

**Invitation To Participate**

**Provision of Services**

**Title**

**FIDELITY’S ENERGY AND UTILITIES SERVICES DYNAMIC MARKET**

**Tender Reference**

FIDELT003.1

**Cross-Reference**

Refer to Public Notice

INITIAL APPLICATION CLOSING DATE AND TIME:

00:01am on Wednesday 30th July 2025

The Dynamic Market will be in operation from the date of the relevant notice being published.

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# SECTION 0

# INSTRUCTIONS FOR PARTICIPATING

|  |  |
| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall not** form part of the final Contract, and shall be deleted. |

**01 INVITATION & INSTRUCTIONS TO TENDERERS**

* 1. **INTRODUCTION TO THE INVITATION**

Fidelity Energy invites the Applicant to submit an offer for the consideration of Fidelity Energy, in relation to the tender reference and title as indicated on the cover page of this document.

This tender process is being conducted as a : dynamic market under regulation 34 (and other application requlations) of the Procurement Act 2023.

Throughout this set of documents the terms “framework”, “Framework Agreement”, and “Dynamic Market” are used interchangeably, but in all cases the purpose of this Invitation to Participate (ITP) is to invite Applicants to apply to join the resultant Dynamic Market. For further details, see Section 3 – Method of Operation.

Any public sector body or organisation is permitted to utilise the Framework. It may also be used by private enterprises where appropriate.

All tenders must be submitted by the date and time on the front page of this document.

* 1. **GENERAL INFORMATION ON TENDER PROCEDURE**

01.2.1 The table below lists general information the Bidder may need to complete their Tender :

|  |  |
| --- | --- |
| **Type of Information** | **Response** |
| Deadline for : Asking all questions under this tender | See 01.3 Key Dates for Procurement and Award |
| Deadline for : Submission of Tender Response | See 01.3 Key Dates for Procurement and Award |
| Electronic tendering system utilised by the Purchaser | This will be ProActis, and may also include any other electronic tendering system advised by Fidelity Energy from time to time. |
| Purchaser’s Representative | **Roger Ruffles**  **Catseye Commercial Ltd**  **Contact Details:**  [publicsector@fidelity-energy.co.uk](mailto:publicsector@fidelity-energy.co.uk)  **07873 363 610**  **(do not contact directly during the tender process unless it is for the purposes of gaining access to the tender process where you have experienced difficulty – and in the first instance, contact ProActis/Procontract helpdesk)** |
| Purchaser’s Representative – method of communication | All communication must be through the messaging facility in the Electronic tendering system. Any direct communications with the exception of access requests will be ignored. |
| Registered address of the legal entity of the Purchaser | **Fidelity Energy Ltd**  **37-41 Bedford Row**  **London**  **WC1R 4JH** |
| Trading Address of the legal entity of the Purchaser | **Fidelity Energy Ltd**  **90 Bartholemew Street**  **Newbury**  **RG14 5EE** |
| Submission details for tender returns | Enter your return through the Electronic purchasing system portal facility. |

01.2.2 Definitions which are applicable to the ITP Documentation are :

**Agreement** means the contract between Fidelity Energy and the Supplier when they have been successful in joining the Dynamic Market

**Applicant** means a company applying to join the Agreement.

**Application** means a Response containing Appendix 1 and Appendix 2.

**Bidder** means the contractor, service provider or supplier bidding in response to this invitation to tender;

**Contract** means a Contract following a Mini-Competition process;

**Contract Variations** means Contract Modifications in the context of the Procurement Act 2023;

**Direct Award** as a process is not allowed under a **Dynamic Market** but is permissible where no response or no competitive response of more than 1 tender is made to a Stage 2 Mini-Competition; it will be referred to as a Direct Award but for clarity there must always be a commercial process to attempt selection first. The correct procedure for award is a **competitive flexible procedure**.

**Dynamic Market** means the Fidelity’s Energy and Utilities Services Dynamic Market;

**ITP Documentation** and **ITP** and **Invitation to Tender** means this invitation to participate;

**Purchaser** and **Fidelity** and **Fidelity Energy** means the legal entity given above;

**Purchaser’s Representative** means the person as indicated in the table above.

**Respondent** means a company applying to join the Agreement at Stage 1 (and can be the same as Applicant)

**Stage 1** means the process for an Applicant to join the Dynamic Market

**Stage 2** or **Mini-Competition** means the process of call-off or Mini-Competition to follow at the second part of the process to award a Contract; in the Procurement Act 2023 it is referred to as a “competitive selection process”

**Supplier** means an Applicant or a Bidder

**Tender** means the Bidder’s response to the ITP Documentation;

**Tender Reference** means the tender number, reference or other identifying alphanumeric code assigned by the Purchaser to this ITT Documentation

* 1. **KEY DATES FOR PROCUREMENT AND AWARD**

01.3.1 The table below lists the expected key dates for the procurement and award under this process, all of which are subject to change as the process continues:

|  |  |
| --- | --- |
| **KEY DATES FOR THE PROCESS** | |
| **Process Step** | **Expected Date (and Time where applicable)** |
| **ITP Issue & Notice Indicating Intent to Establish a Dynamic Market** | Tuesday 24th June 2025 |
| **Start of Questions Period (Clarification Questions)** | Tuesday 24th June 2025 |
| **End of Tender Questions Period (Clarification Questions)** | Thursday 17th July at 00:01am |
| **Date by when Purchaser must reply to Clarifications received** | Tuesday 22nd July |
| **Submission of Initial Application(s)** | By 00:01am on Wednesday 30th July 2025 |
| **Anticipated Assessment Period of Application** | 1st August 2025 |
| **Start of Post-Tender Questions Period (Clarification Questions) / Extended Assessment Period Allowance** | 30th July 2025 up to 8th August 2025 |
| **All Successful Applicants Notified** | Between 1st August 2025 and 8th August 2025 |
| **Commencement Date of Dynamic Market** | 8th August 2025 |
| **Dynamic Market Open for all New Applications** | **8th August 2025**  (Any applications submitted between 30th July and 8th August will be assessed after 8th August *as if* they had been sent on 8th August) |
| **Term of Dynamic Market** | **8 years** |
| **Dynamic Market is open for all new Applicants or returning Applicants throughout the life of the framework.**  **It is during this period that Stage 2 Mini-Competitions shall be issued to determine who wins the contract under a competitive flexible procedure, and direct awards without competition will only be made if there is only 1 response to a request for quote.**  **No contracts need to be signed at Stage 1 for the Dynamic Market; At Stage 1 Applicants will be informed if they are successful or not and asked to return a letter acknowledging the acceptance to complete entry onto the Agreement; Stage 2 mini-competitions will require contractual signature at end of the process with the winning bidder.**  **Standstill periods for any contracts awarded under the dynamic market are not mandatory and are voluntary only; utilising a standstill period on one call-off award will not imply that standstill periods should or shall be used on other call-offs.** | |

* 1. **PURCHASER BACKGROUND**

Fidelity Energy is changing the way businesses procure their energy. We not only provide procurement services, but all the other services you would expect from one of the UK’s leading utilities and energy consultants. We help our customers get the best value from their energy contracts, reducing their energy consumption, minimising their carbon footprint and ensuring that their bills are right. Thousands of businesses of all sizes from all over the UK rely on us for their energy needs, whether that be one site or multi-sites across the UK. We remove the stress of dealing with the energy contracts by contacting your existing and new supplier, as well as managing the process throughout, from start to finish.

Fidelity Energy offers:

* Business Energy
* Business Gas
* Green Energy
* Consultancy
* Electric Vehicle Charging
* Automatic Switching
* Monitoring Software / Carbon Reduction Services, and Etainbl Carbon Reporting platform for Carbon capture technology
* VO Optimisation Hardware or Rental
* SOLASS – Solar As A Service
* LED Lighting
* Coolnomix (a retrofit for air conditioning and refrigeration systems to reduce energy consumption)
  1. **BACKGROUND TO THIS TENDER**

01.5.1 Fidelity Energy is committed to servicing its public sector customers. As a result we have constructed this tender to provide your company a good opportunity to secure reliable and effective public sector contracts on a regular basis. Fidelity Energy will give specific and regular feedback for each and every mini-competition with regular strategic supplier reviews. Fidelity currently deliver, professional account management, bill validation, honest and fair procurement and customer support giving you and your organisation the confidence that you will be dealing with a company that prides itself on excellent service. We offer a consistent approach to energy procurement, invoice validation, contract procurement and energy management.

With the contracts your company may win, Fidelity will assist the supplier to achieve excellent cash- flow, control debt management and overall, the opportunity to differentiate itself in the public sector energy markets.

* 1. **TYPES OF BIDDERS BEING SOUGHT**

01.6.1 Any Bidder of whatever background or frame of reference, providing they are legally allowed to contract and bid for work under the jurisdictions applicable to this tender opportunity, is welcome and encouraged to bid for this opportunity, providing they have passed the Stage 1 Application process.

01.6.2 Whilst considering all Applicants of any background and capability, the Purchaser does indicate that we are most interested in Bidders and Applicants that are:

* Engaged in the markets as outlined in 01.4 Purchaser Background
* Engaged in the markets of our Clients – public sector (all types), and some private sector use
* If in doubt, please contact the Purchaser’s Representative and ask.
  1. **QUESTIONS THROUGHOUT THE TENDER PROCESS**
     1. It is expected, and encouraged, for all Applicants and any resultant Bidders in this process to ask clarification questions of the Purchaser during the application process, at the points it is permissible to do so.
     2. Questions may only be asked of the Purchaser’s Representative (for contact details see 01.2.1.).
     3. It is expressly prohibited for the Applicant to ask any questions directly or indirectly of any Purchaser’s staff, or third parties of whatever nature presently or previously or potentially connected to the Purchaser relating to this invitation to tender. If there are reasonable grounds for the Purchaser to consider that the Applicant or Bidder has asked such questions or solicited and received information in relation to this Tender that has not been issued by the Purchaser’s Representative, then on the grounds of being fair to the other Bidders in the process, the Bidder shall be disqualified by the Purchaser.
     4. Disqualification at any point will not necessarily prevent a Supplier from re-applying again in the future when they have corrected whatever issue may have led to their disqualification.
  2. **DOCUMENTS TO RETURN**

The Applicant will return all documents listed below, the contents of which shall be considered by all parties to the process to form the basis of the Respondent’s Application to the Purchaser.

The documents are to be provided in 1 zipped folders for the Application, and an optional additional 2 zipped folders as follows:

**Folder 1 - Required (Mandatory) Submission for an Application:**

* 1. **Folder 1 - Submission for an Application/Response:**
  2. Appendix 1 – Application PSQ
  3. Appendix 2 – Main Questions
  4. **Note: both documents must be returned in this folder to be considered.**

All Applications will be considered on the basis of the zipped folder submitted being complete.

* 1. **ASSESSMENT OF RETURNS**
     1. At Stage 1, all Applicants will be assessed fairly and equally, by a minimum of **one** person from the Purchaser’s organisation, but preferably by a full tender panel which can be disclosed post-tender on request.
     2. At Stage 2 (Mini-Competition), all Bids will be assessed fairly and equally, by a minimum of **two** people from the Purchaser’s organisation, but preferably by a full tender panel which can be disclosed post-competition on request.
     3. **At Stage 1 all questions are: Pass/Fail. Further guidance is available in Appendix 1, and below.**
     4. At Stage 2, the weightings are:

|  |  |
| --- | --- |
| **Quality** | **40%** |
| **Price** | **60%** |

- but may be varied per tender or Mini-Competition if required.

* + 1. Word or page limits may be indicated in marked questions. These cannot be exceeded, or the assessors will only consider an answer up to the limit identified and mark accordingly. The Purchaser also reserves the right to disqualify an Application or Bid where appropriate at either Stage.
    2. Scoring will be transparent, but it is the responsibility of the Bidder to question any scoring methodology or process they do not understand at any point prior to acceptance of Application or award of Contract. The Purchaser would encourage early assessment of the scoring methodology to ensure that Bidders can identify any issues or questions as early as possible.
    3. Any percentages or values will be considered to two decimal points. At the third decimal point, if this is equal to 0.005, this will be rounded up to the nearest two-decimal number (for example, 20.535% will be given a score of 20.54%).
    4. Each section, requirement or question will be considered to the two decimal points independently of any other section, requirement or question, and in the final scoring **will not**. Other sections, requirements or questions cannot cumulatively be combined (for example, a score of 20.535% being recorded as 20.54%, and a score of 15.536% being recorded as 15.54%, will together make a score of 36.08%).
    5. Where a pass or fail assessment is indicated, the Response or Bid response for this section, requirement or question will be assessed by the Purchaser’s tender panel. The tender panel will mark a tender “Pass” or “Fail”. A pass mark will judge the Application successful. A fail will result in the Application being rejected, but after a suitable period of time to correct whatever the issue was the Applicant is invited to apply again.
    6. A Pass may be awarded a “Conditional Pass”, which means further information or a qualified position for a Pass may apply, and the Applicant may need to satisfy Fidelity further as to whether their response is acceptable or not in a Stage 2 Mini-Competition. If the Conditional Pass is a Stage 2 Mini-Competition, they must satisfy Fidelity further during the course of the resultant Contract to provide services or the Contract can be terminated without liability by Fidelity Energy.
    7. The assessment scores per section, requirement or question will be graded as below (in whole numbers only) :

|  |  |
| --- | --- |
| **Awarded Score** | **Reason for Assessment** |
| 5 | **Excellent** Answer : Addresses all of the requirements and provides a highly detailed, robust and unambiguous response with relevant supporting evidence where no weaknesses are identified, giving Fidelity Energy complete confidence that the requirements will be met in full. |
| 4 | **Good** Answer : Addresses all of the requirements and provides a comprehensive response with relevant supporting evidence, where no weaknesses are identified, giving Fidelity Energy high confidence that the requirements will be met. |
| 3 | **Acceptable** Answer : Addresses all of the requirements and provides a response with relevant supporting evidence, but contains minor weaknesses or lacks clarity in some areas, giving Fidelity Energy reasonable confidence that all the requirements will be met. |
| 2 | **Unacceptable** Answer : Partially addresses the requirements and provides a response with some relevant supporting evidence but contains weaknesses which lack explanatory detail or clarity, giving Fidelity Energy some confidence that the requirements will be met. |
| 1 | **Unanswered** : When the Bidder does not provide an answer at all, or the written answer bears no relation to the question, it will be scored as “0” |

* + 1. The assessment scores per section, requirement or question will further be weighted as indicated in the table below. All sections, requirements or questions will be assessed as follows:

**Stage 1**

A Response will be entered by the Applicant according to the Question.

The Response will be evaluated on the Pass/Fail basis.

The information will be recorded in a separate spreadsheet, and factually checked by an independent person from the Procurement Representative (the “Moderation” in this instance).

**Stage 2**

* + 1. A score of 0 for any question will be an automatic fail and the bidder will be excluded at that stage.
    2. Where questions are further divided within the section / sub section, that sub-section holds an individual weighting. The individual question percentage scores will be calculated using the following formula.

**Question Percentage Score** = Bidder Score ÷ XX% (maximum available score) x XX% (the question percentage weighting)

|  |
| --- |
| *Technical Example* |
| Question 1 Score = 3  Total Possible score = 5  Percentage weighting = 10% |
| **Question 1 Score**  3/5 x 10% = 6**%** |

Each question percentage score will be added together to form an overall section / sub section % score out of the total section / subsection % weighting.

* + 1. The technical scores for all sections and sub-sections will be added together to form an overall score out of the total achievable marks. The total score will then be calculated to provide a final technical score in relation to the XX% weighting.A Bidder’s technical score will be calculated using the following formula:

**Technical (Quality) Score** = Bidder score ÷ XX (total possible score) x XX% (the percentage weighting)

|  |
| --- |
| *Technical Example* |
| Bidder A Score = 20  Total Possible score = 25  Percentage weighting = 50% |
| **Bidder A Score**  20/25 x 50% = **40%** |

*Pricing*

* + 1. Each Bidder’s priced submission will be evaluated and the lowest cost will be awarded the full (maximum) available marks. All other bids will be compared against the lowest bid and scored accordingly, using the following formula:

**Pricing (Cost) Score** = Lowest bid price ÷ Other bid price x XX% (the percentage weighting)

|  |
| --- |
| *Pricing Example* |
| Lowest Bid Price = £100  Bidder A Price = £200  Percentage weighting = 50% |
| **Bidder A Score**  100/200 x 50% = **25%** |

* + 1. Bidders are required to complete the Pricing Template set out at Appendix 4.

