

Award Form

This Award Form creates the Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

The Parties intend that this Award Form will not oblige the Buyer to buy or the Supplier to supply Deliverables. The Parties agree that when a Buyer seeks Deliverables from the Supplier under the Contract, the Buyer and Supplier will agree and execute a Statement of Work (in the form of the template set out in Appendix 1 to this Award Form.

Upon the execution of each Statement of Work it shall become incorporated into the Buyer and Supplier's Contract.

1.	Buyer	The Health and Social Care Information Centre (known as NHS Digital) 7 & 8 Wellington Place, Leeds, LS1 4AP
2.	Supplier	Name: Thompson Brand Partners Ltd Address: The Old Stables, Springwood Gardens, Leeds, LS8 2QB Registration No: 03745303
3.	Contract	This Contract between the Buyer and the Supplier is for the supply of Deliverables. This opportunity is advertised in the UK Find a Tender and Contracts Finder services
4.	Contract Reference	C38826
5.	Deliverables	The supply of end-to-end marketing/communications services as specified by the Buyer in the form of complete Statements of Work as called-off from time-to-time by the Buyer during the life of the Contract. Contract value not to exceed an annual average of £500,000 over the life of the contract. See Schedule 2 (Specification) for further details
6.	Start Date	13 December 2021
7.	End Date	12 December 2023
8.	Extension Period	Up to two additional 12 month Extension Periods

9.	Incorporated Terms (together these documents form the 'the Contract')	<p>The following documents are incorporated into the Contract. Where numbers are missing we are not using these Schedules. If the documents conflict, the following order of precedence applies:</p> <ol style="list-style-type: none">1. This Award Form including any executed Statement of Work2. Any Special Terms (see Section 10 Special Terms in this Award Form)3. Core Terms (version 1.0)4. Schedule 1 (Definitions)5. The following Schedules (in equal order of precedence):
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- Schedule 2 (Specification)
- Schedule 3 (Charges)
- Schedule 5 (Commercially Sensitive Information)
- Schedule 11 (Continuous Improvement)
- Schedule 12 (Benchmarking)
- Schedule 18 (Supply Chain Visibility)
- Schedule 21 (Variation Form)
- Schedule 24 (Financial Difficulties)
- Schedule 26 (Corporate Social Responsibility)
- Schedule 4 (Tender) as long as any part of the Tender that offers a better commercial position for the Buyer takes precedence over the documents above

