

The Template and Risks of Direct Awards

This Template incorporates the terms and conditions of existing CCS DPS Agreement RM6018, Research Marketplace, (“**DPS RM6018**”) to facilitate the supply of goods and/or services. It allows you, as the Customer, to document the terms retrospectively of a contract that you have already made an urgent direct award of to an existing CCS DPS Supplier.

A contract entered into using this template is not an order contract under DPS RM6018, but a separate award of a contract incorporating the terms of DPS RM6018.

Opting for an urgent direct award is a high risk activity. As is entering into contracts without documenting the terms of the contract in full before the start date of the contract. These guidance notes are not, therefore, a substitute for obtaining your own legal advice which in all cases is strongly recommended prior to committing to this course of action.

If this template is used to document in a single contract the direct award of more than one project, the risk that any challenge to the award of the contract as an urgent direct award increases substantially. You should take your own legal advice if you are considering asking the supplier with whom you have contracted using this Template to undertake subsequent projects.

Documenting your justifications

As the current COVID-19 pandemic has been progressing for some weeks, using the fact of the pandemic to justify your direct award alone is no longer likely to be sufficient. Customers now have the opportunity to plan for what will be needed in the coming months.

You will need to have, and document, objectively justifiable reasons as to why the particular need you are addressing is extremely urgent and why the events which brought them about were not foreseeable. You should follow the directions in PPN 01/20 on how to document your urgent direct award. You will need to show that you have considered the mandatory and discretionary exclusion grounds and whether the supplier had the capability to perform the Project (as assessed when the supplier was awarded a place on the framework) and why you chose that supplier.

Failure to make a contemporaneous record of decisions and the reasons for them will increase the legal risk to the Buyer for their award of the contract. You should consider the reputational risks too.

Supplier Terms

For the contract to be subject to the terms and conditions set out in this Template, you must not accept any supplier terms and conditions that are sent to you either separately, attached to or contained in the email of acceptance of the contract or sent to you in soft or hard copy. If any of these events occur, you must ensure those terms are rejected and the rejection is evidenced in writing. Wording to this effect is included in Annex C to the letter, and, should any supplier terms be received, you should ensure that this wording is sufficient to reject those terms.

3rd July 2020

Dear REDACTED

Direct Award of Contract – CCFI20A10 State Aid Advice to HM Treasury in Relation to the Future Fund Scheme

I am writing to inform you that **HM Treasury** (the “**Customer**”) proposes to make an award of a contract to you to provide extremely urgent deliverables as part of the response to unforeseeable consequences of the COVID-19 pandemic on the terms set out in this letter (the “**Contract**”).

Due to unforeseeable consequences of the current COVID-19 pandemic, the Customer reasonably anticipates that the Public Contracts Regulations 2015 will apply to this Contract and the Parties shall ensure that there is a lawful basis for awarding the Contract under the Public Contracts Regulations 2015 and/or any applicable procurement rules. Due to unforeseeable consequences of the current COVID-19 pandemic, this may include in particular justifications under Regulation 32 of the Public Contracts Regulations 2015 or such other applicable or equivalent provision.

The Contract

In the light of the extreme urgency of the current situation and as you are already a supplier on **Research Marketplace Dynamic Purchasing System RM6018** (the “**DPS Contract**”), the Contract shall be based on the DPS Contract’s Contract Terms as follows:

1. The Supplier shall supply the Services and the Deliverables to complete the Project as specified in Annex A to this letter as if Annex A to this letter was each of a Letter of Appointment and a Statement of Work for the Project comprising of each of a Customer Project Specification and a Supplier Proposal.
2. The Contract Charges relating to the Project are specified in Annex A to this letter.
3. The Special Terms set out in the Statement of Works at Annex A to this letter apply to the Contract. The Special Terms set out in Annex A to this letter are terms of this letter.
4. The Effective Date of the Contract will be **22nd April 2020**.
5. The Customer and the Supplier acknowledge and agree that:
 - 5.1. each of the Effective Date and the Project Commencement Date occurred before the date on which the Parties documented the terms of the Contract;
 - 5.2. the terms of the Contract documented in this letter are all of the terms upon which the Parties agreed to contract on and from the Effective Date; and
 - 5.3. no other written or oral agreements, representations or understandings exist between them in respect of the subject-matter of this Contract.
6. The Expiry Date of the Contract will be **20th September 2020**.
7. The Customer may extend the Contract by up to one month at a time by giving notice to the Supplier prior to the then existing Expiry Date, as previously extended where applicable, as many times as are justified by the

circumstances of extreme urgency which justify the award of the Contract continue to exist. The Extension Expiry Date is the date on which the Contract ends pursuant to any operation of this paragraph.