*Total Tender Score*

* 1. Each Bidder’s scores will be calculated by adding the total weighted scores (Technical and Price) together to produce a total score (out of 100%) that offers the Most Advantageous Tender for Fidelity Energy. A Bidder’s total score will be calculated using the following formula:

**Total Bidder Score** = Total Technical % + Total Price %

|  |
| --- |
| *Total Score Example* |
| Bidder A Technical Score = **40**%  Total Technical Available = 50% |
| Bidder A Pricing Score = **25**%  Total Pricing Available = 50% |
| **Bidder A Total Score** = **65**% |

*Consensus*

* + 1. Following the assessment of the Bidder’s scores a consensus meeting will be arranged by the Procurement Representative or the assessor in Fidelity Energy with an Evaluation Panel (the group of assessors). The purpose of the meeting is to identify any discrepancies/inconsistencies in the scores awarded and to reach a consensus of the final score to be awarded for each question with the Evaluation Panel and the rationale for each score awarded.
  1. **SUBMISSION PROCEDURE**

01.10.1 The Bidder must return all tender submissions to the Purchaser at the time and date indicated in clause 01.3.

01.10.2 The Bidder must return all tender submissions to the locations specified in subclause 01.2.1.

01.10.3 The Bidder must utilise the Purchaser’s electronic tendering platform(s), at the link provided below:

https://procontract.due-north.com/Login

It is the Applicants and/or Bidder’s responsibility to ensure that they are correctly registered and fully informed as to how to utilise the system to complete their Application and any Bid response.

\*Note: In the case of **Rapid Quotation Processes** (see Section 3 Method of Operation), it may be necessary for the Opening Procedure to lead into assessment without a Moderation meeting from Opening. In this instance it is acceptable to submit quality and pricing responses together to evaluators. Evaluators must make their decision on the same day as receipt.

* 1. **OPENING PROCEDURE**
     1. Provided that the Bidder has submitted their Application or Bid response by the time and date indicated in clause 01.3 and in accordance with clause 01.10, then the Purchaser will conduct the following opening procedure :
* All Applications (or in the case of Stage 2 Mini-Competitions) Bids will be opened at the same time, but not necessarily at the exact time of the closing date and time
* All Applications or Bids will be checked to make sure they are complete and correct
* Where a Bid has a Quality and a Commercial section, only Quality sections will be communicated for assessment.
* Following assessment and a Moderation meeting with an Evaluation Panel, the Commercial section will be distributed for assessment.

\*Note: In the case of **Rapid Quotation Processes** (see Section 3 Method of Operation), it may be necessary for the Opening Procedure to lead into assessment without a Moderation meeting from Opening. In this instance it is acceptable to submit quality and pricing responses together to evaluators. Evaluators must make their decision on the same day as receipt.

* 1. **MOBILISATION AND CONCLUSION OF CONTRACT**

1. Applicants will be informed of their successful or failed Applications
2. A Voluntary Standstill process will be held for a period of 8 days where any Applicant can object
3. The Agreement will then be formed with each successful Applicant at the times indicated in the Timetable under 0.3
4. Mini-Competitions for Stage 2 of the restricted process may then be issued on the day of the Service Commencement Date indicated in the Timetable.
5. Following assessment per Mini-Competition, the outcomes will be communicated to all Bidders
6. A Voluntary Standstill process is not necessary at Stage 2 (Mini-Competition), and contract can commence same-day if required (particularly in the case of **Rapid Quotation Processes**).
   1. **CONDITIONS OF MAKING AN OFFER**
      1. You must insert your responses in the appropriate places and must not amend any of the existing text in any way, unless it is expressly indicated that you can do so.  Any amendment to the existing text of the invitation to Participate document which is not indicated expressly indicated as permissible may result in the rejection of your tender, and can result in any action up to withdrawal of award or termination of any resultant contractual Agreement.
      2. All costs incurred in relation to preparing and submitting an Application or Tender are to be borne by the Bidder or Applicant.
      3. It is the Bidder’s or Applicant’s responsibility to read all instructions and make sure they understand them before submitting a Response or Bid.
      4. All material issued in connection with this invitation to Participate shall remain the property of the Purchaser and shall be used only for the purpose of this procurement exercise. Any unsuccessful Bidder is required to destroy their tender documentation within 90 calendar days of being informed they have been unsuccessful.
      5. Joint ventures or consortiums are welcome to submit a Bid response or an Application. Where a joint venture or consortium submits a Bid response following a successful Application, although the majority of the response documentation can be completed only once, the Form of Tender must be completed by a representative of the Joint Venture, and then one Form of Tender for each legal entity making up a part of the joint venture or consortium.
      6. It is a condition precedent to the Purchaser’s any acceptance of a bid that a duly authorised signatory of the Applicant or Bidder signs all forms, declarations and statements where indicated in this document.
      7. The Bidder shall ensure that all forms which require signature are signed by a duly authorised signatory of the legal entity of the Bidder. Failure to ensure that the signatory is a duly authorised signatory capable of committing the Bidder’s organisation to the offer made in response to the ITP Documentation will result in the bid being judged non-compliant and the Purchaser may at its sole option choose to exclude the Bidder from the process or invalidate a signed Agreement or Contract. Personal damages may then be pursued by Fidelity Energy without limitation or restriction.
      8. Where the Purchaser or the Client (whichever is appropriate in the circumstance of the Mini-Competition) does not expressly confirm in writing that they accept a Bid at Stage 2, and services are commenced without such acceptance, it shall be considered that the Bid and any resultant contract is non-compliant. The Bidder proceeds at their own risk, and Fidelity Energy may elect to pursue for damages.
      9. The Purchaser shall not be committed to any course of action as a result of :

1. issuing this ITP Documentation or any invitation to participate in this procurement exercise;
2. an invitation to submit any response in respect of this procurement exercise;
3. communicating with a Bidder or a Bidder’s representatives or agents in respect of this procurement exercise;

* + 1. Bidders shall accept and acknowledge that by issuing this invitation to Participate the Purchaser shall not be bound to accept any Application response and reserves the right not to conclude either the Application process itself, a resultant Bid process, or any resultant Contractual Agreement.
    2. The Purchaser further reserves the right to amend, add to or withdraw all or any part of this ITP Documentation at any time during the procurement exercise.
    3. Do not PDF this invitation to Participate or any documentation issued in response or connected to it as this may invalidate your submission, unless otherwise indicated that it is acceptable to do so. Electronic signatures are acceptable for those forms which require signature, providing they are made by a duly authorised representative of the Bidder’s organisation.
    4. The Bidder shall at all times consider this invitation to Participate and the Applicant response and the Bid response any other documents in relation to the tender as confidential, save in so far as they are in the public domain. Bidders or Applicants may disclose information to any party assisting them in completion of their Tender response or planned provision of services, providing they have signed a confidentiality agreement which guarantees non-disclosure and destruction of information with 90 days of award of this contract, or 90 days of completion of provision of the supply, services or works, or where compliance with statutory law requires a period of retention, whichever is the latter.
    5. Applicants and Bidders must form their own opinions, making such investigations and taking such advice (including professional advice) as is appropriate, regarding the contents and assessment of this tender and any provision of goods, services or works resultant from it, without reliance upon any opinion or other information provided by the Purchaser or their advisers and representatives. Applicants or Bidders shall notify the Purchaser promptly of any perceived ambiguity, inconsistency or omission in this invitation to Participate, any of its associated documents and/or any other information issued to them during the procurement process.
  1. **USE OF AI**

01.14.1 The Authority expects suppliers to declare where they have used AI software in the creation of Tender responses or intend to use AI software in the performance of the contract. How any AI software was, or will be, used should be declared within your technical submission or caveats [insert reference clear this bit up]. We may require you to answer further specific questions on the use of AI software as part of a clarification process.

01.14.2 Suppliers must follow any guidelines or regulations related to AI use and declarations as indicated in the PPN 2/24 Improving Transparency of AI Use in Procurement.

01.14.3 Any information, instructions, or data provided by the Authority to suppliers as part of this tender, the requirements, or contract should not be directly inserted into Generative AI software without prior permission, even if you consider that this information might be published in the public domain. Please ensure you confirm permission from the Authority before using any part of this tender, the requirements, or contract in Generative AI software.

* 1. **EDI (Equality, Diversity and Inclusion)**

01.15.1 A diverse and inclusive working environment where every individual has equality of opportunity to progress and apply their insights makes the UK a fair and better place to live. We expect this commitment to be respected in all dealings with Fidelity or their clients.

* 1. **NPPS**

01.16.1 NPPS refers to the National Procurement Policy Statement, a UK government policy document that sets out the strategic priorities for public procurement. It is a guide for public sector contracting authorities in England, detailing how they should approach procurement. The current NPPS was published on February 13, 2025, and came into effect on February 24, 2025, alongside the new Procurement Act 2023

* 1. **Debarment List**

01.17.1 The Procurement Act 2023 creates new powers for a Debarment List, which all Applicants should be aware of.

01.17.2 Section 62 (Debarment list) allows a Minister of the Crown to create a debarment list. This is a published list of suppliers which, following an investigation, they consider are excluded or excludable suppliers and which they have decided to put on the debarment list. It also allows the Minister to put a supplier on the debarment list where the Minister has determined the supplier’s failure to cooperate with an investigation under section 60 (Investigations of supplier: exclusion grounds) is sufficiently serious to warrant mandatory exclusion. In addition the Act sets out: what information must be recorded on the debarment list; the advance notice that must be given to the supplier before they are entered onto the debarment list (which triggers a standstill period); when the Welsh Ministers and Northern Ireland departments must be consulted; and other requirements pertaining to how the list is maintained.

* 1. **Transparency Notices**
     1. With the new Procurement Act 2023 coming into operation, the requirements to publish notices have changed. The Act enforces and requires greater transparency than before, so Applicants accept that there will be an increased visibility of information published relating to this procurement and any resultant call-off or contract than was previously the case.
     2. The Central Digital Platform (CDP) is now required for use by all public authorities. As well as information being available on the CDP, notice content may be accessible through the Find a Tender (FTS) service.
     3. Applicants may be required to provide information for additional notices on request, and for certain reporting functions under the notices may need to provide additional information.
     4. Without excluding any new notices or notices not referenced below, these may include:

**Pre-Procurement Notices**

### Pipeline Notice (UK1)

An announcement made before the start of the financial year, 1 April, detailing procurement plans for the next 18 months. Publication of these notices is mandatory for contracting authorities expecting to spend more than £100m in the next financial year. Only procurements worth more than £2 million each are required within Pipeline Notices.

### Preliminary Market Engagement Notice (UK2)

An invitation for suppliers to participate in preliminary market engagement. These notices help contracting authorities explore their procurement requirements and options, while also allowing the market to prepare bid plans. These notices can also be used to inform suppliers that preliminary market engagement has taken place, providing details of the process and outcomes.

### Planned Procurement Notice (UK3)

An optional announcement by a contracting authority, indicating its intention to publish a tender notice. These notices contain enough information for suppliers to start planning their bids, and primarily aim to shorten the tendering period. If the market is given advance notice of 40 days to 12 months, the tendering period for the associated procurement can be reduced to just 10 days.

### Transparency Notice & Direct Awards (UK5)

Published to inform the market that a contracting authority intends to make a Direct Award (enter into a Public Contract with a supplier), without the use of a competitive tendering procedure. These notices provide a summary of the requirements and terms within the Public Contract, and the rationale for making the Direct Award decision. There is a minimum eight working day standstill period after the publication of this notice, after which point the Contracting Authority may enter into the Public Contract. There is no requirement to publish a subsequent Contract Details Notice in relation to the Direct Award.

## **Sourcing and Procurement notices**

### Tender Notice (UK4) – for Below-Threshold Contracts (Low-Value Tenders)

Notices for Below-Threshold Contracts are commonly known as Low-Value Tenders, and advertise contracting opportunities valued above £12,000, while not exceeding the [UK Public procurement thresholds](https://www.tendersdirect.co.uk/knowledge-hub/news/uk-public-procurement-thresholds/). Due to their lower value, there are limited requirements for these procurements, making them great opportunities for SMEs and companies new to the public sector marketplace.

### Tender Notice (UK4) – for Public Contracts (High-Value Tenders)

Notices for Public Contracts are commonly known as High-Value Tenders, and advertise contracting opportunities valued above the [UK Public procurement thresholds](https://www.tendersdirect.co.uk/knowledge-hub/news/uk-public-procurement-thresholds/). Due to their higher value, the questions within these tenders tend to require detailed responses and evidence to prove eligibility. These types of opportunities are suitable for larger businesses or companies with significant tendering experience.

### Contract Award Notice (UK6)

Published to share a contracting authority’s intention to enter into a Public Contract with a supplier, or suppliers, following a competitive tendering procedure. These notices provide a summary of the requirements and terms within the Public Contract. There is a minimum eight working day standstill period after the publication of this notice, after which point the Contracting Authority may enter into the Public Contract.

Before entering into a Public Contract, Summary Assessments must also be sent to all suppliers who submitted a tender, whether they were successful or not.

### Contract Details Notice (UK7)

Used to notify stakeholders that a contracting authority has entered into a contract with a supplier, or suppliers, following a competitive tendering procedure. These notices must be published within 30 days, and if the value of the work is over £5 million, copies of all contracts and associated KPIs must be included.

### Procurement Termination Notice (UK12)

Informs the market that a contracting authority has decided to cancel the procurement process, following the publication of a Tender or Transparency Notice. This could be due to a change in circumstances, or no suitable suppliers submitted bids for the contract. No bids for the contract will be considered and no contracts awarded.

### Dynamic Market Intention Notice (UK13)

An announcement detailing a contracting authority’s intent to establish a dynamic market. These notices include information about the buyers’ needs, technical requirements, payment terms, and joining instructions. These function like Tender Notices, and invite suppliers to submit bids for relevant opportunities within the Dynamic Market.

### Dynamic Market Establishment Notice (UK14)

Used to notify stakeholders that a contracting authority has established a Dynamic Market, following a competitive tendering procedure. These notices include lists of which suppliers have been admitted, and details of which parts of the Dynamic Market they have access to.

## **Post-Procurement and Contract Management Notices**

### Contract Performance Notice (UK9)

Published, at least annually, to provide details of supplier performance against set Key Performance Indicators (KPIs). They are associated with Public Contracts valued at £5 million or greater, for which at least three KPIs must be set to measure supplier performance.

### Contract Change Notice (UK10)

Used when changes or modifications are required to ensure a contract can still be fulfilled despite changing demands or circumstances. Typically, these notices would be used to overcome the materialisation of known risks, the need for additional resources, and unforeseen circumstances.

### Contract Termination Notice (UK11)

Used to inform the market that a contract has ended. They are mandatory for all Public Contracts, and are published regardless of successful fulfilment or early termination of contractual obligations.

### Dynamic Market Modification Notice (UK15)

Used when changes or modifications are required to ensure a Dynamic Market fully meets the needs of the buyers. The conditions for membership may not be modified during the term of the Dynamic Market, but parts and specifications may be edited as required. These notices define the nature and scope of the modifications made, as well as details of newly added or removed suppliers.

### Dynamic Market Cessation Notice (UK16)

Used to inform stakeholders that the Dynamic Market has ceased to operate. These notices primarily contain administrative information.

### Payments Compliance Notices (UK17)

Published every 6 months to provide a summary of payments relating to Public Contracts. These notices help ensure Contracting Authorities comply with agreed payment terms, and detail their adherence to the 30-day payment policy.

# SECTION 1

# Application Terms and Conditions

|  |  |
| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides the **Application Terms (Section 1),** and the **Application Agreement** (replacing Section 0) * This box will be deleted at formation of contract. |

These terms are only for use at Stage 1 with a successful Applicant, and are designed only to confirm the Applicant has joined the Dynamic Purchasing Energy Agreement.

Actual call-off terms will be issued for the Contract on the Stage 2 Mini-Competition; examples of potential terms to be issued are under Section 10, but be aware these may vary per requirement.

Application Terms will be confirmed through the exchange of Fidelity’s notification letter of successful Application, and the Applicant’s acceptance/acknowledgement of the terms.

**PART A – APPLICATION TERMS**

**APPLICATION AGREEMENT**

This Application to the join the Dynamic Purchasing Energy Agreement is dated \_\_\_\_\_\_\_\_

Between the Parties:

1.Fidelity Energy Limited (“Fidelity Energy”), company number 09258334 and registered office address at C/O Teacher Stern LLP, 37-41 Bedford Row, London, WC1R 4JH

2. **[Applicant]** ("the *Applicant*") company number [insert] and registered office address at [insert]

RECITALS:

1. Fidelity Energy identified a requirement to support their customer base and business activities with an overarching framework agreement. They have a number of customers (the “Client”)
2. The most suitable form of agreement was considered by Fidelity Energy to be a Dynamic Market under the relevant applicable legislation, following a two-stage restricted process
3. Tender documentation was issued on the date of [enter], with a closing date of [enter], and the Applicant applied within that process
4. The Applicant was subsequently assessed by Fidelity Energy and found to be suitable for joining the Dynamic Market (the Dynamic Purchasing Energy Agreement).
5. The Applicant can leave the Dynamic Market at any point, and re-apply to join. The Applicant’s acceptance onto the Dynamic Purchasing Energy Agreement is not a commitment to contract, and a Contract is only form following a Stage 2 Mini-Competition process. A Contract is only formed at this second stage, and a Contract can only
6. This Application acceptance (“Agreement”) does not infer any guarantee of volume, commitment, or guarantee of business.
7. Agreements may be held under the Dynamic Market with a number of successful Bidders; this Agreement is only between Fidelity Energy and the Applicant.

