



Department  
of Health

Invitation to Compete

**for Supply Chain Future Operating Model - Provision of Supporting  
Technologies and Infrastructure Services**

Attachment 4 - Terms of Participation

**Supply Chain Future Operating Model  
Supporting Technologies and Infrastructure Services  
Attachment 4  
Terms of Participation**

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## Contents

1.	INTRODUCTION .....	3
2.	INTERPRETATION .....	3
3.	CONDUCT - GENERAL.....	3
4.	CONDUCT - SPECIFIC OBLIGATIONS .....	3
5.	RESPONSE REQUIREMENTS .....	5
6.	RIGHT TO VERIFY INFORMATION .....	6
7.	RIGHT TO CANCEL OR VARY THIS PROCUREMENT .....	7
8.	RIGHT TO EXCLUDE.....	8
9.	STATUS OF THE INVITATION TO COMPETE.....	9
10.	AWARDING THE CONTRACT .....	9
11.	COSTS .....	10
12.	CONFIDENTIALITY .....	10
13.	FREEDOM OF INFORMATION .....	11
14.	TRANSPARENCY.....	12
15.	DATA PROTECTION .....	13
16.	INTELLECTUAL PROPERTY RIGHTS .....	13
17.	PUBLICITY .....	13
18.	NO INDUCEMENT OR INCENTIVE .....	14
19.	LAW AND JURISDICTION .....	14
20.	SMALL AND MEDIUM ENTERPRISES .....	14
21.	WARRANTIES .....	14
22.	CONTRACTUAL ISSUES .....	15
23.	COPYRIGHT.....	15

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

**1. INTRODUCTION**

- 1.1 These Terms of Participation should be read in conjunction with the Invitation to Compete and form part of the Invitation to Compete.
- 1.2 These Terms of Participation set out the conditions of participation in this Procurement, including:
- 1.2.1 rules in relation to the conduct of Potential Providers; and
  - 1.2.2 specific rights of the Authority and limits to the Authority's liability, which apply throughout this Procurement.

**2. INTERPRETATION**

- 2.1 Except where specified or the context requires, capitalised expressions in these Terms of Participation shall have the meaning given to them in the Glossary (Attachment 3). In these Terms of Participation any reference to 'person' includes, but is not limited to, any person, firm, body or association, corporate or incorporate.

**3. CONDUCT - GENERAL**

- 3.1 The Potential Provider shall abide by these Terms of Participation and any instructions given in the Invitation to Compete.
- 3.2 An obligation on the Potential Provider to do, or to refrain from doing, any act or thing under the Invitation to Compete including these Terms of Participation, shall include an obligation upon the Potential Provider to procure that all its directors, office holders, staff, members of its Group of Economic Operators (if it acts as Lead Contact), companies within its Group, Sub-Contractors, its advisers or agents involved or connected with this Procurement also do, or refrain from doing, such act or thing.

**4. CONDUCT - SPECIFIC OBLIGATIONS**

- 4.1 By participating in this Procurement, the Potential Provider warrants (without limitation to any other warranties in these Terms of Participation or elsewhere in the Invitation to Compete) that:
- 4.1.1 it has made sufficient enquiries and has received sufficient information from the Authority (including information provided within the Data Room) to fully understand the requirements of this Procurement and agree to provide the Services in accordance with the terms of Contract;
  - 4.1.2 in furtherance of the obligation under paragraph 3.2, it has supplied a copy of the Invitation to Compete, including these Terms of Participation, to all members of its Group of Economic Operators (if bidding as a Lead Contact) and any Sub-Contractors named in any of its submissions in response to the Invitation to Compete;
  - 4.1.3 it has all the requisite corporate authority to sign all documentation included or connected to the Procurement requiring signature;

