Ethical & Sustainable Supply Dynamic Purchasing System Core Terms & Conditions

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## **Order Form**

**FROM**

|  |  |
| --- | --- |
| **Contracting Authority** |  |
| **Address** |  |
| **Invoice Address** |  |
| **Contact Ref:** |  |

**TO**

|  |  |
| --- | --- |
| **Service Provider:** |  |
| **Address:** |  |
| **Contact Details** | Name:  Phone:  Email: |
| **Finance Contact Details:** | Name:  Phone:  Email: |
| **Bank Account Details:** | Account Name:  Account Number:  Sort Code:  Payment Terms: 30 days  VAT Number: |

|  |  |
| --- | --- |
| **CONTRACT TERM** | |
| **Commencement Date** | |
| **Expiry Date** | |
| **GOODS AND/OR SERVICES REQUIRED** | |
|  | |
| **PAYMENT PROVISIONS** | |
| **Contract Price** |  |
| **Payment Schedule** |  |
| **SPECIAL TERMS AND CONDITIONS** | |
|  | |
| **CONFIDENTIAL INFORMATION** | |
| **The following information shall be deemed commercially sensitive information or confidential information:**  **Duration that the information shall be deemed commercially sensitive information or confidential information.** | |

By signing and returning the provider agrees to enter a legally binding contract with the Contracting Authority to provide to the Contracting Authority the Services specified in this Order Form together with all documents outlined with the Appendix 6 DPS core terms that will form and be construed and read as the contract. This form is incorporating the rights and obligations in the Terms and Conditions set out in the Dynamic Purchasing System Agreement entered into by the Provider and The Contracting Authority

|  |  |
| --- | --- |
| For and on behalf of the Provider: | |
| Name and Title |  |
| Signature |  |
| Date |  |
| For and on behalf of the Contracting Authority: | |
| Name and Title |  |
| Signature |  |
| Date |  |

## **Definitions**

|  |  |
| --- | --- |
| **Beneficiary** | A Party having (or claiming to have) the benefit of an indemnity under a DPS Contract; |
| **BWCET** | Bishop Wilkinson Catholic Education Trust |
| **Charges** | The prices (exclusive of any VAT) that is payable to the Supplier by the Customer |
| **Claim** | any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under DPS Contract |
| **Contract** | Either the DPS Contract or Call Off Contract following further competition |
| **Core Terms** | Refers to this set of DPS Core Terms |
| **Customer** | The contracting authority procurer identified within the further competition |
| **Deliverables** | The goods and/or services requested within the further competition |
| **DPS** | Dynamic Purchasing System |
| **ECS** | Education Commercial Services |
| **Fraud** | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud BWCET, or any public body |
| **Further Competition** | Competitive procedure ran under the DPS Contract |
| **Goods** | Goods to be delivered by the Supplier as requested within the Customer further competition |
| **IPR Claim** | any claim of infringement or alleged infringement (including the  defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract; |
| **Management Information Fee** | Fee payable by the Supplier to BWCET |
| **Material Breach** | means any breach of Clauses 20 (Conflict of Interest), 19 (Prevention of Bribery and Corruption), 22 (Health and Safety), 14 (Data Protection Act), 27 (Official Secrets Act), 6 (Records keeping), 21 (Equality, Diversity and Human Rights) 33 (Transfer and Sub-Contracting), 8 (Rights and Protections) |
| **Party** | In the context of the DPS Contract – BWCET and the Supplier, and in the context of the Contract the Customer and the Supplier. “Parties” mean both |
| **Regulations** | The Public Contract Regulations 2015 |
| **Services** | Services to be delivered by the Supplier as requested within the Customer further competition |
| **Special Terms** | Any additional terms set out within the further competition which forms part of the Contract |
| **Specification** | The specification set out in the Further Competition documents of the goods and/or services required |
| **Subcontractor** | Any person other than the Supplier, who is a party to a sub-contract or agents of that person |
| **Supplier** | The person or company identified within the DPS Appointment Form |
| **Variation** | Any changes to agreed Deliverables within the Contract |

## **How the contract works**

* 1. The supplier is eligible for the award of Call-Off Contracts during the DPS Contract Period
  2. BWCET does not guarantee the Supplier any exclusivity, quantity or value of work under the DPS Contract
  3. If the Customer decides to buy commonly used goods and/or services under the DPS Contract, they must use the further competition process and must outline their requirements using Appendix 4 Further Competition Template. If allowed by the Regulations, the Customer can:
     1. make changes to the Further Competition template
     2. use Special Terms as part of the competition process
  4. Each Call-Off Contract:
     1. Is a separate Contract from the DPS Contract
     2. is between a Supplier and a Customer
     3. includes Core Terms, schedules and any other changes or items as stated within the further competition document
     4. survives the termination of the DPS Contract
  5. Where the Supplier is approached by an eligible Customer requesting Deliverables or substantially similar goods or services, the Supplier must tell them about this DPS Contract before accepting their order. The Supplier will promptly notify BWCET if the eligible Customer won’t use this DPS Contract, including the reasons for not using the DPS.
  6. The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Customer no warranty of its accuracy is given to the Supplier.
  7. BWCET and the Customer won’t be liable for errors, omissions or misrepresentation of any information.
  8. The Supplier warrants and represents that all statements made and documents submitted as part of the DPS submission and the procurement of Deliverables are and remain true and accurate.

