

## 1. Acceptance

- 1.1. Please read carefully the Terms and Conditions set out below. You will be deemed to have accepted these Terms and Conditions and entered into this Agreement with BiP if You complete an Order Form that makes reference to these Terms and Conditions.
- 1.2. You acknowledge that You are entering this Agreement on behalf of the organisation, company, or other legal entity as identified in the applicable Order Form. You represent that You have the authority to bind such entity and affiliates to these Terms and Conditions, in which case the terms "You" and "Your" shall refer to such entity and its affiliates. If You do not have such authority, or if You do not agree with these Terms and Conditions, You may not use the Service.
- 1.3. You acknowledge that if your use of the Service requires the publication of notices to the Central Digital Platform (CDP) that your organisation has, or will acquire, the necessary share codes to facilitate this. Delta eSourcing bears no responsibility for your inability to publish notices to the CDP.
- 1.4. If the Terms and Conditions of this Agreement are not accepted in full, You are not authorised to use the Service.

## 2. Definitions

- 2.1. **"Agreement"** – means the legally binding contract between You and BiP for the provision of the Services to You subject to and in accordance with these Terms and Conditions.
- 2.2. **"Affiliate"** – means any entity which directly or indirectly controls, is controlled by, or is under common control of either party. Control, for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the relevant party.
- 2.3. **"API"** - means Application Programming Interface - A service between two software applications.
- 2.4. **"Buyer"** – means the organisation, contracting authority or other legal entity co-ordinating or running a Procurement Exercise.
- 2.5. **"Controller"** – has the meaning given in the UK GDPR.
- 2.6. **"Data"** – means all electronic data or information submitted by You for the purposes of receiving the benefit of the Services.
- 2.7. **"Data Protection Laws"** – means the UK GDPR and any corresponding, equivalent or supplementary national laws or regulations and/or any replacement or amendment of the same, including but not limited to the Data Protection Act 2018.
- 2.8. **"Data Subject"** – has the meaning given in the UK GDPR.
- 2.9. **"UK GDPR"** – means the UK General Data Protection Regulation and the Data Protection Act 2018.
- 2.10. **"Helpdesk"** – means the facility provided by BiP to handle support queries and issues raised by Users.
- 2.11. **"Malicious Code"** – means viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents, or programs.
- 2.12. **"Order Form"** – means the ordering documents used by a Buyer, including any addenda, that are entered into between You and BiP from time to time. Order Forms shall be deemed to be incorporated into and form part of this Agreement by reference and include but are not limited to electronic forms online, hard copy, electronically scanned hard copy.
- 2.13. **"Personal Data"** – has the meaning given in the UK GDPR.
- 2.14. **"Personal Data Breach"** – has the meaning given in the UK GDPR.
- 2.15. **"Privacy Notice"** – means the information notice required to be supplied to Data Subjects under Data Protection Laws detailing the relevant Processing and provided at a time, in a form and at all times containing content, which is compliant with the requirements of Data Protection Laws and relevant guidance issued by the Article 29 Working Party/European Data Protection Board and/or the Information Commissioner's Office.
- 2.16. **"Processing"** – has the meaning given in the UK GDPR and "Process" and "Processed" have corresponding meanings.
- 2.17. **"Processor"** – has the meaning given in the UK GDPR.
- 2.18. **"Procurement Exercise"** - means a procurement process that may involve a Request for Information, an Invitation to Tender, an Invitation to Negotiate, an Invitation to Participate in Dialogue, an Invitation to Submit Final Offer, Invitation to Submit Final Tender, a Best And Final Offer, a Request for Proposal, a Request for Quotation an electronic contract or other processes that exist under the prevailing procurement legislation. This list of individual artefacts used in procurement exercise processes is indicative only and is a non-exhaustive representation of commonly used terminology. You may have Your own, unique terminology to be applied on a case by case basis.
- 2.19. **"Registration Information"** – means information required by BiP and provided by You in order to obtain access to the Service
- 2.20. **"Schedule"** – means the schedule which is annexed to and forms part of these Terms and Conditions.
- 2.21. **"Supplier"** – means an organisation or legal entity responding to and participating in a Procurement Exercise, whether by invitation or otherwise, with the objective of providing goods and / or services to the Buyer.
- 2.22. **"Security Information"** – means any information that includes but is not limited to any user identifications, passwords, or any other unique identification data, or other security procedures that control access to any equipment, computer hardware systems or networks, computer software or applications, or any other services accessed or used by You in the use of the Services.
- 2.23. **"Service" and "Services"** – means those services described in Clause 5 that You purchased under an Order Form and includes the online, web-based applications and platform provided by BiP's Delta e-Sourcing service via <http://www.delta-esourcing.com> and other URLs and any associated offline components but excluding Third Party Applications.

- 2.24. **"Supervisory Authority"** – has the meaning given in the UK GDPR.
- 2.25. **"Supplier List"** – means a list which is created and maintained by a Buyer via the Service and contains the names and details of Suppliers in which the Buyer has an interest.
- 2.26. **"Terms and Conditions"** – means the terms and conditions set out in this document.
- 2.27. **"Third Party Applications"** – means online, web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party applications.
- 2.28. **"User Guide"** – means the online user guide for the Services accessible via Delta e-Sourcing Service.
- 2.29. **"Users"** – means individuals who are authorised by You to use the Services, and to whom You have supplied user identifications and passwords (or by BiP at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, or third parties with whom You contract business.
- 2.30. **"Working Days"** – means 08:30 to 17:30 GMT, Monday to Friday but excluding UK bank holidays.
- 2.31. **"You" or "Your"** – means the company or organisation or other legal entity entering into this Agreement with BiP, and Affiliates of that entity
- 2.32. **"Cloud Service Customer" or "CSC"** – means the company or organisation or other legal entity entering into this Agreement with BiP, and Affiliates of that entity
- 2.33. **"Cloud Service Provider" or "CSP"** – refers to BiP, as the organisation responsible for the supply and maintenance of the cloud service.
- 2.34. Any use of the above terminology or other words in the singular, plural or capitalisation are taken as interchangeable and therefore as referring to the same.

