

DPS Agreement

Dynamic Purchasing system

for

Sustainable and Ethically sourced works/construction projects (including professional services) delivering, decarbonisation, energy efficiency, estate management and social value in local communities'

Reference number: 2022/S 000-033749

Date: 29th December 2022

This DPS Agreement is for the provision of Construction, Works and professional services between:

Bishop Wilkinson Catholic Education Trust and <Supplier>



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THIS AGREEMENT is dated <Date>

PARTIES

- (1) Bishop Wilkinson Catholic Education Trust incorporated and registered in England and Wales with Company Number 07890590, whose principle place of business is at Barmston Court, Nissan Way, Turbine Business Park, Washington, Sunderland, England, SR5 3NY (Contracting Authority)
- (2) <SUPPLIER NAME> incorporated and registered in England and Wales with company number <NUMBER> whose principal place of business and registered office is at <REGISTERED OFFICE ADDRESS> (Supplier)

BACKGROUND

- (A) The Contracting Authority placed a contract notice <Number> on 29th November 2022 seeking expressions of interest from potential service providers for the provision of Services under the Dynamic Procurement System for Ethically and Sustainably Sourced Works, Construction and professional services to itself and the other Contracting Authority in the contract notice under the DPS agreement.
- (B) Following receipt of expressions of interest, the Contracting Authority invited potential service providers (including the Supplier) to submit an application to participate in this Dynamic Purchasing System.
- (C) On the basis of the Supplier's Application, the Contracting Authority selected the Supplier to enter a dynamic purchasing system agreement to provide services to those Contracting Authority who place Orders for Categories in accordance with this DPS Agreement.
- (D) This DPS Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Supplier under this DPS Agreement.



(E) It is the Parties' intention that Contracting Authority have no obligation to place Orders with the Supplier under this DPS Agreement or at all.

1. 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	
<p>The following information shall be deemed commercially sensitive information or confidential information:</p> <p>Duration that the information shall be deemed commercially sensitive information or confidential information.</p>	



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 and/or Goods 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 Supplier and The Contracting Authority

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Contracting Authority:

Name and Title	
Signature	
Date	



2. Definitions and Interpretation

2.1 The definitions and rules of interpretation in this clause apply in this DPS Agreement.

Application	Means a completed Selection Questionnaire to participate in the DPS submitted by the Supplier to the Contracting Authority
Approval	Means the prior written approval of the Contracting Authority
Beneficiary	Means a Party having (or claiming to have) the benefit of an indemnity under a DPS Contract;
BWCET	Bishop Wilkinson Catholic Education Trust
Call off contract	Means a legally binding agreement (made pursuant to the provisions of this DPS Agreement) for the provision of Services made between a Contracting Authority and the Supplier
Charges	Means the prices (exclusive of any VAT) that are payable to the Supplier by the Customer
Claim	Means any claim which it appears that a beneficiary is, or may become, entitled to indemnification under DPS Contract
Commencement Date	Means <DATE>
Contract	Means either the DPS Contract or Call Off Contract following further competition
Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, 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
Contracting Authority	means the body and any other Contracting Authority
Customer	Means the Contracting Authority's procurer identified within the further competition
Data Protection legislation	means all applicable (i) laws and regulations; and (ii) guidance issued by a DP Regulator, in each case pertaining to the security, confidentiality, protection or privacy of personal data, as amended or re-enacted from time to time, including (without limitation and to the extent applicable) the GDPR
Deliverables	Means The goods and/or services requested within the further competition
DPS	means the dynamic purchasing system out of which this DPS Agreement has been awarded and entered into
DPS Agreement Date	means the period commencing on the Commencement Date and ending on 27 th December 2027 or on earlier termination of this DPS Agreement unless the Agreement is extended in accordance with the Regulations.
ECS	Education Commercial Services



Further Competition	Means the competitive procedure ran under the DPS Contract
Goods & Services	Means the Goods & Services to be delivered by the Supplier as requested in line with the contract and specification within the Customer further competition
GDPR	means the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC.
Good Industry Practice	means standards, practices, methods and procedures conforming to the Law and that require a degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or organisation engaged in providing Goods, Services and/or Works (as applicable) of similar type and nature to those required under the terms of this Agreement
Intellectual Property Rights	means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off
Law	means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.
Management Information (MI)	means the management information set out in the MI Reporting Template set out in Appendix 5
Management Information Fee	Means the Fee payable by the Supplier to BWCET
Material Default	Means a material breach of this agreement
Order	means any order for Goods, works or Services pursuant to a Call Off Contract sent by any Contracting Authority to the Supplier
Party	In the context of the DPS Contract – means BWCET and the Supplier, and in the context of the Contract the Customer and the Supplier. "Parties" mean both
Persistent Failure	means a breach or breaches of this Agreement that have continued for more than [14] days or recurred in [3] or more months within a 6-month period after which notice has been service by the Contracting Authority
Prohibited Act	the following constitute Prohibited Acts: a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority a financial or other advantage to:



	<p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(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 DPS Agreement;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act 2010;</p> <p>(ii) under legislation creating offences concerning fraudulent acts;</p> <p>(iii) at common law concerning fraudulent acts relating to this DPS Agreement or any other contract with the Contracting Authority; or</p> <p>(d) defrauding, attempting to defraud or conspiring to defraud the Contracting Authority.</p>
Regulations	Means the Public Contract Regulations 2015
Reporting Date	means the date notified by the Contracting Authority to the Supplier for by which the Management Information Report must be submitted
Services	Means services to be delivered by the Supplier as requested within the Customer further competition
Service Levels	means the service level requirements of the Suppliers by a Contracting Authority pursuant to a Further Competition
Special Terms	Means any additional terms included but not limited to JCT/NEC term specific as required by a specific contract and set out within the further competition which form part of the Contract
Specification	Means the specification set out in the Further Competition documents of the goods and/or services required
Subcontractor	Means any person or company other than the Supplier, who is a party to a sub-contract or agents of that person
Supplier	Means the person or company identified within the DPS Appointment Form and Agreement
Variation	Means any changes to agreed Deliverables or terms within the Contract

2.2 The interpretation and construction of this DPS Agreement shall all be subject to the following provisions:

2.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

2.2.2 words importing the masculine include the feminine and the neuter;

2.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";



- 2.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 2.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 2.2.6 headings are included in this DPS Agreement for ease of reference only and shall not affect the interpretation or construction of this DPS Agreement;
- 2.2.7 the Schedules form part of this DPS Agreement and shall have effect as if set out in full in the body of this DPS Agreement and any reference to this DPS Agreement shall include the Schedules;
- 2.2.8 references in this DPS Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this DPS Agreement so numbered;
- 2.2.9 references in this DPS Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this DPS Agreement so numbered;
- 2.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 2.2.11 a reference to specific standards, codes of practice, guideline, rules and / or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and / or substitutes thereto;
- 2.2.12 unless expressly stated otherwise, a reference to any period of time in this DPS Agreement shall be construed as meaning calendar days. Any express reference to 'working days' shall exclude weekends and public holidays under the Banking and Financial Dealings Act 1971;
- 2.2.13 unless the context otherwise requires, the terms "controller", "processor", "processing", "process", "personal data", and "data subject" shall be interpreted and construed by reference to Data Protection Legislation; and
- 2.2.14 references to a law of the European Union include a reference to that law as incorporated into the laws of the United Kingdom at any time before or after the United Kingdom ceases to be a Member State of the European Union.



3. TERMS OF THE DPS AGREEMENT

- 3.1. This DPS Agreement shall take effect on the Commencement Date and shall expire at the end of the DPS Agreement Period unless it is terminated earlier in accordance with the terms of this Agreement under Clause 20.
- 3.2. This Agreement may be extended at the Contracting Authority's sole discretion for such period as may be notified to Suppliers.
- 3.3. The Terms of this Agreement may be reduced or extended. This Agreement shall remain in effect for the validity of the DPS.

4. Scope of the Agreement

- 4.1. This DPS Agreement governs the relationship between the Contracting Authority and the Supplier in respect of the provision of the Services by the Supplier to the Contracting Authorities.
- 4.2. The Contracting Authority appoints the Supplier as a DPS Supplier of the Services, and the Supplier shall be eligible to receive Orders for such Services from Contracting Authority during the Period.
- 4.3. The Contracting Authority at their absolute discretion and from time to time during the DPS Agreement Period, place an Order for the Services from the Supplier in accordance with the provisions of the Call Off Procedures.
- 4.4. The Supplier acknowledges that there is no obligation whatsoever on the Contracting Authority to select the Supplier to provide any Services and/or to purchase any Services under this DPS Agreement.
- 4.5. No undertaking or any form of statement, promise, representation or obligation shall be made or deemed to have been made by the Contracting Authority in respect of the total quantities or values of the Services to be ordered by them pursuant to this DPS Agreement and the Supplier acknowledges and agrees that it has not entered into this DPS Agreement on the basis of any such undertaking, statement, promise or representation.
- 4.6. The Contracting Authority shall not in any circumstances be liable to the Supplier or any Other Contracting Authority for payment or otherwise in respect of any Goods and/or Services provided by the Supplier to any Other Contracting Authority.