1. **Deliverables**
   1. **All deliverables**
      1. The Supplier must provide Deliverables:
         1. that comply with the DPS submission, further competition and specifically the Specification
         2. to a professional standard
         3. using reasonable skill and care
         4. using good industry practice
         5. using its own policies, processes and internal quality control measures as long as they don’t conflict with the contract
         6. on the dates agreed
         7. that comply with law
      2. The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects
   2. **Good clauses**
      1. All Goods delivered must be new, or as new if recycled, unused and of recent origin.
      2. All manufacturer warranties covering the Goods must be assignable to the Customer on request and for free.
      3. The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
      4. Risk in the Goods transfers to the Customer on Delivery of the Goods but remains with the Supplier if the Customer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
      5. The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
      6. The Supplier must deliver the Goods on the date and to the specified location during the Customer’s working hours.
      7. The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
      8. All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods
      9. The Supplier must provide all tools, information and instructions the Customer needs to make use of the Goods.
      10. The Supplier must indemnify the Customer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
      11. The Customer can cancel any order or part order of Goods which has not been Delivered. If the Customer gives less than 14 days’ notice then it will pay the Supplier’s reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
      12. The Supplier must at its own cost repair, replace, refund or substitute (at the Customer’s option and request) any Goods that the Customer rejects because they don’t conform with Clause 3. If the Supplier doesn’t do this it will pay the Customer’s costs including repair or re-supply by a third party.
   3. **Services clauses**
      1. The Supplier must co-operate with the Customer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.
      2. The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.
      3. The Supplier must allocate sufficient resources and appropriate expertise to each Contract.
      4. The Supplier is responsible for all resources provided as part of the Deliverables, and has the right to substitute resources with the same expertise where required.
      5. The Supplier must take all reasonable care to ensure performance does not disrupt the Customer’s operations, employees or other contractors.
      6. The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
      7. The Customer is entitled to withhold payment for partially or undelivered Services but doing so does not stop it from using its other rights under the Contract.
2. **Pricing and Payment**
   1. In exchange for the Deliverables, the Supplier must invoice the Customer for the agreed Charges in the Contract
   2. Suppliers agree to a 0.9% management fee charge calculated against the total invoices value of every awarded contract through the DPS, payable to BWCET
   3. Suppliers shall, at no charge, provide timely, full, accurate and complete MI reports to ECS which incorporate the data requested as part of the MI Reporting.
   4. BWCET must invoice the Supplier for the Management Charge and the Supplier must pay it within 30 days of receipt of a valid, undisputed invoice
   5. All Charges and the Management Charge:
      1. exclude VAT, which is payable on provision of a valid VAT invoice
      2. include all costs connected with the supply of Deliverables
   6. The Customer must pay the Supplier the Charges within 30 days of receipt by the Customer of a valid, undisputed invoice
   7. A Supplier invoice is only valid if it:
      1. includes all appropriate references including the Contract reference number and other details reasonably requested by the Customer
      2. includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any)
      3. doesn’t include any Management Charge (the Supplier must not charge the Customer in any way for the Management Charge)
   8. The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn’t happen, the Customer can publish the details of the late payment or non-payment.
3. **The Customer’s obligations to the supplier** 
   1. If Supplier’s non-performance arises from a customer cause:
      1. neither BWCET or the Customer can terminate a Contract under Clause 10.3
      2. the Supplier is entitled to reasonable and proven additional expenses and to relief from delay payments, liability and deduction under this Contract
      3. the Supplier is entitled to additional time needed to make the Delivery
      4. the Supplier cannot suspend the ongoing supply of Deliverables
   2. Clause 5.1 only applies if the Supplier:
      * gives notice to the Party responsible for the Customer Cause within 10 Working Days of becoming aware
      * demonstrates that the Supplier Non-Performance only happened because of the Customer Cause
      * mitigated the impact of the authority cause
4. **Record keeping and reporting** 
   1. The Supplier must attend progress meetings with the Customer and provide progress reports when specified in the Specification.

* 1. The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for 7 years after the End Date.
  2. The Supplier must allow any auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit.
  3. The Supplier must provide information to the Auditor and reasonable co-operation at their request.
  4. If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
     1. tell the Customer and give reasons
     2. propose corrective action
     3. provide a deadline for completing the corrective action