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

- 4.1.4 all the information contained in any of its Responses and any other information submitted to the Authority during the Procurement (including all Tenders) is accurate and true and the Potential Provider undertakes to notify the Authority of any changes as soon as practicable; and
- 4.1.5 it has complied with all the requirements set out in the Invitation to Compete, including these Terms of Participation.
- 4.2 Contact during this Procurement exercise and canvassing
- 4.2.1 The Potential Provider must not directly or indirectly canvass any Minister, officer, public sector employee, member, advisor or agent of the Authority, the Department of Health, NHS Improvement, the Cabinet Office or HM Treasury regarding this Procurement or attempt to obtain any information from the same regarding this Procurement (except where and as permitted by the Invitation to Compete). Any attempt by the Potential Provider to do so may result in the Potential Provider's disqualification from this Procurement.
- 4.3 Non-solicitation of staff
- 4.3.1 The Potential Provider agrees that it will not canvass or solicit any member of staff of the Authority, the Department of Health, NHS Improvement, the Cabinet Office or HM Treasury (or their advisors or any other persons employed or engaged by them) for the purpose of offering that person employment or any other form of remuneration in connection with this Procurement. This agreement will be enforced for as long the Potential Provider remains a party to this Procurement and for a period of six months after any contract award to the Potential Provider.
- 4.4 Collusive behaviour
- 4.4.1 A Potential Provider must not:
- 4.4.1.1 fix or adjust any element of its Responses by agreement or arrangement with any other person, except where such prohibited acts are undertaken with persons who are also participants in the Potential Provider's Response, such as members of its Group of Economic Operators (if it acts as a Lead Contact), companies within its Group or Sub-Contractors, or where disclosure to such person is made in confidence in order to obtain quotations necessary for the preparation of its Response or to obtain any necessary security;
- 4.4.1.2 communicate with any person other than the Authority the value, price or rates set out in its Response or information which would enable the precise or approximate value, price or rates to be calculated by any other person, except where such communication is undertaken with persons who are also participants in the Potential Provider's Response, such as members of its Group of Economic Operators (if it acts as a Lead Contact), companies within its Group or Sub-Contractors, or where disclosure to such person is made in

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

- confidence in order to obtain quotations necessary for the preparation of its Response or to obtain any necessary security;
- 4.4.1.3 enter into any agreement or arrangement with any other person, so that person refrains from submitting a Response;
- 4.4.1.4 share, permit or disclose to another person, access to any information relating to its Responses or any other information submitted to the Authority; or
- 4.4.1.5 offer or agree to pay or give or do pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any other person for doing or having done or causing or having caused to be done in relation to its Responses, any act or omission.
- 4.4.2 If a Potential Provider breaches paragraph 4.4.1, the Authority may (without prejudice to any other criminal or civil remedies available to it) exclude the Potential Provider from further participation in this Procurement.
- 4.4.3 The Authority may require a Potential Provider to put in place any procedures or undertake any such action(s) that the Authority in its sole discretion considers necessary to prevent or curtail any collusive behaviour.

**5. RESPONSE REQUIREMENTS**

- 5.1 A fully compliant Response must adhere to the following instructions:
- 5.1.1 it must be submitted in the English (UK) language;
- 5.1.2 Arial font size 10 as a minimum and line spacing must be 1.0 or more;
- 5.1.3 all questions must be answered accurately and as fully as possible, within any word / character or page limits specified. The Authority will disregard any part of a response to a question which exceeds the specified word, character or page limit (i.e. the excess will be disregarded, not the whole response);
- 5.1.4 all pages of the Response must be sequentially numbered (including any forms to be completed and returned);
- 5.1.5 the Potential Provider must submit its Response in a editable format: non-editable documents will not be accepted;
- 5.1.6 no additional attachments should be submitted with a Response (unless specifically requested by the Authority);
- 5.1.7 save as provided in this paragraph or as expressly provided in the relevant question, questions should not be answered by cross referring to other answers or to other materials (e.g. annual company reports located on a web site), and each question answered must be complete in its own right. Potential Providers may provide evidence in their responses to questions SQ6.4 to SQ6.14 of the Selection Questionnaire by making reference in such responses to their answers in response to question SQ6.1 to SQ6.3 of the Selection Questionnaire;