### 3. Agreement

- 3.1. This Agreement constitutes a legally binding contract between You and BiP and governs Your use of the Services
- 3.2. You agree that the Services are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by BiP regarding future functionality or features.

### 4. Grant of Licence

- 4.1. BiP grants You a non-exclusive, non-transferable licence to Use the Service for the period set out in the Order Form unless and until terminated in accordance with the terms of this Agreement. You acknowledge that this Agreement is granted to You as a named User on behalf of the organisation or entity identified on the Order Form.
- 4.2. You grant to BiP an irrevocable royalty-free unrestricted licence to use, copy, modify, amend, update, re-use, publish, disseminate and distribute any and all information and data made available by You at any time during the period of this Agreement for the purposes of receiving the benefit of the Services where such information is made available to the public or meant for publication or already in the public domain.
- 4.3. Neither this Agreement nor the Service may be transferred, sub-licensed or otherwise assigned to any other person without the prior written approval of BiP. You must configure the Service for Your own Use provided it is in support of Your authorised Use.
- 4.4. For the purposes of this Agreement, "Use" shall mean to use the Service by accessing the Service from Your computer hardware, or by copying, transmitting, accessing or loading the same into the temporary memory of Your computer hardware and printing or copying any information or data accessed using the Service as required by You. Use shall also mean accessing Delta Open API and associated data where applicable.
- 4.5. The Service may be used solely for business use and only by a person or persons named and nominated by You as specified in the applicable Order Form or as otherwise agreed in writing between the parties from time to time. In certain circumstances the Service may be provided to You for use by an unlimited number of Users. Any information entered or accessed by the User may be used for business use only.
- 4.6. You shall not be entitled to use, re-use, distribute or make available information or data accessed or copied using the Service to any third parties other than Your Users and / or those entities with which You collaborate strictly within the legitimate scope of the Service.
- 4.7. Your rights to use the Service shall be limited to those specified in this Agreement. Any other use of the Service is not permitted.
- 4.8. Neither the Service nor information provided as part of the Service shall be corrupted, changed, altered, amended or varied or damaged, destroyed, deleted, or decimated or otherwise modified by You to create other products or services or derivative works by or on behalf of You.
- 4.9. Neither You nor any User may vary, modify, adapt, translate, reverse engineer, decompile or disassemble the Service (or any part of the same) except as permitted by applicable law. Neither You nor any Users shall be permitted to copy the Service, in whole or in part, except to the extent permitted in terms of this Agreement or by applicable law.
- 4.10. You shall not store or save any information or data in or using the Service that is not directly pertinent to Your tendering process or the legitimate scope of the Service.
- 4.11. You shall not, whether for a fee or free of charge, use, re-use, transfer, share, link to or frame, distribute or make available information or data accessed or copied using the Service to any third parties other than Users and shall not Use the Service in any manner to provide computer or consultancy or computer bureaux services to any third parties or otherwise to rent, lease, loan, resell for profit, redistribute, sub-lease, sub-licence or create works based upon the Service or any part of the same.

**5. The Service**

- 5.1. Delta is a secure, managed, compliant and audited service that facilitates the lifecycle of Procurement Exercises for public sector Buyers and their Suppliers, from initial notification of requirements through expressions of interest, the issuing of invitations to tender and receiving and evaluating the final tenders
- 5.2. Delta provides a collaborative environment and tools for Buyers to publish and share information, and to interact and work as a team. Examples include but are not limited to:
  - a. Management of Procurement Exercises;
  - b. Create and publish contract announcements;
  - c. Manage online supplier lists;
  - d. Securely dispatch and receive tender documents;
  - e. Manage Buyer organisation hierarchies and workspaces;
  - f. Access and view registered Supplier profiles, including those with Select Accredited accredited status.
  - g. Integrate to other systems via an API
- 5.3. BiP is committed to delivering a quality service to You and operates a Helpdesk as part of the Service. The Helpdesk is available to Buyers and Suppliers and may be contacted by:
  - a. Phoning 0845 270 7050 during Working Days;
  - b. Emailing at [helpdesk@delta-esourcing.com](mailto:helpdesk@delta-esourcing.com) during Working Days;
  - c. Writing to Delta Helpdesk, Customer Services, BiP Solutions Limited, Medius, 60 Pacific Quay, Glasgow, G51 1DZ;
- 5.4. The Services include any BiP Delta e-Sourcing Service programs (including, but not limited to, cgi scripts, registration wizard, html code, BiP databases and BiP content and information programs) to which You subscribe as set out in the Delta e-Sourcing Order Form or as may otherwise be agreed in writing by the parties from time to time.