5. How the contract works

- 5.1. The supplier is eligible for the award of Call-Off Contracts during the DPS Contract Period



- 5.2 If the Contracting Authority decides to source any of the Services through this DPS Agreement, then it shall be entitled at any time in its absolute and sole discretion during the DPS Agreement Period to award Call Off Contracts for the Services from the Supplier
- 5.3 The Supplier shall comply with the relevant provisions in Schedule 4 (Call Off Procedure).
- 5.4 If requested by the Contracting Authority in writing, the Supplier shall supply a copy (or details) of any Call Off Contract to the Contracting Authority (excluding Confidential Information).
- 5.5 BWCET does not guarantee the Supplier any exclusivity, quantity or value of work under the DPS Contract
- 5.6 If the Customer decides to buy 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:
 - 5.7.1. make changes to the Further Competition template
 - 5.7.2. use Special Terms as part of the competition process
- 5.8. Each Call-Off Contract:
 - 5.8.1. Is a separate Contract from the DPS Contract
 - 5.8.2. is between a Supplier and a Customer
 - 5.8.3. includes Core Terms, Schedules and any other changes or items as stated within the further competition document
 - 5.8.4. survives the termination of the DPS Contract
- 5.9. Where the Supplier is approached by an eligible Customer requesting Deliverables or substantially similar goods, services or works the Supplier must advise that all orders go through the DPS system. The Supplier will promptly notify BWCET if the eligible Customer won't use this DPS Contract, including the reasons for not using the DPS.
- 5.10. 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.
- 5.11. BWCET and the Customer won't be liable for errors, omissions or misrepresentation of any information.
- 5.12. 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.
- 6. Deliverables
 - 6.1. All deliverables
 - 6.1.1. The Supplier must provide Deliverables:



- 6.1.1.1. that comply with the DPS submission, further competition and specifically the specification
- 6.1.1.2. to a professional standard
- 6.1.1.3. using reasonable skill and care
- 6.1.1.4. using good industry practice
- 6.1.1.5. using its own policies, processes and internal quality control measures as long as they don't conflict with the contract
- 6.1.1.6. on the dates agreed
- 6.1.1.7. that comply with Law

- 6.1.1.8. The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects

6.2. Goods

- 6.2.1. All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 6.2.2. All manufacturer warranties covering the Goods must be assignable to the Customer on request and for free.
- 6.2.3. The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 6.2.4. 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.
- 6.2.5. The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 6.2.6. The Supplier must deliver the Goods on the date and to the specified location during the Customer's working hours.
- 6.2.7. The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 6.2.8. All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods
- 6.2.9. The Supplier must provide all tools, information and instructions the Customer needs to make use of the Goods.
- 6.2.10. 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.
- 6.2.11. 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.



- 6.2.12. 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.

6.3. Services clauses

- 6.3.1. 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.
- 6.3.2. The Supplier must at its own risk and expense provide all Supplier equipment required to deliver the Services.
- 6.3.3. The Supplier must allocate sufficient resources and appropriate expertise to each Contract.
- 6.3.4. The Supplier is responsible for all resources provided as part of the Deliverables, and has the right to substitute resources (where they are agreed with the Customer) with the same expertise where required.
- 6.3.5. The Supplier must take all reasonable care to ensure performance does not disrupt the Customer's operations, employees or other contractors.
- 6.3.6. The Supplier must ensure all Services are of applicable standards and good industry practice, and anything used to deliver the Services, are of expected quality and free from defects.
- 6.3.7. 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.

7. Pricing and Payment

- 7.1. In exchange for the Deliverables, the Supplier must invoice the Customer for the agreed charges in the contract
- 7.2. 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
- 7.3. Suppliers shall, at no charge to the Customer and ECS, provide timely, full, accurate and complete MI reports which incorporate the data requested as part of the MI Reporting.
- 7.4. 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 in accordance with the Prompt payment policy.



7.5. All Charges and the Management Charge:

- 7.5.1. exclude VAT, which is payable on provision of a valid VAT invoice
- 7.5.2. include all costs connected with the supply of Deliverables

7.6. The Customer must pay the Supplier the Charges within 30 days of receipt by the Customer of a valid, undisputed invoice

7.7. A Supplier invoice is only valid if it:

- 7.7.1. includes all appropriate references including the Contract reference number and other details reasonably requested by the Customer
- 7.7.2. includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any)
- 7.7.3. doesn't include any Management Charge (the Supplier must not charge the Customer in any way for the Management Charge)

7.8. The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice in line with the Government prompt payment policy. If this doesn't happen, the Customer can publish the details of the late payment or non-payment.