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

- 5.1.8 it must meet the stated requirements as to format, structure, instructions and supporting documentation required for each element of the Response. Use of diagrams is permitted where relevant but diagrams are included within the page limit (if applicable). Annexes, attachments and supporting materials (other than those specifically requested) will not be considered as part of the evaluation process and, if provided, will be ignored; and
- 5.1.9 documents must not be embedded within other documents. Instead, Potential Providers should provide separate electronic copies of any submitted documents, clearly labelled and referenced if necessary.
- 5.2 It is the Potential Provider's responsibility to:
- 5.2.1 ensure that fully compliant Responses are submitted;
- 5.2.2 ensure that the latest versions of the relevant documents and Attachments are used; and
- 5.2.3 allow plenty of time for the entering of Responses into BMS.
- 5.3 Responses must be received by the Authority before the relevant deadlines stated in the Invitation to Compete (as any such deadlines may be updated by the Authority through BMS). Potential Providers should note that Responses received on or after the time (e.g. 15:00 hrs) given for each deadline will be considered irregular and may be excluded from this Procurement.
- 5.4 Potential Providers may only modify and resubmit a Response at any time prior to the relevant deadline. Potential Providers wishing to submit a new or modified Response after uploading it on BMS, but prior to any applicable deadline in the timetable, should contact the Authority email box [SupportingTechnologies@dh.gsi.gov.uk](mailto:SupportingTechnologies@dh.gsi.gov.uk) to advise that a replacement Response is being submitted. The Potential Provider will then be advised of the process for re-submission.
- 5.5 Potential Providers may withdraw from this Procurement at any stage by choosing not to submit a Response. In that case, Potential Providers should inform the Authority by email to [SupportingTechnologies@dh.gsi.gov.uk](mailto:SupportingTechnologies@dh.gsi.gov.uk) as soon as they have made their decision to no longer proceed with this Procurement.
- 5.6 It is the Potential Provider's responsibility to contact the BMS helpdesk to resolve any problems with the electronic submission of a Response or any other information to be submitted to the Authority and Potential Providers should leave sufficient time to do so before the relevant submission deadline. Assistance is available from the BMS helpdesk between 10am and 4pm, Monday to Friday (excluding public and bank holidays) by calling telephone number 0113 254 5777.
- 6. RIGHT TO VERIFY INFORMATION**
- 6.1 The Authority may contact (or may require the Potential Provider to contact on its behalf) any of the Potential Provider's customers, members of its Group of Economic Operators (if it acts as Lead Contact), Sub-Contractors or other third parties to whom information relates in the Potential Provider's Responses, to ask that they verify that such information is accurate and true.

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

- 6.2 The Authority reserves the right to seek third party independent advice or assistance to validate Responses submitted by a Potential Provider and/or to assist in the evaluation process.
- 6.3 The Authority reserves the right to conduct site visits of any premises indicated by the Potential Provider to be used in connection with the Potential Provider's provision of the Services and/or conduct audits at the premises at any time during this Procurement.
- 6.4 The Authority may require the Potential Provider to clarify aspects of its Responses in writing and/or provide additional information. Failure to respond adequately and/or within any specified timescale may result in the rejection of the Potential Provider's Responses and its elimination from further participation in all or part of this Procurement.
- 6.5 Should the successful Potential Provider be unable to provide the necessary proof of information previously self-certified by that Potential Provider and/or if information given by a Potential Provider in any Response or any other information to be submitted to the Authority is found by the Authority to be false or misleading, the Authority reserves the right to disqualify the Potential Provider from any further participation in this Procurement and not to award a contract to it. In the event that the Authority elects to disqualify the successful Potential Provider in such circumstances, the Authority reserves the right to award a contract to the next ranking (at the last competitive stage) Potential Provider.
- 6.6 If the Authority considers that any pricing proposed by a Potential Provider as part of any Response is abnormally low, the Authority may ask the Potential Provider to explain its price or costs. If, following the Potential Provider's explanations, the Authority is not satisfied with the Potential Provider's account of its reasons for the low level of price or cost in the relevant Response, the Authority may reject the Response in accordance with rejection by the Regulations.

**7. RIGHT TO CANCEL OR VARY THIS PROCUREMENT**

- 7.1 The Authority reserves the right, subject to the Regulations, to:
- 7.1.1 change the basis of or the procedures for this Procurement at any time;
  - 7.1.2 amend, clarify, add to or withdraw all or any part of the Invitation to Compete at any time during this Procurement, including varying any timetable or deadlines set out in the Invitation to Compete;
  - 7.1.3 cancel all or part of this Procurement at any stage at any time, including for the reason stated in paragraph 7.3 below; and
  - 7.1.4 not award a contract for some or all of the Services for which Tenders are invited.
- 7.2 Potential Providers accept and acknowledge that, and in accordance with the Regulations, the Authority is not bound to accept any Responses or award a contract with any Potential Provider at all.
- 7.3 If the Authority deems that none of the Responses are satisfactory, it reserves the right to terminate all or part of this Procurement.