**OPERATIVE PROVISIONS**

# Definitions and Interpretation

* 1. In this Agreement (including the Recitals) words and expressions have the same meaning given to them in the Conditions referred to below.
* **Agreement** means the contract between Fidelity Energy and the Supplier when they have been successful in joining the Dynamic Market
* **Applicant** means a company applying to join the Agreement Dynamic Market
* **Application** means a Response containing Appendix 1 and Appendix 2 (and optionally depending on Applicant the Appendix 3 and Appendix 4)
* **Bidder** means the contractor, service provider or supplier bidding in response to this invitation to tender;
* **Change In Law** means the coming into effect of any change in law after the date of this contract and also expressly includes any Procurement Act 2023 related event or change in law.
* **Charges** means the charges for the Deliverables as specified in Appendix 4
* **Client** means any customer of **Fidelity Energy** and by extension the **Bidder, Applicant or Supplier**
* **Contract** means a Contract following a Stage 2 Mini-Competition process;
* **Confidential Information** means all information whether written or oral (however record) 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.
* **Contract** means the **Call-Off Contract** at Stage 2 between **Fidelity Energy** and the **Supplier** or **Bidder** or **Applicant**.
* **Controller** has the meaning given to it in the General Data Protection Regulations and any other data-related control and management policy or applicable or equivalent law
* **Data Protection Legislation** means the General Data Protection Regulations and any other data-related control and management policy or applicable or equivalent law
* **Data Protection Impact Assessment** means an assessment by the Controller of the Impact of the envisaged processing on the protection of Personal Data
* **Data Protection Officer** has the meaning given to it in the General Data Protection Regulations
* **Data Subject** has the meaning given to it in the General Data Protection Regulations
* **Data Loss Event** any event that results or may result in unauthorised access to Personal Data held by the Supplier, Applicant or Bidder under this Contract and/o0r any actual or potential loss and /or destruction of Personal Data in breach of this Contract or Application, including any Personal Data Breach
* **Date of Delivery** means the date by which the Deliverables must be delivered to **Fidelity Energy**
* **Deliver** means handing over the Deliverables to **Fidelity Energy** or their **Client**
* **Dynamic Market** means the Dynamic Purchasing Framework Agreement;
* **Existing IPR** means any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise)
* **Expiry Date** means the date for expiry of the **Application**, the **Dynamic Purchasing Energy Agreement**, or the **Contract**
* **Force Majeure Event** means any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding any industrial dispute or any other failure in the Supplier or their supply chain, any event occurrence circumstance matter or cause which is attributable to the wilfiul act, neglect or failure to take reasonable precautions against the occurrence by the Party concerned, and any failure or delay caused by a lack of funds.
* **ITP Documentation** and **ITP** and **Invitation to Tender** means this invitation to participate;
* **Goods** means any goods provided by the Supplier to **Fidelity Energy** or their **Client**
* **Good Industry Practice** means any standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
* **Insolvency Event** means an event of insolvency or if an order is made or resolution passed for the winding up, or an administrator or administrative receiver is appointed in respect of the whole or any part of the person, asset or business, or if any composition with creditors as a result of debt is made
* **Key Personnel** means any persons specified as such or otherwise notified as such to **Fidelity Energy**
* **New IPR** means all and any intellectual property rights in materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier’s Existing IPR;
* **Party** means typically the Supplier, the Applicant, the Bidder, and Fidelity Energy; and only where the Supplier authorises a Contract with a Client, the Client;
* **Personal Data** has the meaning given to it in the General Data Protection Regulations,
* **Personal Data Breach** has the meaning given to it in the General Data Protection Regulations,
* **Processor** has the meaning given to it in the General Data Protection Regulations,
* **Purchase Order** means a purchase order issued by **Fidelity Energy** if applicable and appropriate;
* **Purchaser** and **Fidelity** and **Fidelity Energy** means the legal entity given above;
* **Purchaser’s Representative** means the person as indicated in the table above.
* **Regulations** means any applicable law;
* **Respondent** means a company applying to join the Agreement at Stage 1 (and can be the same as Applicant)
* **Services** means the services to be supplied by the Supplier to **Fidelity Energy**
* **Specification** means the specification for the Deliverables to be supplied by the Supplier to **Fidelity Energy** as specified at Stage 1 and where appropriate at Stage 2.
* **Staff** means all directors, officers, employee agents, consultants and contractors of the Supplier and/or any sub-contractor of the Supplier engaged in the performance fo the Supplier’s obligations under the Contract
* **Staff Vetting Procedures** means vetting procedures that accord with good industry practice, or the **Client**s or **Fidelity Energy** procedures or requests from time to time
* **Stage 1** means the process for an Applicant to join the Dynamic Market
* **Stage 2** or **Mini-Competition** means the process of call-off or Mini-Competition to follow at the second part of the restricted process to award a Contract
* **Supplier** means an Applicant or a Bidder under a Stage 2 Contract
* **Supplier Staff** means all staff in the employ of the Supplier and/or any Subcontractor or sub-suppier engaged in the performance of the Supplier’s obligations under a Contractor
* **Tender** means the Bidder’s response to the ITP Documentation;
* **Tender Reference** means the tender number, reference or other identifying alphanumeric code assigned by the Purchaser to this ITT Documentation
* **Term** means the period from a) the start of the accepted Application to the end of the Framework, or b) the start of an accepted Contract to the end of the Contract,
* **VAT**  means value added tax in accordance with the provisions of the Value Added Tax Act 1994 as may be updated from time to time or replaced;
* **Workers** means a worker or one of the Supplier’s Staff
* **Working Day** means a day other than a Saturday or a Sunday on which banks are open for business in England and Wales
  1. The Conditions are
* Provided in Section 1 of the Application Agreement; and
* As issued and confirmed in the Contract at a Stage 2 Mini-Competition

# Agreement Acceptance

2.1. This Application to join the Dynamic Purchasing Energy Agreement has been accepted by Fidelity Energy.

# Documents

3.1 In order of precedence the documents forming part of this Agreement are:

* 1. This Agreement;
  2. Dynamic Purchasing Energy Framework Terms (Section 1)
  3. Dynamic Purchasing Energy Framework Specification Section 2
  4. The Contract formed by the acceptance of a Bid in response to a Request For Quotation
  5. Sections 3 to 10 of the Dynamic Purchasing Energy Framework in order

3.2. The several documents forming part of this Agreement are to be taken as mutually explanatory of one another.

IN WITNESS whereof the parties hereto have signed this Agreement on the day and year below written:

|  |  |
| --- | --- |
| Date } |  |
| Signed by [enter authorised representative]  for and on behalf of  [Enter Bidder legal entity name] |  |
| Signed by [enter authorised representative]  for and on behalf of  Fidelity Energy Ltd |  |

**SECTION 1 – TERMS AND CONDITIONS OF APPLICATION**

1. **Understanding the Contract**

In the Contract, unless the context otherwise requires:

2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;

2.2 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;

2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;

2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form; 2.5 the singular includes the plural and vice versa;

2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and

2.7 the word ‘including’, "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

1. **What Needs to be Delivered**

2.1 All Deliverables

(a) The Supplier must provide Deliverables:

(i) in accordance with the Specification;

(ii) to a professional standard;

(iii) using reasonable skill and care;

(iv) using Good Industry Practice;

(v) using its own policies, processes and internal quality control measures as long as they don’t conflict with the Contract; (vi) on the dates agreed; and

(vii) that comply with all law.

1. **Goods (Lot 3 Only)**

Goods clauses:

(a) All Goods delivered must be new, or as new if recycled, unused and of recent origin.

(b) All manufacturer warranties covering the Goods must be assignable to Fidelity Energy on request and for free.

(c) The Supplier transfers ownership of the Goods on completion of delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.

(d) Risk in the Goods transfers to Fidelity Energy on delivery, but remains with the Supplier if Fidelity Energy notices damage following delivery and lets the Supplier know within three Working Days of delivery.

(e) The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.

(f) The Supplier must deliver the Goods on the date and to the specified location during Fidelity Energy's working hours.

(g) The Supplier must provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged.

(h) All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.

(i) The Supplier must provide all tools, information and instructions Fidelity Energy needs to make use of the Goods.

(j) The Supplier will notify Fidelity Energy of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify Fidelity Energy against the costs arising as a result of any such request.

(k) Fidelity Energy can cancel any order or part order of Goods which has not been delivered. If Fidelity Energy gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.

(l) The Supplier must at its own cost repair, replace, refund or substitute (at Fidelity Energy's option and request) any Goods that Fidelity Energy rejects because they don't conform with this clause. If the Supplier doesn't do this it will pay Fidelity Energy's costs including repair or re-supply by a third party.

(m) Fidelity Energy will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of Fidelity Energy or its servant or agent. If Fidelity Energy suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation then the Supplier shall indemnify from any losses, charges costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its [sub-suppliers].

1. **Services (Lot 1, 2 and 3)**

Services clauses

(a) Late delivery of the Services will be a default of the Contract.

(b) The Supplier must co-operate with Fidelity Energy and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.

(c) Fidelity Energy must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services

(d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by Fidelity Energy to the Supplier for supplying the Services remains the property of Fidelity Energy and is to be returned to Fidelity Energy on expiry or termination of the Contract.

(e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.

(f) The Supplier must take all reasonable care to ensure performance does not disrupt Fidelity Energy's operations, employees or other contractors.

(g) On completion of the Services, the Supplier is responsible for leaving Fidelity Energy's premises in a clean, safe and tidy condition and making good any damage that it has caused to Fidelity Energy's premises or property, other than fair wear and tear.

(h) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality [and free from defects].

(i) Fidelity Energy is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

1. **Fidelity Energy’s Obligations to the Supplier – Application Termination**

5.1 If Supplier fails to comply with the Application as a result of Fidelity Energy Cause:

(a) Fidelity Energy cannot terminate any Contract under the Application

(b) the Supplier cannot suspend the ongoing supply of Deliverables.

5.2 Clause 5.1 only applies if the Supplier:

(a) gives notice to Fidelity Energy within 10 Working Days of becoming aware;

(b) demonstrates that the failure only happened because of Fidelity Energy Cause;

(c) mitigated the impact of Fidelity Energy Cause.

6.3 Fidelity Energy and the Supplier can terminate an Application with immediate effect, without it consequentially resulting in termination of any Contracts under the Application and without any further liability. Termination under Contract conditions shall be subject to the conditions of Contract.

1. **Record Keeping and Reporting**

6.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with Fidelity Energy and provide progress reports when specified in the Contract or the Application Agreement.

6.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract or the Application Agreement for seven years after the date of expiry or termination of the Contract.

6.3 The Supplier must allow any auditor appointed by Fidelity Energy access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit, subject to the provision of reasonable notice.

6.4 The Supplier must provide information to the auditor and reasonable co-operation at their request.

6.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

(a) tell Fidelity Energy and give reasons;

(b) propose corrective action;

(c) provide a deadline for completing the corrective action.

6.6 If Fidelity Energy or Client, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then Fidelity Energy may:

(a) require that the Supplier provide to Fidelity Energy (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by Fidelity Energy and once it is agreed then the Supplier shall act in accordance with such plan and report to Fidelity Energy on demand

(b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by Fidelity Energy or fails to implement or provide updates on progress with the plan, terminate any Contract immediately for material breach (or on such date as Fidelity Energy notifies).

1. **Supplier Staff**

7.1 The Supplier Staff involved in the performance of any Contract must:

(a) be appropriately trained and qualified;

(b) be vetted using Good Industry Practice and in accordance with the Client requirements;

(c) comply with all conduct requirements when on Fidelity Energy's or Client’s premises;

(d) comply with Clients safeguarding and health and safety procedures.

7.2 Where Fidelity Energy decides one of the Supplier's Staff isn’t suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.

7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.

7.5 The Supplier indemnifies Fidelity Energy against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

7.6 The Supplier shall use those persons nominated in the Contract or Request for Quotation (if any) to provide the Deliverables and shall not remove or replace any of them unless:

(a) requested to do so by Fidelity Energy (not to be unreasonably withheld or delayed) or the Client;

(b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or

(c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

1. **Ending a Contract under the Application Agreement**
   1. The Contract takes effect on the date of or (if different) the date specified in the Contract and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.
   2. Fidelity Energy can extend the Contract where set out in the Contract in accordance with the terms in the Contract.
   3. The Contract can survive expiry or termination of the Application Agreement.
2. **Data Protection**

9.1 Fidelity Energy is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation.

9.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with this Contract.

9.3 The Supplier must not remove any ownership or security notices in or relating to the Client Data.

9.4 The Supplier must make accessible back-ups of all Client Data, stored in an agreed off-site location and send Fidelity Energy copies every six Months.

9.5 The Supplier must ensure that any Supplier system holding any Client Data, including back-up data, is a secure system that complies with the security requirements specified in writing by Fidelity Energy or their Client.

9.6 If at any time the Supplier suspects or has reason to believe that the Client Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify Fidelity Energy and immediately suggest remedial action.

9.7 If the Client Data is corrupted, lost or sufficiently degraded so as to be unusable Fidelity Energy may either or both:

(a) tell the Supplier to restore or get restored Client Data as soon as practical but no later than five Working Days from the date that Fidelity Energy receives notice, or the Supplier finds out about the issue, whichever is earlier;

(b) restore the Client Data itself or using a third party.

9.8 The Supplier must pay each Party's reasonable costs of complying with clause 9.7 unless Fidelity Energy is at fault.

9.9 Only the Client can decide what processing of Personal Data a Supplier can do under the Contract.

9.10 The Supplier must only process Personal Data if authorised to do so by the Client.

9.11 The Supplier must give all reasonable assistance to Fidelity Energy or the Supplier in the preparation of any Data Protection Impact Assessment before starting any processing, including:

(a) a systematic description of the expected processing and its purpose;

(b) the necessity and proportionality of the processing operations;

(c) the risks to the rights and freedoms of Data Subjects;

(d) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.

9.12 The Supplier must notify Fidelity Energy immediately if it thinks Fidelity Energy's instructions breach the Data Protection Legislation. The Supplier must notify the Client immediately if it think’s the Client’s instruction breach the Data Protection Legislation

9.13 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by Fidelity Energy, or the Client.

9.14 If lawful to notify Fidelity Energy, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.

9.15 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:

(a) are aware of and comply with the Supplier's duties under this clause 9;

(b) are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;

(c) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third Party unless directed in writing to do so by Fidelity Energy or as otherwise allowed by the Contract;

(d) have undergone adequate training in the use, care, protection and handling of Personal Data.

9.16 The Supplier must not transfer Personal Data outside of the UK unless all of the following are true:

(a) it has obtained prior written consent of Fidelity Energy and/or the Client;

(b) Fidelity Energy and/or the Client has decided that there are appropriate safeguards (in accordance with Article 46 of the GDPR);

(c) the Data Subject has enforceable rights and effective legal remedies when transferred;

(d) the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;

(e) where the Supplier is not bound by Data Protection Legislation it must use its best endeavours to help Fidelity Energy meet its own obligations under Data Protection Legislation; and

(f) the Supplier complies with Fidelity Energy's reasonable prior instructions about the processing of the Personal Data.

9.17 The Supplier must notify Fidelity Energy immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; (f) becomes aware of a Data Loss Event.

9.18 Any requirement to notify under clause 9.17 includes the provision of further information to Fidelity Energy and/or the Client in stages as details become available.

9.19 The Supplier must promptly provide Fidelity Energy with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 9.17. This includes giving Fidelity Energy and/or the Client:

(a) full details and copies of the complaint, communication or request;

(b) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;

(c) any Personal Data it holds in relation to a Data Subject on request;

(d) assistance that it requests following any Data Loss Event;

(e) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.

9.20 The Supplier must maintain full, accurate records and information to show it complies with this clause 9.

9.21 The Supplier must appoint a Data Protection Officer responsible for observing its obligations in this Schedule and give Fidelity Energy their contact details.

9.22 Before allowing any Subprocessor to process any Personal Data, the Supplier must: (a) notify Fidelity Energy or the Client in writing of the intended Subprocessor and processing;

(b) obtain the written consent of Fidelity Energy;

(c) enter into a written contract with the Subprocessor so that this clause 9 applies to the Subprocessor;

(d) provide Fidelity Energy and the Client with any information about the Subprocessor that Fidelity Energy and/or the Client reasonably requires.

9.23 The Supplier remains fully liable for all acts or omissions of any Subprocessor.

9.24 At any time Fidelity Energy can, with 30 Working Days notice to the Supplier, change this clause 9 to:

(a) replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under GDPR Article 42;

(b) ensure it complies with guidance issued by the Information Commissioner's Office.

9.25 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.