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10	Special Terms	<p>Special Term 1: Statement of Work</p> <p>The following wording shall be included as a new Clause 2.78 of the Core Terms</p> <p>2.7 Where a Statement of Work would result in:</p> <ul style="list-style-type: none"> a) a variation of the Services procured under this Contract; b) an increase in the Charges agreed under this Contract; or c) a change in the economic balance between the Parties to the detriment of the Buyer that is not provided for in this Contract, <p>the relevant term(s) will be dealt with as a proposed Variation to this Contract in accordance with the Variation procedure set out in Clause 24.</p> <hr/> <p>Special Term 2: Cyber Security Requirements2</p> <p>The following wording shall be included as a new Clause 3.4 of the Core Terms:</p> <p>The Supplier warrants and represents that it has complied with and throughout the Contract Period will continue to comply with the Cyber Security Requirements. The “Cyber Security Requirements” means:</p> <ul style="list-style-type: none"> a) compliance with the data security and protection toolkit (DSP Toolkit), an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian’s 10 data security standards and supports key requirements of the GDPR, which can be accessed from https://www.dsptoolkit.nhs.uk/, as may be amended or replaced by the Buyer or the Department of Health and Social Care from time to time; b) such requirements as are identified by the Buyer in its Security Policy (if applicable); and c) any other cyber security requirements relating to the Services notified to the Supplier by the Buyer from time to time; <hr/> <p>Special Term 3: Supplier Staff</p> <p>The following wording shall be included as a new Clause 7.6 of the Core Terms of the Contract:</p> <p>7.6 Notwithstanding that Schedule 16 (Security) has not been incorporated into this Order Form under the section headed “INCORPORATED TERMS”, paragraph 3.4.3 of Part B of Schedule 16 (Security) shall apply to this Order Form in any event.</p>
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		<p>Special Term 4: Intellectual Property Rights (IPRs)</p> <p>Clause 9 of the Core Terms shall be deleted in its entirety and replaced with the following new Clause 9:</p> <p>9.1. All New IPR shall vest in the Buyer absolutely, and the Supplier hereby assigns to the Buyer, absolutely with full title guarantee (and free from all third party rights), any and all of its rights, title and interest in and to all the existing and future New IPR, to the fullest extent permitted by law.</p> <p>9.2. The Supplier hereby grants the Buyer a perpetual, royalty-free, irrevocable, worldwide, non-exclusive licence (with a right freely to sub-license to any third party) to use all the present and future Existing IPR that is owned by the Supplier and/or the use of which the Supplier is able to license, including any modifications to or derivative versions of any such Existing IPR, which the Buyer reasonably requires in order to exercise its rights under and to take the full benefit of the Contract including the Services provided, including, without limitation, to receive, use, re-use, adapt, modify, reproduce, exploit, produce derivative versions of, supply and/or publish (including as open source software) or deal in any other way with the Deliverables.</p> <p>9.3. Each Party undertakes that it shall promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or desirable to vest all the New IPR in, and to register it in, the name of the Buyer and/or to give full effect to the licences granted under this Clause 9.</p> <p>9.4 The Supplier:</p> <p>9.4.1. warrants that the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables by the Buyer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and</p> <p>9.4.2. shall indemnify, and keep indemnified, the Buyer in full against all costs, expenses, damages and losses (whether direct or indirect), including but not limited to any interest, penalties, and legal and other professional fees awarded against or incurred or paid by the Buyer as a result of or in connection with any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use, re-use, reproduction, exploitation, supply and/or publication</p>
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		<p>(including as open source software) of the Services or Deliverables.</p> <p>9.5. All Existing IPR is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom that Party's right to use the Existing IPR has derived) and nothing in this Contract shall operate to transfer any Existing IPR of one Party to the other.</p> <p>9.6. The Buyer hereby grants to the Supplier, for the Contract Period, a non-exclusive, royalty-free, non-transferable licence to use any New IPR or any Existing IPR that is owned by the Buyer and/or the use of which the Buyer is able to license, to the extent such use is necessary for the purpose of the Supplier performing its obligations under this Contract and/or providing the Services and Deliverables.</p> <p>9.7. The Supplier shall:</p> <p>9.7.1. identify any third-party licences for software or other Intellectual Property Rights which are required for the receipt and use of the Services or the Deliverables by the Buyer;</p> <p>9.7.2. procure that the third party owner of such software or Intellectual Property Rights grants to the Buyer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Buyer an authorised sub-licence, to use, reproduce, modify, develop and maintain the software and Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Buyer to sub-license, transfer, novate or assign to any other Contracting Authority or to any other third party supplying goods and/or services to the Buyer; and</p> <p>9.7.3. pay any applicable fees for any such licence.</p> <p>Special Term 5: Execution and Counterparts</p> <p>The following wording shall be included as new Clause 36 of the Core Terms:</p> <p>36 Execution and Counterparts</p> <p>36.1 This Contract may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.</p>
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		<p>Special Term 6: Definitions</p> <p>For the purposes of incorporation of Schedule 1 (Definitions) of the Core Terms, the following definitions shall be added (and where such terms are already defined, such definitions shall be replaced with the corresponding definitions below):</p> <table><tr><td>"Advertising Regulations"</td><td>any present or future applicable code of practice or adjudication of the Committee of Advertising Practice, Broadcast Committee of Advertising Practice or the Advertising Standards Authority (including any applicable modification, extension or replacement thereof), together with other UK laws, statutes and regulations which are directly applicable to the Services;</td></tr><tr><td>"Contracting Authority"</td><td>means as defined in the Public Contracts Regulations 2015;</td></tr><tr><td>"Deliverables"</td><td>means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Contract or otherwise arising out of or in connection with the provision of the Services;</td></tr><tr><td>"Intellectual Property Rights" or "IPR"</td><td>means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets)</td></tr></table>	"Advertising Regulations"	any present or future applicable code of practice or adjudication of the Committee of Advertising Practice, Broadcast Committee of Advertising Practice or the Advertising Standards Authority (including any applicable modification, extension or replacement thereof), together with other UK laws, statutes and regulations which are directly applicable to the Services;	"Contracting Authority"	means as defined in the Public Contracts Regulations 2015;	"Deliverables"	means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Contract or otherwise arising out of or in connection with the provision of the Services;	"Intellectual Property Rights" or "IPR"	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets)
"Advertising Regulations"	any present or future applicable code of practice or adjudication of the Committee of Advertising Practice, Broadcast Committee of Advertising Practice or the Advertising Standards Authority (including any applicable modification, extension or replacement thereof), together with other UK laws, statutes and regulations which are directly applicable to the Services;									
"Contracting Authority"	means as defined in the Public Contracts Regulations 2015;									
"Deliverables"	means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Contract or otherwise arising out of or in connection with the provision of the Services;									
"Intellectual Property Rights" or "IPR"	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets)									