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

**8. RIGHT TO EXCLUDE**

- 8.1 The Authority may exclude a Potential Provider from this Procurement if the Potential Provider fails to provide to the Authority:
- 8.1.1 any information requested;
  - 8.1.2 a full and satisfactory response to any question or information request;
  - 8.1.3 a response to the Authority's queries, within any specified timescales; and/or
  - 8.1.4 on request any documentation referred to in its Responses.
- 8.2 The Authority may exclude a Potential Provider from any participation in this Procurement at any stage, if the Potential Provider:
- 8.2.1 fails to comply fully with the requirements of this Procurement as set out in the Invitation to Compete;
  - 8.2.2 has breached these Terms of Participation; and/or
  - 8.2.3 has committed a wilful omission or misrepresentation in its Responses or any other information to be submitted to the Authority.
- 8.3 Where the Authority has the right to exclude a Potential Provider under these Terms of Participation or the Invitation to Compete it may (in its sole discretion):
- 8.3.1 exclude the affected Response but allow the Potential Provider to participate as member of a Group of Economic Operators or Sub-Contractor in another Response; or
  - 8.3.2 completely exclude the Potential Provider from any involvement in this Procurement in its own name, or as member of a Group of Economic Operators or Sub-Contractor in another Response.
- 8.4 Potential Providers are under a continuing obligation to notify the Authority of any actual or potential conflict of interest. Potential Providers are therefore advised to review carefully their prior or current involvement with the Authority, and to identify any such conflict, notifying the Authority, using the Conflicts of Interest Declaration (Attachment 19), through BMS prior to submission of their Selection Stage Response and at any time thereafter when they identify such conflict. For example, a potential conflict may arise where a key person (those individuals who have power to influence a competitive bid) has any relatives in senior positions within the Authority and should be disclosed using the Conflicts of Interest Declaration, if not disclosed earlier at the Selection Stage. The Authority may exclude a Potential Provider from any involvement in this Procurement where the Authority considers there is an actual or potential conflict of interest.
- 8.5 The Authority may exclude a Potential Provider from participation in this Procurement where there is a change in identity, control, financial standing or other factor impacting on the selection and/or award process, which would affect or would have affected the Authority's evaluation of the Potential Provider's Responses in accordance with the Regulations. This change or other factor may apply to a single entity Potential Provider or a member of a Group of Economic Operators and/or Sub-Contractors.

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

**9. STATUS OF THE INVITATION TO COMPETE**

- 9.1 No information contained in the Invitation to Compete or in any communication made between the Authority and a Potential Provider in connection with this Procurement shall be relied upon as constituting agreement or representation that any contract shall be entered into in accordance with the Potential Provider's Response or at all.
- 9.2 The Authority shall not be committed to any course of action as a result of:
- 9.2.1 issuing the Invitation to Compete relating to this Procurement;
  - 9.2.2 any communications with Potential Providers or their representatives, agents or advisers in respect of this Procurement; and/or
  - 9.2.3 any communications between Potential Providers, the Authority and any other party (whether directly or through their agents or representatives) in respect of this Procurement.
- 9.3 The Invitation to Compete has been prepared in good faith but does not purport to be a comprehensive statement of all matters relevant to this Procurement nor has it been independently verified. Neither the Authority nor its advisers, directors, officers, members, employees or other staff or agents:
- 9.3.1 accept any liability or responsibility for the adequacy, accuracy or completeness of the Invitation to Compete and its accompanying documents (including all documents in the Data Room); and/or
  - 9.3.2 make any representation or warranty, express or implied, with respect to the information the Invitation to Compete contains nor shall any of them be liable for any loss of damage arising as a result of reliance on such information or any subsequent communication.
- 9.4 The Potential Provider shall form its own conclusions and make its own independent assessment of the requirements of the terms of the Contract and should seek its own financial and legal advice about the methods and resources needed to meet the Authority's requirements.
- 9.5 The Authority does not accept responsibility for the Potential Providers' assessment of the requirements of this Procurement.
- 9.6 The Potential Provider is responsible at its own expense, for obtaining all information required to prepare its Responses.
- 9.7 Any exclusions of liability of the Authority in this paragraph 9 do not apply to the extent of any deceit or fraudulent misrepresentation made by or on behalf of the Authority.