9.26 The Supplier:

(a) must provide Fidelity Energy or the Client with all Client Data in an agreed open format within 10 Working Days of a written request;

(b) must have documented processes to guarantee prompt availability of Client Data if the Supplier stops trading;

(c) must securely destroy all Storage Media that has held Client Data at the end of life of that media using Good Industry Practice;

(d) securely erase all Client Data and any copies it holds when asked to do so by Fidelity Energy unless required by Law to retain it;

(e) indemnifies Fidelity Energy against any and all Losses incurred if the Supplier breaches clause 14 and any Data Protection Legislation.

1. **Confidentiality**

10.1 Each Party must:

(a) keep all Confidential Information it receives confidential and secure;

(b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;

(c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

10.2 In spite of clause 10.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:

(a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;

(b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;

(c) if the information was given to it by a third party without obligation of confidentiality;

(d) if the information was in the public domain at the time of the disclosure;

(e) if the information was independently developed without access to the disclosing Party's Confidential Information;

(f) to its auditors or for the purposes of regulatory requirements;

(g) on a confidential basis, to its professional advisers on a need-to-know basis;

(h) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

10.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under a Contract or this Application. The Supplier Staff must enter into a direct confidentiality agreement with Fidelity Energy at its request.

10.4 Fidelity Energy may disclose Confidential Information in any of the following cases:

(a) on a confidential basis to the employees, agents, consultants and contractors of Fidelity Energy;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that Fidelity Energy transfers or proposes to transfer all or any part of its business to;

(c) if Fidelity Energy (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;

1. **Invalid Parts of Contract or Application**

11.1 If any part of the Contract or the Application is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract or the Application as much as required and rendered ineffective as far as possible without affecting the rest of the Contract or Application, whether it’s valid or enforceable.

1. **No Other Terms Apply**

12.1The provisions incorporated into:

1. The Application Agreement
2. Any resultant Contract following a Mini-Competition

are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

1. **Third Party Rights**

13.1 No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This is with This does not affect third party rights and remedies that exist independently from CRTPA.

13.2 It is intended that third parties may access the Application Agreement and may be able to enforce any term of a Contract issued under the Application Agreement. These parties shall be signatory to the resultant Contract or named within the Contract as receiving a benefit or liability.

1. **Assignment**

14.1 The Supplier cannot assign the Contract or the Application Agreement without Fidelity Energy's written consent. Fidelity Energy can assign, novate or transfer its Contract or Agreement or any part of it., and the Supplier must enter into a novation agreement in the form that Fidelity Energy specifies.

1. **Changing the Application Agreement**

15.1 Either Party can request a variation to the Application Agreement which is only effective if agreed in writing and signed by both Parties. Fidelity Energy is not required to accept a variation request made by the Supplier

1. **Notices**

16.1 All notices under the Contract or Application Agreement must be in writing and are considered effective on the Working Day of delivery as long as they’re delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

1. **Anti-Bribery**

17.1 The Supplier shall not:

(a) commit any criminal offence referred to in the regulations provided in the Appendix 1 of their Application;

(b) offer, give, or agree to give anything, to any person (whether working for or engaged by Fidelity Energy or any other public body) 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 Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract, an Application or any other public function.

17.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 17.1 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract or Application and shall notify Fidelity Energy immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

17.3 If the Supplier or the Staff engages in conduct prohibited by clause 17.1 or commits fraud in relation to the Contract or Application or any other contract with Fidelity Energy may:

(a) terminate the Application or Contract and recover from the Supplier the amount of any loss suffered by Fidelity Energy resulting from the termination, including the cost reasonably incurred by Fidelity Energy of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by Fidelity Energy throughout the remainder of the Contract; or

(b) recover in full from the Supplier any other loss sustained by Fidelity Energy in misr of any breach of this clause. 17.

1. **Equality, Diversity and Human Rights**

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

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

(b) any other requirements and instructions which Fidelity Energy reasonably imposes related to equality Law.

18.2 The Supplier must take all necessary steps, and inform Fidelity Energy of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

1. **Health and Safety**

19.1 The Supplier must perform its obligations meeting the requirements of:

(a) all applicable law regarding health and safety;

(b) the Client’s current health and safety policy while at Client’s premises, as provided to the Supplier.

19.2 The Supplier and the Client must inform Fidelity Energy and as soon as possible notify the other of any health and safety incidents or material hazards they’re aware of at Client premises that relate to the performance of a Contract.

1. **Conflict Assessment**

20.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to Fidelity Energy under the Contract, in the reasonable opinion of Fidelity Energy.

20.2 The Supplier must promptly notify and provide details to Fidelity Energy if a conflict of interest happens or is expected to happen.

20.3 Fidelity Energy can terminate an Application immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

1. **Resolving Dispute**

21.1 If there is a dispute between the Parties in relation to this Application Agreement, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.

21.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 32.3 to 32.5.

21.3 Unless Fidelity Energy refers the dispute to arbitration using clause 21.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

(a) determine the dispute;

(b) grant interim remedies;

(c) grant any other provisional or protective relief.

21.4 The Supplier agrees that Fidelity Energy has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

21.5 Fidelity Energy has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 32.3, unless Fidelity Energy has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 21.4.

21.6 The Supplier cannot suspend the performance of the Contract during any dispute.

1. **Applicable Law**

22.1 This Contract and any issues arising out of, or connected to it, are governed by English law.

1. **Change In Law**

23.1 If a change of law occurs, the Supplier is obliged to take reasonable steps to mitigate the adverse impact of such Change In Law upon the Contract.

# SECTION 2

# Scope & Specification

|  |  |
| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides the detail of **Scope of services.** * This box will be deleted at formation of contract. |

1. **SCOPE**

Fidelity Energy is changing the way businesses procure their energy. We not only provide procurement services, but all the other services you would expect from one of the UK’s leading utilities and energy consultants. We help our customers get the best value from their energy contracts, reducing their energy consumption, minimising their carbon footprint and ensuring that their bills are right. Thousands of businesses of all sizes from all over the UK rely on us for their energy needs, whether that be one site or multi-sites across the UK. We remove the stress of dealing with the energy contracts by contacting your existing and new supplier, as well as managing the process throughout, from start to finish.

Fidelity Energy provides Gas and Electricity procurement, with associated Consultancy. We are also engaged in Water procurement, business audit and health check, smart technologies and electric vehicle charging.

This Agreement is for a [Dynamic Market / Framework Agreement], to support our general business model and approach outlined above. See below for the Lots this procurement framework will cover.

[insert description of a Dynamic Market / Framework Agreement from the Cover Letter here]

1. **LOTS**

The procurement to establish the Agreement and the resultant Contracts with individual Suppliers were/are divided into two Lots. Those lots are:

Lot 1 – Gas, Electric and Water Supply

Lot 2 – Ancillary Services (including Consultancy and Goods)

This Agreement is for: [insert Applicant’s return table indicating supply, below]

|  |  |  |
| --- | --- | --- |
| Lot No. | Service Provision | Indicate YES/NO |
| 1 | Provision of Electric |  |
| 1 | Provision of Gas |  |
| 1 | Provision of Water |  |
| 2 | Provision of Consultancy Services |  |
| 2 | Provision of Educational / Training Material |  |
| 2 | Carbon Reduction Services |  |
| 2 | Any “Other” Ancillary or Supportive Provision of Services |  |

1. **SPECIFICATION – CORE SERVICE STREAM**

**NEW BUSINESS STAGES**

A Letter of Authority (example attached in Section 10) – signed by an authorised signatory. It must be noted that when an LoA is received it will mean the client will want to opt away from their incumbent provider, and to that end, You MUST provide the required data to Fidelity Energy to enable the process to commence.

Together with the LoA Fidelity Energy will receive copy invoices to ascertain the metering and volume requirements at site;

This data will be used to contact incumbent energy suppliers in order to obtain

* Details of the KVA (HH Meters)
* Current prices
* Contract end dates (contract renewal information)
* annual quantities (AQ’s) and half hourly data where applicable/we cannot access this data ourselves.

**As stated in a) above, Fidelity Energy does not accept data being withheld by suppliers in any** way**, shape or form to halt this process under the auspices of “they are not your client”.**

On receipt of Annual Quantities (AQ) and renewal dates, Fidelity Energy will provide to the client a free Utility Health Check (HEALTH CHECK example in Schedule II). This document confirms the number of meters on site and sets the expectations of current costs and provides an indicative renewal cost/budget. Furthermore, the discussion around the HEALTH CHECK provokes conversation over market prices; potential issues over current providers; the high levels of customer service expected from Fidelity Energy moving forward and subsequently sets a date for an actual “live” price to be sent on a specific day.

**FIDELITY ENERGY SUPPLY AGREEMENT**

Rather than sign and send a Supplier Energy Supply Contract (SESC) to the client for signature, Fidelity Energy normally receives a signature on its own Electricity or Gas Supply Agreement. This paperwork provides the end user an informative and detailed breakdown of current costs vs. new projected costs; AQ’s, contract term, supplier, green charges inclusion; CMR charges, data collection and metering costs, together with high level Fidelity Energy terms and conditions. By signing this document, the client accepts the rates quoted by the successful supplier through the Mini Competition and also allows a senior representative from Fidelity Energy to sign the Supplier Energy Supply Contract (SESC) if necessary. This document will be sent to the successful supplier as proof that an Energy Supply Contract has been accepted through the previously tendered Mini Competition with respect to a particular supplier Quotation ID Reference (QIDR).

**CONFIRMATION OF RATES**

Following Clause 3.7.4(d) Fidelity Energy would expect confirmation of the rates being locked in by the Supplier on the same day or at worst within 24 hours. If necessary and required by the Supplier, Fidelity Energy will sign the Supplier Energy Supply Contract (SESC) on behalf of the client who has already signed a Fidelity Energy Supply Agreement (ZSA). If 24 hours should lapse with no formal confirmation, it will be assumed by Fidelity Energy that the rates are confirmed and locked in by the supplier as previously quoted. Neither Fidelity Energy, nor its client will be financially penalised by the said Supplier, or any other party where confirmation is not received within 24 hours.

**SUPPLY CONTRACT CONDITIONS**

As well as the Fidelity Energy Supply Agreement being signed by an authorised signatory of the client, Fidelity Energy will also ascertain the need for a VAT exemption certificate and gas emergency contact forms if applicable. These forms will be sent to the supplier during the acceptance process and must be applied within 4 weeks of request, (in the case of a VAT Exemption Certificate – VATEC) to the account from the date required on the appropriate form(s).

**SUPPLY INVOICES – PAYMENT BY THE CLIENT**

Fidelity Energy will promote payment by Direct Debit for each supplier accepted onto the Framework Agreement through its Fidelity Energy Supply Agreement. It will be envisaged that standard payment terms will be 21 - 30 days after the supply invoice date and taken by Direct Debit. Where this is not possible, and through negotiation with Fidelity Energy, the supplier may accept or decline to quote if a client cannot pay by DD; the payment terms are not acceptable; or, an inflated rate may be quoted to Fidelity Energy, as agreed to account for the additional administrative burden placed on the energy supplier.

Fidelity Energy expects a process of debt collection to be managed internally by its own account managers and to be in regular discussion with the client and supplier to assist a speedy recovery of debt for the supplier. Only in extreme cases will the supplier be given authority to chase the client directly.

Where not on DD, Fidelity Energy would not expect a supplier to receive payment over a holiday, e.g., Christmas, Easter or summer, or to chase for payment over these periods. Fidelity Energy will encourage school clients to pay invoices before these holiday times, but in any case, Fidelity Energy will aim to notify Suppliers who these schools may be, for purposes of administration.

**REGISTRATION – NO PENALTIES**

It is envisaged that suppliers on the Framework will provide a dedicated person to liaise with Fidelity Energy through the registration process to avoid objections and any unnecessary delays. Fidelity Energy will perform pre-registration account balance checks would be performed in advance of the registration process to aid a successful transfer. It is also assumed that Suppliers **will not object** to a transfer of a new supplier under grounds of debt, unless by prior agreement. Fidelity Energy guarantees its clients that they will, in no way be financially penalised by using the energy procurement services of Fidelity Energy unless they have purposefully not paid a debt to clear the objection. We believe this service is unique in the industry to protect clients from poor service and your company will form part of this innovative way of doing business and supporting caring relationships. In its 17-year history, Fidelity Energy has never encountered a bad debt that has not been recovered.

**INVOICE VALIDATION**

Fidelity Energy prides itself on offering very high levels of customer satisfaction and to that end offer and perform, as standard, a monthly invoice validation service to its clients. This enables and allows:

* + Validation of supplier invoices to confirm correct rates, VAT levels, correct Data Collection charges (DC) and meter readings where applicable;
  + Provision of monthly / quarterly Positive Energy Packs (PEP example shown in Appendix IV) which provide useful consumption data, budgetary information and costs to the site;
  + An on-going 13 month rolling budgetary summary.

The Suppliers Supply License Conditions (SSLC) will always prevail in terms of non-payment and emergency procedure, however under normal circumstances the process for the Fidelity Energy invoice validation service is as follows, and will be exactly the same for ALL contracts placed with the successful tenderer, unless notified before acceptance of the ZSA:

* + Invoices are addressed and sent to the Fidelity Energy offices either as a hard paper copy or electronically as a PDF copy / .csv and the supplier will notify Fidelity Energy of the expected issue date;
  + The invoices will be addressed as:

**Site Name,**

**c/o Fidelity Energy Ltd**

**90 Bartholemew Street**

**Newbury**

**RG14 5EE**

The supply address **must** be shown on the invoice;

* + Invoices are scanned and stored securely electronically by Fidelity Energy to allow easy retrieval for ongoing contract management and validated within 72 hours. These are then emailed to the client with an accompanying memorandum. The email will state whether it is OK for payment or not; if it is “not OK for payment” then the dedicated account manager will inform the Supplier as to the error and expect a speedy resolution from the supplier to enable payment. As part of the resolution process Fidelity Energy will expect to see and discuss Suppliers Service Level Agreements
  + Where applicable, a group or multi meter invoice may be required and data should be supplied in simple csv data format on a regular basis in time with invoicing runs for all Fidelity Energy sites.

**CONTRACT MANAGEMENT**

Contract Management will be subject to Section 5 per Contract, but management will be taken as a whole across all Contracts being delivered by the Supplier. This is covered in more detail in Section 5.

Operationally, following confirmation of the rates lock in from the supplier, the client will be provided a named Fidelity Energy Customer Relationship Manager (CRM) for new business only as a renewal will continue the existing CRM relationship.

Within 5 days of the documents being signed the client will receive an introductory call from the CRM explaining the registration process and what will happen next. During this phone call the CRM will confirm VAT levels, payment method and chase any other outstanding paperwork for new business or additional sites. Emphasis will be put on their current supply account **being free of debt** during the registration process.

Fidelity Energy, through the CRM, takes its responsibilities seriously as the first port of call for all customer enquiries, dealing directly with suppliers account management teams to deal with all queries and issues involved in the supply of the gas or electricity contract. Fidelity Energy is committed to assisting the customer to comply with current and future Government initiatives. During the process of ‘Going Live’ on the initial contract the level of account management increases to ensure all the elements of Going Live are correct and in place.

Ongoing account management will commence from this point in terms of query resolution, invoice validation and debt chasing on behalf of the Supplier. Ultimately this will lead full circle to the production of the IBF (Indicative Budget Forecast) where applicable, the following year to enable the renewal of the utility supply contracts.

**CLIENT DEBT**

Fidelity Energy does not accept liability or responsibility for any client debt. It is however encouraged and expected to have clarity and information on a monthly basis through the supplier management process. Statement of Accounts may be requested and copy invoices where necessary although these will be stored on the Fidelity Energy server unless they have never been received at Fidelity Energy’s offices. It is expected that “debt chase” letters and/or “notice to disconnect” letters will be sent to the Fidelity Energy offices and where applicable the CRM will liaise with the supplier in a timely and urgent manner to have the appropriate debt paid by the client.

