

**Statement of Requirements**

**for the**

**Provision of UK Estimates of Investment in Intangible Assets**

**Version: FINAL**

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This document (the “**SOR**”) is classified as **Official Sensitive (Commercial)**, and must be handled appropriately, in accordance with UK Government’s Document Classification Scheme.

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# Glossary of Defined Terms

Within the SOR, the following defined terms shall have the following meanings:

| **Defined Term** | **Definition** |
| --- | --- |
| **2015 Regulations** | The Public Contracts Regulations 2015. |
| **Clarification** | A query or question raised by a Supplier to the Contracting Body on an aspect of the SOR that is raised during the Proposal Response Period. |
| **Clarifications Deadline** | The deadline by when the Supplier must raise any Clarifications. For the Procurement, the Clarifications Deadline is 11th April 2017 |
| **Conflict of Interest** | Defined by the Law Society as:  “Conflicts of interest means any situation where:   * you owe separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict (a 'client conflict');   OR   * your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter (an 'own interest conflict')'” |
| **Contracting Body** | ONS. The client, as further described in Section 1 of the SOR. |
| **Criterion** | One of the individual elements of the Selection Criteria. |
| **Crown** | The UK state, in all its aspects. |
| **EU** | European Union. |
| **GDP** | Gross Domestic Product. |
| **Government** | The government of the UK. |
| **GSS** | Government Statistics Service. |
| **ICT** | Information and Communications Technology. |
| **NSI** | National Statistics Institute. |
| **ONS** | Office for National Statistics, the Contracting Body. |
| **PDF** | Proof document format. |
| **Portal** | [www.in-tend.co.uk](http://www.in-tend.co.uk) In-Tend eSourcing portal, the electronic tendering solution used by the Contracting Body for the Procurement. |
| **PPA** | Public & Policy Analysis |
| **PPPs** | Public Private Partnerships. |
| **Procurement** | The process of purchasing the Services, which was commenced by the Contracting Body with the issue of tender documentation and will conclude with the earlier of either the appointment of a Supplier to provide or cancelling of the Procurement by the Contracting Body. |
| **Proposal** | A compliant submission made by a Supplier in response to the SOR. |
| **Proposal Response Period** | The period of time from the launch of the SOR to the Proposal Return Deadline. |
| **Proposal Return Deadline** | The deadline by when all Tenders must be submitted to the Contracting Body. In the case of this Procurement, the Proposal Return Deadline is 21st April 2017 |
| **Selection Criteria** | The criteria on which basis the compliant Proposals received by the Contracting Body from the Suppliers at the Proposal Return Deadline will be evaluated and assessed. |
| **Service Levels** | The levels to which the Supplier will need to comply when delivering the Services. |
| **Services** | The services that the Supplier will deliver to the Contracting Body. |
| **SOR** | Statement of Requirements, this document. |
| **Supplier** | An organisation that is issued with the SOR. |
| **UK** | United Kingdom. |
| **VAT** | Value added tax. |

# Introduction

## About the Contracting Body

The Contracting Body is the UK’s largest independent producer of official statistics and is the recognised NSI for the UK. The Contracting Body is also responsible for collecting and publishing statistics related to the economy, population and society at national, regional and local levels. The Contracting Body also conducts the census in England and Wales every ten years.

The main responsibilities of the Contracting Body are:

* the collection, compilation, analysis and dissemination of a range of key economic, social and demographic statistics about the UK;
* the provision of statistical leadership and methodological advice for the benefit of UK official statistics;
* representation of the UK internationally as the NSI.

The Contracting Body is also the only government department with the production of statistics as its main role. The Contracting Body operates independent of ministers and instead reports through the UK Statistics Authority to Parliament and the devolved administrations of Scotland, Wales and Northern Ireland.

These responsibilities span more than 650 different statistical releases a year which rely on a broad range of methods and systems. More information about the Contracting Body and can be found on the Contracting Body’s website: [www.ons.gov.uk](http://www.ons.gov.uk).

The Contracting Body is the executive office of the UK Statistics Authority, which was established on 1 April 2008 by the Statistics and Registration Service Act 2007. Under the Act, the UK Statistics Authority is responsible for promoting and safeguarding the production and publication of official statistics which serve the public good. Further information on the UK Statistics Authority, and the Statistics and Registration Service Act, is available on the UK Statistics Authority website, [www.statisticsauthority.gov.uk](http://www.statisticsauthority.gov.uk)

# General Information

## Title of the Procurement

The title of the Procurement is Provision of UK Estimates of Investment in Intangible Assets, Reference PU-18/0013.