8. Supplier's general obligations

8.1. Warranties and representations

The Supplier warrants and represents to the Contracting Authority and to each of the Other Contracting Authority that:

- 8.1.1. it has full capacity and Contracting Authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this DPS Agreement;
- 8.1.2. this DPS Agreement is executed by a representative of the Supplier with Contracting Authority to legally bind the Supplier;
- 8.1.3. in entering into this DPS Agreement or any Call Off Contract it has not committed any Prohibited Act;
- 8.1.4. as at the Commencement Date, all information, statements and representations contained Application are true, accurate and not misleading save as may have been specifically disclosed in writing to the Contracting Authority before the execution of this DPS Agreement and it will promptly advise the Contracting Authority of any fact, matter or circumstance of which it may become aware during the DPS Agreement Period that would render any such information, statement or representation to be false or misleading;
- 8.1.5. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its



ability to perform its obligations under this DPS Agreement and any Call Off Contract which may be entered into with the Contracting Authority or Other Contracting Authority;

- 8.1.6. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this DPS Agreement and any Call Off Contract; and
- 8.1.7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.

9. Statutory Requirements and Standards

- 9.1. The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this DPS Agreement and any Call Off Contract to enable them to perform the contract.
- 9.2. The Supplier shall comply with the Standards at all times during the performance by the Supplier of the DPS Agreement and any Call Off Contract.
- 9.3. Throughout the DPS Agreement Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by a Contracting Authority under a Call Off Contract, of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure at clause 39
- 9.4. Where a new or emergent standard is to be developed or introduced by the Contracting Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or a Contracting Authority's receipt under a Call Off Contract, of the Services is explained to the Contracting Authority and the Contracting Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 9.5. Where Standards referenced conflict with each other or with Good Industry Practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.

10. The Customer's obligations to the supplier

- 10.1. If Supplier's Non-Performance arises from a Customer Cause:
 - 10.1.1. neither BWCET nor the Customer can terminate a Contract under Clause 20 (Termination)
 - 10.1.2. the Supplier is entitled to reasonable and proven additional expenses and to relief from delay payments, liability and deduction under this Contract
 - 10.1.3. the Supplier is entitled to additional time needed to make the Delivery



10.1.4. the Supplier cannot suspend the ongoing supply of Deliverables

10.2. Clause 6.1 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 Contracting Authority Cause

11. Health & Safety

11.1. Without in any way detracting from or affecting a Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of the Call Off Contracts, the Parties will use best endeavours to establish and maintain on all projects with which they are involved a safety first culture and working environment in which health and safety is of paramount concern to everybody involved with the project and health and safety takes precedence over all other considerations.

11.2. As a first step towards raising health and safety standards on projects with which a Supplier is involved, in addition, but without prejudice, to the specific health and safety requirements of the Call Off Contracts the relevant Supplier undertakes to:

11.2.1. comply with any and all approved codes of practice produced by the Health and Safety Executive and/or the Health and Safety Commission;

11.2.2. ensure that all personnel engaged by the Supplier receive comprehensive site specific health and safety induction training and regular refresher training;

11.2.3. ensure that all personnel engaged by the Supplier have access, at all times, to competent health and safety advice in accordance with Regulation 7 of the Management of Health and Safety at Work Regulations 1999;

11.2.4. ensure that there is full and proper health and safety consultation with all personnel engaged by the Supplier in accordance with the Health and Safety (Consultation with Employees) Regulations 1996; and

11.2.5. comply at all times with the Control of Asbestos at Work Regulations 2012/632.

12. Record keeping and reporting

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

12.2. The Supplier shall keep and maintain until six (7) years after the date of termination or expiry (whichever is the earlier) of this DPS Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this DPS Agreement including the Services provided under it, the Call Off Contracts entered into with Contracting Authority and the amounts paid by each Contracting Authority.



- 12.3. The Supplier shall keep the records and accounts above in accordance with Good Industry Practice.
- 12.4. The Supplier shall afford the Contracting Authority (or relevant Contracting Authority) or the Auditor (or both) such access to such records and accounts as may be required from time to time, in order that the Contracting Authority (or relevant Contracting Authority or Auditors) may carry out an inspection for any purposes relating to this DPS Agreement
- 12.5. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 10, unless the Audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the Audit.
- 12.6. The Supplier must allow any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract, including working conditions and standards, and provide copies of documents requested for an Audit.
- 12.7. The Supplier must provide information to the Auditor and reasonable co-operation at their request.
- 12.8. If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- 12.8.1. tell the Customer and give reasons
 - 12.8.2. propose corrective action
 - 12.8.3. provide a deadline for completing the corrective action
- 12.9. The Contracting Authority may share the Management Information supplied by the Supplier with any Other Contracting Authority.
- 12.10. The Contracting Authority may make changes to the nature of the Management Information that the Supplier is required to supply and shall give the Supplier at least one month's written notice of any changes

13. Supplier staff

- 13.1. The Supplier Staff involved in the performance of each Contract must:
- 13.1.1. be appropriately trained and qualified
 - 13.1.2. be vetted using Good Industry Practice and the Security Policy
 - 13.1.3. comply with all conduct requirements when on the Customer's Premises
 - 13.1.4. be paid at least the minimum wage
 - 13.1.5. have satisfactory working conditions in line with Health and Safety at work and industry practice labour standards.
- 13.2. 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.