8. This Contract is not conditional upon the receipt of a Guarantee.
9. The documents from the DPS Contract specified in Annex B to this letter are incorporated into the Contract (the "**Incorporated Documents**"). If any of the Incorporated Documents conflict with any of the terms of this letter, the terms of this letter prevail.
10. References in the Contract Terms to "Agreement" shall be read as references to this Contract.
11. References in the Incorporated Documents to "Letter of Appointment" shall be read as references to this letter.
12. "Force Majeure", as defined in paragraph 1.6 of Schedule 1 of the Contract Terms, shall exclude any acts, events, omissions, happenings or non-happenings arising out of or in connection to either or both coronavirus (the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)) and/or COVID-19 (the official designation of the disease which can be caused by coronavirus).
13. For the avoidance of doubt, the DPS Contract and any provision of any Incorporated Document which relates only to the DPS Contract (other than clauses Clause 6 of the DPS Contract, DPS Schedule 5 (Management Charge and Information) and the corresponding definitions contained in DPS Schedule 1 (Definitions and Interpretation) which are incorporated into the Contract by paragraph 14 below) are not incorporated into the Contract.
14. In spite of paragraph 13 above, the Customer and the Supplier agree that:
 - 14.1. clause 6 of the DPS Contract;
 - 14.2. DPS Schedule 5 (*Management Charge and Information*); and
 - 14.3. all definitions for terms defined in DPS Schedule 1 of the DPS Contract which are capitalised and used in clause 6 of the DPS Contract and DPS Schedule 5 (Management Charge and Information),are incorporated into this Contract so that:
 - A. the Supplier shall on receipt of an invoice from the Crown Commercial Service ("**CCS**") for the Management Levy, pay the Management Levy and provide Management Information using the process in clause 6 of the DPS Contract; and
 - B. the Customer and the Supplier agree that clause 28 of the Contract Terms (*Third Party Rights*) apply to this paragraph 14 to the extent necessary to ensure that CCS will have the right to enforce any obligation owed to it by the Supplier under this paragraph 14 in its own right under section 1(1) of the Contract (Rights of Third Parties) Act 1999.
15. References to "Contract" in the clauses and schedules of the DPS Contract which are incorporated into this Contract by paragraph 14 above shall be read as references to this Contract.
16. If the Customer and the Supplier enter into the Contract, the Customer and the Supplier will, each at their own expense, do all acts and things necessary or desirable to give effect to the Contract.

Accepting the offer of the Contract

In the circumstances, **HM Treasury** proposes to confirm that the Parties entered into the Contract on 22nd April 2020 exceptionally by an exchange of correspondence.

Please confirm that you accepted the Contract terms on that date by email to REDACTED, using the heading "**URN 00585900 - Acceptance of Contract Terms**".

To assist us in managing the process, please respond by 17:00 on **07/07/2020**.

Please state the following in your email:

*"I refer to your letter dated 03/07/2020 (the "Letter") in respect of the contract **CCF120A10 State Aid Advice to HM Treasury in Relation to the Future Fund Scheme** which incorporates terms from Research Marketplace Dynamic Purchasing System RM6018 as set out in the Letter (the "Contract"). A copy of the Letter is attached to this email. I confirm that, on 22nd April 2020, I accepted the terms of the Contract for and on behalf of Oxera Consulting LLP, and that the Contract took effect on and from that date."*

Please make sure that your name and job title are included in the email and attach a copy of this letter to your email.

If we are not sufficiently clear whether or not you confirm that you accepted the terms of the Contract on 22nd April 2020, we will contact you again to ask for clarification.

Contract management information

In order to make the Contract operate as designed using the terms incorporated by reference from the DPS Contract, you will need the information set out in Annex C to this letter.

Please provide the following information with your email confirmation of acceptance:

- Authorised Supplier Approver (name, role, email address and address)
- Commercially Sensitive Information (not applicable or insert your Commercially Sensitive Information)
- Key Individuals (name, role, email address and address)
- Supplier Address (registered address if registered)
- Registration number (registration number if registered)
- DUNS number (if known)
- SID4GOV ID (if known)

If you have any queries, please contact the team on REDACTED, referencing **URN 00585900**.