## About the SOR

The SOR aims to provide all of the information that is required to enable a Supplier to make a submission that meets with the Contracting Body’s requirements for a compliant Proposal.

## Contact with the Contracting Body

The process for raising Clarifications is described elsewhere in the SOR. Any and all contact with the Contracting Body relating to the Procurement shall be via the Portal. No other means of contact during the Proposal Response Period will be acceptable to the Contracting Body.

## Structure of the SOR

The SOR is divided into the following elements and sections:

The SOR

This document, which is sub-divided into the following Sections:

1. *Introduction*, providing the Supplier with an overview of the Contracting Body
2. *General Information,* providing salient information on the conditions under which the Contracting Body is administering the tendering phase of the Procurement, and which the Supplier must comply with at all stages of the Procurement;
3. *The Services*, providing the Supplier with an overview of the range of the Services and how the Contracting Body intends to manage the relationship with the Supplier.
4. *Instructions to Suppliers*, providing the Supplier with directions on responding to the SOR, and how to submit a compliant Proposal;
5. *Selection Criteria,* describing the Selection Criteria on which basis the sourcing of the Supplier will be based;
6. *Evaluation of Compliant Tenders,* describing the proposed approach and process that will be adopted by Contracting Body to assess the compliant Tenders received by the Proposal Return Deadline.

## Confidentiality

The Contracting Body takes the management of its information (and that of its Suppliers) very seriously.

The information provided by the Contracting Body within the SOR or which is communicated in further correspondence or which is provided at any time during the Procurement is copyright of the Crown and OFFICAL SENSITIVE (COMMERCIAL)[[1]](#footnote-1). As such, it is to be treated as “Commercial in Confidence” and not shared by the Supplier with any organisation other than its own.

Further, the Supplier:

must not communicate, disclose or otherwise make available this information to any third party (other than that as set out below), except with the permission of the Contracting Body; and

must not use the information for any commercial or industrial purpose not connected with the Procurement; and

may communicate, disclose or otherwise make available this information to an employee or a professional advisor who requires the information in connection with the preparation of a Proposal in response to the SOR; or to support any subsequent discussions or clarification in relation to the Proposal, provided that the Supplier ensures they observe the confidentiality requirements of this SOR.

## Redundant Information

In the event of either:

the Supplier deciding not to respond to the SOR, or

the Supplier being informed that the Supplier has not been successful with their Proposal;

all copies of versions of all information issued as a part of or in connection with the Procurement must be destroyed or deleted by the Supplier within 48 hours of the Contracting Body requesting that the Proposal shall do so (the Supplier confirming in writing that they have complied with the Contracting Body’s request to do so).

## Transparency

The Supplier is to note that, in compliance with the Government’s commitment to provide a greater level of transparency in expenditure by the public sector, the Commercial Services Division of the Contracting Body is required to publish the details of all new contracts over £10,000 in value that have been awarded after 1July 2010. The Contracting Body is further obliged to publish all new tender documents issued after 1 September 2010.

The Contracting Body may (at its sole discretion):

consult with and / or inform the Supplier of its decision relating to the publication of information; and

redact any element of the information that the Contracting Body may choose to publish.

## Disclaimers

The information contained in the SOR is issued to the Supplier for information purposes only and to enable the Supplier to submit a response to the SOR. The issue of the SOR to the Supplier does not imply any guarantee or obligation on the part of the Contracting Body.

In taking part in the Procurement or preparing a response to the SOR or submitting a Proposal, the Supplier should not rely on any information previously provided to them by the Contracting Body, nor obtained by the Supplier from other sources, whether verbally or in writing and / or whether or not such information may have previously formed a part of the Procurement. The only information upon which the Supplier should base their response to the SOR is that which is contained in the SOR or issued to the Supplier prior to the Proposal Return Deadline.

Whilst all reasonable endeavours have been made by the Contracting Body to produce an accurate description of the Contracting Body’s requirements and the Services, the Supplier should form the Supplier’s own conclusions about the methods and resources needed to meet those requirements and / or deliver the Services. The Contracting Body will not accept responsibility for any of the Supplier’s own interpretation of the Contracting Body’s requirements.

The Supplier should note that the Supplier must bear all costs and / or expenses of responding to the SOR and taking any part in the Procurement. The Contracting Body reserves the right to withdraw from or cancel or curtail or amend or postpone any stage of the Procurement at any time. Under no circumstances will the Contracting Body refund any expense incurred by Supplier as a part of their involvement in the Procurement.