**10. AWARDING THE CONTRACT**

- 10.1 The Potential Provider undertakes that, in the event of its Final Tender being accepted by the Authority and the Authority confirming in writing such acceptance to the Potential Provider, the Potential Provider shall execute the terms of Contract as amended to accommodate aspects of the Final Tender within 5 calendar days (or any other longer period

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

of time as determined by the Authority at its sole discretion) of being called upon to do so by the Authority.

**11. COSTS**

- 11.1 The Authority will not reimburse any costs incurred by a Potential Provider (including the costs or expenses of any members of its Group of Economic Operators (if acting as a Lead Contact), Sub-Contractors, agents or advisors) in connection with any aspect of the Procurement (including the Dialogue and the preparation and/or submission of the Potential Provider's Responses), including (without limit) where:
- 11.1.1 this Procurement is cancelled, shortened or delayed for any reason (including, without limitation, where such action is necessary due to non-compliance or potential non-compliance with the law, including the Regulations);
  - 11.1.2 all or any part of the Invitation to Compete is at any time amended, clarified, added to or withdrawn for any reason;
  - 11.1.3 a contract is not awarded in respect of some or all of the Services for which Tenders are invited; or
  - 11.1.4 the Potential Provider is disqualified from participation in this Procurement for any reason, including breach of these Terms of Participation.

**12. CONFIDENTIALITY**

- 12.1 Subject to the exceptions referred to in paragraph 12.2, the contents of the Invitation to Compete are being made available by the Authority on the conditions that the Potential Provider:
- 12.1.1 treats the Confidential Information as confidential at all times, unless the Confidential Information is already in the public domain;
  - 12.1.2 does not disclose, copy, reproduce, distribute or pass any of the Confidential Information to any other person at any time or allow any of these things to happen, except where, and to the extent that, the Confidential Information has been publicised in accordance with paragraph 13 (Freedom of Information) or paragraph 14 (Transparency);
  - 12.1.3 only uses the Confidential Information for the purposes of preparing its Responses (or deciding whether to respond); and
  - 12.1.4 does not undertake any promotional or similar activity related to this Procurement within any section of the media during this Procurement.
- 12.2 A Potential Provider may disclose any of the Confidential Information to members of its Group of Economic Operators (if acting as a Lead Contact), Sub-Contractors, advisers or to any other person provided that:
- 12.2.1 this is done for the sole purpose of enabling the Potential Provider to submit its Responses and the person receiving the Confidential Information undertakes in writing (such written undertaking to be made available to the Authority on the Authority's request) to keep the Confidential Information confidential on the same terms imposed by these Terms of Participation; or

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

- 12.2.2 it obtains the Authority's prior written consent in relation to such disclosure, distribution or passing of Confidential Information; or
  - 12.2.3 the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to this Procurement; or
  - 12.2.4 the Potential Provider is legally required to make such a disclosure; or
  - 12.2.5 the Confidential Information has been published in accordance with paragraph 13 below (Freedom of Information) or paragraph 14 below (Transparency).
- 12.3 The Authority may disclose information submitted by Potential Providers during this Procurement to its officers, employees, agents or advisers or other Government organisations who are stakeholders in this Procurement.
- 12.4 The provisions of paragraphs 12 and 1 of the introduction to the Selection Questionnaire apply to information submitted to and obtained by the Authority in relation to the assessment of past performance of Potential Providers.
- 12.5 All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross Government role delivering overall Government policy on public procurement - including ensuring value for money and related aspects of good procurement practice.
- 12.6 For the reasons set out in paragraph 12.5, the Authority may disclose within HM Government any of the Potential Provider's Responses or any other information to be submitted to the Authority (including any that the Potential Provider considers to be confidential and / or commercially sensitive such as specific information in its Tender). Potential Providers taking part in this Procurement consent to such disclosure as part of their participation in the Procurement.
- 13. FREEDOM OF INFORMATION**
- 13.1 In accordance with the obligations and duties placed upon public authorities by the FoIA and the EIR and in accordance with any government Code of Practice on the discharge of public authorities' functions under the FoIA, all information submitted to the Authority may be disclosed under a request for information made pursuant to the FoIA and/or the EIR.
- 13.2 A Potential Provider should note that the information disclosed pursuant to a FoIA or EIR request may include, but is not limited to, the disclosure of its Tender (including any attachments or embedded documents) and/or any score or details of the evaluation of its Tender.
- 13.3 If the Potential Provider considers any part of its Response or any other information it submits to the Authority to be confidential or commercially sensitive, the Potential Provider should:
- 13.3.1 clearly identify such information as “commercially sensitive” or “confidential” in Attachment 18(Confidentiality and commercially sensitive information);

