with the Management of Health and Safety at Work Regulations 1999. Please provide examples of risk assessments relevant to the contract applied for and related safe systems of work. |  |  |
|  | **Food Safety:**   * 1. Have you ever been scored below 3 on the food hygiene rating scheme? If yes, please explain why. |  |  |
|  | * 1. Have you ever had any statutory enforcement action taken against you, ie Prohibition or improvement notices? If yes, please explain what for. |  |  |
|  | * 1. Please provide details of your food safety management system – ie: full HACCP, partial HACCP, other (what). |  |  |
| **8.4** | **Local presence**  Please confirm you have or will be able to provide a management office base within 120 miles of Council offices at Winchester City Council, Colebrook Street, Winchester, Hampshire SO23 9LJ in the event of your tender being successful. | Yes ☐  N/A ☐ |  |
| **8.5** | **Safeguarding**  Please confirm your safeguarding policies and practices are consistent with Hampshire County Council policy (copy of policy enclosed with tender documentation). | Yes ☐  N/A ☐ |  |

**Relevant experience (Stage 2a)**

|  |  |
| --- | --- |
| **9.1 Relevant experience and contract examples** |  |
| Where the Council has received the references directly from Tenderer’s referees, as outlined and subsequently nominated by the Tenderer in response to Part 3, Section 6, the Council will assess these as part of Stage 2a and award marks towards the Tenderer’s quality score for each satisfactory reference received. | |

**Quality Assessment - Method Statements (Stage 2a)**

As part of the assessment of quality, including added value, Tenderers must provide evidence in the form of completed Quality Method Statements to be submitted as part of their tender bid.

The highest scoring Tenderers overall (up to a maximum of 6) will be invited to attend an interview to answer questions on their proposals through a set of pre-determined questions from a panel for all invited Tenderers to answer (one question requiring a presentation of which the topic will be provided before interview). The panel will then score responses and these scores will be added to the overall marks.

The Tenderer with the highest score overall will go on to Stage 3.

**Submission of Quality Method Statements**

* The Quality Method Statements must be returned with the Form of Tender.

**Format of the Quality Method Statements**

* Tenderers should create, complete and submit a document which includes Quality Method Statements to cover the criteria & questions raised,
* Returned Quality Method Statements will only be accepted in the format confirmed in Section 1 – Instructions to Tenderers.

**Content of Quality Method Statements**

Your answers should illustrate how you expect to meet or exceed the minimum requirements of the Conditions of Contract and the Service Specification. You must provide evidence to enable the Council to assess:

* Your ability to operate the Contract in accordance with the Service Specification and Conditions of Contract,
* Any service quality over and above the standards required,
* Any added value that can be provided as part of the Contact at no additional cost to the Council.

Please provide as much information as you think necessary to enable the Council to accurately assess how you would meet the requirements of each section.

**Quality Method Statements**

Please provide Quality Method Statements to cover the criteria & questions:

**A) Experience of working with the client group – “What experience do you have of running a catering service to older people with care and support needs, what challenges have you encountered and how have you overcome them?” 750 words maximum**

**(B) Continuous improvement – “How have you collected feedback regarding the quality of your services and used this to make improvements in service delivery?” 500 words maximum**

**(C) Added value – “What steps will you take to bring added value to the Council and service users within the life of the contract?” 400 words maximum**

**Section 10 – Relevant Experience - Reference Pro-Forma**

**WCC Catering Service Contract - Reference Form for Assessment of Proposals**

|  |  |
| --- | --- |
| **Name of Provider:** |  |
| **Name of referee (including company name and contact details):** |  |
| **Brief details of the contract:** |  |
| **Relationship to Provider:** |  |
| **Period of relationships (dates):** |  |
| **Value of contracts in place:** |  |
| **Would you contract / work with this Provider in the future?**  **If no, please give further details.** |  |

From your experience of working with the Provider, please score them 1-5 in relation to each of the following areas (1 = very poor, 5 = very good):

|  |  |
| --- | --- |
| **Item** | **Score 1-5** |
| Quality of customer service |  |
| Value for money |  |
| Communication |  |
| Problem-solving |  |
| Responding to feedback |  |
| Attitude of staff |  |

**Please use the space below to make any additional comments following your scoring above or any other observations you feel would be helpful:**

|  |
| --- |
|  |

|  |  |
| --- | --- |
| **Signed:** | **Date:** |

**Please return the completed form by 12.00 Noon on 11th January 2017:**

Sarah Turpitt

Sheltered & Extra Care Services Manager

Winchester City Council

Hyde Lodge

Worthy Lane

Winchester SO23 7AB

Email: [cateringtender@winchester.gov.uk](mailto:cateringtender@winchester.gov.uk)

**Thank you for taking the time to complete this form.**

**Section 11 – Checklist for a Complete Response**

| **Item** | **Cross Reference** | Provided by Tenderer –  please tick to confirm | **Tenderers page number(s)** |
| --- | --- | --- | --- |
| Form of Tender | Section 5 |  |  |
| Tendering (Collusion) Certificate | Section 6 |  |  |
| Statement Relating to Mandatory and Discretionary Grounds for Rejection | Section 7 |  |  |
| Pricing Schedule | Section 8 |  |  |
| Assessment of Financial Information and Service Standards | Section 9 |  |  |
| Quality Method Statements | Section 9 |  |  |
| Three references from Tenderer’s other contracts | Section 10 |  |  |
| Letter from Bank, insurance company or other similar institution confirming availability of a bond for 10% of annual Contract Price, and proposed wording of bond | Section 1 paragraph 8 |  |  |
| One electronic copy (on suitable media such as CD-Rom or USB stick) of the whole tender submission, together with one paper copy of the whole tender and two copies of all method statements. If a Tenderer’s financial statements are available free of charge on a relevant national database, Tenderers should state where these statements can be found instead of needing to submit electronic or hard copies. |  |  |  |

Tender Label

As per Paragraph 6.3 of Section 1 of Part 1 of the Invitation to Tender, Tenderers should print off this label and securely affix it to the envelope in which they submit their Tender.

Winchester City Council

**TENDER**

**DO NOT OPEN**

Contract Reference:-

**ECCATERING1**

***Catering Service Contract***

Date and Time for Receipt

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)