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## Using the Order and Joint Schedules For Artificial Intelligence Order Contracts



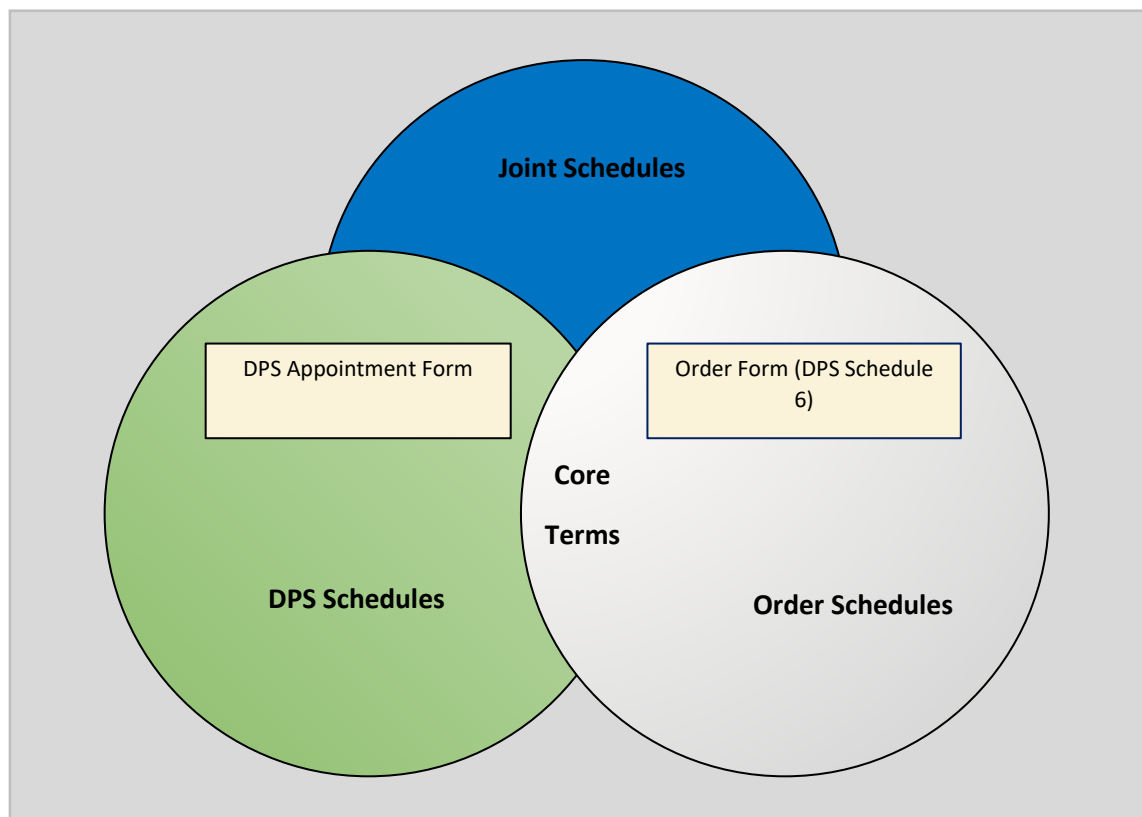
### Introduction

The Artificial Intelligence (AI) Order Contract structure is flexible so that it can cope with deals of a wide range of complexity. Very simple contracts may only require a completed Order Form supplemented by the essential Joint Schedules – 1 Definitions, 2 Variation Form and 10 Rectification Plan. At the other extreme, more complex contracts could require most of the optional Joint and Order Schedules.

The buyer may decide to insert sections of Joint and Order Schedules in DPS Schedule 6 Order Form, as an alternative to populating complete Schedules as an annex to the Order Form.

Buyers may enter into a Contract with Suppliers for a period of their determining. The flexibility of the contracting period allows the Buyer to determine appropriate contracting timelines required in order that the Supplier can meet the needs of the Buyer for large or complex projects. Buyers will specify the contract length within their Statement of Requirements. The option of longer contracts will give you more time with suppliers, to deliver more complex projects. For simple, short service projects we recommend a shorter contract term.

The picture below gives a visual view on how the different parts of the Contract documents work together:



This document is a brief guide to the various Order and Joint Schedules and how they may be used.

#### a) Order Schedules

**Order Schedule 1 Transparency Reports** – Central government bodies are subject to procurement transparency policy requirements. Where these apply to your organisation you should set out your transparency reporting requirements in the Annex to the schedule, guided by Procurement Policy Note 1/17

**Order Schedule 2 Staff Transfer**– Staff Transfer provisions may be required for deals with a dedicated service provision element. You should review the schedule options against the circumstances of your procurement, taking legal advice where necessary. If TUPE rules mean that a staff transfer is likely following the award of your Order contract you'll need Option A where Buyer staff will transfer to the incoming supplier, or Option B where the staff of an existing supplier will transfer to the incoming supplier. You'll also need to consider whether Part D (Pensions) should be incorporated into the contract and if so which annex should apply – D1 (CSPS), D2 (NHSPS) or D3 (LGPS).