1. **Supplier staff** 
   1. The Supplier Staff involved in the performance of each Contract must:
      1. be appropriately trained and qualified
      2. be vetted using good industry practice and the security policy
      3. comply with all conduct requirements when on the Customer’s Premises
   2. Where a Customer decides one of the Supplier’s Staff isn’t suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.
   3. If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 19.
   4. The Supplier must provide a list of Supplier Staff needing to access the Customer’s Premises and say why access is required.
   5. The Supplier indemnifies BWCET and the Customer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
2. **Rights and protection**
   1. The Supplier warrants and represents that:
      1. it has full capacity and authority to enter into and to perform each Contract
      2. each Contract is executed by its authorised representative
      3. it is a legally valid and existing organisation incorporated in the place it was formed
      4. there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Contract
      5. it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract
      6. it doesn’t have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract
      7. it is not impacted by an insolvency event
      8. it will comply with each Call-Off Contract
   2. The warranties and representations in 2.8 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.
   3. The Supplier indemnifies both BWCET and every Customer against each of the following:
      1. wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract
      2. non-payment by the Supplier of any tax or National Insurance
   4. All claims indemnified under this Contract must use Clause 18.
   5. BWCET or a Customer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.
   6. If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify BWCET and every Customer.
   7. All third party warranties and indemnities covering the Deliverables must be assigned for the Customer’s benefit by the Supplier.
3. **Intellectual Property Rights**
   1. Save as granted elsewhere under the Contract, neither the Customer nor the Supplier shall acquire any right, title, or interest in the other's IPR.
   2. The Parties shall not, and shall procure that the staff shall not, (except when necessary for the performance of the Contract) without prior approval, use or disclose any other parties IPRs to any third party.
   3. Prior to using any third-party Intellectual Property Rights, the Provider shall ensure that they have all necessary third-party licences to enable them to use the third-party Intellectual Property Rights to carry out its obligations under the Contract.
   4. Where the Supplier is granted approval by the Customer to use the third-party rights, the Supplier shall procure that the owner of third-party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.
   5. Any new IPR created under a Contract is owned by the Customer. The Customer gives the Supplier a licence to use any existing IPRs and new IPRs for the purpose of fulfilling its obligations during the Contract Period.
   6. If there is an IPR Claim, the Supplier indemnifies BWCET and each Customer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
4. **Termination** 
   1. BWCET has the right to terminate the DPS Contract at any time without reason or liability by giving the Supplier at least 30 days’ notice
   2. Each Customer has the right to terminate their Call-Off Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice
   3. The Customer has the right to terminate its Contract immediately by issuing a Termination Notice to the Supplier and BWCET may terminate the DPS Contract, if the any of the following events happen:
      1. The Supplier or its Staff commits any Fraud in relation to the Contract
      2. There’s a Supplier insolvency event
      3. There’s a Material Default of the Contract
      4. There’s a Contract Default that is not corrected in line with a rectification plan
      5. If there is a repeated failure to meet the KPIs set out in the DPS Contract and/or Contract
      6. Where there is a breach of Clauses 2.8, 9, Data Protection, Confidential, Fraud bribery & corruptions or conflict of interest.
      7. There’s a Variation to a Contract which cannot be agreed or resolved
   4. If there is a Default, the Customer can, without limiting its other rights, request a Supplier to provide a rectification plan.
   5. When the Customer receives a requested rectification plan it can either:
      1. reject the rectification plan and provide reasons
      2. accept the rectification plan (without limiting its rights) and the Supplier must immediately start work on the actions in the rectification plan at its own cost, unless agreed otherwise by the Parties
   6. When a Contract is terminated for any reason, the following apply:
      1. The Customer’s payment obligations under the terminated Contract stop immediately.
      2. Accumulated rights of the Parties are not affected.
      3. The Supplier must promptly delete or return any data except where required to retain copies by law.
      4. The Supplier must promptly return any of BWCET or the Customer’s property provided under the terminated Contract.
      5. The Supplier must, at no cost to BWCET or the Customer, co-operate fully in the handover and reprocurement (including to a Replacement Supplier).
      6. BWCET or the Customer must promptly return any of the Supplier’s property or equipment provided by the Supplier under the terminated Contract
   7. The Supplier can issue a reminder notice if the Customer does not pay an undisputed invoice on time. The Supplier can terminate a Call-Off Contract if the Customer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice
   8. If a Supplier terminates a Call-Off Contract the Customer must promptly pay all outstanding Charges incurred to the Supplier
5. **Liability** 
   1. Each Party's total aggregate liability in each contract year under this Framework Contract (whether in tort, contract or otherwise) is no more than £100,000.
   2. Each Party's total aggregate liability in each Contract Year under each Call-Off Contract (whether in tort, contract or otherwise) is no more than the greater of £1 million or 100% of the Estimated Yearly Charges unless specified in the Call-Off Order Form
   3. No Party is liable to the other for:
      1. Any indirect losses
      2. Loss of profits, turnover, savings, business opportunities or damage to goodwill
   4. In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:
      1. Its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors
      2. Its liability for bribery or fraud or fraudulent misrepresentation by it or its employees
      3. any liability that cannot be excluded or limited by Law
      4. its obligation to pay the required Management Fee or default management charge
   5. The Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.6, 12.1 and 25
   6. Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities
6. **Obeying the Law**
   1. The Supplier indemnifies BWCET and every Customer against any costs resulting from any default by the Supplier relating to any applicable Law to do with a Contract
   2. The Contact and any issues arising out of, or connected to it, are governed by English Law
7. **Insurance**
   1. The Supplier must, at its own cost, obtain and maintain the following Insurances as a minimum and any additional insurances within Further Competition;
      1. Employer’s Liability Insurance of £5,000,000
      2. Public Liability Insurance of £2,000,000
      3. Professional Indemnity Insurance of £1,000,000
8. **Data Protection**
   1. The Supplier acknowledges that Personal Data may be Processed in connection with the operation of this Contract. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Customer acts as the Data Controller.
   2. Both Parties agree to meet all their obligations under Data Protection Laws.
   3. The Supplier will, in conjunction with the Customer and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
   4. The Service Provider must:
      1. process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Customer (which may be specific or of a general nature)
      2. only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Customer’s prior written consent;
      3. take all reasonable steps to ensure the reliability and integrity of any supplier representatives who have access to the Personal Data and ensure that the Supplier Representatives:
         1. are aware of and comply with the Supplier’s duties under this clause;
         2. are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
         3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
         4. have undergone adequate training in the use, care, protection and handling of Personal Data.
   5. implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
   6. The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Customer. In the case of general written authorisation, the Supplier must inform the Customer of any intended changes concerning the addition or replacement of any other sub-contractor and give the Customer an opportunity to object to such changes.
   7. If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Customer, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Customer for the performance of the sub-contractor’s performance of the obligations.
   8. The Supplier must provide to the Customer reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.
   9. The Supplier must notify the Customer if it:
      * 1. receives a Data Subject Access Request (or purported Data Subject Access Request);
        2. receives 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 Laws;
        4. receives any communication from the supervisory authority nor any other regulatory authority in connection with Personal Data processed under this Contract; or
        5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Customer from time to time.