- 13.3. If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach any clauses in this contract.
- 13.4. The Supplier must provide a list of Supplier Staff needing to access the Customer's Premises and say why access is required.
- 13.5. 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.

14. Modern Slavery

14.1 The Supplier undertakes, warrants and represents that:

neither the Supplier nor any of its officers, employees, agents or subcontractors has:

- (a) committed an offence under the Modern Slavery Act 2015 (a MSA Offence); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

14.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy

14.3 its responses to the Customer's modern slavery and human trafficking due diligence in the DPS questionnaire are complete and accurate;

14.4 it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Supplier's obligations under Clause 8. Any notice under this Clause shall set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations

15 Equality, Diversity & Inclusion

15.1 BWCET seeks to maintain a supplier base that reflects the diversity of the communities we operate in. In this manner, BWCET will ensure that diverse businesses (i.e. those owned, operated, or controlled by ethnic minorities, women, LGBT+ people, people with a disability etc.) will have equal opportunity to become suppliers to BWCET. We also expect that all of our suppliers have or are willing to develop similar policies to promote employee and supply chain diversity. Suppliers are expected to have policies or procedures that explicitly ban disrespectful behaviour, discrimination, bullying, or harassment based on the 9 protected characteristics as set out by the Equality Act: age, disability, gender reassignment, marriage



and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

15.2 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

15.2.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise

15.2.2 any other requirements and instructions which BWCET or the Customer reasonably imposes related to equality Law

15.2.3 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.

16 Environmental Management

16.1 In line with the requirements of the DPS, The Supplier intends to implement (appropriately and proportionately to the size of its business, and as agreed with the Customer), a minimum of a carbon reduction plan and establish environmental objectives that will lead to improved environmental performance.

16.2 When working on Site the Supplier must perform its obligations under the Customer's current Environmental Policy, which the Customer must provide.

16.3 The Supplier must ensure that Supplier Staff are aware of the Customer's Environmental Policy.

17 Social Value

17.1 BWCET are keen to ensure that our supply chain contributes as much as possible to the communities in which we operate. The supplier will be expected to identify social value opportunities that it can deliver as part of each contract award. Social Value delivery will be a key performance indicator in evaluating the overall performance of any supplier. Delivery of social value commitments and progress will be expected under the reporting requirements of this contract.

18 Rights and protection

18.1 The Supplier warrants and represents that:

18.2 it has full capacity and Contracting Authority to enter into and to perform each Contract

18.3 each Contract is executed by its authorised representative

18.4 it is a legally valid and existing organisation incorporated in the place it was formed



- 18.5 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
- 18.6 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract
- 18.7 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract
- 18.8 it is not impacted by an Insolvency Event
- 18.9 it will comply with each Call-Off Contract
- 18.10 The warranties and representations in all clauses are repeated each time the Supplier provides Deliverables under the Contract.
- 18.11 The Supplier indemnifies both BWCET and every Customer against each of the following:
 - 18.12 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract
 - 18.13 non-payment by the Supplier of any tax or National Insurance
- 18.14 All claims indemnified under this Contract must use Clause 33
- 18.15 BWCET or a Customer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.
- 18.16 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify BWCET/ECS and every Customer.
- 18.17 All third-party warranties and indemnities covering the Deliverables must be assigned for the Customer's benefit by the Supplier.

19 Intellectual Property Rights

- 19.1. 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.
- 19.2. 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.
- 19.3. 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.
- 19.4. 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.
- 19.5. 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.



19.6. 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.

20. Termination

20.1 WCET has the right to terminate the DPS Contract at any time without reason or liability by giving the Supplier at least 30 days' notice

20.2 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

20.3 The Customer has the right to terminate its Contract immediately by issuing a Termination Notice to the Supplier, with effect from the date specified in the notice, and BWCET may terminate the DPS Contract, if the any of the following events happen:

20.4 The Supplier or its Staff commits any Fraud in relation to the Contract

20.5 There's a Supplier insolvency event

20.6 There's a material default of the Contract

20.7 There's a Contract Default that is not corrected in line with a Rectification Plan

20.8 If there is a repeated failure to meet the KPIs set out in the DPS Contract and/or Contract

20.9 Where there is a breach of, Data Protection, Confidentiality, Fraud bribery & corruptions or conflict of interest.

20.10 There's a Variation to a Contract which cannot be agreed or resolved

20.11 If there is a Default, the Customer can, without limiting its other rights, request a Supplier to provide a Rectification Plan.

