

Invitation to Tender for:

**Signature Events Spring 2023**

**September 22 to April 23**

**Contract No. EVENT/22/2**

**Document One – Instructions and Information**

**Deadline for Tenders to be received: 10:00hrs 19 July 2022**

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**DEFINITIONS**

**Ashford Borough Council (ABC):** the Employer

**Bidder means:** the person, whose Tender is accepted by the Employer.

**Bribery Act:**the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Commercially Sensitive Information:** comprising the information of a commercially sensitive nature relating to the Bidder, its intellectual property rights or its business or which the Bidder has indicated to Ashford Borough Council that, if disclosed by Ashford Borough Council, would cause the Bidder significant commercial disadvantage or material financial loss.

**Confidential Information:** any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Bidder, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including Commercially Sensitive Information.

**Company's Personnel:** all employees, staff, and other workers of the Company and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Data Protection Legislation**: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**Default:** any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement

(a) in the case of the Client, of its employees, servants, agents; or

(b) in the case of the Company, of its Sub-Contractors or any Company's Personnel, in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other.

**Effective Date:** the date on which this Agreement is signed by both Parties

**Environmental Information Regulations:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Goods:** the goods to be delivered by or on behalf of the Bidder under this agreement.

**Information:** has the meaning given under section 84 of FOIA.

**Prohibited Act:** the following constitute Prohibited Acts:

1. To directly or indirectly offer, promise or give any person working for or engaged by the Client a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) To directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) Committing any offence:

(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

(ii) under legislation or common law concerning fraudulent acts;

(iii) defrauding, attempting to defraud or conspiring to defraud the Client.

(d) Any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

**Request for Information:**a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

**Services:** the services to be delivered by or on behalf of the Bidder under this agreement.

**Standstill Period:** Standstill is a period of at least 10 calendar days between the notification of the intended award of a contract and the contract award itself. It ensures the Tender process is fair, is adhered to and allows for challenges to be made to the contract award decision, if necessary.

**Sub-Contract:** any contract or agreement or proposed contract or agreement between the Bidder and any third party whereby that third party agrees to provide to the Bidder the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof.

**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Bidder.

**TUPE:** stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006. These regulations are designed to protect the employment rights of staff when the business or undertaking they are working in is sold or transferred to someone else.

**Works:** the works to be delivered by or on behalf of the Bidder under this agreement.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

1. INTRODUCTION AND BACKGROUND
   1. Ashford Borough Council (**ABC**) is issuing this Invitation to Tender ("**ITT**") for the procurement of Signature Events Spring 2023 This document contains important information about the procurement process and the contract that ABC intends to award.
   2. This **ITT Document one** contains further information about the procurement process.
   3. **ITT Document two** contains the questions that Bidders must complete.
   4. All Tenders must be returned no later than the deadline for receipt of Tenders specified on the front cover of this ITT.

* 1. ABC is using the Kent Business e-tendering portal to conduct the procurement process. The portal can be accessed via the following link;

<https://www.kentbusinessportal.org.uk/>

* 1. All communications (including submission of Tenders) should be carried out via the Kent Business Portal.

**Introduction to Ashford Borough Council (ABC)**

* 1. ABC is a local authority which provides services to residents in Ashford, Tenterden and a large network of surrounding villages.
  2. Our services include keeping the streets clean and collecting rubbish, renting out social housing (council houses and flats), providing leisure facilities and play areas and processing council tax and housing benefits.
  3. We deal with local planning applications for everything from a conservatory to major developments, and if you are buying a home in the borough we can provide you with a comprehensive land search service.
  4. We issue licenses for taxis and licensed premises, look after parks and open spaces, and parking around the borough.
  5. We are based in offices in Tannery Lane. Our customer services team are based at the Civic Centre, and we have a [further office in Tenterden Town Hall](https://www.google.co.uk/maps/place/Tenterden+Town+Council/@51.06883,0.6857938,17z/data=!3m1!4b1!4m5!3m4!1s0x47deaec8abcbf7d5:0xce5a314a9a214c05!8m2!3d51.06883!4d0.6879825). We employ over 470 people.