* 1. Taking into account the nature of the Processing and the information available, the Supplier must assist the Customer in complying with the Customer’s obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
     + 1. ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
       2. notifying a Personal Data breach to the Customer without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
       3. assisting the Purchaser with communication of a personal data breach to a Data Subject;
       4. supporting the Purchaser with preparation of a data protection impact assessment;
       5. supporting the Purchaser with regard to prior consultation of the Supervisory Authority.
  2. At the end of the provision of Services relating to processing the Supplier must, on written instruction of the Customer, delete or return to the Customer all Personal Data and delete existing copies unless laws of England and Wales or Member State law requires storage of the Personal Data.
  3. Schedule 3 – Data Protection Schedule will be used for all further competitions

1. **Confidential Information** 
   1. Each Party shall:
      1. treat the other Party's Confidential Information as confidential and safeguard it; accordingly, and
      2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
   2. A Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
      1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA (Freedom of Information Act)
      2. such information was obtained from a third party without obligation of confidentiality
      3. such information was already in the public domain at the time of disclosure
      4. it is independently developed without access to the other party's Confidential Information
      5. if the information was given to it by a third party without obligation of confidentiality
   3. The Supplier may only disclose the Customer’s Confidential Information to its Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
   4. The Supplier Staff must enter into a direct confidentiality agreement with the Customer at its request.
   5. The Supplier must not publicise the services or any Contract, without prior written consent from the Customer and BWCET.
2. **Variation** 
   1. Either Party can request a Variation to a Contract which is only effective if agreed in writing and signed by both Parties
   2. BWCET and the Customer are not required to accept a Variation request made by the Supplier
   3. If the Variation to a Contract cannot be agreed or resolved, BWCET or the Customer can either:
      1. Agree the Contract continues without the Variation
      2. Terminate the affected Contract, except where the Supplier has already delivered part or all of the Deliverables in accordance with the Contract or where the Supplier can show evidence of substantial work being carried out
      3. Refer to the Dispute Resolution Procedure
3. **Dispute Resolution Procedure**
   1. If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.
   2. If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 17.3 to 17.5
   3. Unless the Customer refers the Dispute to arbitration using Clause 17.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
      1. determine the Dispute
      2. grant interim remedies
      3. grant any other provisional or protective relief
   4. The Supplier agrees that the Customer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute
   5. The Customer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 17.3, unless the Customer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 17.4.
4. **Claims**
   1. If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.
   2. At the Indemnifier’s cost the Beneficiary must both:
      1. allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim
      2. give the Indemnifier reasonable assistance with the claim if requested
   3. The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which can not be unreasonably withheld or delayed.
   4. The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn’t damage the Beneficiary’s reputation.
   5. The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
   6. Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.
   7. If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
      1. the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money
      2. the amount the Indemnifier paid the Beneficiary for the Claim
5. **Preventing Fraud, Bribery and Corruption**
   1. The Supplier must not during any Contract Period:
      1. commit a prohibited act or any other criminal offence
      2. do or allow anything which would cause BWCET or the Customer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them
   2. The Supplier must during the Contract Period:
      1. create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same
      2. keep full records to show it has complied with its obligations under Clause 19 and give copies on request
      3. if required by the Customer, within 20 Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Customer, that they have complied with Clause 19, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures
   3. The Supplier must immediately notify BWCET and the Customer if it becomes aware of any breach of Clauses 19.1 or 19.2 or has any reason to think that it, or any of the Supplier Staff, has either:
      1. been investigated or prosecuted for an alleged Prohibited Act
      2. been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency
      3. received a request or demand for any undue financial or other advantage of any kind related to a Contract
      4. suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act
   4. If the Supplier notifies BWCET or the Customer as required by Clause 19.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
   5. In any notice the Supplier gives under Clause 19.4 it must specify the:
      1. Prohibited Act
      2. identity of the Party who it thinks has committed the Prohibited Act
      3. action it has decided to take
6. **Conflict of Interest**
   1. The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.
   2. The Supplier must promptly notify and provide details to BWCET and each Customer if a Conflict of Interest happens or is expected to happen.
   3. BWCET and each Customer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.
7. **Equality, Diversity and Human Rights**
   1. The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:
      1. protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
      2. any other requirements and instructions which BWCET or the Customer reasonably imposes related to equality Law
   2. The Supplier must take all necessary steps, and inform BWCET or the Customer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.
8. **Health and Safety**
   1. The Supplier must perform its obligations meeting the requirements of:
      1. all applicable Law regarding health and safety
      2. the Customer’s current health and safety policy while at the Customer’s Premises, as provided to the Supplier
   2. The Supplier and the Customer must as soon as possible notify the other of any health and safety incidents or material hazards they’re aware of at the Customer Premises that relate to the performance of a Contract.
9. **Environment**
   1. When working on Site the Supplier must perform its obligations under the Customer’s current Environmental Policy, which the Customer must provide.
   2. The Supplier must ensure that Supplier Staff are aware of the Customer’s Environmental Policy.
10. **Tax**
    1. The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Goods and/or Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.
    2. The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines.
11. **Reporting Breach of Contract**
    1. As soon as it is aware of it the Supplier and Supplier Staff must report to BWCET or the Customer any actual or suspected breach of:
       1. Law
       2. Clause 12
       3. Clauses 19 to 32
    2. The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Customer
    3. The supplier is eligible for the award of Call-Off Contracts during the DPS Contract Period
    4. BWCET does not guarantee the Supplier any exclusivity, quantity or value of work under the DPS Contract
    5. If the Customer decides to buy commonly used goods and/or services under the DPS Contract, they must use the further competition process and must outline their requirements using Appendix 8 Further Competition Template. If allowed by the Regulations, the Customer can:
       1. make changes to the Further Competition template
       2. use Special Terms as part of the competition process
    6. Each Call-Off Contract:
       1. Is a separate Contract from the DPS Contract
       2. is between a Supplier and a Customer
       3. includes Core Terms, Schedules and any other changes or items as stated within the further competition document
       4. survives the termination of the DPS Contract
    7. Where the Supplier is approached by an eligible Customer requesting Deliverables or substantially similar goods or services, the Supplier must tell them about this DPS Contract before accepting their order. The Supplier will promptly notify BWCET if the eligible Customer won’t use this DPS Contract, including the reasons for not using the DPS.
    8. The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Customer no warranty of its accuracy is given to the Supplier.
    9. BWCET and the Customer won’t be liable for errors, omissions or misrepresentation of any information.
    10. The Supplier warrants and represents that all statements made and documents submitted as part of the DPS submission and the procurement of Deliverables are and remain true and accurate.