**STANDARD FAIRNESS TERMS**

As described above Fidelity Energy’s ethos is to work in partnership with suppliers towards a fair and ethical working relationship. The agreements that are assigned need to be commercially acceptable to all parties; Fidelity Energy, the supplier and the end user. It is therefore seen that attempts to deliberately block fairness terms and forging a business relationship together unacceptable, and the ethos is that mistakes will happen; it is how they are dealt with that really matters. To that end through this Framework Fidelity Energy will:

* Not accept unlawful Supplier objections being raised;
* Not accept a direct approach by the supplier to entice a Fidelity Energy client to leave and accept a contract directly through said Supplier;
* Not accept a Supplier having communications directly with a Fidelity Energy client regarding Fidelity Energy’s levels of service, commission, or all-round abilities without the prior agreement and express permission from a senior management employee of Fidelity Energy;
* Not accept a defamation of Fidelity Energy’s character from the Supplier;
* Not accept the incumbent or new Supplier penalising the client or Fidelity Energy for any potential “industry errors” and always have the best interests of the client at their core;
* Compensate the client if an employee of Fidelity Energy does not follow process and an error is made through the course of the contract that causes the client to be financially penalised, Fidelity Energy will pay compensation and reimburse the client in order that no additional costs are passed on to the customer;
* In return, expect the Supplier to employ the same philosophy and hence if errors occur from the supplier that either financially impacts the client, or Fidelity Energy in terms of lost commission, then compensation will be paid to either Fidelity Energy, or the client to avoid any financial loss;
* Respect the termination conditions within the supply contract and it is expected the supplier will accept a group termination for all sites that have been negotiated through Fidelity Energy and the mini competition and will **at no time** roll over or auto renew any contract;
* Respect the supplier’s requirement to have a take or pay condition. However, it is expected that the Supplier will balance the consumption pattern across all sites contracted through said Supplier in the Fidelity Energy portfolio, included within the Framework.
* Not accept, if the Tenderer has received an LOA from Fidelity Energy through the process of the mini competition then the tenderer will be forbidden to provide offers or attempt to contract directly the customer without prior written notification to Fidelity Energy. If any request for prices of any customer within the framework is received the tender must inform Fidelity Energy and a conclusive decision must be reached by the customer before anything can progress.

**PAYMENT OF COMMISSION TO FIDELITY ENERGY**

Fidelity Energy have unique payment terms with each supplier typically. Payments must be in line with agreed payment terms, or the supplier will confirm how Fidelity Energy will obtain commission/payment.

**WORKING WITH CLIENT - ACADEMIES**

Fidelity Energys experience in the management of utility supply contracts has shown a need to guide suppliers in the knowhow of changing status to an Academy. It is expected that the successful supplier will work with Fidelity Energy to assist in any legal change of status requests. Where another TPI (Third Part Intermediary) is involved, Fidelity Energy will not allow supply contracts to be cancelled through a Change of Occupier / Change of Tenancy (CoO / CoT) when a school converts to an Academy or becomes part of a Multi Academy Trust (MAT), but You, the Company and Fidelity Energy will allow the contract to novate to the new entity at the contracted rates previously applied and continue to be managed through Fidelity Energy until the contract end date.

Assisting and working with the Client in all other sectors is also applicable and required.

**ENERGY AS A SERVICE**

Fidelity Energy is also committed to engaging with clients in order to reduce energy consumption, improving but not limited to sustainability, renewal of mechanical engineering equipment such as boilers, central heating, lighting, cavity wall insulation, solar panels, wind generation, source heating and movement sensors. To that end this Framework will include energy related services that your company may be able to provide and/or the client may require after appropriate surveys.

**MARKET REPORTS, CONFERENCES, EDUCATIONAL MATERIAL**

Fidelity Energy is committed to regular communication with its customers providing them with insight and market data on the latest developments in the UK utilities market. To get a full view it will be a requirement of the supplier to provide daily and monthly market reports that can be re-used by Fidelity Energy, and perhaps “white labelled”.

In addition, Fidelity Energy often attend conferences and educational events. We will therefore encourage the engagement of suppliers on this Framework to provide literature and marketing materials to assist with the education and engagement of young people within the energy and water industries, which is one of the aims of creating this Framework document (see section below).

**WATER**

In addition to Electricity and Gas, we are also seeking to provide the same services as outlined in the section above for the Water industry and sector, to Fidelity Energy customers, operating in the same manner and using the same process contained in this specification.

1. **SPECIFICATION - ADDITIONAL SERVICES STREAMS**

**CARBON REDUCTION CONSULTANCY**

As outlined above, we provide Consultancy services to our Clients in a number of areas. In particular, we provide services based around the following and accordingly require Suppliers also capable of operating in the following areas:

* Compliance and Legislation
* Commercial Energy Audits and Assessment
* Certifications and Authoring Review
* Training (Corporate)
* Carbon Reporting
* Training/Lessons (e.g. in Schools, subject to Safeguarding requirements of the Client)

As such we would expect a Supplier to be able to provide such services to any location in the United Kingdom.

The types of job roles or consultants to be provided under this Lot are:

* Director

**Directors** lead a particular company or business. They are responsible for all aspects of the company’s success. As a leader of a company or project, directors sometimes report to board members or company stakeholders. They strive to maintain professional and corporate customs, enforce ethical practices, meet fiscal targets and manage company budgets.

**Responsibilities/Skills –**

. Exceptional **leadership, business and interpersonal proficiency**  
2. Prior thriving **managerial experience**  
3. Be able to **set business targets, time lines, plans and financial targets**  
4. Be able to **stimulate employees, teams and departments**  
5. Be a superior **networker, negotiator, and business leader**  
6. Be **successful, self directed, flexible and tactical**  
7. Excellent **computer or technology skills**  
8. Be able to **garner the fidelity, esteem and confidence of employees**  
9. Be a **visionary**  
10. High quality **communication and presentation dexterity**

**Education –**

Directors should be overachievers, successful in business and strong, capable leaders. They should have a successful business record and excellent managerial performance. Having at least a Master’s degree or MBA as a Director is essential. Directors who do not possess a degree can transition to this position based on their business prowess.

* Senior Associate Consultant

Senior Associate Consultants are responsible for ensuring the meeting of milestones and deadlines by communicating clearly with clients on topics such as overall engagement objectives, work plan and key findings; managing internal project teams; delegating project tasks; supervising the work of Associates and Project Assistants; and, coordinating with firm principals.

**Responsibilities/Skills**

· Working with clients to identify key strategic questions facing the organization.

· Conducting in-depth financial analyses of income statements and balance sheets to clarify the organization’s financial model and current state of financial health.

· Building financial models, and identifying and modeling scenarios and their implications.

· Designing and implementing a research agenda to inform a strategic or business planning process. Such research agendas may include interviews, focus groups, audience surveys, organizational benchmarking and statistical analysis of client data. · Analyzing and synthesizing all research findings – qualitative and quantitative – to identify key market implications and strategic challenges.

· Collaborating closely with key client staff members to develop organizational business plans, including financial projections and detailed operational strategies, and identifying risks within the business plan and any mitigating strategies.

· Leading the process of developing major client deliverables, including writing and editing reports as well as presentations for clients.

· Facilitating meetings of clients’ board, staff and other stakeholders as needed. · Contributing to sector reach and the firm’s learning objectives.

· Participating in business development, including writing project proposals and attending meetings with potential clients.

**Education**

Typically degree-level, professional work qualification equivalent considered.

* General Associate Consultant

In this role, you'll be responsible for identifying issues, forming hypotheses and helping with the implementation of change. Associates will manage larger aspects of the problem solving process and be responsible for presenting findings and formulating recommendations.

In terms of managerial experience, you'll help to structure the work and manage analysts (or Junior Support Roles) who are working on the project. During their time in this role, they will gain sector-specific knowledge and develop core consultancy skills training.

**Skills**

Similar to Senior Associate Consultant, but with 5 or less years experience.

**Education**

**Typically degree-level, professional work qualification equivalent considered.**

* Technical Consultant – Carbon Reduction

See General Associate Consultant, but with a focus and specialism in: Carbon Reduction.

This may have specific technical qualifications in this field.

* Technical Consultant – ESOS

See General Associate Consultant, but with a focus and specialism in: Energy Savings Opportunity Schemes.

This may have specific technical qualifications in this field.

* Technical Consultant – Lighting

See General Associate Consultant, but with a focus and specialism in: Lighting.

This may have specific technical qualifications in this field.

* Technical Consultant – Energy Audit

See General Associate Consultant, but with a focus and specialism in: Energy Audit

This may have specific technical qualifications in this field.

* Technical Consultant – Water Audit

See General Associate Consultant, but with a focus and specialism in: Water Audit

This may have specific technical qualifications in this field.

* Junior Support Role (Administration/Clerical) – also, an Analyst

 A typical entry point level or pre-associate consultant role, perhaps following graduation from university or with less than 5 years experience in an administrative/analyst role. As an analyst you'll spend the majority of time on the client site, having responsibility for part of the problem-solving process. You'll support a team of consultants in research, data collection and analysis, as well as taking part in training and development programmes.

**PRODUCTS AND GOODS**

Suppliers under this lot will be asked or capable of providing support to various Clients, but typically schools and educational establishments, around energy supply.

This may take the form of educational tools and materials, and demonstrator equipment.

Suppliers can make and provide their own propositions for the goods provided, but should outline to us what these are. Types of materials may change over time as development continues, but must be updated to and informed and agreed with Fidelity Energy at the point of Call-Off.

The Supplier shall conform with all Client restrictions and policies if visiting a Client location, including health and safety and security policies, and Safeguarding policies.

1. **METHOD OF OPERATION**

Refer to Section 3.

The Method of Operation describes how the process works, at Stage 1 and at Stage 2.

It also describes based framework management principles as applicable to the procurements under this framework and any resultant Contract.

1. **SOCIAL VALUE**

Social Value requirements in the context of the relevant legislation is an increasing and well-legislated requirement for a number of potential and existing Clients of Fidelity Energy.

It can be a difficult area to support, as Clients frequently have their own interpretations of how this is to work and their own methods of monitoring. Therefore, flexibility from the Applicant and successful Bidders at Stage 2 will be required to ensure that this can be delivered and reported upon to the Client’s satisfaction.

More information is provided in Section 4.

1. **SERVICE LEVELS, PERFORMANCE MEASURES, AND REPORTING REQUIREMENTS**

The Supplier shall comply with the Service Levels, Performance Measures, and reporting requirements outlined in Section 5. These may be updated by Fidelity Energy as required, or additional Service Levels, Performance Measures and reporting requirements may be requested or determined by the Client.

1. **SPECIAL CONDITIONS AND DOCUMENTATION**

The Special Conditions and documentation (Section 6) will only apply in certain circumstances, and only where explicitly requested by Fidelity Energy or by their Client.

These documents can be introduced to apply to Stage-2 Mini-Competitions only. They do not apply at Application (Stage 1).

They must be taken on a case-by-case basis dependent on Client requirements, supply chain risks and financial risk assessments (as well as any other applicable reason) applicable per engagement.

1. **ONBOARDING AND EXIT PLANS**

Example onboarding (Mobilisation) and Exit Plans are provided under Section 7 and should be read in conjunction with the Method of Operation and the Request for Quotation.

The option of using bespoke onboarding, mobilisation or exit plans is available where Fidelity Energy and the Supplier agree, or the Client requests.

These onboarding and exit plans are intended for use with Lots 3 and 4. They may also from time to time as appropriate be used with other Lots.

1. **INDICATIVE FORM OF REQUEST FOR QUOTATION (PROCESS STAGE 2)**

When responding to a Stage 2 Request for Quotation, the Bidders in the Mini-Competition shall ensure they utilise the form as issued by Fidelity Energy. An indicative form is provided under Section 8.

1. **TIMESCALES FOR ENGAGEMENT PROCESS**

The quotation process timescales shall be indicated in the Request for Quotation and strictly adhered to by all parties in the process.

In general terms, the Mini-Competition at Stage 2 should be issued by Fidelity Energy for 10 days to comply with the legislation, unless and with the provision that an exclusion is possible when all Respondents agree that a shorter time-scale is appropriate.

1. **RENEWABLE (GREEN) ENERGY**

The Supplier shall ensure that consideration is given, and in some instances fully green (or renewable) energy is sourced wherever possible or appropriate.

The UK government has stated: “UK businesses including smaller suppliers will be well-placed to win orders and further investment from energy companies around the world and increase their competitive standing on the global stage, as well as supporting low-carbon supply chains.

The UK’s Prime Minister has also set out further commitments to ensure that, within the decade, the UK will be at the forefront of the green industrial revolution as we accelerate our progress towards net zero emissions by 2050.

These include:

* Confirming offshore wind will produce more than enough electricity to power every home in the country by 2030, based on current electricity usage, boosting the government’s previous 30GW target to 40GW.
* Creating a new target for floating offshore wind to deliver 1GW of energy by 2030, which is over 15 times the current volumes worldwide. Building on the strengths of our North Sea, this brand new technology allows wind farms to be built further out to sea in deeper waters, boosting capacity even further where winds are strongest and ensuring the UK remains at the forefront of the next generation of clean energy.
* Setting a target to support up to double the capacity of renewable energy in the next Contracts for Difference auction, which will open in late 2021 - providing enough clean, low cost energy to power up to 10 million homes”

Switching to a green tariff allows you to meet the GHG Protocol Corporate Standard where it can be matched to REGOs, allowing you to report zero emissions for “Scope 2” purchased electricity. ”REGO” stands for Renewable Energy Guarantees of Origin and one is issued for each megawatt hour of renewable electricity generated.

It is common knowledge that brown energy from fossil fuels has a detrimental impact on climate change, however not everyone knows of the other benefits for businesses who choose to go greener

1. **REPORTING MECHANISMS AND SERVICES**

As contained within this document, and as requested from time to time by Fidelity Energy.

1. **SUPPLY CHAIN VISIBILITY**

The Supplier has a responsibility to inform Fidelity Energy (and as Fidelity Energy may direct the end-Client) of their subcontractors, sub-suppliers and subconsultants, across the full supply chain of services and/or goods. An indicative supply chain has been provided in Appendix 2 under Section 7 in the final Contract, but this may be subject to change.

Where a change to the supplier base is required for a particular Contract, this shall be notified to Fidelity Energy at the point of responding to a Request for Quotation utilising the relevant supply chain form in Appendix 2. Fidelity Energy has the right to refuse an unsuitable supplier being included in the supply chain on the grounds of Fidelity Energy’s own risk assessment of said supplier, and the Client can direct the refusal of supply from an unsuitable supplier. No such refusal can be vexatious or without justification, and the Supplier has the right to request a reasonable explanation for the refusal.

1. **MODERN SLAVERY**

The provisions of the legislation (both current and as may be updated) in relation to Modern Slavery shall be adhered to by the Supplier and enforced throughout their supply chain of subcontractors, sub-suppliers and subconsultants.

Modern Slavery requirements from a legislative viewpoint incorporate reporting requirements for companies with a turnover above a certain value; but even below this value, the Supplier shall take all reasonable steps either of their own or as directed by Fidelity Energy to ensure they are satisfied that modern slavery risk has been assessed and mitigated within their supply chain.

In the context of this Contract, note that in particular modern slavery risk can not only apply to wages of people engaged in the energy supply chain closer to source, but also to the origination of goods, equipment, electronics, raw material extraction, and many other sources not listed that are involved in supplying any of the goods and services under this Contract.

1. **DATA PROCESSING AND HANDLING**

The General Data Protection Regulation (GDPR) is an EU legislation that aims to give the residents of the EU more control over their data. Under this regulation, organizations that handle data of EU residents will have to comply with data and privacy rules. Post-Brexit, this legislation has remained a part of UK legislation, and also is further enhanced and informed by the historical legislation relating to the Data Protection Act.

One of the key requirements and changes is that your Privacy Policy will need to be updated to reflect GDPR requirements. References to “Articles” below refer to the appropriate parts of the legislation.

All the below points are inferred to apply in any Contract at Stage 2 resultant from a successful Application at Stage 1. You should also ensure your supply chain incorporates and complies with this summary of the general legislation.

**What details about the processing must the contract include?**

Article 28(3) states that the contract (or other legal act) must include the following details about the processing:

* the subject matter and duration of the processing;
* the nature and purpose of the processing;
* the type of personal data and categories of data subject; and
* the controller’s obligations and rights.

The controller therefore needs to be very clear from the outset about the extent of the processing it is contracting out.

**What are the minimum required terms?**

Article 28(3) also sets out the following specific terms or clauses that must be included in the contract:

* Processing only on the documented instructions of the controller.
* Duty of confidence.
* Appropriate security measures.
* Using sub-processors.
* Data subjects’ rights.
* Assisting the controller.
* End-of-contract provisions.
* Audits and inspections.

These are the minimum required, but the controller and processor may agree to supplement them with their own terms. Each of these terms is explored further below.

**Processing only on the controller’s documented instructions**

Under Article 28(3)(a) the contract must say that the processor may only process personal data in line with the controller’s documented instructions (including when making an international transfer of personal data) unless it is required to do otherwise by UK law.

The contract may include details of the instructions specified in Article 28(3), or those instructions may be provided separately. An instruction can be documented by using any written form, including email. The instruction must be capable of being saved, so that there is a record of the instruction. This contract term should make it clear that it is the controller, rather than the processor, that has overall control of what happens to the personal data.

If a processor acts outside of the controller’s instructions in such a way that it decides the purpose and means of processing, including to comply with a statutory obligation, then it will be considered to be a controller in respect of that processing and will have the same liability as a controller.

**Duty of confidence**

Under Article 28(3)(b) the contract must say that the processor must obtain a commitment of confidentiality from anyone it allows to process the personal data, unless that person is already under such a duty by statute.

This contract term should cover the processor’s employees as well as any temporary workers and agency workers who have access to the personal data.

**Appropriate security measures**

Under Article 28(3)(c) the contract must oblige the processor to take all security measures necessary to meet the requirements of Article 32 on the security of processing.