**6. Engagements Between Buyers and Suppliers**

- 6.1. Buyers may invite Suppliers to participate in a specific Procurement Exercise:
  - a. By using the Service to send an invitation to appropriate Suppliers who have already registered to receive the Services;
  - b. By using the Service to send an invitation to appropriate Suppliers that have not yet registered, in which case such Suppliers will be required to register for the Service before access to the Procurement Exercise is granted;
  - c. By publishing a unique contract reference when publishing a tender notice via the Service and which Suppliers may then use to join and participate in the Procurement Exercise, subject to being registered for the Service.
- 6.2. Buyers will be responsible for making data and information relating to a specific Procurement Exercise available to invited Suppliers.
- 6.3. Buyers may configure each Procurement Exercise. The selected configuration settings for a Procurement Exercise shall be displayed for invited Suppliers to view.
- 6.4. All material issued by a Buyer in connection with its Procurement Exercise shall remain the property of the Buyer and shall be used only for the purpose of participating in the Procurement Exercise.
- 6.5. Responses will be opened by the Buyer in accordance with the opening procedures specified for each Procurement Exercise.
- 6.6. As a User, You are responsible and liable for the content, accuracy, completeness and format of all Data published by You, whether uploaded, transmitted, or otherwise, using the Service. Neither BiP nor its licensors shall be responsible or liable for the content of any Data published by any User.
- 6.7. As a User, you are responsible for ensuring that any notices created by you within the Service are published in accordance with the prevailing procurement legislation, including where that provides for publication in national or other government portals.

**7. Terms of Agreement**

- 7.1. Except as otherwise specified in these Terms and Conditions or in an applicable Order Form:
  - a. Fees are quoted in pounds sterling (GBP).
  - b. Fees are payable in pounds sterling (GBP).
  - c. Fees are based on Services purchased, and not actual usage.
  - d. Fees will be subject to an annual increase (refer to clause 7.5)
  - e. Fees paid are non-refundable.
  - f. The number of User subscriptions cannot be decreased during the relevant subscription term stated on the Order Form.
- 7.2. You will provide us with a completed and accurate Order Form or with an alternative document reasonably acceptable to BiP.
- 7.3. Unless otherwise stated in the Order Form, BiP will invoice you annually in advance and invoiced charges must be paid in full within thirty (30) days of the invoice date.
- 7.4. Failure to pay invoices for paid-for Services will constitute a breach of contract, entitling BiP the rights to claim damages and other remedies pursuant to Clause 19.
- 7.5. BiP reserve the right to increase annual charges by an amount not exceeding the Retail Price Index for the prior 12 months based on the RPI in December of the prior year (as published in January)

- 7.6. Where your order includes training days, these must be used within 12 months of order. Any unused days after this period will be lost. Should the order include a certain number of days training within each license year then the days must be taken within that license year and cannot be carried over.
- 7.7. Where training is carried out face to face, travel and subsistence costs will be chargeable at cost and invoiced on completion of the training
- 7.8. You are responsible for ensuring that BiP is provided with complete, accurate and up to date billing and contact information.
- 7.9. Unless otherwise stated, BiP's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added sales. You are responsible for paying all taxes associated with Your purchases under this Agreement.

## 8. Terms of Agreement

- 8.1. This Agreement commences on the start date specified in the applicable Order Form and subject to Clause 9 below, shall continue for the period specified in the Order Form.

## 9. Termination

- 9.1. You are entitled to terminate this Agreement at any time by notice in writing to BiP without cause provided that You will remain liable for all fees that would otherwise have been payable if the Agreement had continued until expiry of the remaining period of the Agreement.

BiP shall be entitled, at its entire discretion and without any liability to You in respect of the same, to terminate this Agreement or to suspend the provision or availability of the Services forthwith without further notice to You:

- a. pursuant to Clauses 11.1, 11.4, 12.3, 19.1 or 20.5;
  - b. if an encumbrancer takes possession or a receiver or a judicial factor is appointed over any of the property or assets of You;
  - c. You become insolvent or apparently insolvent or make any voluntary arrangement with Your creditors generally, or become subject to an administration order; or
  - d. You go into liquidation (except for the purposes of solvent amalgamation or reconstruction) or anything analogous to any of the foregoing under the laws of any jurisdiction outside England and Wales occurs in relation to You.
- 9.2. On the termination or expiry of this Agreement, You shall cease, and shall ensure that all Users cease, all use of the Service. BiP will retrieve, transmit or otherwise provide You with a copy of all tender data entered into the Service by You prior to the effective date of termination or expiry, if so requested in writing within no less than sixty (60) days of the effective date of termination or expiry of this Agreement. You acknowledge that BiP shall, at BiP's entire discretion, be entitled to charge an additional fee in respect of the retrieval and transmission or provision of such data, such fee as may be notified by BiP to You from time to time. You further acknowledge that BiP shall not be liable to provide such data after such period unless requested to do so within no less than such sixty (60) day period or where a data retention agreement is in place.
  - 9.3. Any termination or expiry of this Agreement shall not affect the accrued rights and obligations of the parties at the effective date of termination or expiry of this Agreement.

## 10. Unauthorised Copying

- 10.1. You shall not copy, use, modify, transmit, distribute, reverse engineer, or in any way exploit copyrighted or proprietary materials made available to You as part of the Services, except as expressly permitted by BiP. Reselling of BiP information is expressly prohibited. All trade-marks, and trade names on any materials provided to You are the marks of the respective owner(s), and any unauthorised use thereof is strictly prohibited. BiP shall not be liable for any errors, inaccuracies or delays in providing content, or for any actions taken in reliance of such content. BiP expressly disclaims all warranties, expressed or implied, as to the accuracy of any the content provided, or as to the fitness of the information for any purpose.