## **Deliverables**

* 1. **All deliverables**
     1. The Supplier must provide Deliverables:
        1. that comply with the DPS submission, further competition and specifically the specification
        2. to a professional standard
        3. using reasonable skill and care
        4. using good industry practice
        5. using its own policies, processes and internal quality control measures as long as they don’t conflict with the contract
        6. on the dates agreed
        7. that comply with Law
     2. The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects
  2. **Good clauses**
     1. All Goods delivered must be new, or as new if recycled, unused and of recent origin.
     2. All manufacturer warranties covering the Goods must be assignable to the Customer on request and for free.
     3. The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
     4. Risk in the Goods transfers to the Customer on Delivery of the Goods but remains with the Supplier if the Customer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
     5. The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
     6. The Supplier must deliver the Goods on the date and to the specified location during the Customer’s working hours.
     7. The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
     8. All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods
     9. The Supplier must provide all tools, information and instructions the Customer needs to make use of the Goods.
     10. The Supplier must indemnify the Customer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
     11. The Customer can cancel any order or part order of Goods which has not been Delivered. If the Customer gives less than 14 days’ notice then it will pay the Supplier’s reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
     12. The Supplier must at its own cost repair, replace, refund or substitute (at the Customer’s option and request) any Goods that the Customer rejects because they don’t conform with Clause 3. If the Supplier doesn’t do this it will pay the Customer’s costs including repair or re-supply by a third party.
  3. **Services clauses**
     1. The Supplier must co-operate with the Customer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.
     2. The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.
     3. The Supplier must allocate sufficient resources and appropriate expertise to each Contract.
     4. The Supplier is responsible for all resources provided as part of the Deliverables, and has the right to substitute resources with the same expertise where required.
     5. The Supplier must take all reasonable care to ensure performance does not disrupt the Customer’s operations, employees or other contractors.
     6. The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
     7. The Customer is entitled to withhold payment for partially or undelivered Services but doing so does not stop it from using its other rights under the Contract.