Yours faithfully,

REDACTED

Annex A
Project, Services and Deliverables, Contract Charges and Special Terms

Project:	See Appendix A – Statement of Requirements
Project Commencement Date:	22 nd April 2020
Project Completion Date:	See below.
Project Term:	<p>The Contract duration shall be a period of five (5) months, beginning upon Contract signing. There shall be an extension option of three one-month periods (1+1+1).</p> <p>Contract start date: 22nd April 2020</p> <p>End date of initial Contract period: 20th September 2020</p> <p>End of 1st extension period: 20th October 2020 End of 2nd extension period: 20th November 2020 End of 3rd extension period: 20th December2020</p> <p>It shall remain the Customer's decision whether or not to take up this extension option. The decision shall depend upon the Customer's requirements as the research progresses.</p>
Project Notice Period:	N/A
Services & Deliverables:	See Appendix A – Statement of Requirements
Inclusion of Additional Schedules	<p>The following Schedules are incorporated into this Scope of Work:</p> <p>REDACTED</p>
Project Plan:	See Appendix A – Statement of Requirements

Contract Charges:	REDACTED
Customer Materials:	N/A
International locations	N/A
Customer Affiliates:	N/A
Special Terms:	N/A
Authorised Customer Approver:	<p>Person(s) who have the authority to agree day to day decisions on behalf of the Customer for this Project:</p> <p>REDACTED</p>

Annex B Incorporated Documents

The documents specified in this Annex B are incorporated into the Contract from the DPS Contract.

Where numbers are missing, those schedules are not included. If the Incorporated Documents conflict with each other, the following order of precedence applies:

1. *The Contract Terms from RM6018*
2. *The following Schedules to the Contract Terms in equal order of precedence:*
3. *The Schedules from the Contract Terms for RM6018*
 - *Schedule 4 (Dispute Resolution Procedure)*
 - *Schedule 5 (Variation Form)*
 - *Schedule 7 (Processing, Personal Data and Data)*
4. *DPS Schedules for RM6018*
 - *DPS Schedule 9 (Guarantee)*

No other Supplier terms are part of the Contract. That includes any terms written in the email accepting the offer of the Contract or presented at the time of delivery.

The Incorporated Documents can be found at <https://www.crowncommercial.gov.uk/agreements/RM6018>

Annex C
Contract Management Information

CUSTOMER CONFIDENTIAL INFORMATION

Not Applicable

CUSTOMER'S INVOICE ADDRESS:

REDACTED

CUSTOMER'S SECURITY POLICY

The Supplier's staff should have the suitable qualifications and experience to enable them to produce an MEO assessment.

The Supplier must keep confidential any information provided to it to enable it to produce its assessment. The MEO assessment is confidential and must not be disclosed to any party other than the Authority.

INSURANCE REQUIREMENTS

- 1.1. The Supplier will hold insurance policies to the value sufficient to meet its liabilities in connection with this Contract (including any specific insurance requirements as are set out in the Statements of Work). The Supplier will provide the Customer with evidence that such insurance is in place at the Customer's request.
- 1.2. The Supplier will effect and maintain the policy or policies of insurance as stipulated in the Letter of Appointment.
- 1.3. If, for whatever reason, the Supplier fails to comply with the provisions of this Clause the Customer may make alternative arrangements to protect its interests. If the Customer does so, it may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 1.4. Any insurance effected by the Supplier will not relieve it of any liability under this Contract. It is the Supplier's responsibility to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Contract.
- 1.5. The Supplier must ensure that the policies of insurance it holds pursuant to this Clause are not cancelled, suspended or vitiated. The Supplier will use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any circumstance whereby the relevant insurer could give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

MAXIMUM LIABILITY

- 1.6. Nothing in this Contract will exclude or in any way limit either Party's liability for fraud, death or personal injury caused by its negligence.
- 1.7. Subject always to Clauses 1.6 and 1.8, the maximum amount the Supplier can be liable for in respect of all Defaults shall in no event exceed:
 - 1.7.1 in relation to any Defaults occurring from the Effective Date to the end of the first Contract Year, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges estimated by the Customer for the first Contract Year;
 - 1.7.2 in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges payable to the Supplier under this Contract in the previous Contract Year; and
 - 1.7.3 in relation to any Defaults occurring in each Contract year that commences after the end of the Initial Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract charges payable to the Supplier under this Contract in the last Contract Year commencing during the Term.
- 1.8. Subject to Clause 1.6, neither Party will be liable to the other in any situation for any:
 - 1.8.1 loss of profits
 - 1.8.2 loss of goodwill or reputation
 - 1.8.3 loss of revenue
 - 1.8.4 loss of savings whether anticipated or otherwise; or

- 1.8.5 indirect or consequential loss or damage of any kind
- 1.9. Without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all defaults, claims, losses or damages howsoever caused will in no event exceed the figure specified in the Letter of Appointment.

PURCHASE ORDER NUMBER

To be provided to the Supplier after Contract Award.

STANDARDS

The assessment should be of the high standards that would be expected from a leading consultancy firm.