## 11. Fair and Acceptable Usage

- 11.1. BiP's fair and acceptable usage policy is designed to make sure the Services provided to You deliver value, are fast and are reliable. The following list details all the uses of the Services that BiP consider to be unfair or unacceptable. You must ensure that any use of the Services, by You or Your Users, complies with this policy. If You or Your Users using the Services contravene this policy, BiP may:
  - a. Give You notice to stop the unacceptable use(s); or
  - b. Terminate or suspend the Services, with or without notice as we consider appropriate, under this Agreement.
- 11.2. You shall not use the Services for:
  - a. Unlawful, fraudulent, criminal or otherwise illegal activities;
  - b. Sending, receiving, publishing, posting, distributing, disseminating, encouraging the receipt of, uploading, downloading or using any material which is offensive, abusive, defamatory, indecent, obscene, unlawful, harassing or menacing or a breach of the copyright, trade-mark, intellectual property, confidence, privacy or any other rights of any person;
  - c. Knowingly or negligently creating, transmitting, storing, publishing or uploading any electronic material (including, without limit, files that contain viruses, corrupted files, Trojans or any other similar Malicious Code, scripts or similar software programs or instructions) which will or are designed, known or likely to delete, interrupt, damage, destroy, change, modify or limit the functionality of any computer software, hardware, telecommunications equipment or data or data files owned by BiP or any other User of or customer of BiP using the Service;
  - d. Activities that invade another's privacy, cause annoyance, inconvenience or needless anxiety to any person;
  - e. Activities that are in breach of any third party's rights, including downloading, installation or distribution of pirated software or other inappropriately licensed software, deletion of any author attributions, legal notices or proprietary designations or labels in any file that is uploaded, falsification of the origin or source of any software, document or other material;
  - f. Anything that may disrupt or interfere with BiP's network or Service or cause a host or the network to crash;



- g. Launching “denial of service” attacks, “mailbombing” attacks or “flooding” attacks against a host or network;
  - h. Granting access to the Services to others who are not authorised Users, or in any way reselling or re-providing the Services to third parties;
  - i. Making excessive use of, or placing unusual burdens on the network, for example by sending or receiving large volumes of email, uploading excessively large files;
  - j. Circumventing the user authentication or security process of the host or network.
- 11.3. You are responsible for all use made of the Services by You or Your Users and for any breach of this policy whether an unacceptable use occurs or is attempted, whether You knew or should have known about it, whether or not You carried out or attempted the unacceptable use alone, contributed to or acted with others or allowed any unacceptable use to occur by omission. You agree that BiP is not responsible for any of Your activities in using the Services.
- 11.4. There is no explicit limit on the monthly usage of the Services. However, if BiP considers that Your activities are so excessive that other customers are adversely affected, BiP will request immediate discussion to resolve the issue. If no resolution is agreed, BiP may give You a written warning to decrease activity (by email or otherwise). In extreme circumstances, if the levels of activity do not immediately decrease after the warning, BiP may suspend the Services or terminate this Agreement without further notice.

## 12. Your Responsibilities

- 12.1. You agree to provide true, accurate, current and complete information about You as prompted on the Order Form; and
- 12.2. maintain and promptly update the Registration Information to keep it true, accurate, current and complete.
- 12.3. If You provide any Registration Information that is untrue, inaccurate, not current or incomplete, or we have grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we may suspend or terminate Your account and refuse any and all current or future use of the Service (or any portion thereof).
- 12.4. You shall at Your cost and expense, procure and use in connection with the Service all hardware, equipment, telephone installation, terminal, consumable or other equipment required to access and use the Service as notified by BiP to You from time to time.
- 12.5. You shall ensure that the hardware, equipment, telephone installation, terminal, consumable or other equipment used by You to access and use the Service meets the minimum standards and specifications notified by BiP to You from time to time.
- 12.6. You shall comply with such application specific requirements as may be notified by BiP to You prior to the commencement of this Agreement in relation to the relevant part or parts of the Service to be provided to You. You act as the Cloud Service Customer or CSP and are responsible for using the cloud services following the terms of this agreement. It includes providing accurate information, complying with usage policies, and paying for the services outlined in the agreement. You are also responsible for any data uploaded to the cloud services that comply with relevant regulations and standards.

## 13. Security Information

- 13.1. You are responsible for ensuring that the Security Information remains confidential and secure so that the Services cannot be used by any unauthorised person.
- 13.2. You shall keep any and all Security Information issued to You by BiP from time to time secret and secure (including without limitation ensuring that the same are not stored on its computer systems in plain text) and shall not disclose the same or make the same available to any third party (other than authorised persons notified to BiP) or to the public.
- 13.3. You shall notify BiP immediately on becoming aware that any Security Information issued to You by BiP has been disclosed to or become known by any unauthorised person.
- 13.4. You shall not use Security Information for any purpose connected with the improper use of the Services including accessing or attempting to access other parts of the Services for which You do not have access rights.
- 13.5. In the event that you are a Delta Open API user and your API key is compromised, it is your responsibility to ensure that your API key is deactivated using the API key admin page within the Delta application.
- 13.6. BiP shall not be responsible for any losses arising out of the unauthorised use of Your Security Information and You agree to indemnify and hold harmless BiP for any improper, unauthorised or illegal uses of the same.

## 14. Use of BiP Websites and Web-Based Elements of the Service

- 14.1. You may not use any ‘deep-link’, ‘page-scrape’, ‘robot’, ‘spider’ or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any part of any BiP websites, the Service or any materials, content, documents or data, or in any way reproduce or circumvent the navigational structure or presentation of the Service to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Service. This extends to sharing any content or data acquired through the system with AI tools such as (but not limited to) Chat GPT. BiP reserves the right to bar any such activity, including via software and other electronic means.
- 14.2. You may not attempt to gain unauthorised access to any portion or feature of the Service, or any other systems or networks connected to the Service or to any BiP server, or to any of the services offered on or through any BiP websites, by hacking, password ‘mining’ or any other illegitimate means.