The Contracting Body is not responsible for any omissions or errors within the SOR. The Contracting Body will use best endeavours to answer any Clarifications arising from the issue of or the information contained within the SOR.

The Supplier is also notified that the Contracting Body hereby reserves the right:

not to accept the lowest priced or any Proposal which may be submitted for the Contracting Body’s evaluation;

not to accept any Proposal which is received after the Proposal Return Deadline; and

(at any time) to acquire similar services to those described within the SOR from Suppliers other than the Supplier.

Finally, and acting within its mandatory and statutory obligations, the Contracting Body hereby retains the right to change, delete, add, or omit any aspect of the SOR, including (but not limited to) the process and approach to the Procurement described in the SOR, and or the scope of the Services and / or the requirements to be imposed on the Supplier.

# The Services

## Overview

**UK Statistics Authority**

The UK Statistics Authority is an independent body operating at arm's length from government as a non-ministerial department, directly accountable to Parliament. It was established on 1 April 2008 by the *Statistics and Registration Service Act 2007.* The Statistics Authority's statutory objective is to promote and safeguard the production and publication of official statistics that serve the public good. It is also required to promote and safeguard the quality and comprehensiveness of official statistics, and ensure good practice in relation to official statistics.

The Authority’s functions relate to its statutory areas of responsibility:

* oversight of the UK official statistics system, which includes around 30 central government departments and the devolved administrations, and the promotion, safeguarding and monitoring of quality, comprehensiveness and good practice in relation to all official statistics, wherever produced;
* production of a *Code of Practice for Statistics* and assessment of official statistics against the Code; and
* governance of the Office for National Statistics (ONS) the UK’s National Statistical Institute and the largest producer of official statistics. The Office for National Statistics (ONS) is the executive office of the UK Statistics Authority

The Statistics Authority has a strategic aim to enhance trust in the statistical system in terms of quality and impartiality. It has committed to press for the highest standards of openness and integrity in the UK statistical system, to ensure that official statistics inform and enrich the democratic process and are worthy of the trust of those who use them. Part of this will involve conducting an exercise to measure public confidence in official statistics.

**Office for National Statistics**

The Office for National Statistics (ONS) is the executive office of the UK Statistics Authority, a non ministerial department which reports directly to Parliament. ONS is the UK Government's single largest statistical producer. It functions as:

* the office of the National Statistician, who is also the UK Statistics Authority's Chief Executive and principal statistical adviser
* the UK's National Statistics Institute (or NSI - to use European terminology), and
* the 'Head Office' of the Government Statistical Service (GSS) Governance

ONS operates under two levels of governance.

* strategic oversight is provided by the Statistics Authority
* day-to-day management is the responsibility of the National Executive Group (NSEG)

The ONS is the UK Government's main survey organisation and its main producer of official statistics. It is also the central co-ordinating agency for the wider [Government Statistical Service (GSS).](http://www.ons.gov.uk/about/our-organisation/about-the-gss/index.html)

ONS is responsible for producing a wide range of key economic and social statistics which are used by policy makers across government to create evidence-based policies and monitor performance against them.

## Background

While economists have long recognised the role of tangible capital in production, the importance of intangible capital has increased only comparatively recently. This culminated in the recent reclassification of a number of intangible assets as capital items in the National Accounts under the European System of Accounts 2010.

Intangible assets are typically grouped into three categories, using a widely-cited framework developed by **Corrado, Hulton and Sichel** (2005). These are:

* **economic competencies** such as brand equity, firm-specific human capital, organisational know-how, and aspects of advertising and marketing;
* **innovative property** including scientific and non-scientific R&D, copyrights, designs and trademarks;
* **computerised information** which include software and databases.

Measuring these assets is an area of growing importance for ONS to provide a more complete picture of the UK economy. Reports by the [UK Commission for Employment and Skills](https://www.gov.uk/government/publications/uk-productivity-the-importance-of-intangible-assets) (2011) and the [OECD](https://www.oecd.org/sti/inno/46349020.pdf) (2011) note that investment in intangible assets is thought to be faster growing than tangible investment, and these sources suggest that intangibles also account for over half of all investment in the UK. More recently, the Bean Review (2016) discussed the growing importance of intangible investment given the shift from capital-intensive to knowledge-intensive production.

It is also argued that estimates of investment in intangibles may help to explain a part of the productivity puzzle ([Goodridge, Haskel, and Wallis](http://journals.sagepub.com/doi/abs/10.1177/002795011322400104), 2013). Current measurement of productivity, based primarily on the ‘tangible’ inputs of capital and labour, may not fully account for variations in performance. Understanding more about intangible assets will help to better understand the sources of growth.