20.12 When the Customer receives a requested Rectification Plan it can either:

20.13 reject the Rectification Plan and provide reasons

20.14 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

20.15 When a Contract is terminated for any reason, the following apply:

20.16 The Customer's payment obligations under the terminated Contract stop immediately.

20.17 Accumulated rights of the Parties are not affected.

20.18 The Supplier must promptly delete or return any data except where required to retain copies by law.



20.19 The Supplier must promptly return any of BWCET or the Customer's property provided under the terminated Contract.

20.20 The Supplier must, at no cost to BWCET or the Customer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

20.21 BWCET or the Customer must promptly return any of the Supplier's property or equipment provided by the Supplier under the terminated Contract

20.22 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

20.23 If a Supplier terminates a Call-Off Contract the Customer must promptly pay all outstanding Charges incurred to the Supplier

21. Termination on insolvency and Change of Control

21.1. Without affecting any other right or remedy available to it, the Contracting Authority may terminate this agreement with immediate effect by giving written notice to the Supplier if:

21.2 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply];

21.3 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier];

21.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier];

21.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);



- 21.6 the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 21.7 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 21.8 the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- 21.9 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- 21.10 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in or
- 21.11 the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 21.12 The Supplier shall notify the Contracting Authority immediately if the Supplier undergoes a Change of Control. The Contracting Authority may terminate the DPS Agreement by giving notice in writing to the Supplier with immediate effect within six Months of:
 - 21.13 being notified that a Change of Control has occurred; or
 - 21.14 where no notification has been made, the date that the Contracting Authority becomes aware of the Change of Control;
 - 21.15 but shall not be permitted to terminate where an Approval was granted before the Change of Control.

22. Termination on Fraud or Bribery

- 22.1. The Contracting Authority may terminate this DPS Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the conduct prohibited has occurred.

23. Termination on Conflict of Interest

- 23.1. The Contracting Authority may terminate this DPS Agreement and Contracting Authority may terminate Call Off Contracts by serving notice on the Supplier in writing with effect from the date specified in the notice for any conflict of interest.

24. Termination on Breach of Obligations of Confidentiality

- 24.1. The Contracting Authority may terminate this DPS Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier fails to comply with any obligations or confidentiality.



25. Termination on Failure to Agree Variation

- 25.1. The Contracting Authority may terminate this DPS Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier is in breach of its obligations under variation agreement.

26. Termination on Audit

- 26.1. The Contracting Authority may terminate this DPS Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice in the event of any breach of clause 11 (Records and Audit).

27. Termination on Persistent Failure

- 27.1. The Contracting Authority may terminate this DPS Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where a Persistent Failure has occurred.

28. Termination on Grave Misconduct

- 28.1. The Contracting Authority may terminate this DPS Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier is a partnership or a limited liability partnership or an individual, or where the provider is a firm, any partner in that firm:
- 28.2 is convicted of a criminal offence relating to the conduct of its business or profession; or
 - 28.3 commits an act of grave misconduct in the course of its business or profession; or
 - 28.4 fails to comply with any obligations relating to the payment of any taxes or social security contributions; or
 - 28.5 makes any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or
 - 28.6 fails to obtain any necessary licences or obtain or maintain membership of any relevant body.

29. Termination on Financial Standing

- 29.1. The Contracting Authority may terminate this DPS Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice:
- 29.2 where (in the reasonable opinion of the Contracting Authority) there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
 - 29.2.1 adversely impacts on the Supplier's ability to supply the Services under this DPS Agreement or any Call Off Contract; or



29.2.2 could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Services under this DPS Agreement or any Call Off Contract; or

29.2.3. if the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier.

30. Termination by the Contracting Authority for convenience

30.1. The Contracting Authority shall have the right to terminate this DPS Agreement, or to terminate the provision of any part of the DPS Agreement at any time by giving three (3) Months' written notice to the Supplier.

31. Suspension of Supplier's appointment

31.1. Without prejudice to the Contracting Authority's rights to terminate this DPS Agreement in Clause 20 through to 30 above, if a right to terminate this DPS Agreement arises in accordance these clauses, the Contracting Authority may suspend the Supplier's appointment to provide Services in any or all Supplier's Categories under this DPS Agreement by giving notice in writing to the Supplier and the Supplier agrees that it shall not be entitled to enter into any new Call Off Contract during such suspension.

31.2. If the Contracting Authority provides notice to the Supplier in accordance with this Clause 31, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Contracting Authority in writing from time to time.

31.3. The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Call Off Contracts concluded prior to the suspension notice.

32. Consequences of termination and expiry

32.1. Notwithstanding the service of a notice to terminate the DPS Agreement, the Supplier shall continue to fulfil its obligations under the DPS Agreement until the date of expiry or termination of the DPS Agreement or such other date as required under this Clause 32.