- 14.3. You may not probe, scan or test the vulnerability of any BiP websites, and/or the Service or any connected network, nor breach any of BiP's security or authentication measures. You may not reverse look-up, trace or seek to trace any information on any other user of or visitor to any BiP website or the Services, or exploit the Service or any service or information made available or offered by or through BiP's website, in any way where the purpose is to reveal any third party information. You agree that You will not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of BiP's websites, Service or other systems. You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of the Service. You agree that You will not make or attempt any denial of service attacks against BiP.

**15. Third Party Sites**

- 15.1. The Service may present links to third party websites not owned or operated by BiP. BiP is not responsible for the availability of these sites or their content. You agree that BiP is not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with Your use of or reliance on any content of any such site or goods or services available through any such site.
- 15.2. Any reference to a linked site or any specific third party product or service by name does not constitute or imply its endorsement by BiP, and You assume all risk with respect to its use.

**16. Log Files**

- 16.1. BiP uses IP addresses to analyse trends, administer the Service, track Users' movement and activity, and gather broad demographic information for aggregate use.
- 16.2. For the purposes of systems administration, detecting usage patterns, troubleshooting and support of audits, our web servers automatically log standard access information and certain User activities. Activity log information may be shared within the originating organisation. A Suppliers' activity log may also be shared for audit purposes with a Buyer's organisation where the Supplier's activity is related to a Procurement Exercise. BiP does not share this information with any third parties outside the originating organisation or outside the relevant Buyer organisation.

**17. Cookies**

- 17.1. Like most interactive websites, the Service uses cookies to enable us retrieve User details for each visit. Cookies are used in some areas of the Service to enable the functionality of this area and ease of use for those Users visiting.

**18. Promotions and Advertising**

- 18.1. BiP may present advertisements or promotional materials on or through the Service and on any BiP websites. Your participation in any promotional event is subject to the Terms and Conditions associated with that event. Your dealings with, or participation in promotions by any third-party advertisers on or through the Service are solely between You and such third party. You agree that BiP shall not be responsible or liable for any loss or damage of any kind incurred by You as the result of any such dealings or as the result of the presence of such third parties on the Service.

**19. Breach of These Terms and Conditions**

- 19.1. Should BiP consider or determine, at its sole discretion, that You have breached any provision of this Agreement or have otherwise demonstrated inappropriate conduct in the use of the Service, BiP reserves the absolute right, at its sole discretion to:
- Warn You that You have breached the Terms and Conditions and request that You to discontinue such conduct; and/or
  - Discontinue Your access to the Service and / or any other related services, including paid for content / features; and/or
  - Take measures (including terminating, suspending or restricting Your use of the Service) to prevent You from using the Service or linking to or accessing the website; and/or
  - Terminate this Agreement with immediate effect.
- 19.2. If BiP terminates this Agreement or suspends Your account for any of the reasons set out in Clause 19.1, BiP shall have no liability or responsibility to You, and BiP will not refund any amounts that You have previously paid.

**20. Intellectual Property Rights**

- 20.1. Subject to the limited rights expressly granted under these Terms and Conditions, BiP and its licensors reserve all rights, title and interest in the Service, including all related intellectual property rights. No rights are granted to You other than as expressly set out in this Agreement. You acknowledge that the copyright and any other intellectual property rights (including without limitation rights in relation to inventions, patents, unregistered, design rights and registered designs, database rights, and trade marks (unregistered and registered) in and to the information and data, databases, images and content made available as part of the Services or the style, "look and feel" and function of the Service, in whole or in part, is and shall remain at all times owned exclusively by BiP and its licensors.
- 20.2. You shall not, and shall ensure that Your Users shall not, delete or in any manner alter any copyright, trade mark and other proprietary rights notices of BiP or its licensors which appear on materials provided in connection with the Service and You shall ensure that such notices are reproduced on all copies (in any form, electronic or otherwise) made by You or any Users of the Service (or any part of the same) or information or data accessed using the Service.
- 20.3. As between BiP and You, You own all rights, title and interest in and to all of Your Data.
- 20.4. BiP shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual licence to use or incorporate into the Services any suggestions, enhancement requests, recommendations, or other feedback provided by You, including Users, relating to the operation of the Services.

- 20.5. If BiP receives a notice alleging that You have engaged in behaviour that infringes BiP's or any other party's intellectual property rights, or reasonably suspects the same, BiP may suspend or terminate Your account without notice to You. If BiP suspends or terminates Your account under this Clause, it shall have no liability or responsibility to You, including for any amounts that You have previously paid.

**21. Confidentiality**

- 21.1. For the purposes of this Agreement, Confidential Information means all confidential information disclosed by either party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data. BiP's Confidential Information shall include materials or information provided to You as part of the Services. Confidential Information of each party shall include business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party.
- 21.2. Confidential Information (other than Your Data) shall not include any information that:
- becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
  - was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
  - is received from a third party without breach of any obligation owed to the Disclosing Party;
  - was independently developed by the Receiving Party.
- 21.3. Except as otherwise permitted in writing by the Disclosing Party the Receiving Party shall:
- use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care)
  - not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and
  - limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those set out in this Agreement.
- 21.4. Without limiting the above, BiP shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Your Data. BiP shall not:
- modify Your Data;
  - disclose Your Data except as required by law in accordance with Clause 21.5 (Compelled Disclosure) or as expressly permitted in writing by You; or
  - access Your Data except to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.
- 21.5. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is required to do so by law, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is required by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.
- 21.6. You shall keep and shall procure that all of Your employees or agents or representatives shall keep secret and confidential both during and after expiry or termination of this Agreement all Confidential Information relating in any way to the business affairs, software, computer systems, suppliers, customers, accounts, finances or business methods of BiP or technical information relating to the Service coming into its possession during the period of this Agreement,
- 21.7. You shall procure that all of Your employees or agents or representatives use such Confidential Information only for the purposes of this Agreement and for no other purpose whatsoever, and in particular shall not use such Confidential Information to develop other services which may compete with the Services being provided under this Agreement.