## **Pricing and Payment**

* 1. In exchange for the Deliverables, the Supplier must invoice the Customer for the agreed Charges in the Contract
  2. Suppliers agree to a 0.9% management fee charge calculated against the total invoices value of every awarded contract through the DPS, payable to BWCET
  3. Suppliers shall, at no charge, provide timely, full, accurate and complete MI reports to ECS which incorporate the data requested as part of the MI Reporting.
  4. BWCET must invoice the Supplier for the Management Charge and the Supplier must pay it within 30 days of receipt of a valid, undisputed invoice
  5. All Charges and the Management Charge:
     1. exclude VAT, which is payable on provision of a valid VAT invoice
     2. include all costs connected with the supply of Deliverables
  6. The Customer must pay the Supplier the Charges within 30 days of receipt by the Customer of a valid, undisputed invoice
  7. A Supplier invoice is only valid if it:
     1. includes all appropriate references including the Contract reference number and other details reasonably requested by the Customer
     2. includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any)
     3. doesn’t include any Management Charge (the Supplier must not charge the Customer in any way for the Management Charge)
  8. The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn’t happen, the Customer can publish the details of the late payment or non-payment.

## **The Customer’s obligations to the supplier**

* 1. If Supplier’s Non-Performance arises from a Customer Cause:
     1. neither BWCET or the Customer can terminate a Contract under Clause 10.3
     2. the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract
     3. the Supplier is entitled to additional time needed to make the Delivery
     4. the Supplier cannot suspend the ongoing supply of Deliverables
  2. Clause 5.1 only applies if the Supplier:
     + gives notice to the Party responsible for the Customer Cause within 10 Working Days of becoming aware
     + demonstrates that the Supplier Non-Performance only happened because of the Customer Cause
     + mitigated the impact of the Authority Cause

## **Record keeping and reporting**

* 1. The Supplier must attend Progress Meetings with the Customer and provide Progress Reports when specified in the Specification.

* 1. The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for 7 years after the End Date.
  2. The Supplier must allow any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit.
  3. The Supplier must provide information to the Auditor and reasonable co-operation at their request.
  4. If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
     1. tell the Customer and give reasons
     2. propose corrective action
     3. provide a deadline for completing the corrective action

## **Supplier staff**

* 1. The Supplier Staff involved in the performance of each Contract must:
     1. be appropriately trained and qualified
     2. be vetted using Good Industry Practice and the Security Policy
     3. comply with all conduct requirements when on the Customer’s Premises
  2. Where a Customer decides one of the Supplier’s Staff isn’t suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.
  3. If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 19.
  4. The Supplier must provide a list of Supplier Staff needing to access the Customer’s Premises and say why access is required.
  5. The Supplier indemnifies BWCET and the Customer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## **Rights and protection**

* 1. The Supplier warrants and represents that:
     1. it has full capacity and authority to enter into and to perform each Contract
     2. each Contract is executed by its authorised representative
     3. it is a legally valid and existing organisation incorporated in the place it was formed
     4. there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Contract
     5. it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract
     6. it doesn’t have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract
     7. it is not impacted by an Insolvency Event
     8. it will comply with each Call-Off Contract
  2. The warranties and representations in 2.8 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.
  3. The Supplier indemnifies both BWCET and every Customer against each of the following:
     1. wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract
     2. non-payment by the Supplier of any tax or National Insurance
  4. All claims indemnified under this Contract must use Clause 18.
  5. BWCET or a Customer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.
  6. If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify BWCET and every Customer.
  7. All third party warranties and indemnities covering the Deliverables must be assigned for the Customer’s benefit by the Supplier.

## **Intellectual Property Rights**

* 1. Save as granted elsewhere under the Contract, neither the Customer nor the Supplier shall acquire any right, title, or interest in the other's IPR.
  2. The Parties shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any other parties IPRs to any third party.
  3. Prior to using any third-party Intellectual Property Rights, the Provider shall ensure that they have all necessary third-party licences to enable them to use the third-party Intellectual Property Rights to carry out its obligations under the Contract.
  4. Where the Supplier is granted Approval by the Customer to use the third-party rights, the Supplier shall procure that the owner of third-party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.
  5. Any New IPR created under a Contract is owned by the Customer. The Customer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.
  6. If there is an IPR Claim, the Supplier indemnifies BWCET and each Customer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

## **Termination**

* 1. BWCET has the right to terminate the DPS Contract at any time without reason or liability by giving the Supplier at least 30 days’ notice
  2. Each Customer has the right to terminate their Call-Off Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice
  3. The Customer has the right to terminate its Contract immediately by issuing a Termination Notice to the Supplier and BWCET may terminate the DPS Contract, if the any of the following events happen:
     1. The Supplier or its Staff commits any Fraud in relation to the Contract
     2. There’s a Supplier insolvency event
     3. There’s a material default of the Contract
     4. There’s a Contract Default that in not corrected in line with a Rectification Plan
     5. If there is a repeated failure to meet the KPIs set out in the DPS Contract and/or Contract
     6. Where there is a breach of Clauses 2.8, 9, Data Protection, Confidential, Fraud bribery & corruptions or conflict of interest.
     7. There’s a Variation to a Contract which cannot be agreed or resolved
  4. If there is a Default, the Customer can, without limiting its other rights, request a Supplier to provide a Rectification Plan.
  5. When the Customer receives a requested Rectification Plan it can either:
     1. reject the Rectification Plan and provide reasons
     2. accept the Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties
  6. When a Contract is terminated for any reason, the following apply:
     1. The Customer’s payment obligations under the terminated Contract stop immediately.
     2. Accumulated rights of the Parties are not affected.
     3. The Supplier must promptly delete or return any data except where required to retain copies by law.
     4. The Supplier must promptly return any of BWCET or the Customer’s property provided under the terminated Contract.
     5. The Supplier must, at no cost to BWCET or the Customer, co-operate fully in the handover and reprocurement (including to a Replacement Supplier).
     6. BWCET or the Customer must promptly return any of the Supplier’s property or equipment provided by the Supplier under the terminated Contract
  7. The Supplier can issue a Reminder Notice if the Customer does not pay an undisputed invoice on time. The Supplier can terminate a Call-Off Contract if the Customer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice
  8. If a Supplier terminates a Call-Off Contract the Customer must promptly pay all outstanding Charges incurred to the Supplier