Estimates of UK Intangible investment, previously commissioned by the Intellectual Property Office, were last produced in 2014 by [Goodridge, Haskel and Wallis](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561709/Estimating-UK-Investment-intangible-assets-IP-Rights.pdf) of Imperial College London. They found that in 2011 the UK invested £126.8bn in intangible assets compared to £88bn in tangible assets. Whilst intangible investment recovered since the economic downturn and grew in 2010-11, investment in tangible assets was flat.

ONS recently took over responsibility for producing measures of intangible assets and is looking to update these estimates with the latest available data. This is part of a wider piece of work to examine current coverage and measurement and identify where improvements could be made.

## Core Requirements

The core requirements of this project is to produce estimates of Intangible investment in the UK for 2015, replicating the current methodology developed by [Goodridge, Haskel and Wallis](https://www.gov.uk/government/publications/estimating-uk-investment-in-intangible-assets-and-ip-rights.html), Imperial College London (2014).

In particular the project should include

* Producing annual estimates of intangible asset investment, using current methodology developed by Imperial College London;
* Providing a detailed guide of the current methodology to estimate intangible asset investment;
* Proposing any key methodological improvements for ONS to incorporate into future development work, in particular in the areas of Entertainment, Literary and Artistic Originals (including the Games industry), and Software and Databases.

Current methodology

The methodology used to derive the estimates should be consistent with estimates developed by [Goodridge, Haskel and Wallis](https://www.gov.uk/government/publications/estimating-uk-investment-in-intangible-assets-and-ip-rights.html), Imperial College London (2014). This uses a conceptual Upstream-Downstream Framework, as applied in Corrado, Goodridge and Haskel (2011). The measurement approach is designed to be consistent with the UK National Accounts and official measures of output, income and expenditure.

Following **Corrado, Hulton and Sichel** (2005), the categories of assets to be estimated are:

* Computerised information and databases (own account software and purchased software)
* Innovative property (scientific R&D, R&D in social sciences and humanities, financial product Innovation, Design, Artistic Originals, Mineral Exploration)
* Economic Competencies (Branding, Training, Organisational)

Further details of the methodology used previously can be found in the following papers.

Goodridge, P., J. Haskel, et al. (2012). “UK Innovation Index: productivity and growth in UK industries.”

Goodridge, P., J. Haskel, et al. (2014) “Estimating UK investment in intangible assets and Intellectual Property Rights”

Timing and output

ONS expects the project to be carried out in two parts.

The first part would be to produce the annual estimates of intangible asset investment and an accompanying written report. The report will present the latest estimates and should include the conceptual and methodological approach taken, data collection and analysis, results and conclusions.

The second part would be to produce a detailed guide outlining the measurement framework used and recommendations for methodological improvements. The guide should include information on data sources used and methodological approach for individual assets. This will enable ONS to take forward further development and production of measures of Intangible investment in 2018.

The successful bidder will be required to provide progress updates throughout the duration of the project highlighting any key findings or issues that may have a bearing on the project achieving a successful outcome. The BIDDER will also be expected to present their findings at the end of the project at the ONS offices in Newport.

BIDDERS should demonstrate an ability to complete work within similar timescale as set out below.

* Start up meeting in early May
* Final report to be delivered in August
* Presentation of final results after publication

# Instructions to the Supplier

## Procurement Process

Following the issue of the SOR, the remaining stages of the Procurement comprise the following:

1. *Proposal Response Period* – the period prior to the Proposal Return Deadline where the Supplier prepares their response to the SOR;
2. *Receipt of Tenders* – the receipt and checking of all responses to the SOR received by the Contracting Body by the Proposal Return Deadline;
3. *Evaluation of Tenders* – the evaluation of the compliant Tenders received by the Contracting Body against the Selection Criteria;
4. *Conclusion of the Evaluation* – the conclusion of the evaluation and scoring of the compliant Tenders, which includes the assessment and / or approval of any award recommendation that the Contracting Body may make;
5. *Announcement of the Outcome* – the announcement by the Contracting Body of any outcome of the evaluation process to those organisations that submitted compliant Tenders;
6. *Concluding the Award* – during which the Contracting Body will assemble the final agreement to be signed by the Supplier (noting that this period expressly excludes any negotiation or further clarification – by either the Supplier or the Contracting Body – of that which the Supplier has submitted previously);
7. *Executing the agreement* – the entering-into of the agreement reached between the Supplier and the Contracting Body.