			and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
		"New IPR"	a) IPR in the Deliverables; and/or b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same; but shall not include the Supplier's Existing IPR;
		<p>Also, the following wording shall be included as a new Clause 37 of the Core Terms:</p> <p>37 Advertising Standards</p> <p>37.1 Both parties acknowledge that they have a responsibility to comply with all relevant Advertising Regulations.</p> <p>37.2 The parties will co-operate with each other to ensure satisfaction of the requirements of any applicable Advertising Regulation.</p> <p>Special Term 7:</p> <p>The following wording shall be included as a new Clause 38 of the Core Terms:</p> <p>38 Appointment of Subcontractors</p> <p>38.1 The Supplier shall exercise due skill and care in the selection of any Subcontractors to ensure that the Supplier is able to: manage any Subcontractors in accordance with Good Industry Practice; comply with its obligations under this Contract in the Delivery of the Services; and assign, novate or otherwise transfer to the Buyer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.</p> <p>38.2 Prior to subcontracting any of its obligations under this Contract, the Supplier shall notify the Buyer and provide the Buyer with: the proposed Subcontractor's name, registered office and company</p>	

		<p>registration number; the scope of any Services to be provided by the proposed Subcontractor; and where the proposed Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Sub-Contract has been agreed on "arm's-length" terms.</p> <p>38.3 If requested by the Buyer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 38.2, the Supplier shall also provide: a copy of the proposed Sub-Contract; and any further information reasonably requested by the Buyer.</p> <p>38.4 The Buyer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 38.2 (or, if later, receipt of any further information requested pursuant to Clause 38.3), object to the appointment of the relevant Subcontractor if they consider that: the appointment of a proposed Subcontractor may prejudice the provision of the Services or may be contrary to the interests respectively of the Buyer under this Contract; the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other Buyers; and/or the proposed Subcontractor employs unfit persons, in which case, the Supplier shall not proceed with the proposed appointment.</p> <p>38.5 If the Buyer has not notified the Supplier that it objects to the proposed Subcontractor's appointment by the later of ten (10) Working Days of receipt of: the Supplier's notice issued pursuant to Clause 38.2; and any further information requested by the Buyer pursuant to Clause 38.3, the Supplier may proceed with the proposed appointment.</p>
11	Buyer's Environmental Policy	<p>Available online at: Sustainable development management plan summary report 2017-2022 - NHS Digital</p>
12	Buyer's Security Policy	<p>Guidance on Data Security and Information governance available online at: Data security and information governance - NHS Digital</p>
13	Social Value Commitment	<p>The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with the social value commitments in Schedule 4 (Tender)</p>
14	Commercially Sensitive Information	<p>Supplier's Commercially Sensitive Information: Schedule 5</p>