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

- 13.3.2 explain the potential implications of disclosure of such information taking into account and specifically addressing the public interest test as set out in the FOIA; and
- 13.3.3 provide an estimate of the period of time during which it believes that such information will remain confidential or commercially sensitive.
- 13.4 If the Potential Provider identifies that part of any Response or other information it submits to the Authority is confidential or commercially sensitive, the Authority in its sole discretion will consider whether or not to withhold such information from publication. Potential Providers should note that, even where information is identified as confidential or commercially sensitive, the Authority may be required to disclose such information in accordance with the FOIA or the EIR.
- 13.5 The Authority is required to form an independent judgement of whether the Potential Provider's information referred to in paragraph 13.4 is exempt from disclosure under the FOIA or the EIR and whether the public interest favours disclosure or not. The Authority cannot guarantee that any information indicated as being confidential or commercially sensitive by the Potential Provider will be withheld from publication.
- 13.6 The Authority will not accept attempts to class all, or any broad categories of information as "confidential" or "commercially sensitive" and may disregard a Potential Provider's attempts to classify information in this way. Potential Providers are reminded that the Authority shall be responsible for determining in its absolute discretion whether information is exempt from disclosure in accordance with the FOIA or the EIR.
- 13.7 If the Potential Provider receives a request for information under the FOIA or the EIR during and in relation to this Procurement, it should be immediately referred to the Authority.

**14. TRANSPARENCY**

- 14.1 In accordance with the Government's policy on transparency, the Authority reserves the right to make all or part of the Confidential Information (which, for the avoidance of doubt, includes the terms of Contract) publicly available (subject to any redactions made at the discretion of the Authority by considering and applying relevant exemptions under the FOIA).
- 14.2 A Tender is likely to be published unless such disclosure is not required in accordance with paragraphs 12 or 13.
- 14.3 Potential Providers should note that the terms of Contract will permit the Authority to publish the full text of such contract awarded with the Potential Provider after considering (at the Authority's sole discretion) any representations made by the Potential Provider regarding the application of any relevant FOIA or EIR exemptions.
- 14.4 The Potential Provider acknowledges and agrees that information contained within its Responses, including its Final Tender, may be incorporated by the Authority into any contract awarded to the Potential Provider and as a result, it may be published in accordance with this paragraph 14.

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

**15. DATA PROTECTION**

- 15.1 The Authority will collect, hold and use personal data (as defined in the Data Protection Act 1998) obtained from and about the Potential Provider including any members of the Group of Economic Operators and their staff during the course of the Procurement (“Personal Data”). The Potential Provider must agree to such Personal Data being collected, held and used in accordance with and for the purpose of administering this Procurement and for contract management of any contract subsequently awarded.
- 15.2 The Potential Provider warrants, on a continuing basis, that it has:
- 15.2.1 all requisite authority and has obtained and will maintain all necessary consent required under the Data Protection Act 1998 or from the date it comes into force in the UK the General Data Protection Regulation (EU) 2016/679 (as applicable), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all relevant regulations together with any codes of conduct and guidance issued by the Information Commissioner (the “Data Protection Regulations”); and
  - 15.2.2 otherwise fully complied with all of its obligations under the Data Protection Regulations, in order to disclose to the Authority the Personal Data, and allow the Authority to carry out this Procurement.
- 15.3 The Potential Provider shall immediately notify the Authority if any of the consents referred to in paragraph 15.2.1 are revoked or changed in any way which impacts on the Authority’s rights or obligations in relation to such Personal Data.

**16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1 The Invitation to Compete and its accompanying documents (including all documents in the Data Room) issued in connection with this Procurement shall remain the property of the Authority and shall be used by the Potential Provider only for the purposes of this Procurement.
- 16.2 The Potential Provider grants the Authority an irrevocable, perpetual, non-exclusive licence to copy, amend and reproduce any intellectual property contained within its Responses for the purposes of carrying out this Procurement; complying with the law and/or any government guidance; and/or carrying out the Authority’s business activities. This licence shall also permit the Authority to sublicense the use of the Potential Provider’s Responses to its advisers or sub-contractors or other Contracting Authorities (as defined in Regulation 2 of the Regulations) for the same purposes.