## **Liability**

* 1. Each Party's total aggregate liability in each Contract Year under this Framework Contract (whether in tort, contract or otherwise) is no more than £100,000.
  2. Each Party's total aggregate liability in each Contract Year under each Call-Off Contract (whether in tort, contract or otherwise) is no more than the greater of £1 million or 100% of the Estimated Yearly Charges unless specified in the Call-Off Order Form
  3. No Party is liable to the other for:
     1. Any indirect losses
     2. Loss of profits, turnover, savings, business opportunities or damage to goodwill
  4. In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:
     1. Its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors
     2. Its liability for bribery or fraud or fraudulent misrepresentation by it or its employees
     3. any liability that cannot be excluded or limited by Law
     4. its obligation to pay the required Management Charge or Default Management Charge
  5. The Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.6, 12.1 and 25
  6. Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities

## **Obeying the Law**

* 1. The Supplier indemnifies BWCET and every Customer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with a Contract
  2. The Contact and any issues arising out of, or connected to it, are governed by English Law

## **Insurance**

* 1. The Supplier must, at its own cost, obtain and maintain the following Insurances as a minimum and any Additional Insurances within Further Competition;
     1. Employer’s Liability Insurance of £5,000,000
     2. Public Liability Insurance of £2,000,000
     3. Professional Indemnity Insurance of £1,000,000

## **Data Protection**

* 1. The Supplier acknowledges that Personal Data may be Processed in connection with the operation of this Contract. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Customer acts as the Data Controller.
  2. Both Parties agree to meet all their obligations under Data Protection Laws.
  3. The Supplier will, in conjunction with the Customer and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
  4. The Service Provider must:
     1. process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Customer (which may be specific or of a general nature)
     2. only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Customer’s prior written consent;
     3. take all reasonable steps to ensure the reliability and integrity of any Supplier Representatives who have access to the Personal Data and ensure that the Supplier Representatives:
        1. are aware of and comply with the Supplier’s duties under this clause;
        2. are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
        3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
        4. have undergone adequate training in the use, care, protection and handling of Personal Data.
  5. implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
  6. The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Customer. In the case of general written authorisation, the Supplier must inform the Customer of any intended changes concerning the addition or replacement of any other sub-contractor and give the Customer an opportunity to object to such changes.
  7. If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Customer, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Customer for the performance of the sub-contractor’s performance of the obligations.
  8. The Supplier must provide to the Customer reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.
  9. The Supplier must notify the Customer if it:
     + 1. receives a Data Subject Access Request (or purported Data Subject Access Request);
       2. receives 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 Laws;
       4. receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
       5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Customer from time to time.

* 1. Taking into account the nature of the Processing and the information available, the Supplier must assist the Customer in complying with the Customer’s obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
     + 1. ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
       2. notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
       3. assisting the Purchaser with communication of a personal data breach to a Data Subject;
       4. supporting the Purchaser with preparation of a data protection impact assessment;
       5. supporting the Purchaser with regard to prior consultation of the Supervisory Authority.
  2. At the end of the provision of Services relating to processing the Supplier must, on written instruction of the Customer, delete or return to the Customer all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
  3. Schedule 3 – Data Protection Schedule will be used for all further competitions

## **Confidential Information**

* 1. Each Party shall:
     1. treat the other Party's Confidential Information as confidential and safeguard it; accordingly, and
     2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
  2. A Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
     1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA (Freedom of Information Act)
     2. such information was obtained from a third party without obligation of confidentiality
     3. such information was already in the public domain at the time of disclosure
     4. it is independently developed without access to the other party's Confidential Information
     5. if the information was given to it by a third party without obligation of confidentiality
  3. The Supplier may only disclose the Customer’s Confidential Information to its Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
  4. The Supplier Staff must enter into a direct confidentiality agreement with the Customer at its request.
  5. The Supplier must not publicise the services or any Contract, without prior written consent from the Customer and BWCET.

## **Variation**

* 1. Either Party can request a Variation to a Contract which is only effective if agreed in writing and signed by both Parties
  2. BWCET and the Customer are not required to accept a Variation request made by the Supplier
  3. If the Variation to a Contract cannot be agreed or resolved, BWCET or the Customer can either:
     1. Agree the Contract continues without the Variation
     2. Terminate the affected Contract, except where the Supplier has already delivered part or all of the Deliverables in accordance with the Contract or where the Supplier can show evidence of substantial work being carried out
     3. Refer to the Dispute Resolution Procedure

## **Dispute Resolution Procedure**

* 1. If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.
  2. If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 17.3 to 17.5
  3. Unless the Customer refers the Dispute to arbitration using Clause 17.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
     1. determine the Dispute
     2. grant interim remedies
     3. grant any other provisional or protective relief
  4. The Supplier agrees that the Customer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute
  5. The Customer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 17.3, unless the Customer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 17.4.