## Requirements for a compliant Proposal

A Proposal will be deemed compliant if it:

includes a response to all elements of the Selection Criteria;

includes confirmation by the Supplier that they agree to the AUTHORITY’S Standard terms and conditions contained within this SOR;

is submitted by the Supplier in a single, electronic, PDF-format file that meets with the restrictions identified within the Selection Criteria; and

is received by the Contracting Body prior to the Proposal Return Deadline.

Failure to comply with any of the above requirements may result the Proposal being rejected as ‘non-compliant’ (and thereby not receiving any further consideration or evaluation by the Contracting Body).

Please note the Proposal must not contain any sales literature or uncorroborated references.

If, having reviewed the SOR, the Supplier feels they are unable to meet the minimum requirements for the submission of a compliant Proposal, the Supplier is advised to raise a Clarification to the Contracting Body, in accordance with the procedure for raising and submitting Clarifications contained elsewhere in the SOR.

## Clarifications

The Supplier is permitted to submit Clarifications to the Contracting Body at any time prior to the Clarifications Deadline on any aspect of the SOR.

The Contracting Body will respond only to those Clarifications that are presented to the Contracting Body:

before the Clarifications Deadline;

via the Portal; and

on a table presented with the following headings:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Date of Clarification** | **Section of SOR** | **Paragraph (if relevant)** | **Page Number** | **Clarification** | **Contracting Body Response** |
|  |  |  |  |  |  |

The Contracting Body will use its best endeavours to respond to each Clarification raised within three (3) working days of receipt.

The Contracting Body will also share the responses issued to all Clarifications with all Suppliers, unless a Supplier clearly identifies that their Clarification is ‘Commercial in Confidence’. However, if in the opinion of the Contracting Body the Clarification submitted is not deemed commercial in confidence (i.e. to respond to the Clarification will require the Contracting Body to provide further information to the Supplier in order to respond to the Clarification) then the Contracting Body will provide the Supplier with an opportunity to withdraw the Clarification prior to the Contracting Body responding.

## Procurement Timetable

It is presently envisaged that the Procurement will be managed in accordance with the following indicative timetable:

| **Activity** | **Date** |
| --- | --- |
| **Issue the SOR** | **22/03/2017** |
| **Clarifications Deadline, 12:00 pm BST on:** | **11/04/2017** |
| **Proposal Return Deadline, 12:00 pm BST on:** | **21/04/2017** |
| **Conclusion of evaluation of Tenders received / Contracting Body announces the outcome of the evaluation** | **WC 01/05/2017** |
| **Contract Award** | **08/05/2017** |
| **Commencement of the Services** | **08/05/2017** |

# Selection Criteria

Compliant Proposals will be evaluated in accordance with the following Selection Criteria. Suppliers are requested to ensure that their Proposal fully addresses all requirements of this Section of the SOR.

## Format of the Proposal

All compliant Proposals should be:

submitted in single PDF-format file titles Provision of UK estimates of Investment in Intangible Assets – *XXX*.pdf” (replacing *XXX* with the name of the Supplier);

assembled using minimum 11 point Arial typeface;

inclusive of a response to all of the Selection Criteria identified below.

In addition to addressing all of the elements of the Selection Criteria, each response to the Selection Criteria should not exceed the maximum permissible word length contained within each Criterion.

## Criteria and their Weightings

The Selection Criteria and their weightings are summarised on the following table:

|  |  |
| --- | --- |
| Level 1 | Weight |
| 1 Methodology | **35%** |
|
| 2 Personnel Research Experience | **20%** |
|
| 3 Timing and Outputs | **20%** |
|
| 4 Commercials | **25%** |