**22. Modification to Service**

- 22.1. BiP reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with 90 days notice to You, without any liability to You or to any third party. In the event that a paid for service is discontinued a pro-rate refund of fees will be made.
- 22.2. BiP reserves the right to vary the free and paid for content/features of the Service and does not guarantee that the content/features of the Service provided free of charge will remain free of charge and does not guarantee that the content/features of the Service provided subject to payment will remain a paid-for service.

**23. BiP's Responsibilities**

- 23.1. BiP warrants to You that the use of the Service by You in accordance with the terms of this Agreement will not infringe the copyright or database rights of any third party.
- 23.2. BiP will use its reasonable endeavours to ensure that all information and data made available to You using the Service will be accurate and up-to-date;
- 23.3. BiP will use reasonable skill and care in making the Service and the information and data available to You 24 hours each day Monday to Friday (excluding Bank Holidays in England) excluding routine and scheduled maintenance during the period of this Agreement. However, BiP will not be liable if for any reason the service is not available at any particular time or for any reasonable period;

- 23.4. BiP will take all reasonable steps to prevent any unauthorised access to all and any commercially sensitive data stored or input by You and Your Users using the Service (except to the extent that any unauthorised access is obtained as a result of the act, omission or negligence of You or any such User). This obligation shall not apply if and to the extent that any unauthorised access has resulted directly or indirectly from:
- any unauthorised use or modifications to the Service or any information or data accessed using the Service;
  - use of the Service otherwise than in accordance with the terms of this Agreement and the accompanying material.
- 23.5. BiP shall use its reasonable endeavours to issue to You new passwords and other unique identification data or security procedures within one Working Day of receipt of notification from You under Clause 13.3.
- 23.6. BiP acts as the CSP or Cloud Service Provider. The CSP is responsible for delivering the cloud services outlined in the agreement. It includes maintaining the infrastructure, meeting service levels, and providing technical support. The CSP is also responsible for ensuring that the cloud services meet all applicable regulations and standards, including data security and privacy requirements.

## 24. Data Protection

- 24.1. The parties acknowledge and agree that for the purposes of this Agreement You are the Controller and BiP is a Processor in respect of all Personal Data Processed pursuant to this Agreement.
- 24.2. You shall comply with your obligations under Data Protection Laws in respect of all Personal Data Processed pursuant to this Agreement.
- 24.3. You warrant and represent that:
- all Personal Data transmitted to/from BiP is transmitted in accordance with applicable laws (including but not limited to the Data Protection Laws); and
  - you have and shall maintain throughout the period of this Agreement all appropriate, lawful bases to use such Personal Data in accordance with the Agreement, including ensuring the provision of appropriate Privacy Notices to any relevant Data Subjects covering the Processing of such Personal Data by BiP pursuant to this Agreement.
- 24.4. BiP shall only Process Personal Data for the purpose of performing the Services on reasonable written instructions that You may give to BiP from time to time concerning such Processing. You shall ensure that any such instructions comply with all applicable laws (including but not limited to the Data Protection Laws). BiP shall notify You if, in BiP's opinion, any instruction given by or on behalf of You breaches Data Protection Laws and may refuse to comply with any such instruction.
- 24.5. Notwithstanding any provision to the contrary within this Agreement, BiP may take any steps that BiP (acting reasonably and in good faith) determines are necessary in order for it to comply with Data Protection Laws. This shall include, without limitation, BiP having the right to notify the Information Commissioner's Office or any other relevant Supervisory Authority of any circumstance that has arisen in relation to the Processing of Personal Data under the Agreement to the extent that BiP (acting reasonably and in good faith) believes that this is necessary in order to comply with Data Protection Laws.
- 24.6. BiP shall maintain appropriate technical and organisational security measures in accordance with Article 32 of the UK GDPR.
- 24.7. BiP shall ensure that the measures to be taken pursuant to Clause 24.6 above are appropriate having regard to:
- the nature of the Personal Data and the scope, context and purposes of the Processing and the likelihood and severity of the risks to Data Subjects that are presented by the Processing of such Personal Data, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed; and
  - the state of technological development and the cost of implementing such measures.
- 24.8. BiP shall:
- maintain a record of its Processing activities which relate to the Agreement in accordance with the requirements of Article 30(2) of the UK GDPR; and
  - at any time upon request, and in any event upon termination or expiry of the Agreement, (unless You otherwise agree in writing in each case) deliver up all Personal Data Processed pursuant to the Agreement.
- 24.9. Following such delivery up and in the event of termination or expiry of the Agreement BiP shall promptly and securely delete or destroy all such Personal Data except for any Personal Data:
- which is necessary to enable BiP to comply with any continuing obligations that BiP may have following termination or expiry of the Agreement; or
  - which BiP is required to store in accordance with any applicable laws (including but not limited to the Data Protection Laws).
- 24.10. Each party shall provide the other with such information as such other party reasonably requests from time to time to enable such other party to satisfy itself that the party providing the information is complying with its obligations under this Agreement.
- 24.11. Each party may, at its own expense, inspect the other party's compliance with this Agreement. Due to the confidential and proprietary nature of BiP's operations and to protect the integrity and security of its operations and the nature of systems which may be used to provide the Services under the Agreement, BiP reserves the right to limit to a reasonable extent the scope of such audits or inspections, and require that such inspections:
- must be preceded by advance written request of no less than thirty (30) days prior to the anticipated start date and may occur no more than once in any twelve (12) month period;
  - must take place at a time mutually agreed by BiP and You;
  - if to be conducted by a third party, the third party must be:
    - approved in writing by BiP and You (such approval not to be unreasonably withheld or delayed);
    - subject to appropriate confidentiality and non-disclosure provisions; and
  - must not unreasonably disrupt BiP's normal business or IT operations.