## **Claims**

* 1. If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.
  2. At the Indemnifier’s cost the Beneficiary must both:
     1. allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim
     2. give the Indemnifier reasonable assistance with the claim if requested
  3. The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which can not be unreasonably withheld or delayed.
  4. The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn’t damage the Beneficiary’s reputation.
  5. The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
  6. Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.
  7. If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
     1. the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money
     2. the amount the Indemnifier paid the Beneficiary for the Claim

## **Preventing Fraud, Bribery and Corruption**

* 1. The Supplier must not during any Contract Period:
     1. commit a Prohibited Act or any other criminal offence
     2. do or allow anything which would cause BWCET or the Customer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them
  2. The Supplier must during the Contract Period:
     1. create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same
     2. keep full records to show it has complied with its obligations under Clause 19 and give copies on request
     3. if required by the Customer, within 20 Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Customer, that they have complied with Clause 19, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures
  3. The Supplier must immediately notify BWCET and the Customer if it becomes aware of any breach of Clauses 19.1 or 19.2 or has any reason to think that it, or any of the Supplier Staff, has either:
     1. been investigated or prosecuted for an alleged Prohibited Act
     2. been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency
     3. received a request or demand for any undue financial or other advantage of any kind related to a Contract
     4. suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act
  4. If the Supplier notifies BWCET or the Customer as required by Clause 19.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
  5. In any notice the Supplier gives under Clause 19.4 it must specify the:
     1. Prohibited Act
     2. identity of the Party who it thinks has committed the Prohibited Act
     3. action it has decided to take

## **Conflict of Interest**

* 1. The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.
  2. The Supplier must promptly notify and provide details to BWCET and each Customer if a Conflict of Interest happens or is expected to happen.
  3. BWCET and each Customer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

## **Equality, Diversity and Human Rights**

* 1. The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:
     1. protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
     2. any other requirements and instructions which BWCET or the Customer reasonably imposes related to equality Law
  2. The Supplier must take all necessary steps, and inform BWCET or the Customer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

## **Health and Safety**

* 1. The Supplier must perform its obligations meeting the requirements of:
     1. all applicable Law regarding health and safety
     2. the Customer’s current health and safety policy while at the Customer’s Premises, as provided to the Supplier
  2. The Supplier and the Customer must as soon as possible notify the other of any health and safety incidents or material hazards they’re aware of at the Customer Premises that relate to the performance of a Contract.

## **Environment**

* 1. When working on Site the Supplier must perform its obligations under the Customer’s current Environmental Policy, which the Customer must provide.
  2. The Supplier must ensure that Supplier Staff are aware of the Customer’s Environmental Policy.

## **Tax**

* 1. The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Goods and/or Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.
  2. The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines.

## **Reporting Breach of Contract**

* 1. As soon as it is aware of it the Supplier and Supplier Staff must report to BWCET or the Customer any actual or suspected breach of:
     1. Law
     2. Clause 12
     3. Clauses 19 to 25
  2. The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 26.1 to the Customer

# **Schedule 1 – Further Competition Details**

# **Schedule 2 – Special Terms & Conditions**

# **Schedule 3 – Data Protection Schedule**

|  |  |  |
| --- | --- | --- |
| **No** | **Description** | **Details** |
| 1 | Subject matter of the processing | *The processing of personal data in relation to the obligations of the Provider as the supplier* |
| 2 | Duration of the processing | *The data will be provided for the duration of the Contract*  *The contract expires on the contract end date at which time the information will be returned inline with the instructions identified in point 6.* |
| 3 | Nature and purposes of the processing | *The nature of the processing includes the collection, recording, organisation storage, retrieval, use, disclosure by transmission, dissemination or otherwise making available, erasure or destruction of data (whether by automated means)*  [The use of any third party systems such as payroll software used by the service provider to be confirmed by the successful Supplier and inserted into final contract]  *The purpose of the processing is to enable the Customer to comply with its obligations in relation to employment law* |
| 4 | Type of Personal Data | *For the purposes of the contract, the Customer will disclose the following information directly to the supplier: ​*  *Contact details for individuals concerned with the management of the Contract: Name, business email address, business postal address, business telephone number.*  *Full details of all individuals employed to enable the service provided to complete their duties*  *[List of data to be provided to be confirmed by the successful supplier and inserted into final contract] ​* |
| 5 | Categories of Data Subject | *Personal data relating to the Customer staff (including temporary or agency staff).* |
| 6 | Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | *The Supplier agrees that all data supplied will be retained no longer that is necessary or beyond statutory requirements after the expiry or termination of the Contract.*  *Upon termination, the supplier shall provide a fully accessible copy of all data in a portable format within 3 months*  *Following confirmation from the customer that all data has been received in a portable format and is accessible, the supplier shall destroy all personal data as soon as practicable and provide written confirmation of completion.* |