1. TENDER TIMETABLE

**Key dates**

* 1. The procurement will follow a clear, structured and transparent process to ensure a fair and level playing field so that all Bidders are treated equally.
  2. The key dates for this procurement are currently anticipated to be as follows:

|  |  |
| --- | --- |
| Task | Date |
| Invitation to Tender issue | 24th June 2022 |
| Deadline for the receipt of clarification questions | 12th July 2022 at 12:00hrs |
| Deadline for receipt of Tenders | 19th July 2022 at 10:00hrs |
| Evaluation of Tenders | 20th July 2022 |
| Interviews | 4th or 5th August 2022 |
| Notification of contract award decision | 8th August 2022 |
| Standstill period | Ends 18th August 2022 |
| Contract award | 9th September 2022 |
| Contract start | 12th September 2022 |
| Commission announcement | 12th September 2022 |
| Earliest date of physical event delivery | 1st March 2023 |
| Latest date of physical event delivery | 16th April 2023 |
| Final activity report/evaluation | 21st April 2023 |

* 1. Whilst ABC does not intend to depart from the timetable, it reserves the right to do so at any stage.

**Deadline for receipt of Tenders**

* 1. Bidders must submit their Tenders in the manner prescribed in the above key date table no later than the date and time specified.
  2. Any Tender received after the deadline or by any method other than via the Kent Business Portal shall not be considered. ABC may at its discretion extend the deadline and in such circumstances ABC will notify all Bidders of any change.

**Contract Award**

* 1. Contract award is subject to the formal approval process of ABC. Until all necessary approvals are obtained and the standstill period completed, no contract(s) will be entered into.
  2. Once ABC has reached a decision in respect of a contract award, it will notify all Bidders of that decision and provide for a standstill period in accordance with the Public Contracts Regulations 2015 before entering into any contract(s).

1. SCOPE OF TENDER
   1. We require the services of an established and highly experienced organisation, with a proven track record in this field, to develop our existing concept (Refer to **Appendix A Specification** for the Suggested Seed Event), and lead on all aspects of project management, delivery, community development, additional income leverage, and evaluation for our final Seed Event in Ashford Town Centre for Spring 2023.
   2. **Location of contract:** Ashford, Kent. The Town Centre with Borough-wide engagement.
   3. **Contract Term:** Approximately an eight month contract with potential to recommission following review.
   4. **Budget:** £25,000 secured. Potential of up to £60k total budget depending on additional external funding.

A current budget of £25,000 has been secured and available to deliver this Seed Event. However, this budget is not limited to any additional leverage achieved such as other public sector funding, private sector commercial income, sponsorship, inward investment, and ticket or other income streams. ABC would like to work with the commissioned organisation to grow the budget, and potentially grow the project ambition, brand, artistic quality, scale of work and number of mural sites. There is potential for a further year funding should budget be available and following a full review of work.

* 1. **Service lead:**

Chris Dixon, Arts & Cultural Industries Manager for Ashford Borough Council

[chris.dixon@ashford.gov.uk](mailto:chris.dixon@ashford.gov.uk)

01233 330 352

1. INSTRUCTIONS TO BIDDERS
   1. **Do** ensure all communication is via the Kent Business Portal <https://www.kentbusinessportal.org.uk/> . You will receive any amendments to the Tender the council issues, and responses to any clarification received.
   2. **Do** provide requested information on time and in the required format.
   3. **Do** provide clear and concise contact details; telephone numbers and e-mails and details.
   4. **Do** thoroughly check your prices and data before final submission of pricing schedules or quotations.
   5. **Do** review your policies on a regular basis to ensure that they comply with current legislation.
   6. **Do** comply with the ITT and any other regulations that apply to procurement. Failure to do so will lead to disqualification.
   7. **Do** make sure that you have not exceeded the number of pages/words you are asked to submit – and make sure that the responses to the questions are clearly numbered.
   8. **Do** make sure that you upload your insurance documents.
   9. **Do** make sure that when uploading your bids electronically to the Kent Business Portal you read the following guidance;