- 24.12. BiP may cause or allow Personal Data to be transferred to and/or otherwise Processed in countries outside the European Economic Area, provided that such transfer or Processing complies with Data Protection Laws.
- 24.13. You acknowledge and agree that BiP shall be entitled to use sub-processors to Process Personal Data on BiP's behalf. If BiP wishes to appoint additional or replacement sub-processors during the period of this Agreement, it shall inform You of such proposed appointment in advance and give You the opportunity to object to the appointment. BiP shall take into account any objections communicated to BiP by You when deciding whether to make the appointment, but BiP shall not be bound by such objections.
- 24.14. BiP shall procure that any sub-processors who have access to Personal Data in connection with the Agreement shall be subject to binding contractual obligations which are substantially similar to the terms of this Agreement.
- 24.15. BiP shall, to the extent reasonably practicable, provide You at Your expense with such assistance as You may reasonably request in order to comply with Your obligation to respond to requests for the exercise of Data Subjects' rights under the UK GDPR within any reasonable timescales specified by You.
- 24.16. BiP shall notify You without undue delay if BiP becomes aware of a Personal Data Breach.
- 24.17. You acknowledge that the Schedule sets out the nature and purpose of Processing by BiP as a Processor on Your behalf, the subject-matter and duration of the Processing, the types of Personal Data, and the categories of Data Subjects.

**25. No Other Warranties**

- 25.1. BiP and its licensors disclaim all other warranties, representations, guarantees and conditions, express or implied, in each case whether implied by statute statutory or otherwise which are hereby expressly excluded to the extent permitted by law.
- 25.2. For the avoidance of doubt, neither BiP nor its licensors warrant the quality or accuracy of any information or documentation provided in, resulting from or transmitted using the service.
- 25.3. There is no guarantee or warranty by BiP or any other party or person that:
  - a. The functions contained in the service will meet your requirements; or
  - b. The operation of the service will be uninterrupted or error free; or
  - c. The service will enable you to meet all the requirements of a procurement exercise, including circumstances where there is a failure or delay to submit a bid due to errors in or issues relating to functionality of the service.
- 25.4. You assume all responsibility for the selection of the service to achieve your intended results, and for the installation, use and results obtained from use of the service.

**26. Liability**

- 26.1. If a valid claim is made by You against BiP under Clause 23, BiP shall repair, upgrade or replace the Service as soon as reasonably practicable without any further liability to You provided always that written notice of such claim is received by BiP within thirty (30) days of the date on which You become aware of circumstances giving rise to such claim. Such remedy shall be your sole and exclusive remedy for any breach of this Agreement by BiP.
- 26.2. Neither BiP nor its licensors shall be liable to you or any third party for any unavailability, delays, inaccuracies, errors or omissions howsoever occasioned or for any non-performance or failure in or defective or delayed performance of the service except to the extent that the same arises directly from the negligence of BiP.
- 26.3. Neither BiP nor its licensors shall be liable for any indirect, special or consequential loss, or loss of profits, loss of revenue, loss of business, business stoppage or interruption, computer failure or malfunction, loss of use, contracts, data, management time, anticipated savings or profits, goodwill, reputation or for any economic or financial loss whatsoever and howsoever suffered, whether or not caused by or resulting from its negligence or a breach of its statutory duties or a breach of Your obligations under this Agreement, even if BiP has been advised of the possibility of such damages.
- 26.4. Under no circumstances shall BiP, nor its affiliates, agents, and suppliers, be liable for any damages, including without limitation, direct, indirect, incidental, special, punitive, consequential, or other damages (including without limitation lost profits, lost revenues, or similar economic loss), whether in contract, tort, or otherwise, arising out of the use or inability to use the services, even if BiP is advised of such circumstances in advance of any losses being incurred. nor is BiP liable for any claim by a third party except in the case of death or personal injury caused by BiP's negligence.
- 26.5. BiP shall not be responsible or liable for the content or accuracy of any Data published or transmitted by any User.
- 26.6. Without limiting the general nature of Clauses 24 and 25, BiP is not responsible or liable for:
  - a. Any content, including without limitation, any infringing, inaccurate, obscene, indecent, threatening, offensive, defamatory, tortious, or illegal content; or
  - b. Any third party conduct, transmissions or data.
  - c. Any viruses or other disabling features that affect your access to or use of the software and Services;
  - d. Any incompatibility between the software and Services and other websites, Services, software and hardware;
  - e. Any delays or failures You may experience in initiating, conducting or completing any transmissions or transactions in connection with the software and Services in an accurate or timely manner;
  - f. Any loss of User Data, including without limitation, damaged or lost User files, through use of the Service;
  - g. Any damages or costs of any type arising out of or in any way connected with your use of any software and Services available from third parties through links.