Both controllers and processors are obliged under Article 32 to put in place appropriate technical and organisational measures to ensure the security of any personal data they process which may include, as appropriate:

* encryption and pseudonymisation;
* the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
* the ability to restore access to personal data in the event of an incident; and
* processes for regularly testing and assessing the effectiveness of the measures.

Adherence to an approved code of conduct or certification scheme may be used as a way of demonstrating compliance with security obligations. Codes of conduct and certification may also help processors to demonstrate sufficient guarantees that their processing will comply with the UK GDPR.

**Using sub-processors**

Under Article 28(3)(d) the contract must say that:

* the processor should not engage another processor (a sub-processor) without the controller’s prior specific or general written authorisation;
* if a sub-processor is employed under the controller’s general written authorisation, the processor should let the controller know of any intended changes and give the controller a chance to object to them;
* if the processor employs a sub-processor, it must put a contract in place imposing the same Article 28(3) data protection obligations on that sub-processor. This should include that the sub-processor will provide sufficient guarantees to implement appropriate technical and organisational measures in such a way that the processing will meet the UK GDPR’s requirements. The wording of these obligations do not need to exactly mirror those set out in the contract between the controller and the processor, but should offer an equivalent level of protection for the personal data; and
* the processor is liable to the controller for a sub-processor’s compliance with its data protection obligations.

For more information on the process for appointing sub-processors, as it is a detailed subject, please ensure you are familiar with and comply with the legislation and consult with the Information Commissioners Office, central government, or otherwise obtain appropriate legal advice.

**Data subjects’ rights**

Under Article 28(3)(e) the contract must provide for the processor to take “appropriate technical and organisational measures” to help the controller respond to requests from individuals to exercise their rights.

This provision stems from Chapter III of the UK GDPR, which describes how the controller must enable data subjects to exercise various rights and respond to requests to do so, such as subject access requests, requests for the rectification or erasure of personal data, and objections to processing.

**Assisting the controller**

Under Article 28(3)(f) the contract must say that, taking into account the nature of the processing and the information available, the processor must assist the controller in meeting its obligations to:

* keep personal data secure;
* notify personal data breaches to the ICO;
* notify personal data breaches to data subjects;
* carry out data protection impact assessments (DPIAs) when required; and
* consult ICO where a DPIA indicates there is a high risk that cannot be mitigated.

We recommend that the contract is as clear as possible about how the processor will help the controller meet its obligations.

**End-of-contract provisions**

Under Article 28(3)(g) the contract must say that at the end of the contract the processor must:

at the controller’s choice, delete or return to the controller all the personal data it has been processing for it; and

* delete existing copies of the personal data unless UK law requires it to be stored.
* It should be noted that deletion of personal data should be done in a secure manner, in accordance with the security requirements of Article 32.

The contract must include these terms to ensure the continuing protection of the personal data after the contract ends. This reflects the fact that it is ultimately for the controller to decide what should happen to the personal data being processed, once processing is complete.

We appreciate the practical reality that it may not be possible for data in backups or archives to be deleted immediately on termination of a contract. Provided appropriate safeguards are in place, such as the data being put immediately beyond use, it may be acceptable that the data is not deleted immediately if the retention period is appropriate and the data is subsequently deleted as soon as possible, eg on the processor’s next deletion/destruction cycle.

**Audits and inspections**

Under Article 28(3)(h) the contract must require:

* the processor to provide the controller with all the information that is needed to show that the obligations of Article 28 have been met; and
* the processor to allow for, and contribute to, audits and inspections carried out by the controller, or by an auditor appointed by the controller.

This provision obliges the processor to be able to demonstrate compliance with the whole of Article 28 to the controller. For instance, the processor could do this by giving the controller the necessary information or by submitting to an audit or inspection.

The UK GDPR does not require that the contract includes a provision requiring a processor to keep records of the processing it carries out for the controller – although such records would be useful for the processor to demonstrate compliance with Article 28. However, requirements for processors to maintain records of their processing activities are set out in Article 30(2).

# SECTION 3

# Method of Operation For The Agreement

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| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides the detail of **how this Application and contract are to practically work.** * This box will be deleted at formation of contract. |

1. **METHOD OF OPERATION**

This Method of Operation outlines how the Agreement will work.

The Applicant has (or will) submit an Application to join the Agreement, and if successful, an Application Agreement is formed between Fidelity Energy and the successful Applicant.

The agreement does not contain any guarantee of supply or commitment from either party under the Application Agreement.

Commitments are only formed when the Applicant has bid on a Request for Quotation (also called a 2nd Stage Mini Competition) and been successful. The Request for Quotation contains the details particular to that contract for the supply, and clarifies under which Lot the supply is to be delivered.

The Request for Quotation, if accepted and signed, then forms the Contract between the parties on the terms issued with or accepted under the Request for Quotation.

1. **INITIAL PRICING REQUESTS**

Fidelity Energy carries out health checks for new business opportunities and the requests for prices to suppliers are actioned on an ad-hoc basis. In the case of a renewal, an IBF (example Indicative Budget Forecast shown in Section 10) is sent to site which provides an indication for the forthcoming renewal. With regards to health check requests for new business, or additional meters as stated, these will on a case by case scenario and will be requested throughout various times of year but ultimately Fidelity Energy will aim to get a HEALTH CHECK to a client within 15 days of the initial request.

In both cases Fidelity Energy will send Pre-Tender Data (PTD) to suppliers in order that the supplier can pre-load their system in readiness for a mini-competition request. For Fidelity Energy renewals, the pre-tender data will normally be sent bi-annually which gives suppliers ample time to load the site details into their pricing platform, in readiness for the initial set of IBF’s and the renewals. This data may relate to a significant number of renewals/meters for the following year and it is expected that IBF prices will be provided to Fidelity Energy within one month of a submission.

Pre-Tender Data that will be sent to suppliers to achieve an initial request, via the mini- competition for either an IBF or HEALTH CHECK is:

* A signed Letter of Authority – terms above apply
* Annual Quantity (split by time band where applicable)
* Half hourly data (where applicable)
* Renewal date(s)
* Electricity supply number(s) or gas MPR(s) or Water SPID(s)
* Term required
* Commission to be included for Fidelity Energy

1. **MINI-COMPETITIONS (STAGE 2)**

Having already received the Pre-Tender Data the “Mini Competition” will commence and Fidelity Energy will send the Requests for Quotation electronically to all suppliers on The Framework and require prices normally within 10 days, however this may be longer or shorter dependent on each specific request. Fidelity Energy may require multi meter prices via .csv to aid data input and these will be requested at the time of the Tender Request. The requests may be split into relevant Lots if applicable. This will include:

1. Notification of the site that requires pricing by way of name and MPAN / MPR / SPID;
2. The date and time the mini-competition price is required;
3. Commission to be included for Fidelity Energy;
4. Term of length for the contract(s) required;
5. Any other additional requirements.

1. **PROCUREMENT PROCESS**

The procurement process with Suppliers will vary depending on what is either required or best value for the client. This may take many forms from a fixed, all-inclusive model, to energy only pass through to a flexible basket product. Specifics of which will be discussed during the mini-competition process, but You, the Supplier may only be at liberty to provide the product range available to your company and others may have more preferential products. Should this be the case Fidelity Energy will retain the utmost confidence and not divulge different product ranges to competitor companies.

1. **QUOTING PROCESS**

During the Mini Competition process and after the HEALTH CHECK and IBF processes have been completed, a salesperson from Fidelity Energy will have either a meeting or conversation with the (prospective) client to negotiate a date when a formal and bona fide Energy Supply Contract (EWSC) can be offered. This sets expectations for the client to:

* Sign a Fidelity Energy Supply Agreement (example in Section 10) on the given day. This agreement gives Fidelity Energy Fidelity Energy to sign the Suppliers Energy and/or Water Supply Contract (EWSC) and successful supplier should note and accept that in the main, clients sign a Fidelity Energy agreement and not a supplier agreement;
* Allow suppliers on the Framework time to schedule the provision of the requested
* Mini Competition quotations on the specific required day for the various requested terms;
* Allow Fidelity Energy team enough time to schedule and receive the mini-competition offers from suppliers;
* Analyse the prices on a per meter basis. By way of analysis Fidelity Energy will validate the received supplier quotations on an exact like for like basis, particularly with any other potential pass-through charges applied. A scoring system to assess the best supply contract will be based on the criteria set out in Section 8 (note: this criteria can be changed to suit the procurement).

We will then:

* Provide feedback to suppliers in terms of price and service;
* Issue the successful Fidelity Energy Supply Agreements to a client and receive signed copies by the required deadline, normally 4pm same day.
* Receive confirmation of “contract lock-in” from every energy and/or water supplier.

1. **FRAMEWORK MANAGEMENT**

We may hold an Annual General Meeting once a year with all Applicants on the Agreement to review performance and discuss any changes or improvements than can be made to the operation of the Agreement.

# SECTION 4

# Social Value

|  |  |
| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides the detail of **Social Value requirements for our Customers.** * This box will be deleted at formation of contract. |

1. **SOCIAL VALUE PRINCIPLES**

The Social Value principles as outlined in the Government Commercial Function’s Edition 1.1 dated 3rd December 2020 (as may be amended from time to time) shall broadly be adhered to by any Supplier under this Agreement and any Contract. Evaluation of Social Value in £s is the only section of the document that shall not be enacted at the point of tender; although Fidelity Energy reserves the right to begin assessing Requests for Quote in-line with this guidance when the appropriate tools and methodology are available.

Note that the guidance does not necessarily cover organisations such as Fidelity Energy but will become more and more frequently used in public sector, which means our Clients will begin to request evidence and demonstration of Social Value in the near future. The Public Services (Social Value) Act 2012 has been part of legislation for a considerable period of time, and public sector approaches to PS(SV)A is changing regularly.

In all other aspects, the provisions and principles outlined in the guide (available for download from Gov.UK) shall apply under this contract.

1. **OPTION A – SOCIAL VALUE REPORTING STANDARD FORMAT**

It is important to note that the Social Value KPIs provided at the end of this Section are in a format to align with Section 4.

The 5 themes and 8 Policy Outcomes under social value are:

|  |  |  |
| --- | --- | --- |
| **Themes** |  | **8 Policy outcomes** |
| Theme 1 | COVID-19 recovery | 1. Help local communities to manage and recover from the impact of COVID-19 |
| Theme 2 | Tackling economic inequality | 1. Create new businesses, new jobs and new skills |
| 1. Increase supply chain resilience and capacity |
| Theme 3 | Fighting climate change | 1. Effective stewardship of the environment |
| Theme 4 | Equal opportunity | 1. Reduce the disability employment gap |
| 1. Tackle workforce inequality |
| Theme 5 | Wellbeing | 1. Improve health and wellbeing |
| 1. Improve community cohesion |

These 5 Themes and their 8 outputs will be supported by the Performance Measure outlined in Section 5.

In addition to the Performance Measure, you will also be rated as follows for reporting to Clients:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Quarter** | **Year** | **Social Value Targets – evidence of all Themes and Policy Outcomes** | | | |
| **Good** | **Approaching target** | **Requires improvement** | **Inadequate** |
| [Any Quarter] | [year] | All 8 Policy Outcomes show regular improvement, and there is evidence of attainment/provision on each | 4 out of 5 Themes or 6 out of 8 Policy Outcomes have Outputs that show regular improvement, and there is evidence of attainment/provision on each | 3 out of 5 Themes or 4 out of 8 Policy Outcomes have Outputs that show regular improvement, and there is evidence of attainment/provision on each | 2 out of 5 Themes or only 3 out of 8 Policy Outcomes have Outputs that show regular improvement, and there is evidence of attainment/provision on each |

1. **OPTION B – SOCIAL VALUE CLIENT FORMAT**

Our Clients may request Social Value reports in any format of their own choosing, as there are a number of different approaches available and commonly being taken across all sectors of public service. Where this occurs, and Fidelity Energy is aware, we shall ensure this is outlined in the Request for Quote and details provided. The Dynamic Purchasing Energy Framework therefore permits the use of a Client’s own reporting format and additionally their own Social Value approach where Fidelity Energy judges it reasonable to do so. A Supplier can object if they wish, but they must indicate substantive reasoning for Fidelity Energy to reply to their Client with.

# SECTION 5

# Service Levels & Performance Measures

|  |  |
| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides the detail of **how we will jointly measure performance under Contract.** * This box will be deleted at formation of contract. |

1. **SERVICE LEVEL AND PERFORMANCE MEASUREMENT PRINCIPLES**

The Service Levels are detailed below, and explain the level of Service required per Lot. The Service Levels are the expected standard of provision of Service.

Performance Measurement details how these Service Levels will be measured per Lot, per Service Level, to provide and demonstrate an agreed level of Service has been attained or achieved.

Rectification Process details how a reduction in Service Level or Performance Measurement that becomes unacceptable to Fidelity Energy is to be managed to improve performance. It also includes Sanctions for failure to rectify in a specified time period.

Service Levels can **only** be measured when a Contract has been formed, and will apply to all Contracts individually (not collectively).

1. **SERVICE LEVEL CONDITIONS**

The Service Levels applicable to every Lot are:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| COST & PRICING | CP1 | Quotations / Requests | The Supplier will submit all quotations and responses to requests for pricing as requested within 10 days OR in the timescale requested in the Call-Off | On a monthly basis, the Supplier will submit a report showing the date quotations/requests were received, and the date they were responded to by the Supplier |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| CONTRACT MANAGEMENT | CM2 | Specific Reporting Requirement | The Supplier will comply in ensuring that all the specific reporting requirements are adhered to, for a) Social Value reporting, and b) general contract management. | On a monthly basis the Supplier will provide a report showing the number of times within the month they failed to adhere to these specific reporting requirements, and how many reports were correctly submitted. |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| CONTINUOUS IMPROVEMENT | CI3 | Improve Offering | The Supplier will ensure they engage in Continuous Improvement, by making suggestions to improve their Service offering. | On a six-monthly basis the Supplier will provide a report showing the number of times within the previous six months how many improvements they made to the Service offering |

1. **PERFORMANCE MEASUREMENTS**

The Performance Measurements to match to each Service Level in respect of all Lots are:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| COST & PRICING | CP1 | % Score = (No. of Times Quotations or Requests Submitted Within Timescales / No. of Times Quotations or Requests Were Requested ) \* 100 | PASS = 95%, FAIL = 94.99% | Monthly | Red |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| CONTRACT MANAGEMENT | CM2 | Specific Reporting Requirement | PASS = Provide on Time; FAIL = Do not Provide within 3 days of end of Month | Month | Green |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| CONTINUOUS IMPROVEMENT | CI3 | Improve Offering | PASS = Provide on Time; FAIL = Do not Provide within 15 days of end of 6 month period | Half-Yearly | Green |

1. **RECTIFICATION PROCESS**

A Remediation Notice shall be issued when a failure to achieve a Service Level’s Performance Measure occurs as follows:

1 or more of the Target KPIs labelled ["Red"] in a rolling [INSERT NUMBER] month period; or

1 or more Target KPIs labelled ["Green"] in a rolling [INSERT NUMBER] month period.]

And further Fidelity Energy shall be entitled to serve a notice of Termination in respect of any Contract, or to remove a Respondent’s Application from the Framework, in the following instances (given that removal from the Framework does not prevent a Respondent from re-applying in the future when they are certain they have resolved the performance issues and they will not re-occur):

* + - * 1. [Fidelity Energy serving [INSERT NUMBER] Remediation Notices in a rolling [INSERT NUMBER] month period or [INSERT NUMBER] Default Notices in a rolling [INSERT NUMBER] period.]

**[AND/OR]**

* + - * 1. [the Supplier repeatedly breaching any of the terms of this 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 of this Agreement.]

1. **OPTION TO INCLUDE CLIENT SLA/KPI PERFORMANCE MEASURES**

A Client of Fidelity Energy may require their own Service Levels, Performance Measures (also referred to as “Key Performance Indicators”), and Rectification Processes. Where this occurs, Fidelity Energy shall indicate any additional or replacement Service Levels or Performance Measures or Rectification Processes in the Request for Quote.

# SECTION 6

# Special Conditions & Documentation

|  |  |
| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion **at this stage**. It is provided for information and transparency * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides the detail of **optional documents that may or may not be requested in an RFQ or at point of Contract.** * This box will be deleted at formation of contract. |

1. **INTRODUCTION**

The documents in this section **may only** be implemented at the point of a Contract being placed at Stage 2 following a successful acceptance of an Application at Stage 1.

1. **INCLUSION OF SPECIAL CONDITIONS PER REQUEST FOR QUOTATION (STAGE 2 ENGAGEMENT)**

Refer to Section 10.

Special Conditions can be included any Request For Quotation if Fidelity Energy’s Client’s request them, and this may take the form of new clauses or additional documents or agreements. This will be made clear in the Stage 2 Request For Quotation document, and Bidders are under no obligation to respond to a Bid if these are not acceptable to the Bidder.