## The Selection Criteria

| Criteria | Requirements | Weight |
| --- | --- | --- |
| 1  Methodology | The Supplier is expected to have an advanced knowledge of measurement of intangible assets, and expertise in identifying and addressing methodological issues surrounding the challenges in measurement.  Suppliers responses should address the following considerations with examples to provide evidence of previous quantitative analysis that have been completed with other projects:   * Demonstrate their capability and experience in relation to the measurement of intangible assets. * Demonstrate their understanding of the current conceptual and measurement framework used to produce estimates of intangible asset investments. * Show understanding of methodological issues involved in providing estimates for each individual asset. | 35% |
| 2  Personnel Research Experience | The Supplier is expected to have expertise or previous experience of measuring intangible asset investment. The Supplier should demonstrate relevant experience of carrying out quantitative research of intangible assets, applying appropriate conceptual and measurement framework, carrying out data collection and analysis and interpreting the results.  They should also have experience of working with relevant data sources used in deriving these estimates.   * The Supplier is asked to demonstrate both the skills and experience of the proposed project team, and similar work of the type requested; * Provide examples of previous quantities analysis that they have completed within other projects * Provide information on the levels of expertise of their staff, including evidence of previous work undertaken. * Provide CV’s of all key staff (added as an annex) | 20% |
| 3  Timing and Outputs | ONS expects the project to be carried out in two parts.  The first part would be to produce the annual estimates of intangible asset investment and an accompanying written report. The report will present the latest estimates and should include the conceptual and methodological approach taken, data collection and analysis, results and conclusions.  The second part would be to produce a detailed guide outlining the measurement framework used and recommendations for methodological improvements. The guide should include information on data sources used and methodological approach for individual assets. This will enable ONS to take forward further development and production of measures of Intangible investment in 2018.  The Supplier should demonstrate an ability to complete work within similar timescale as set out below.   * Start up meeting in early May * Final report to be delivered in mid July * Presentation of final results after publication * Provide progress updates throughout the duration of the project highlighting any key findings or issues that may have a bearing on the project achieving a successful outcome | 20% |
| 4  Commercial | The Supplier must supply the brake down of costs with a FIXED price. | 25% |

# 6Evaluation of Compliant Tenders

## Evaluation Process

All compliant Proposals received in response to the SOR will be evaluated in accordance with the Selection Criteria in order to select one Supplier.

The evaluation process will comprise the following steps:

1. Check for Compliance

A check for the completeness and compliance of the Proposal with the requirements of this SOR for a compliant Proposal.

Any proposals that fail these checks may be rejected by the Contracting Body for not complying with the requirements for a compliant Proposal, and may not receive further consideration or evaluation.

1. Evaluation of the compliant Proposals

An evaluation of the Proposal submitted against the Selection Criteria. During this period, the Contracting Body may clarify certain issues with the Supplier, provided always that such clarification will not involve the Supplier being required to submit further information.

Following the evaluation by individual evaluation team member, a consensus scorer will moderate of the evaluations and reach a consensus score for that element of the Proposal.

1. Conclusion of the evaluation of the compliant Proposals

All of the scoring of the compliant Proposals will be finalised, checked, and approved as a part of the Contracting Body’s governance and assurance processes. Identification of the highest-scoring Supplier will also be confirmed and approved.

1. Final Confirmation

Final confirmation from the highest-scoring Supplier of their ability to deliver the Services. This evaluation may include (but not be limited to):

* 1. Confirmation by the Supplier of availability of proposed resource identified for the proposed date of Commencement of the Services;
  2. Confirmation that the Supplier has accepted all of the terms and conditions of the proposed agreement.

Suppliers’ should note that failure to respond to any element of the Selection Criteria identified within the SOR (and expressly in the format requested) may lead to a zero score being allocated to that requirement during the evaluation. The Contracting Body cannot (and will not) make assumptions as to a Supplier’s capability without the relevant supporting evidence.

As part of the evaluation process, Suppliers’ may be required (and must be willing) to provide amplification or clarification of their Proposal. This may involve the Supplier attending interviews, make presentations and give demonstrations.

## Evaluation Methodology

The Contracting Body will score each separate element of the Selection Criteria using the following methodology:

### Selection Criteria 1, 2, 3, and 4

Each of these elements will be assessed by evaluation against the following scoring guidance:

**1 Methodology.**

|  |  |  |
| --- | --- | --- |
| **Grade** | **Score** | **Guidance** |
| Excellent  Confidence | 100% | Excellent understanding of the brief, methodological issues and challenges. Evidence of expertise in the field with multiple examples of previous work. |
| Very Good  Confidence | 90% | Evidence provided exceeds the requirements for Good Confidence but fails to achieve that for Excellent Confidence. |
| Good  Confidence | 75% | Response covers all considerations and Supplier demonstrates a good understanding of the required methodological and challenges. Good example of previous work and adequate level of expertise in the field. |
| Confidence | 50% | Evidence provided exceeds the requirements for Limited Confidence but fails to achieve that for Good Confidence. |
| Limited  Confidence | 25% | Failed to provide suitable examples and/or demonstrate understanding of methodological issues and challenges. |
| Minor  Concern | 10% | Evidence provided exceeds the requirements for Major Concern but fails to achieve that for Limited Confidence. |
| Major  Concern | 0% | Failed to answer the question and/or provide any evidence or assumptions |