* *Keep file names simple and without punctuation or short capitalised words that could be interpreted as SQL* <https://www.w3schools.com/sql/sql_in.asp> Avoid words like IN, WHERE or FULL or punctuation such as > or ) in the filename
* *Do not use multiple tabs (should complete in one browser session)*
* *Be patient whilst larger files are uploaded even if the system seems a little unresponsive (as clicking upload again can cause issues)*
* *Accepted file types are:* zip, pdf, xls, *max size 1,000MB*
* For Bidders there is a dedicated supplier support team, if urgent they can call 0330 005 0352 or e-mail [ProContractSuppliers@proactis.com](mailto:ProContractSuppliers@proactis.com) **or**[suppliersupport@proactis.com](mailto:suppliersupport@proactis.com)
  1. **Don’t** send ‘glossy’ brochures or information that has not been requested, this makes any responses difficult to properly assess. Only send what has been requested and only send supplementary information if we have offered the opportunity to do so.
  2. **Don’t** send company accounts, reports, H&S Policies, etc. unless we specifically ask for them. If your bid is successful we may ask for confirmation of these details.
  3. **Don’t** seek to influence the Tender process by requesting meetings unless invited or contacting ABC to support your Tender. If your Tender requires clarification you will be contacted.
  4. **Don’t** seek changes to the Tender documentation after Tenders have been submitted.
  5. **Don’t** leave submitting your Tender to the last minute, just in case there are any technical difficulties with IT.
  6. **Don’t** ignore the last date/time for clarification – no correspondence will be entered into after this date has passed. Other Bidders may have already submitted their bid.

**Publicity**

* 1. No publicity regarding the award of any contract will be permitted unless and until ABC has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Tender, its contents or any proposals relating to it without the prior written consent of ABC.

**Bidder conduct and conflicts of interest**

* 1. Any attempt by Bidders or their advisors to influence the contract award process in any way may result in the Bidder being disqualified. Specifically, Bidders shall not directly or indirectly at any time:
     1. devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance;
     2. enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
     3. enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
     4. canvass ABC or any employees or agents of ABC in relation to this procurement; and/or
     5. attempt to obtain information from any of the employees of ABC or their advisors concerning another Bidder or Tender (except for debrief information requests made through the Kent Business Portal).
  2. Bidders are responsible for ensuring that no conflicts of interest exist between the Bidder and its advisers, and ABC and its advisors. Bidders should notify ABC promptly of any possible conflict and the proposed steps that the Bidder believes can be taken to avoid the conflict. Any Bidder who fails to comply with these requirements may be excluded from the procurement at the discretion of ABC.

**Ashford Borough Council’s rights**

* 1. Subject to its obligations to act in a transparent, proportionate and non-discriminatory manner, ABC reserves the right to:
     1. waive or change the requirements of this ITT from time to time;
     2. seek clarification or documents in respect of a Bidder's Tender;
     3. disqualify any Bidder that does not submit a compliant Tender in accordance with the instructions in this ITT;
     4. disqualify any Bidder that is guilty of serious misrepresentation in relation to its Tender, expression of interest, the SQ or the procurement process;
     5. withdraw this ITT at any time, or re-invite Tenders on the same or any alternative basis;
     6. exclude any Bidder who no longer passes the SQ selection criteria;
     7. choose not to award any contract as a result of the current procurement process; and
     8. make whatever changes it sees fit to the timetable, structure or content of the procurement process.

**Bid costs**

* 1. ABC will not be liable for any bid costs, expenditure, work or effort incurred by a Bidder in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by ABC.

**Language**

* 1. Tenders, all documents and all correspondence relating to the Tender must be written in English.

**Transparency**

* 1. In accordance with the Public Contracts Regulations 2015 and the Government’s policy on transparency, Bidders should be aware that ABC intends to make the ITT and details of any subsequent contract publicly available, by publication on the Government's Contracts Finder portal if required.

1. TENDER EVALUATION METHODOLOGY AND CRITERIA

**Overview**

This section of the ITT sets out the criteria that ABC will use to evaluate Tenders.

* 1. Bidders are required to submit a Tender strictly in accordance with the requirements set out in this ITT, to ensure ABC has the correct information to make the evaluation. If a Tender is equivocal or unclear, ABC may deduct marks when scoring it, or it may treat the Tender as non-compliant and reject it.