# SECTION 7

# Onboarding and Exit Plans

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| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides the detail of **mobilisation (onboarding) and exit from Contract or Application.** * This box will be deleted at formation of contract. |

1. **INTRODUCTION**

This section details the Onboarding Process (or mobilisation process) for any Bidder successful in **winning a Bid at Stage 2**, for Lot 2. This section also details the Exit Process from a Contract. Management of suppliers and access at Stage 1 is provided under Section 2.

**THIS DOES NOT APPLY TO LOT 1, unless specifically requested.**

1. **ONBOARDING PROCESS**

**A1 Mobilisation Plan – Purpose Statement**

A1.1 A Mobilisation strategy (the Mobilisation Plan) is necessary to identify possible risks, define potential losses, ensure continuity of services for Fidelity Energy and should be a ‘front end’ activity, considered when developing the contract strategy for all parties to follow. With a Mobilisation strategy in hand at the outset of any contractual or supplier relationship, all parties needs will be incorporated into the contract, ensuring the best start to any contractual relationship.

**A2 Mobilisation Plan - Requirements**

A2.1  It is an explicit obligation of the Mobilising Supplier to develop a documented Mobilisation Plan in accordance with the terms of the contract and this part of the contract as a minimum at the latest of:

* date of tender submission or Application (whichever is the earlier) as part of answer to Unmarked and Technical Response document

A2.2 The Mobilisation Plan must commence from the date specified:

Date of Contract award, not Service Commencement

A2.3 The Mobilisation Plan shall only be considered accepted on the date Fidelity Energy expressly confirms in writing it is accepted. The Mobilisation Plan shall be reviewed annually (or as may otherwise be indicated by Fidelity Energy) on the anniversary of such acceptance, or when a significant change or event occurs as outlined in this contractual document.

**A3. Mobilisation Plan - Considerations**

A3.1 There are several considerations to be made when developing a Mobilisation Plan for submission, and your plan should include all of the following (dependent on Lot):

1. Continuing Requirements (obligations during the period of Mobilisation)
2. Data Security and Privacy
3. Knowledge and Documentation Transfer
4. Costs (including a total Mobilisation Cost)
5. People
6. Equipment
7. Transfer of Subcontracts (if applicable)
8. Stakeholder Engagement (linked to Communications Plan)
9. Lessons Learned

**A4 Form of Mobilisation Plan**

A4.1 The Mobilising Supplier is to document their Mobilisation Plan in a format of their choosing, but shall respond to requests from Fidelity Energy modifying or amending the Mobilisation Plan as required.

1. **EXIT PROCESS**

**B1 Exit Plan – Purpose Statement**

B1.1 An exit strategy (the Exit Plan) is necessary to identify possible risks, define potential losses, ensure continuity of goods/services/works for Fidelity Energy and should be a ‘front end’ activity, considered when developing the contract strategy for all parties to follow. With an exit strategy in hand at the outset of any contractual or supplier relationship, all parties needs will be incorporated into the contract, ensuring minimum disruption in the event that the relationship is terminated (on whatever grounds or circumstances).

**B2 Exit Plan - Requirements**

B2.1 It is an explicit obligation of the Exiting Supplier to develop a documented Exit Plan in accordance with the terms of the contract and this part of the contract as a minimum at the latest of:

* date of tender submission or Application (whichever is the earlier) as part of answer to Unmarked and Technical Response document

B2.2 The Exit Plan must commence from the date specified either as:

i) requested in the written notice referred to in 1.3, or subsequent to such written notice, or

ii) notified here, 90 days from end of contract.

B2.3 The Exit Plan shall only be considered accepted on the date Fidelity Energy expressly confirms in writing it is accepted. The Exit Plan shall be reviewed annually (or as may otherwise be indicated by Fidelity Energy) on the anniversary of such acceptance, or when a significant change or event occurs as outlined in this contractual document.

**B3 Exit Plan - Considerations**

B3.1 There are several considerations to be made when developing an Exit Plan for submission, including:

1. Continuing Requirements (obligations during the period of Exit)
2. Data Security and Privacy
3. Knowledge and Documentation Transfer
4. Costs (including a total Exit Cost)
5. People
6. Equipment
7. Transfer of Subcontracts (if applicable)
8. Stakeholder Engagement (linked to Communication Plan)
9. Lessons Learned

**B4 Form of Exit Plan**

B4.1 The Exiting Supplier is to document their Exit Plan in a format of their choosing, but shall respond to requests from Fidelity Energy modifying or amending the Exit Plan as required.

# SECTION 8

# Indicative Form of Request For Quotation

|  |  |
| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion **at this stage (Stage 1)**. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides the detail of **Scope of services.** * This box will be deleted at formation of contract. |

1. **INTRODUCTION**

The following example is the form a Stage 2 Request for Quotation will take. It may be varied or changed during the lifetime of the Dynamic Purchasing Energy Framework, or individually per request if the particular requirements of the Client demand it, but it shall remain substantially the same as provided below.

RFQ Document Example:

# Request For Quotation

**Introduction**

This Request for Quotation (“RFQ”) has been issued under the Dynamic Purchasing Energy Framework [enter key reference]. Responding to this Request For Quotation shall constitute making a formal offer to accept the Services as outlined below and in the Dynamic Purchasing Energy Framework. Subject to Regulation 54 a Standstill period is not required and we have opted not to offer a voluntary period; objections to award can still be communicated and must be done so at the earliest opportunity.

This Bid has been submitted in response to a RFQ by:

|  |  |
| --- | --- |
| Enter Bidder Legal Entity Company Name | [Bidder to complete] |
| Enter Bidder Registered Address | [Bidder to complete] |
| Enter Bidder Company Reg. No. | [Bidder to complete] |

**Timescales for Response**

|  |  |
| --- | --- |
| Date Issued | [Enter data here per requirement] |
| Date & Time for Bidder to Respond | **[Enter data here per requirement – Date, and Time e.g. 14:00]** |
| Assessment of Bid Complete | [Enter data here per requirement] |
| Authorisation Period (Outcome) | [Enter data here per requirement] |
| Award Date | [Enter data here per requirement] |
| Service Commencement Date | [Enter data here per requirement] |

|  |
| --- |
| **Fidelity Energy Client Particulars** |
| [Details of what the Client wants will be entered here. This may include Client name and any volume/quantity indications.] |

**Instructions for Completion**

The following Instructions apply:

1. **Ensure you return this whole document, signed, as the only part of your Bid. No appendices or modifications unless expressly indicated by Fidelity Energy will be allowed**.
2. Bids shall be returned to Fidelity Energy by the Date and Time indicated
3. Fidelity Energy must issue this RFQ with a minimum time-limit of 10 days (“Minimum Time Period”); however, if Fidelity Energy opts to do so they may issue it for a period shorter than 10 days in which case it is the responsibility of the Bidders to object and request the Minimum Time Period is extended.
4. Bids will be assessed in line with the Instructions to Tender issued under the Agreement and the Method of Operation.
5. Bidders may provide new pricing in the section provided below if it is different than pricing they submitted at Stage 1 (if they submitted pricing at Stage 1)
6. Bidders may provide new Assessment answers in the section provided below if a) they opted not to provide any answers at Stage 1 in their Application, or b) they did opt to provide answers at Stage 1 of their Application but now they wish to change or improve their answers for this particular Request for Quote.
7. Variations to any resultant Contract may only be actioned subject to the provisions of Section 1 of the Dynamic Purchasing Energy Framework
8. Submit your Bids **electronically only** to:

|  |
| --- |
| [Enter your chosen submission platform, email, etc – it is recommended a tendering platform is used in every instance but email substitute is acceptable] |

**Stage-2 Assessment Questions**

As indicated in the Method of Operation in Section 2, the weightings applied to assess your responses shall be:

|  |  |
| --- | --- |
| Quality: | xx% |
| Price: | xx% |

And these shall be assessed in accordance with the Instruction for Participation guidance at Stage 1.

Please answer the following questions:

[Enter Questions – these should be the same as indicated at point of Application, although from time to time additional questions may be asked]

**Terms**

1. All terms and provisions under the Dynamic Purchasing Energy Framework shall apply
2. Any terms under this Request for Quotation shall apply
3. The Order of Precedence shall be:
   1. The Agreement;
   2. Dynamic Purchasing Energy Framework Terms (Section 1)
   3. Dynamic Purchasing Energy Framework Specification Section 2
   4. The Contract formed by the acceptance of a Bid in response to a Request For Quotation
   5. Sections 3 to 10 of the Dynamic Purchasing Energy Framework in order
4. Pricing offers shall be valid for xx days (if nothing contrary is indicated, the minimum term will be 30 days).
5. The Particulars as provided below shall also form part of the terms of this Request for Quote and the Bid at Stage 2.
6. Special Terms as provided below are included in this instance:

|  |  |
| --- | --- |
| **Special Term Clause No.** | **Clause Detail** |
| **X1** | [Add any special terms or indicate “Not Used”] |
| X2 | [Add any special terms or indicate “Not Used”] |
| X3  [Additional lines may be added if necessary] | [Add any special terms or indicate “Not Used”] |

**Lots**

The Lots applicable under this Request For Quotation will be entered here by Fidelity Energy:

|  |  |
| --- | --- |
| Lot (Lot) | **Indicate with an “X” if the Stream applies under this Quote** |
| Energy and Gas | [Indicate] |
| Water | [Indicate] |
| Carbon Reduction Consultancy | [Indicate] |
| Goods and Services | [Indicate] |

**Scope**

Written Scope details per Request For Quotation will be entered here by Fidelity Energy:

|  |
| --- |
| **SCOPE DETAILS** |
| [Fidelity Energy to complete per Requirement] |

**Special Requirements of Client**

Any special requirements or requests from the Client shall be entered here by Fidelity Energy:

|  |
| --- |
| **SPECIAL REQUIREMENT DETAILS** |
| [Fidelity Energy to complete per Requirement] |

**Supply Chain**

Any special requirements or requests from the Client shall be entered here by Fidelity Energy:

|  |
| --- |
| Have there been any changes to your Supply Chain, or do you wish to inform of us of any new suppliers in your Supply Chain?  Ensure you include details of:   1. Subcontractor Name, 2. Legal Entity and 3. Company Registration Number 4. Type of Goods/Services/Work being delivered / Capacity of involvement in this Bid 5. % of Contract Price being delivered   Please include details below: |
| [Supplier to Complete or delete table below] |

**Particulars**

The following particulars shall apply to this quote:

|  |  |
| --- | --- |
| **List of Additional Documents to form the Contract** | **Indicate - Provided in Appendix to this document / Refer to part of Agreement** |
| [Insert anything from Section 10 or any other part of Framework here] | Agreement Reference:  [List agreement references here, matched o the list of additional documents] |
| [Add anything new specifically to requirement here] | Provided in Appendix to this document:  [List appendix numbers] |

**Comment by Bidder**

Bidder to indicate anything they wish to be taken into account – note, anything which consists of a major alteration, caveat, or departure from the terms and conditions of the Agreement or the Request for Quotation or any other document **shall** invalidate your Bid:

|  |
| --- |
| [Bidder to leave blank if there is No Comment] |

**Price Offer**

The Price offer made by the Bidder is:

|  |
| --- |
| **The Bidder is to insert the details of their Price Offer here:**  **(Fidelity Energy may or may not provide a specific pricing structure in the box below)** |
| [Bidder to insert Pricing Offer and/or Fidelity Energy to insert required pricing structure] |

**Signature**

IN WITNESS whereof the parties hereto have signed this Agreement on the day and year below written:

|  |  |
| --- | --- |
| Date } |  |
| Signed by [enter authorised representative]  for and on behalf of  [Enter Bidder legal entity name] |  |
| Signed by [enter authorised representative]  for and on behalf of  Fidelity Energy Ltd |  |

# SECTION 9

# Responses – Mandatory and Indicative

**PART 1 – MANDATORY APPLICATION DOCUMENTS**

|  |  |
| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides some of the detail of **from zipped folders 1 and 2** * This box will be deleted at formation of contract. |

**[THIS PAGE WILL HAVE A COPY OF YOUR APPLICATION**

**IN THE FINAL CONTRACT**

**(Consisting of Appendix 1 and Appendix 2 Responses]**

# SECTION 10

# Additional Documents & Appendices to Contract

|  |  |
| --- | --- |
| Guidance Note to Applicants: | * **No part** of this document requires any completion. It is provided for information. * This particular section of the document shall **not** be evaluated independently. * This section **shall** form part of the final Contract, in that it provides the detail of **any supporting or ancillary documents, documents provided for information, or further documents that may form part of a Contract following a Stage 2 RFQ.** * This box will be deleted at formation of contract. |

1. **CONTENTS**

This section contains the following documents:

* Letter of Authority
* Business Health Check
* Indicative Budget Forecast
* Fidelity Energy Customer Terms (Example only)
* Example of Services terms (Lot 2 – for use with services)
* Example of Goods terms (Lot 2 – for use with goods)

Note: all terms are provided as examples only, however, in any instance they should be substantially and materially the same. We may also utilise different terms or your own terms.

1. **Letter of Authority**

FIDELITY ENERGY LIMITED (Company Number: 09258334)

C/O Teacher Stern LLP 37-41 Bedford Row London

WC1R 4JH

Date:

LETTER OF AUTHORITY

I,[ ], on behalf of [ LIMITED], hereby authorise Fidelity Energy Limited (9258334) of 90 Bartholemew Street, Newbury, RG14 5EE, (**Fidelity**) to act for and on our behalf in connection with our Energy and Water supply.

This authority is to be used for the purpose of obtaining current Tariff/Product details, current contract information, historical metering, billing and consumption information (industry held data) and negotiation and implementation of competitive Tariffs/Products which our business may choose to accept from Fidelity (**Purpose**).

This authority also gives permission to Fidelity to serve notice on our behalf to our existing contracts, should the need arise, for the purpose of avoiding an automatic renewal by the existing supplier.

This authority further extends to granting Fidelity the permission to process and pass any personal data under our possession or control that is reasonably necessary for the Purpose, to the relevant energy and water suppliers, and we hereby confirm that we:

1. are aware, and accept the terms, of Fidelity’s terms and conditions (www.fidelity-energy.co.uk/termsandconditions).
2. are aware, and accept the terms, of Fidelity’s latest privacy policy [(www.fidelity-energy.co.uk/privacy);](http://www.fidelity-energy.co.uk/privacy)%3B)
3. have the consent of all those data subjects whose personal data is to be provided to Fidelity and/or the relevant supplier(s) in connection with the transfer; and
4. consent to Fidelity contacting us for marketing purposes in connection with the Purpose (and related services only), and we understand that this can be withdrawn, freely, at any time without affecting the validity of the remainder of this letter.

I understand that I am under no obligation to transfer to any supplier or product recommended by Fidelity. I understand that should Fidelity secure a new energy contract on our behalf they will receive a commission from the supplier. This commission is funded through the price per kWhs paid by us under any agreed energy contract Fidelity procures for us. Further details of how Fidelity are remunerated can be found in the above referenced terms and conditions.

This letter of authority is valid for 36 months from date of signature and covers all of our site address and supply points.

Signed:

Name:

Position in the Company:

For and on behalf of:

Phone Number:

Email:

Dated:

1. **Business Health Check**

Will be provided at the point of request in Stage 2 Mini-Competition.

1. **Indicative Budget Forecast**

Will be provided at the point of request in Stage 2 Mini-Competition.

1. **Fidelity Energy Customer Terms (Example)**

**See separate file**

1. **Example of Terms – Lot 2 (Consultancy Specific)**

Please see the terms this Agreement has been issued under in Section 1. Make the amends indicated below for Services if it is Consultancy and for Goods if it is Goods.

These are based on the standard short form contract for the supply of goods and services published by the UK Government. They are not intended to be complete, or used in every instance without amendment/consideration by both parties, and are provided as an example only.

**STANDARD DOCUMENT: SHORT FORM CONTRACT FOR THE SUPPLY OF GOODS AND/OR SERVICES**

**[Guidance delete before issuing]**

*Scope of document*

1. This standard document consists of a contract order form for goods and/or services and annexes, including short form terms and conditions of contract in its Annex 1 (Conditions). It has been designed for use by all Government Departments and Executive Agencies1 when procuring deliverables.
2. This document assumes that there will be no TUPE liability and is therefore not suitable for outsourced services where a relevant TUPE transfer is likely to occur.

*Drafting considerations* - *Services-only Contracts*

1. The Agreement provides for a 6 month extension period exercisable by the Buyer on not less than 10 working days' notice. The Agreement also envisages that a variation of the scope of the services may be required by the Buyer. Any such variation should be made in writing. Before extending or varying the Agreement in this way, you should always consider whether this may result in the contract falling within the scope of the public contract legislation.