**2 Personnel Research Experience.**

|  |  |  |
| --- | --- | --- |
| **Grade** | **Score** | **Guidance** |
| Excellent  Confidence | 100% | Outstanding staff team skills and experiences relevant to this project. |
| Very Good  Confidence | 90% | Evidence provided exceeds the requirements for Good Confidence but fails to achieve that for Excellent Confidence. |
| Good  Confidence | 75% | Clear and complete overview of the account team with defined roles and responsibilities and suitable skill sets |
| Confidence | 50% | Evidence provided exceeds the requirements for Limited Confidence but fails to achieve that for Good Confidence. |
| Limited  Confidence | 25% | Failed to address the majority of considerations. Unclear account structure including roles & responsibilities, and/or incomplete information on roles and relevant staff and skills sets |
| Minor  Concern | 10% | Evidence provided exceeds the requirements for Major Concern but fails to achieve that for Limited Confidence. |
| Major  Concern | 0% | Failed to answer the question and/or provide any details. |

**3 Timing and outputs**

|  |  |  |
| --- | --- | --- |
| **Grade** | **Score** | **Guidance** |
| Excellent  Confidence | 100% | Response provides detailed plan of how the Supplier will meet the timing and output requirements, including staffing information. |
| Very Good  Confidence | 90% | Evidence provided exceeds the requirements for Good Confidence but fails to achieve that for Excellent Confidence. |
| Good  Confidence | 75% | Response provides sufficient evidence of capacity to meet the timing and output requirements. |
| Confidence | 50% | Evidence provided exceeds the requirements for Limited Confidence but fails to achieve that for Good Confidence. |
| Limited  Confidence | 25% | Failed to provide adequate plan of capacity to meet the timing and output requirements |
| Minor  Concern | 10% | Evidence provided exceeds the requirements for Major Concern but fails to achieve that for Limited Confidence. |
| Major  Concern | 0% | Failed to answer the question and/or provide any details. |

### 4 Commercial

The Supplier is to note that the total lowest price will be awarded 25% and then a comparison of that lowest figure as a percentage of the other bids.

|  |  |  |
| --- | --- | --- |
| Lowest Tenderers’ Price |  | X 25 % |
| Tenderers’ Price |

**Annex 1.**

**Terms and Conditions of Contract for Services**

1. Interpretation
   1. In these terms and conditions:

|  |  |
| --- | --- |
| “Agreement” | means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes; |
| “Award Letter” | means the letter from the Customer to the Supplier printed above these terms and conditions; |
| “Central Government Body” | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:   1. Government Department; 2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); 3. Non-Ministerial Department; or 4. Executive Agency; |
| “Charges” | means the charges for the Services as specified in the Award Letter; |
| “Confidential Information” | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; |
| “Customer” | means the person named as Customer in the Award Letter; |
| “DPA” | means the Data Protection Act 1998; |
| “Expiry Date” | means the date for expiry of the Agreement as set out in the Award Letter; |
| “FOIA” | means the Freedom of Information Act 2000; |
| “Information” | has the meaning given under section 84 of the FOIA; |
| “Key Personnel” | means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing; |
| “Party” | means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them; |
| “Personal Data” | means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement; |
| “Purchase Order Number” | means the Customer’s unique number relating to the supply of the Services; |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); |
| “Services” | means the services to be supplied by the Supplier to the Customer under the Agreement; |
| “Specification” | means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter; |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time; |
| “Supplier” | means the person named as Supplier in the Award Letter; |
| “Term” | means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement; |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

* 1. In these terms and conditions, unless the context otherwise requires:
     1. references to numbered clauses are references to the relevant clause in these terms and conditions;
     2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
     3. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
     4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
     5. the word ‘including’ shall be understood as meaning ‘including without limitation’.

1. Basis of Agreement
   1. The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
   2. The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within [7] days of the date of the Award Letter.
2. Supply of Services
   1. In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
   2. In supplying the Services, the Supplier shall:
      1. co-operate with the Customer in all matters relating to the Services and comply with all the Customer’s instructions;
      2. perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
      3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
      4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
      5. comply with all applicable laws; and
      6. provide all equipment, tools and vehicles and other items as are required to provide the Services.
   3. The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.
3. Term
   1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
   2. The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days’ notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.
4. Charges, Payment and Recovery of Sums Due
   1. The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
   2. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
   3. The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
   4. In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
   5. If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
   6. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
   7. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
   8. Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
      1. provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
      2. a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
      3. In this clause 5.8, “sub-contract” means a contract between two or more Suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
   9. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.
5. Premises and equipment
   1. If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer’s premises by the Supplier or the Staff shall be at the Supplier’s risk.
   2. If the Supplier supplies all or any of the Services at or from the Customer’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer’s premises, remove the Supplier’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer’s premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer’s premises or any objects contained on the Customer’s premises which is caused by the Supplier or any Staff, other than fair wear and tear.
   3. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
   4. The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer’s premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer’s security requirements.
   5. Where all or any of the Services are supplied from the Supplier’s premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
   6. Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
   7. The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.
6. Staff and Key Personnel
   1. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
      1. refuse admission to the relevant person(s) to the Customer’s premises;
      2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
      3. require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