**Evaluation criteria**

* 1. ABC will award the contract to the Tender that is, applying the methodology below, the Most Advantageous Tender (**MAT**). The Tender submission will be evaluated in accordance with the criteria shown below and using the following weightings:

**Quality weighting:** 60%

**Price weighting:** 30%

**Interview:** 10%

# EXAMPLE OF TENDER EVALUATION CRITERIA (based on 70%/30% ratio)

*Note: the following is an example, and does not necessarily reflect the weightings indicated for the project. The process, for evaluation, is the same.*

EXAMPLE

Tender submissions will be evaluated using the following weightings:

Price: (tendered costs as calculated from Schedule of Rates) **70%**

and Matrix)

Quality: (details supplied by Bidders) **30%**

**PRICE**

70 points will be allocated to the lowest Tender and then other Tenders will be evaluated as a percentage of the lowest price. This is then converted to a point score to reflect that this area carries 70% of the total score. An example of this procedure is shown in the example below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tender** | **Price £** | **Calculation** | **Convert to 70%** | **Points** |
| 1 | 500 | (425÷500) x 100 = 85 | (70 x 85) ÷ 100 | 59.5 |
| 2 | 622 | (425÷622) x 100 = 68.3 | (70 x 68.3) ÷100 | 47.8 |
| 3 | 425 |  |  | 70 |
| 4 | 440 | (425÷440) x 100 = 96.5 | (70 x 96.5) ÷ 100 | 67.6 |
| 5 | 625 | (425÷625) x 100 = 68 | (70 x 68) V 100 | 47.6 |

**QUALITY**

This section will be evaluated using the following criteria and points will be allocated for each section. The Tender with the highest point score will be used as the base line to calculate the relative scores for the other Bidders. This is then converted to a point score (out of 10) to reflect that this area carries 30% of the total score.

* The Bidder’s proposed management, supervision structure and personnel; 15%
* Proposed working methods; 5%
* Labour resources that would be deployed; 5%
* Value Engineering proposals included within; 5%

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tender** | **Quality score** | **Calculation** | **Convert to 30%** | **Points** |
| 1 | 2 | (2÷7) x 100 = 28.6 | (30 x 28.6) ÷ 100 | 8.6 |
| 2 | 5 | (5÷7) x 100 = 71.4 | (30 x 71.4) ÷100 | 21.4 |
| 3 | 4 | (4÷7) x 100 = 57.1 | (30 x 57.1) ÷ 100 | 17.1 |
| 4 | 5 | (5÷7) x 100 = 71.4 | (30 x 71.4) ÷ 100 | 21.4 |
| 5 | 7 |  |  | 30 |

The winning Tender is the one which scores the greatest overall mark once Price and Quality have been combined. The results from the above examples would be as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tender** | **Points awarded for Price** | **Points awarded for Added Value** | **Points Total** |  |
| 1 | 59.5 | 8.6 | 68.1 |  |
| 2 | 47.8 | 21.4 | 69.2 |  |
| 3 | 70 | 17.1 | 87.1 |  |
| 4 | 67.6 | 21.4 | 89 | **Winning Bidder** |
| 5 | 47.6 | 30 | 77.6 |  |

* 1. The quality evaluation will be scored in accordance with the table below:

|  |  |  |
| --- | --- | --- |
| **Scoring** | **Criteria** | **Judgement** |
| **10** | Statement exceeds requirements and adds significant value | Excellent |
| **8** | Statement exceeds requirements and adds some value | Good |
| **6** | Statement meets all the requirements (“par”) | Satisfactory |
| **4** | Statement fails to meet requirements in some way | Unsatisfactory |
| **2** | Statement fails to meet requirements in a significant way | Poor |
| **0** | Statement is unsuitable and/or suggests unacceptable risk | Not to be considered |

* 1. A panel of ABC’s Officers from the Economic Development Team will evaluate the Tenders and score them individually. The officer’s individual scores will then be moderated through a group consensus marking exercise.
  2. ABC will review and then discuss the marks allocated by the individual evaluators together with their justifications for awarding their attributed marks.
  3. The discussion will continue until the evaluators reach a consensus regarding the mark that should be attributed to each Bidder’s answer.
  4. The consensus mark and the justification will be recorded and this process will be repeated until all applicable answers in the Tender response have been consensus marked by evaluators.

**Interviews**

* 1. Bidders will need to score a minimum of 60% on their bid to progress through to the interview stage.
  2. The top ranked Bidders, maximum of three, will be invited to present their proposal and will be evaluated by a panel of ABC’s officers.
  3. Interviews will take place on either **Thursday 4th August or Friday 5th August 2022.**
  4. The interview will be scored on the following basis:
     1. Clarity of presentation and the total impact of the project on the community (expected level of participation and spectators/footfall) and appropriately activating and enlivening the Town Centre.
  5. The purpose of the interview is to gain a greater understanding of proposals and will take the form of a presentation by the Bidder followed by a question and answer session.
  6. Bidders must ensure that those key personnel directly involved in performing the contract will attend.