32.2. Unless expressly stated to the contrary, the service of a notice to terminate the DPS Agreement shall not operate as a notice to terminate any Call Off Contract made under the DPS Agreement. Termination or expiry of the DPS Agreement shall not cause any Call Off Contracts to terminate automatically. For the avoidance of doubt, all Call Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

32.3. Within ten (10) Working Days of the date of termination or expiry of this DPS Agreement, the Supplier shall return to the Contracting Authority any of the Contracting Authority's Confidential Information and records in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Contracting Authority, and any other information and all copies



thereof owned by the Contracting Authority, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this DPS Agreement or under any Law, or such other period as is reasonably necessary for such compliance.

- 32.4. Termination or expiry of this DPS Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this DPS Agreement before termination or expiry.

33. Complaints handling and resolution

- 33.1. The Supplier shall notify the Contracting Authority of any Complaint made by Other Contracting Authority which is not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint.

- 33.2. Without prejudice to any rights and remedies that a complainant may have at Law, including under the DPS Agreement and/or a Call Off Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the DPS Agreement or a Call Off Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

- 33.3. Within two (2) Working Days of a request by the Contracting Authority, the Supplier shall provide full details of a Complaint to the Contracting Authority, including details of steps taken to achieve its resolution.

34. Dispute resolution

- 34.1. In the event that any dispute arises out of or in connection with the operation of this DPS Agreement and which does not fall to be dealt with under the terms of a Call Off Contract, the relevant Parties shall use reasonable endeavours to resolve the dispute in accordance with the dispute resolution process set out in **Error! Reference source not found.** (Dispute Resolution Procedure, clause 41) of this DPS Agreement.

The Supplier shall continue to provide the Services in accordance with the terms of this DPS Agreement until a Dispute has been resolved

35. Liability

- 35.1. 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.

- 35.2. 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

- 35.3. No Party is liable to the other for:



35.3.1. Any indirect losses

35.3.2. Loss of profits, turnover, savings, business opportunities or damage to goodwill

35.4. In spite of Clause 11.1 and 11.2, neither Party limits nor excludes any of the following:

35.4.1. Its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors

35.4.2. Its liability for bribery or fraud or fraudulent misrepresentation by it or its employees

35.4.3. any liability that cannot be excluded or limited by Law

35.4.4. its obligation to pay the required Management Charge or Default Management Charge

35.5. The Supplier does not limit or exclude its liability for any indemnity given under other clauses.

35.6. 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

36. 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 Contract and any issues arising out of, or connected to it, are governed by English Law

37. INSURANCE

37.1 The Supplier shall effect and maintain insurances as required by Law or the Contracting Authority under this DPS Agreement and each individual Call Off Contract.

37.2 the minimum insurances required under this DPS Agreement are set out in the DPS Appointment Form. Contracting Authorities may require higher insurance cover and/or additional insurances as appropriate to individual Call Off Contracts, and such additional requirements shall be set out within the further competition.

37.3 The insurances required by Contracting Authorities under individual Call Off Contract shall be maintained with a reputable insurance company, on terms that are no less favourable to those generally available to a prudent supplier in respect of risks insured in the international insurance market.

37.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this DPS Agreement or any Call Off Contract.

37.5 The Supplier shall produce to the Contracting Authority, on request, copies of all insurance policies required by the Contracting Authority under any Call Off Contracts or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.



37.6 The Supplier shall use its reasonable endeavours to ensure that it shall not by its acts or omissions cause any policy of insurance to be invalidated or voided.

38. Data Protection

38.1 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.

38.2 Both Parties agree to meet all their obligations under Data Protection Laws.

38.3 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.

38.4 The Service Provider must:

38.5 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)

38.6 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;

38.7 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:

- a) are aware of and comply with the Supplier's duties under this clause;
- b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
- c) 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
- d) have undergone adequate training in the use, care, protection and handling of Personal Data.

38.8 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.

38.9 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.

38.10 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.

38.11 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.

38.12 The Supplier must notify the Customer if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
- e) 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.

38.13 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:

- a) 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.
- b) 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;
- c) assisting the Purchaser with communication of a personal data breach to a Data Subject;



- d) supporting the Purchaser with preparation of a data protection impact assessment;
- e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.

38.14 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.

39. Confidential Information

39.1. Each Party shall:

- 39.1.1.** treat the other Party's Confidential Information as confidential and safeguard it; accordingly, and
- 39.1.2.** not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

39.2. A Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- 39.2.1.** 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)
- 39.2.2.** such information was obtained from a third party without obligation of confidentiality
- 39.2.3.** such information was already in the public domain at the time of disclosure
- 39.2.4.** it is independently developed without access to the other party's Confidential Information
- 39.2.5.** if the information was given to it by a third party without obligation of confidentiality

39.3. 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.