- 26.7. Subject to Clause 26.9, the maximum total aggregate liability of BiP under, arising from or in connection with this Agreement or the Use of the Service, whether arising in contract, delict (including negligence), quasi-delict or otherwise, shall not exceed £50,000 or ten times the value of any licence fees payable, whichever is the lower.
- 26.8. You shall be liable to BiP and its licensors for any reasonable costs of any content, information or data entered or instructions received by BiP (whether or not from You) or otherwise or for any loss of any content, information or data or profits suffered or incurred by BiP as a result of any breach by You of Clause 13.1 until You shall have notified BiP of the same in accordance with Clause 13.3.
- 26.9. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to exclude, restrict or limit either party's liability for death or personal injury resulting from its negligence or any liability for fraudulent misrepresentation or any other liability which may not lawfully be limited or excluded under applicable law.

**27. Changes to the Agreement**

- 27.1. This Agreement may not be released, discharged, supplemented, amended, varied or modified in any manner except by agreement in writing of the parties. BiP shall be entitled to supplement, amend, vary or modify these Terms and Conditions at any time by giving notice to You (which may be validly served in electronic form by displaying the same to You when You or any User uses the Service or accesses the home page of the Service), any such supplement, amendment, variation or modification being effective fifteen (15) days after such notice. Your continued use of the Service will signify Your acceptance of any changes to these Terms and Conditions.

**28. Force Majeure**

- 28.1. BiP will not be liable for any delay in performing or failure to perform its obligations under this Agreement due to any cause outside of BiP's reasonable control. Such delay or failure shall not constitute a breach of this Agreement and the time for performance of the affected obligation shall be extended by such period as is reasonable.

**29. Consent to Electronic Communications and Solicitation**

- 29.1. By registering with Delta, You understand that BiP may send You communications or data from BiP regarding the Services, including but not limited to:
- notices about Your use of the Services, including any notices concerning violations of use;
  - updates; and
  - promotional information and materials regarding BiP's products and services, via electronic mail.
- 29.2. BiP gives you the opportunity to opt-out of receiving electronic mail from BiP by following the opt-out instructions provided in the message.

**30. Severance**

- 30.1. If any provision of this Agreement, not being of a fundamental nature, is held by a court of competent jurisdiction to be illegal, void or unenforceable, it shall be severed and the validity or enforceability of the remainder of the terms of this Agreement shall not be affected.

**31. Waiver**

- 31.1. Failure by either party to exercise any right or remedy under this Agreement shall not be construed as a bar to or as a waiver of such right or remedy in respect of any future event.

**32. Communication and Notices**

- 32.1. BiP has several different email addresses for different queries. These and other contact information can be found on the Contact Us link via the Service or via BiP's literature or via BiP's stated telephone, facsimile or mobile telephone numbers.
- 32.2. All notices under this Agreement shall, unless otherwise indicated, be validly served if sent by first class certified, registered or recorded delivery post or email to the address of the other party as notified from time to time by the other party to the party serving notice, being as at the date of this Agreement in the case of BiP the address and email address specified in Clause 5.3 and being in the case of You the address and email address specified on the Delta eSourcing registration form. Notices shall be deemed to have been served if sent by post within 48 hours of sending or if sent by email on receipt of a transmission provided that a copy of such notice is confirmed by first class certified, registered or recorded delivery post sent the same day.

**33. Law and Jurisdiction**

- 33.1. These Terms and Conditions shall be governed by and construed in accordance with the laws of England & Wales and any disputes shall be subject to the jurisdiction of the courts of England & Wales, unless otherwise determined by BiP.

**34. Entire Agreement**

- 34.1. This Agreement contains the entire agreement between the parties in respect of the subject matter of this Agreement and, with the exception of any fraudulent or negligent representations, supersedes and replaces any prior written or oral agreements, representations or understandings between the parties relating to the subject matter. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

**35. Relationship of the Parties**

- 35.1. Nothing contained in this Agreement shall be deemed to constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement and neither party shall have, nor represent that it has, any authority to make any commitments on behalf of the other party.

This is the Schedule referred to in the foregoing Terms and Conditions between You and BiP

## **The Schedule**

### **Data Processing**

In accordance with Article 28(3) of the UK GDPR, please see below the details of the Processing by BiP as a Processor:

#### **1. THE SUBJECT-MATTER AND DURATION OF THE PROCESSING**

The Processing involves Personal Data relating to Buyers and Suppliers (including the relevant employees of Buyers and Suppliers) and registered Users which is held in BiP's systems from time to time in order to enable BiP to provide the Services to Buyers and Suppliers.

The Processing will take place throughout the term of the Agreement and will continue after the term to the extent that: (i) Processing is necessary to enable BiP to comply with any continuing obligations that BiP may have following termination or expiry of the Agreement; or (ii) BiP is required to store Personal Data in accordance with any applicable laws.

#### **2. THE NATURE AND PURPOSE OF THE PROCESSING**

The Processing is necessary in order for BiP to perform the Services in accordance with the Agreement, which includes the operation, administration, maintenance and support of BiP's Delta e-Sourcing service for the purpose of facilitating Procurement Exercises.

#### **3. THE TYPES OF PERSONAL DATA**

The types of Personal Data that will be Processed by BiP will include: (i) the names, email addresses, and contact details of the relevant employees of Buyers and Suppliers; and (ii) the names, email addresses, contact details, user identifications, profiles and passwords of registered Users.

It is not envisaged that any special categories of Personal Data will be Processed by BiP.

#### **4. THE CATEGORIES OF DATA SUBJECTS**

The Data Subjects will be: (i) the relevant employees of Buyers and Suppliers; and (ii) registered Users.