**Pricing**

* 1. ABC expects the Bidder to provide a full breakdown of the costs using the budget provided (refer to **Section 3 Scope** of this document). This must include an indicative breakdown of the portion of time each individual will contribute to the services, hourly rates including any sub-contractor costs.
  2. The Tender sum must provide for all costs associated with the description of works and satisfying all other obligations as set out in the Tender documentation, Standard Selection Questionnaire and the Agreement.
  3. The Tendered rates shall be fixed for the duration of the contract.
  4. The Tender is to be priced in accordance with current legislation and the Instruction to Tenderers.
  5. The Tendered rates should include all costs, including, but not restricted to, all labour, materials, transport, plant tools, machinery costs, expenses, overheads and profit necessary to properly execute and complete the work. No claim for extra costs due to the tendered rates being inadequate will be allowed.
  6. The sum or sums due to the Bidder under the Contract are exclusive of value added tax and ABC shall pay to the Bidder any value added tax properly chargeable by the Commissioners of Customs and Excise.
  7. The total Tender must be exclusive of VAT, but in addition to the total Tender, the Bidder shall be entitled to claim from ABC the amount of VAT properly chargeable on the component parts and service provided by him in the performance of the Contract, if applicable.

1. CONDITIONS OF TENDER
   1. The essence of selective tendering is that ABC shall receive bona-fide competitive Tenders from all persons tendering. In recognition of this principle, the Bidder is to complete and return with his Tender the Collusive Tendering Certificate. Failure to do this may result in the disqualification of his Tender.
   2. The Bidder (whether his Tender is accepted or not) shall treat all documents relating to this Tender as confidential and in the event of a Tender not being submitted, all the enclosed documents must be returned to ABC. The documents must not be passed or shown to any other person without ABC’s written consent.
   3. ABC shall not be bound to accept the lowest or any Tender and reserves the right to accept a Tender in part only.
   4. The quantity and extent of the works specified will be at ABC’s discretion and no minimum or maximum amount of work is guaranteed.
   5. ABC shall not be responsible for, nor pay for, any expenses or losses which may be incurred by the Bidder in the preparation of his Tender, or in respect of any cost associated therewith.
   6. The Tender is to remain open for acceptance for 120 days from the date of submission of Tenders.
   7. On submission of a Form of Tender duly completed and returned to ABC in accordance with the provisions hereof a Bidder will be deemed to have offered to carry out the services.
   8. No Tender shall be deemed to have been accepted unless notified in writing.
   9. The Bidder shall, in addition to the Form of Tender, fully price the pricing schedule. Failure by the Bidder to fully complete and return the Tender documentation may result in the Tender not being considered for acceptance.
   10. No alteration, deletion or insertion shall be made by the Bidder to the text or prices of the Tender documents. If any are made, Tenders may be rejected.
   11. Where the Specification includes detailed schedules of work, the scheduled items are to be individually priced and the whole document returned with the Tender.
   12. The Bidder must specify at the time of tendering any additional guarantees he is prepared to offer.
   13. The Form of Tender together with all documentation supplied by ABC must be duly completed and submitted to ABC via the Kent Business Portal <https://www.kentbusinessportal.org.uk/>
2. CONTRACT TERMS AND CONDITIONS
   1. ABC intends to enter into a contract with the successful Bidder with the Services Form of Agreement.
   2. If the Bidder wishes to raise any comments or requests for amendments to the contract clauses, this should be completed during the clarification period. ABC is under no obligation to permit amendments of the contract clauses during the award stage.
   3. By submitting a Tender, Bidders are agreeing to be bound by the terms of this Invitation to Tender.
   4. The following documents also form part of the contract obligations with ABC;
      1. Form of Tender
      2. Collusive Tendering Certification
      3. The Equalities Act 2010 Declaration
      4. AppendixA Specification
      5. Appendix B Tender response
      6. Appendix D Standard Selection Questionnaire

**Freedom of Information Act 2000 and Environmental Information Regulations**

* 1. The Company acknowledges that the Client is subject to the requirements of the FOIA and the EIRs. The Company shall:
     1. Provide all necessary assistance and cooperation as reasonably requested by the Client to enable to Client to comply with its obligations under the FOIA and EIRs;
     2. Transfer to the Client all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 working day of receipt;
     3. Provide the Client with a copy of all information belonging to the Client requested in the Request for Information which is in its possession or control in the form that the Client required within 5 working days (or such other period as the Client may reasonably specify) of the Client’s request for such information; and
     4. Not respond directly to a Request for Information unless authorised in writing to do so by the Client.
  2. The Company acknowledges that the Client may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Company. The Client shall take reasonable steps to notify the Company of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Client shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