*Drafting considerations* - *Goods-only Contracts*

1. If Delivery is in instalments then to comply with the Sale of Goods Act 1979 dates and details of instalments (including price and quantity etc.) must be set-out in the Specification and acknowledged in the Order Form.
2. Delivery is assumed to be undertaken by the Supplier to an address provided by the Buyer in the Order Form. If the Buyer wishes to collect the Goods, the Specification and Order Form will need to be amended to provide for this. Delivery is assumed to be on Working Days during normal business hours. If Delivery is to be outside of these days and times the Order Form will need amending under the heading 'Additional Delivery Instructions'.
3. The Contract assumes the Supplier neither requires access to nor prior inspection of the Buyer's premises to fulfil the Contract.
4. Acceptance criteria are not covered, however the Contract includes express rights to reject Goods which are defective (as the Sale of Goods Act 1979 provides that once goods have been accepted, these rights are lost).
5. 'Time is of the essence' is not included as in most cases it would be disproportionate to reject delivery and claim damages if the Goods are Delivered late. Where this is a requirement, it should be stated in the Order Form. Where Delivery is late, the Contract provides a number of alternative remedies including rejection of the Goods or termination of the Contract.

*Drafting considerations* - *All Contracts*

1. The Contract provides that where the Buyer requests, the Supplier must comply with the Buyer's data security requirements, staff vetting procedures, equality and diversity policy and/or environmental policy as notified to the Supplier from time to time. The Order Form provides optional text in square brackets for all these matters. It does not make any provision for this therefore in the event that any of these specific requirements are not required, appropriate text will need to be inserted in the Order Form.
2. Clause 12.1 of the Contract provides for a default Supplier liability limitation of 125% of the Charges paid or payable to the Supplier for all claims, apart from claims related to IP and Supplier fraud or corruption which have unlimited liability. In the case of IP claims against the Buyer for actual or alleged infringement of a third party's IP connected with the supply of deliverables, the liability is unlimited.

***[Buyer letterhead]***

***[Supplier name Supplier address]***

Attn: ***[insert Supplier contact* name]**

By email to: ***[insert Supplier contact email address]***

Dear Sirs,

**Supply of *[insert description of Deliverables]***

Date: ***[Insert date]***

Following your tender/ proposal for the supply of [insert details of Deliverables] to [insert Buyer's name], we are pleased confirm our intention to award this contract to you.

The attached contract details ("Order Form"), contract conditions and the [Annex/Annexes] set out the terms of the contract between [insert Buyer's name] for the provision of the deliverables set out in the Order Form.

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the deliverables. Please confirm your acceptance of the Conditions by signing and returning the Order Form to [insert name] at the above address within [x] days from the date of this Order Form. No other form of acknowledgement will be accepted. Please remember to include the reference number above in any future communications relating to this contract.

[We will then arrange for Order Form to be countersigned which will create a binding contract between us.]

Yours faithfully,

# Definitions:

* 1. See Definitions provided in Section 1 of the Dynamic Purchasing Energy Framework.

# Understanding the Contract

In the Contract, 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 in this Contract are for information only and do not affect the interpretation of the Contract;
  4. references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
  5. the singular includes the plural and vice versa;
  6. a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and
  7. the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

# How the Contract works

* 1. The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
  2. The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
  3. The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

# What needs to be delivered

* 1. **All Deliverables**
     1. The Supplier must provide Deliverables: (i) in accordance with the Specification; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all law.
     2. The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.
  2. **Goods clauses**
     1. All Goods delivered must be new, or as new if recycled, unused and of recent origin.
     2. All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
     3. The Supplier transfers ownership of the Goods on completion of delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.
     4. Risk in the Goods transfers to the Buyer on delivery, but remains with the Supplier if the Buyer notices damage following delivery and lets the Supplier know within three Working Days of delivery.
     5. The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
     6. The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
     7. The Supplier must provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged.

(h} All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.

1. The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
2. The Supplier will notify the Buyer of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.
3. The Buyer can cancel any order or part order of Goods which has not been delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
   1. The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with clause 4.2. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

(m) The Buyer will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation then the Supplier shall indemnify from any losses, charges costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its[sub-suppliers].

* 1. **Services clauses**
     1. Late delivery of the Services will be a default of the Contract.
     2. The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.
     3. The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
     4. The Supplier must at its own risk and expense provide all equipment required

to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.

* + 1. The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
    2. The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
    3. On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
    4. The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality [and free from defects].
    5. The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

# Pricing and payments

* 1. In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.
  2. All Charges:
     1. exclude VAT, which is payable on provision of a valid VAT invoice;
     2. include all costs connected with the supply of Deliverables.
  3. The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
  4. A Supplier invoice is only valid if it:
     1. includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
     2. includes a detailed breakdown of Deliverables which have been delivered (if any).
  5. If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 33.
  6. The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
  7. The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

# The Buyer's obligations to the Supplier

* 1. If Supplier fails to comply with the Contract as a result of a Buyer Cause:
     1. the Buyer cannot terminate the Contract under clause 11;
     2. the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
     3. the Supplier is entitled to additional time needed to deliver the Deliverables;
     4. the Supplier cannot suspend the ongoing supply of Deliverables.
  2. Clause 6.1 only applies if the Supplier:
     1. gives notice to the Buyer within 10 Working Days of becoming aware;
     2. demonstrates that the failure only happened because of the Buyer Cause;
     3. mitigated the impact of the Buyer Cause.

# Record keeping and reporting

* 1. The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
  2. The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.
  3. The Supplier must allow any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
  4. The Supplier must provide information to the auditor and reasonable co-operation at their request.
  5. If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
     1. tell the Buyer and give reasons;
     2. propose corrective action;
     3. provide a deadline for completing the corrective action.
  6. If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
     1. require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand
     2. if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

# Supplier staff

* 1. The Supplier Staff involved in the performance of the Contract must:
     1. be appropriately trained and qualified;
     2. be vetted using Good Industry Practice and in accordance with the [instructions issued by the Buyer in the Order Form] [Staff Vetting Procedures];
     3. comply with all conduct requirements when on the Buyer's premises.
  2. Where a Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
  3. If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.
  4. The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
  5. The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
  6. The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
     1. requested to do so by the Buyer (not to be unreasonably withheld or delayed);
     2. the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
     3. the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

# Rights and protection

* 1. The Supplier warrants and represents that:
     1. it has full capacity and authority to enter into and to perform the Contract;
     2. the Contract is executed by its authorised representative;
     3. it is a legally valid and existing organisation incorporated in the place it was formed;
     4. there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
     5. it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
     6. it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
     7. it is not impacted by an Insolvency Event.
  2. The warranties and representations in clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
  3. The Supplier indemnifies the Buyer against each of the following:
     1. wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
     2. non-payment by the Supplier of any tax or National Insurance.
  4. If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
  5. All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

# Intellectual Property Rights (IPRs)

* 1. Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it and its sub­ licensees to both:
     1. receive and use the Deliverables;
     2. use the New IPR.
  2. Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.
  3. Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
  4. Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.
  5. If any claim is made against the Buyer 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 Deliverables (an **"IPR Claim"),** then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
  6. If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
     1. obtain for the Buyer the rights in clauses 10.1 and 10.2 without infringing any third party intellectual property rights;
     2. replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

# Ending the contract

* 1. The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.
  2. The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.
  3. **Ending the Contract without a reason**

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if it's terminated clause 11.5(b) to 11.5(g) applies.

* 1. **When the Buyer can end the Contract**
     1. If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
        1. there's a Supplier Insolvency Event;
        2. if the Supplier repeatedly breaches the Contract in a way 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 Contract;
        3. if the Supplier 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. there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
        5. if the Buyer discovers that the Supplier was in one of the situations in 57
           1. or 57(2) of the Regulations at the time the Contract was awarded;
        6. the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
        7. the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
     2. If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 11.5(b) to 11.5(g) applies.
  2. **What happens if the Contract ends**

Where the Buyer terminates the Contract under clause 11.4(a) all of the following apply:

* + 1. the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract;
    2. the Buyer's payment obligations under the terminated Contract stop immediately;
    3. accumulated rights of the Parties are not affected;
    4. the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
    5. the Supplier must promptly return any of the Buyer's property provided under the Contract;
    6. the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and

re-procurement;

* + 1. the following clauses survive the termination of the Contract: [3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35) and any clauses which are expressly or by implication intended to continue.
  1. **When the Supplier can end the Contract**
     1. The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
     2. If a Supplier terminates the Contract under clause 11.6(a):
        1. the Buyer must promptly pay all outstanding charges incurred to the Supplier;
        2. the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
        3. clauses 11.5(d) to 11.5(g) apply.
  2. **Partially ending and suspending the Contract**
     1. Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
     2. The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
     3. The Parties must agree (in accordance with clause 24) any necessary variation required by clause 11.7, but the Supplier may not either:
        1. reject the variation;
        2. increase the Charges, except where the right to partial termination is under clause 11.3.
     4. The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

# How much you can be held responsible for

* 1. Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
  2. No Party is liable to the other for:
     1. any indirect losses;
     2. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
  3. In spite of clause 12.1, neither Party limits or excludes any of the following:
     1. its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
     2. its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
     3. any liability that cannot be excluded or limited by law.
  4. In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.20), 4.2(m), 8.5, 9.3, 10.5, 13.2, 14.26(e) or 30.2(b).
  5. Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
  6. If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

# Obeying the law

* 1. The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:
     1. comply and procure that its subcontractors comply with the Supplier Code of Conduct
     2. support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;
     3. not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;
  2. The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable law to do with the Contract.
  3. The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 13.1 and Clauses 27 to 32
  4. "Compliance Officer" the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;

# Data protection

* 1. The Buyer is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation.
  2. The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with this Contract.
  3. The Supplier must not remove any ownership or security notices in or relating to the Government Data.
  4. The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every six Months.
  5. The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the security requirements specified [in writing] by the Buyer.
  6. If at any time the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.
  7. If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
     1. tell the Supplier to restore or get restored Government Data as soon as practical but no later than five Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier;
     2. restore the Government Data itself or using a third party.
  8. The Supplier must pay each Party's reasonable costs of complying with clause 14.7 unless the Buyer is at fault.
  9. Only the Buyer can decide what processing of Personal Data a Supplier can do under the Contract and must specify it for the Contract using the template in Annex 1 of the Order Form *(Authorised Processing).*
  10. The Supplier must only process Personal Data if authorised to do so in the Annex to the Order Form *(Authorised Processing)* by the Buyer. Any further written instructions relating to the processing of Personal Data are incorporated into Annex 1 of the Order Form.
  11. The Supplier must give all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment before starting any processing, including:
      1. a systematic description of the expected processing and its purpose;
      2. the necessity and proportionality of the processing operations;
      3. the risks to the rights and freedoms of Data Subjects;
      4. the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
  12. The Supplier must notify the Buyer immediately if it thinks the Buyer's instructions breach the Data Protection Legislation.
  13. The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Buyer.
  14. If lawful to notify the Buyer, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
  15. The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:
      1. are aware of and comply with the Supplier's duties under this clause 11;
      2. are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;
      3. are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third Party unless directed in writing to do so by the Buyer or as otherwise allowed by the Contract;
      4. have undergone adequate training in the use, care, protection and handling of Personal Data.
  16. The Supplier must not transfer Personal Data outside of the EU unless all of the following are true:
      1. it has obtained prior written consent of the Buyer;
      2. the Buyer has decided that there are appropriate safeguards (in accordance with Article 46 of the GDPR);
      3. the Data Subject has enforceable rights and effective legal remedies when transferred;
      4. the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
      5. where the Supplier is not bound by Data Protection Legislation it must use its best endeavours to help the Buyer meet its own obligations under Data Protection Legislation; and
      6. the Supplier complies with the Buyer's reasonable prior instructions about the processing of the Personal Data.
  17. The Supplier must notify the Buyer immediately if it:
      1. receives a Data Subject Access Request (or purported Data Subject Access Request);
      2. receives a request to rectify, block or erase any Personal Data;
      3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
      4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
      5. receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;
      6. becomes aware of a Data Loss Event.
  18. Any requirement to notify under clause 14.17 includes the provision of further information to the Buyer in stages as details become available.
  19. The Supplier must promptly provide the Buyer with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.17. This includes giving the Buyer:
      1. full details and copies of the complaint, communication or request;
      2. reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
      3. any Personal Data it holds in relation to a Data Subject on request;
      4. assistance that it requests following any Data Loss Event;
      5. assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.
  20. The Supplier must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Buyer determines that the processing:
      1. is not occasional;
      2. includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR;
      3. is likely to result in a risk to the rights and freedoms of Data Subjects.
  21. The Supplier must appoint a Data Protection Officer responsible for observing its obligations in this Schedule and give the Buyer their contact details.
  22. Before allowing any Subprocessor to process any Personal Data, the Supplier must:
      1. notify the Buyer in writing of the intended Subprocessor and processing;
      2. obtain the written consent of the Buyer;
      3. enter into a written contract with the Subprocessor so that this clause 14 applies to the Subprocessor;
      4. provide the Buyer with any information about the Subprocessor that the Buyer reasonably requires.
  23. The Supplier remains fully liable for all acts or omissions of any Subprocessor.
  24. At any time the Buyer can, with 30 Working Days notice to the Supplier, change this clause 14 to:
      1. replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under GDPR Article 42;
      2. ensure it complies with guidance issued by the Information Commissioner's Office.
  25. The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.
  26. The Supplier:
      1. must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;
      2. must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
      3. must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
      4. securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it;
      5. indemnifies the Buyer against any and all Losses incurred if the Supplier breaches clause 14 and any Data Protection Legislation.

# What you must keep confidential

* 1. Each Party must:
     1. keep all Confidential Information it receives confidential and secure;
     2. not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;
     3. immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
  2. In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
     1. where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
     2. if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
     3. if the information was given to it by a third party without obligation of confidentiality;
     4. if the information was in the public domain at the time of the disclosure;
     5. if the information was independently developed without access to the disclosing Party's Confidential Information;
     6. to its auditors or for the purposes of regulatory requirements;
     7. on a confidential basis, to its professional advisers on a need-to-know basis;
     8. to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
  3. The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.
  4. The Buyer may disclose Confidential Information in any of the following cases:
     1. on a confidential basis to the employees, agents, consultants and contractors of the Buyer;

(b} on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;

1. if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
2. where requested by Parliament;
3. under clauses 5.7 and 16.
   1. For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.
   2. Information which is exempt from disclosure by clause 16 is not Confidential Information.
   3. The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

# When you can share information

* 1. The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
  2. Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
     1. comply with any Freedom of Information Act (FOIA) request;
     2. comply with any Environmental Information Regulations (EIR) request.
  3. The Buyer may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

# Invalid parts of the contract

If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

# No other terms apply

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

# Other people's rights in a contract

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

# Circumstances beyond your control

* 1. Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
     1. provides written notice to the other Party;
     2. uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
  2. Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.
  3. Where a Party terminates under clause 20.2:
     1. each party must cover its own losses;
     2. clause 11.5(b) to 11.5(g) applies.

# Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

# Giving up contract rights

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

# Transferring responsibilities

* 1. The Supplier cannot assign the Contract without the Buyer's written consent.
  2. The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
  3. When the Buyer uses its rights under clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
  4. The Supplier can terminate the Contract novated under clause 23.2 to a private sector body that is experiencing an Insolvency Event.
  5. The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
  6. If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
     1. their name;
     2. the scope of their appointment;
     3. the duration of their appointment.

# Changing the contract

* 1. Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Buyer is not required to accept a variation request made by the Supplier.

# How to communicate about the contract

* 1. All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
  2. Notices to the Buyer or Supplier must be sent to their address in the Order Form.
  3. This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

# Preventing fraud, bribery and corruption

* 1. The Supplier shall not:
     1. commit any criminal offence referred to in the Regulations 57(1) and 57(2);
     2. offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) 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 Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
  2. The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 26.1 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.
  3. If the Supplier or the Staff engages in conduct prohibited by clause 26.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
     1. terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
     2. recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.

# Equality, diversity and human rights

* 1. The Supplier must follow all applicable equality law when they perform their obligations under the Contract, including:
     1. protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
     2. any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
  2. The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

# Health and safety

* 1. The Supplier must perform its obligations meeting the requirements of:
     1. all applicable law regarding health and safety;
     2. the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.
  2. The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer premises that relate to the performance of the Contract.

# Environment

* 1. When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
  2. The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

# Tax

* 1. The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
  2. Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Off Contract, the Supplier must both:
     1. comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
     2. indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
  3. If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
     1. the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 30.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
     2. the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
     3. the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with clause 30.2 or confirms that the Worker is not complying with those requirements;
     4. the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

# Conflict Assessment

* 1. The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer.
  2. The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
  3. The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

# Reporting a breach of the contract

* 1. As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of law, clause 13.1, or clauses 26 to 31.
  2. The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 32.1.

# Resolving disputes

* 1. If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.
  2. If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 33.3 to 33.5.
  3. Unless the Buyer refers the dispute to arbitration using clause 33.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
     1. determine the dispute;
     2. grant interim remedies;
     3. grant any other provisional or protective relief.
  4. The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
  5. The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 33.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 33.4.
  6. The Supplier cannot suspend the performance of the Contract during any dispute.

# Which law applies

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