* 1. The Supplier shall:
     1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
     2. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer’s premises in connection with the Agreement; and
     3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
  2. Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
  3. Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

1. Assignment and sub-contracting
   1. The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
   2. Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
   3. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier’s obligations under the Agreement.
2. Intellectual Property Rights
   1. All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
   2. All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
   3. The Supplier hereby grants the Customer:
      1. a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
      2. a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
         * 1. any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
           2. any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

* 1. The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

1. Governance and Records
   1. The Supplier shall:
      1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
      2. submit progress reports to the Customer at the times and in the format specified by the Customer.
   2. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer’s representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.
2. Confidentiality, Transparency and Publicity
   1. Subject to clause 11.2, each Party shall:
      1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
      2. not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Agreement.
   2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
      1. where disclosure is required by applicable law or by a court of competent jurisdiction;
      2. to its auditors or for the purposes of regulatory requirements;
      3. on a confidential basis, to its professional advisers;
      4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
      5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier’s obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier’s confidentiality obligations under the Agreement; and
      6. where the receiving Party is the Customer:
         * 1. on a confidential basis to the employees, agents, consultants and contractors of the Customer;
           2. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
           3. to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
           4. in accordance with clause .

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

* 1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
  2. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

1. Freedom of Information
   1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
      2. transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
      3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
      4. not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
   2. The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.
   3. Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.
2. Protection of Personal Data and Security of Data
   1. The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
   2. Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:
      1. ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
      2. provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
      3. promptly notify the Customer of:
         * 1. any breach of the security requirements of the Customer as referred to in clause ; and
           2. any request for personal data; and
      4. ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer’s obligations under the DPA.
   3. When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.
3. Liability
   1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
   2. Subject always to clauses 14.3 and 14.4:
      1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
      2. except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Customer for any:
         * 1. loss of profits;
           2. loss of business;
           3. loss of revenue;
           4. loss of or damage to goodwill;
           5. loss of savings (whether anticipated or otherwise); and/or
           6. any indirect, special or consequential loss or damage.
   3. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
      1. death or personal injury caused by its negligence or that of its Staff;
      2. fraud or fraudulent misrepresentation by it or that of its Staff; or
      3. any other matter which, by law, may not be excluded or limited.
   4. The Supplier’s liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.
4. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

1. Termination
   1. The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
   2. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
      1. (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
      2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
      3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
      4. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
      5. breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
      6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause ) in consequence of debt in any jurisdiction; or
      7. fails to comply with legal obligations in the fields of environmental, social or labour law.
   3. The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
   4. The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
   5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
   6. Upon termination or expiry of the Agreement, the Supplier shall:
      1. give all reasonable assistance to the Customer and any incoming Supplier of the Services; and
      2. return all requested documents, information and data to the Customer as soon as reasonably practicable.
2. Compliance
   1. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer’s premises and which may affect the Supplier in the performance of its obligations under the Agreement.
   2. The Supplier shall:
      1. comply with all the Customer’s health and safety measures while on the Customer’s premises; and
      2. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
   3. The Supplier shall:
      1. perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer’s equality and diversity policy as provided to the Supplier from time to time; and
      2. take all reasonable steps to secure the observance of clause  by all Staff.
   4. The Supplier shall supply the Services in accordance with the Customer’s environmental policy as provided to the Supplier from time to time.
   5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
      1. the Official Secrets Acts 1911 to 1989; and
      2. section 182 of the Finance Act 1989.
3. Prevention of Fraud and Corruption
   1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
   2. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
   3. If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
      1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
      2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.
4. Dispute Resolution
   1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
   2. If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
   3. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
5. General
   1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
   2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
   3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
   4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
   5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
   6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
   7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
   8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
6. Notices
   1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause , e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
   2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
   3. Notices under clauses  (Force Majeure) and (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause .
7. Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

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The information contained in this document is correct as at 3rd November 2016

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1. Information on the Government’s Document Classification System can be found on the following link: https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/251480/Government-Security-Classifications-April-2014.pdf [↑](#footnote-ref-1)