**Prevention of Fraud and Bribery**

* 1. The Company represents and warrants that neither it, nor to the best of its knowledge any Company's Personnel, have at any time prior to the Effective Date:
     1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
     2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
  2. The Company shall not during the term of this Agreement:
     1. commit a Prohibited Act; and/or
     2. do or suffer anything to be done which would cause the Client or any of the Client's employees, Company’s, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
  3. The Company shall during the term of this Agreement:
     1. establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
     2. keep appropriate records of its compliance with its obligations under Clause 1.3(a) and make such records available to the Client on request.
  4. The Company shall immediately notify the Client in writing if it becomes aware of any breach of Clause 1.1 and/or 1.2, or has reason to believe that it has or any of the Company's Personnel have:
     1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
     2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
     3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
  5. If the Company makes a notification to the Client pursuant to Clause 1.4, the Company shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation reasonably required by the Client.
  6. If the Company is in Default under Clauses 1.1 and/or 1.2, the Client may by notice:
     1. require the Company to remove from performance of this Agreement any Company's Personnel whose acts or omissions have caused the Default; or
     2. immediately terminate this Agreement.
  7. Any notice served by the Client under Clause 1.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Client believes has committed the Prohibited Act and the action that the Client has elected to take (including, where relevant, the date on which this Agreement shall terminate).

**Equality and Diversity**

* 1. The Company shall:
     1. perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
        1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
        2. the Client’s equality and diversity policy as provided to the Company from time to time; and
        3. any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality Law; and
     2. take all necessary steps, and inform the Client of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

**Data Protection**

**Data processing**

* 1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 3 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
  2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Company is the Processor. The Data Protection Schedule sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of Personal Data and categories of Data Subject.
  3. Without prejudice to the generality of clause 3.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company and/or lawful collection of the Personal Data by the Company on behalf of the Client for the duration and purposes of this agreement.
  4. Without prejudice to the generality of clause 3.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this agreement:
     1. process that Personal Data only on the documented written instructions of the Client unless the Company is required by Domestic Law to otherwise process that Personal Data. Where the Company is relying on Domestic Law as the basis for processing Personal Data, the Company shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Company from so notifying the Client;
     2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it) ensuring that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
     3. not transfer any Personal Data outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
        1. the Client or the Company has provided appropriate safeguards in relation to the transfer;
        2. the Data Subject has enforceable rights and effective remedies;
        3. the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
        4. the Company complies with the reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
     4. notify the Client immediately if it receives:
        1. a request from a Data Subject to have access to that person's Personal Data;
        2. a request to rectify, block or erase any Personal Data;
        3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
     5. assist the Client in responding to any request from a Data Subject and in ensuring compliance with the Client's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
     6. notify the Client immediately without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
     7. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
     8. maintain complete and accurate records and information to demonstrate its compliance with this clause 3 and allow for audits by the Client or the Client's designated auditor and immediately inform the Client if, in the opinion of the Company, an instruction infringes the Data Protection Legislation.
  5. The Company shall indemnify the Client against any losses, damages, cost or expenses incurred by the Client arising from, or in connection with, any breach of the Company's obligations under this clause 3.
  6. Where the Company intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
     1. notifiy the Client in writing of the intended processing by the Sub-Contractor;
     2. obtain prior written consent to the processing;
     3. ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 3.
  7. Either party may, at any time on not less than 30 Days' written notice revise this clause 3 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
  8. The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

**Data Protection Schedule**

**Data processing**

* 1. The Company shall comply with any further written instructions with respect of processing by the Client.
  2. Any such further instructions shall be incorporated into this Schedule.
  3. Processing by the Company
     1. Scope
     2. Nature
     3. Purpose of processing
     4. Duration of processing
     5. Types of Personal Data
     6. Categories of Data Subject

**Health and Safety**

* 1. The Company shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
     1. all applicable Law regarding health and safety; and
     2. the Health and Safety Policy whilst at the Client Premises.
  2. Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Client Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Company shall instruct the Company's personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.