39.4. The Supplier Staff must enter into a direct confidentiality agreement with the Customer at its request.

39.5. The Supplier must not publicise the services or any Contract, without prior written consent from the Customer and BWCET.

40. Variation

40.1. Either Party can request a Variation to a Contract which is only effective if agreed in writing and signed by both Parties

40.2. BWCET and the Customer are not required to accept a Variation request made by the Supplier



40.3. If the Variation to a Contract cannot be agreed or resolved, BWCET or the Customer can either:

- 40.3.1. Agree the Contract continues without the Variation
- 40.3.2. 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
- 40.3.3. Refer to the Dispute Resolution Procedure

41. Dispute Resolution Procedure

41.1. 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.

41.2. 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

41.3. 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:

- 41.3.1. determine the Dispute
- 41.3.2. grant interim remedies
- 41.3.3. grant any other provisional or protective relief

41.4. 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

41.5. 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, 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.

42. Claims

42.1. 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.

42.2. At the Indemnifier's cost the Beneficiary must both:

- 42.2.1. allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim
- 42.2.2. give the Indemnifier reasonable assistance with the claim if requested

42.3. 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.

42.4. 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.



42.5. The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

42.6. Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

42.7. 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:

42.7.1. the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money

42.7.2. the amount the Indemnifier paid the Beneficiary for the Claim

43. Preventing Fraud, Bribery and Corruption

43.1 The Supplier must not during any Contract Period:

42.1.1 commit a Prohibited Act or any other criminal offence

42.1.2 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

43.2 The Supplier must during the Contract Period:

43.2.1 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

43.2.2 keep full records to show it has complied with its obligations and give copies on request

43.2.3 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 all requirements, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures

43.2.4 The Supplier must immediately notify BWCET and the Customer if it becomes aware of any breach of prohibited acts or has any reason to think that it, or any of the Supplier Staff, has either:

- (a) been investigated or prosecuted for an alleged Prohibited Act
- (b) 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
- (c) received a request or demand for any undue financial or other advantage of any kind related to a Contract
- (d) suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act



43.3. If the Supplier notifies BWCET or the Customer, 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.

43.4. In any notice the Supplier gives it must specify the:

43.4.1. Prohibited Act

43.4.2. identity of the Party who it thinks has committed the Prohibited Act

43.4.3. action it has decided to take and any result of the action

44. Conflict of Interest

44.1 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.

44.2 The Supplier must promptly notify and provide details to BWCET and each Customer if a Conflict of Interest happens or is expected to happen.

44.3 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.

45. Tax

45.1 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.

45.2 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.

46. Publicity

46.1 Unless otherwise directed by the Contracting Authority, the Supplier shall not make any press announcements or publicise this DPS Agreement in any way without the Contracting Authority's prior written consent.

46.2 The Contracting Authority shall be entitled to publicise this DPS Agreement in accordance with any legal obligation on the Contracting Authority, including any examination of this DPS Agreement by the Auditor or otherwise.



46.3 The Supplier shall not do anything that may damage the reputation of the Contracting Authority or bring the Contracting Authority or the Customer into disrepute.

47. Reporting a Breach of Contract

47.1 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 a clause in this agreement:

47.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach to the Customer



Schedule 1 – Further Competition Details

[any individual further competitions awarded would form part of this Contract]



Schedule 2 – Special Terms & Conditions

[any individual Special Terms & Conditions included in further competitions awarded, would form part of this Contract including any required Construction and/or works terms such as JCT/NEC that are required for the competition project]



Schedule 3 – Data Protection Schedule

[the Data Protection Schedule will be included within every further competition and form part of the Contract]

No	Description	Details
1	Subject matter of the processing	<i>The processing of personal data in relation to the obligations of the Provider as the supplier</i>
2	Duration of the processing	<i>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 in line with the instructions identified in point 6.</i>
3	Nature and purposes of the processing	<p><i>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)</i></p> <p>[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]</p> <p><i>The purpose of the processing is to enable the Customer to comply with its obligations in relation to employment law</i></p>
4	Type of Personal Data	<p><i>For the purposes of the contract, the Customer will disclose the following information directly to the supplier:</i></p> <p><i>Contact details for individuals concerned with the management of the Contract: Name, business email address, business postal address, business telephone number.</i></p> <p><i>Full details of all individuals employed to enable the service provided to complete their duties</i></p> <p><i>[List of data to be provided to be confirmed by the successful supplier and inserted into final contract]</i></p>
5	Categories of Data Subject	<i>Personal data relating to the Customer staff (including temporary or agency staff).</i>
6	Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to	<p><i>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.</i></p> <p><i>Upon termination, the supplier shall provide a fully accessible copy of all data in a portable format within 3 months</i></p>



	preserve that type of data	<i>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.</i>
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