**17. PUBLICITY**

- 17.1 The Potential Provider must obtain approval from the Authority before any disclosures are made to the press or are in any other way made available to the public in respect of this Procurement.
- 17.2 The Potential Provider must not undertake any publicity activities in relation to this Procurement without the express written permission of the Authority.

**Supply Chain Future Operating Model**  
**Supporting Technologies and Infrastructure Services**  
**Attachment 4**  
**Terms of Participation**

---

**18. NO INDUCEMENT OR INCENTIVE**

18.1 The Potential Provider acknowledges and agrees that nothing contained within the Invitation to Compete and its accompanying documents (including the ITPD and any other document inviting Responses) shall constitute an inducement or incentive nor shall have in any other way persuaded a Potential Provider to submit a Response or to enter into a contract (if awarded) or any other contractual agreement.

**19. LAW AND JURISDICTION**

19.1 Any dispute or claim (including non-contractual disputes or claims) relating to this Procurement shall be governed by and construed in accordance with the laws of England and Wales.

19.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) that arises out of or in connection with this Procurement.

**20. SMALL AND MEDIUM ENTERPRISES**

20.1 The Authority is fully committed to supporting the Government's small and medium-sized enterprise ("SME") initiative; including the aspiration that 33% of central government spend goes to SME's by 2020. All Potential Providers, as potential suppliers to the Authority, will also be expected to support this initiative both directly and through their supply chains.

20.2 The Authority, when appropriate, may ask for proposals as part of this Procurement on how Potential Providers are intending to support the SME initiative.

**21. WARRANTIES**

21.1 A Potential Provider in taking part in this Procurement (and submitting any Response or any other information to the Authority) warrants and undertakes to the Authority that:

21.1.1 by submitting a Response or any other information to the Authority unless otherwise disclosed in writing to the Authority with the Response or such other information, any information supplied by the Potential Provider shall be true and accurate at the time of submission and shall remain so (or correctly updated) during the Procurement;

21.1.2 it has complied with the Procurement Conditions in all respects;

21.1.3 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Authority by the Potential Provider or its employees in connection with any phase of the Procurement and/or any Response or any other information submitted to the Authority are true, complete and accurate in all respects; and

21.1.4 it has not submitted any Response or any other information to the Authority (and will not enter into the Contract) in reliance upon any representation or statement (whether made orally, in writing or otherwise) which may have been made by the Authority's advisors, or the directors, officers, members, partners, employees, other staff, or agents of any such body or person.

**Supply Chain Future Operating Model  
Supporting Technologies and Infrastructure Services  
Attachment 4  
Terms of Participation**

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**22. CONTRACTUAL ISSUES**

- 22.1 Without prejudice to any warranties given, no document or Attachment issued by the Authority in relation to this Procurement forms or shall form a separate, collateral or implied contract between the Potential Provider and the Authority. The relevant parts of the Potential Provider's Responses may form part of the Contract subsequently awarded pursuant to completion of the Final Tender Stage.
- 22.2 The subject matter of this Procurement shall only have contractual effect when, and to the extent that, it is contained in the express terms of an executed written contract.
- 22.3 No information contained in any document or Attachment issued by the Authority in relation to this Procurement, or in any communication made between the Authority and any Potential Provider in connection with the Procurement, shall be relied upon as constituting a contract, agreement or representation that any contract shall be offered in accordance with the Procurement.

**23. COPYRIGHT**

- 23.1 All documents and Attachments issued by the Authority in relation to this Procurement are the copyright of the Authority and its professional advisers. Potential Providers shall not reproduce, copy, distribute or otherwise make available to any third party the whole or any part of any documents or Attachments issued by the Authority in relation to this Procurement in any material form (including photocopying it or storing it in any medium including electronic means) without the written permission of the Authority other than for use strictly for the purpose of preparing their Responses in relation to this Procurement.
- 23.2 All documents and Attachments issued by the Authority in relation to this Procurement including all supporting documents/materials, and all copies thereof are and shall remain the property of the Authority and must be returned or destroyed on demand.

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