Part C will apply if there will be no staff transfer at the start of the Order contract. Where there's the potential for a staff transfer at the end of the contract Part E should be included to ensure that obligations are placed on the Supplier to assist with the process.

**Order Schedule 4 Order Tender** – Include this schedule if you want to carry the commitments made in the winning supplier’s tender across into the Order contract.

**Order Schedule 5 Pricing** – This schedule was not included as artificial intelligence is an emerging market. Use the Order Form to readily capture the detail of your contract pricing.

**Order Schedule 6 ICT Services** - This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services, which deploy AI Technologies that are part of the Deliverables. Many AI contracts will need this schedule, if only for the inclusion of Software licensing provisions. Other elements of the Schedule, such as augmented due diligence and warranty provisions will mainly be relevant to contracts involving ongoing service provision. With reference to paragraph 6, you’ll need to decide if you want your Supplier to produce Quality Plans for your approval, the purpose being to ensure the Deliverables are provided in a systematically-controlled manner in accordance with documented processes.

This schedule contains bespoke terms for commissioned software, emergent commissioned software and the emergent content and licences for Supplier Software, and any other new IPR from the Supplier and third parties to the Buyer.

Annexes A and B should be used to document any Supplier software licensing terms. Such Supplier terms sit at the bottom of the contractual order of precedence such that if there’s a conflict with any other element of the contract then it’s the latter that will take precedence.

**Order Schedule 7 Key Supplier Staff** – Decide if there will be certain Supplier roles and personnel that will be key to delivery of your contract. If so, include this schedule in the contract and list the key roles with details of the Supplier staff to occupy those roles to be input before award. Specify the period of notice your Supplier must give to move a key person from their post.

**Order Schedule 8 Business Continuity & Disaster Recovery** – Where your contract has a significant ongoing service provision element you should think about whether you need the assurance of a Supplier Business Continuity and Disaster Recovery Plan to ensure that disruptive events don’t have a serious impact on the business operations to which the contract relates. If so, then include this schedule in your contract

**Order Schedule 9 Security** – Firstly you will need to decide if you should include this schedule in your contract. Will there be any potential ICT security exposure associated with the Supplier’s performance of the contract? If so then one of the options in the schedule should be adopted. The Short Form version obliges the Supplier to comply with i) the Buyer’s Security Policy, and ii) a Security Management Plan which they must produce for Buyer approval and which must set out how all aspects of the Deliverables will be protected. It will be subject to annual review and updating. The Long Form option also obliges the Supplier to implement an Information Security Management System compliant with relevant standards and key government guidelines. This is to be tested and updated annually. You should note that unless you specify that you require a tailored ISMS then the Supplier’s ISMS may be an existing one covering their whole estate.

**Order Schedule 10 Exit Management** – Decide if the nature of the contract is such that there will be a need for a rigorous, systematic approach to contract end and transfer of responsibility for provision of Deliverables to the Buyer or a replacement supplier. If so include this schedule in your contract

**Order Schedule 13 Implementation Plan & Testing** – Schedule 13 ensures there is a clear contractual agreement on the roadmap for contract implementation where the complexities of this cannot be captured in the Order Form. The Supplier will have produced an initial draft prior to award of the Order contract. This initial draft will be updated for agreement by the Buyer and incorporation into the contract thereby committing the Parties to perform their obligations in accordance therewith

The Plan should include a suitable number of Milestones – key contract implementation checkpoints at which the Buyer must sign off satisfactory delivery of the requirements in respect of that Milestone. This will typically involve the performance of defined testing of Deliverables in accordance with Part B of the schedule which requires the Supplier to produce a detailed Test Plan setting out how the Deliverables will be tested and the criteria for success. You must approve the plan before it's implemented.

**Order Schedule 14 Service Levels** – if you use this schedule you'll need to decide;

- i. The Service Level Performance Criteria – what measures do you require?
- ii. The required minimum Service Level for each of these
- iii. Whether you want to apply a Service Credit regime under which the relevant charges will be reduced if the Service Levels fall below that required. If so you'll need to specify how Service Credits will be calculated, and Service Credit Cap – a 12 month limit on Service Credits incurred by the supplier above which additional remedies will be available to you
- iv. If you want Service Credit provisions, a threshold below which the level of service performance will constitute a Critical Service Failure. If this happens you will be entitled to withhold charges for the relevant service period.

**Order Schedule 15 Order Contract Management** – You might want to consider adopting this schedule to document the collaborative contract management needs of your deal.

**Order Schedule 17 MOD Terms** – This schedule is only of relevance to MOD Buyers and must be included in all of the Department's Order contracts.

**Order Schedule 18 Background Checks** – You may want to use this schedule if your contract may involve Supplier staff coming into contact with children or vulnerable adults, or if there are other sensitivities around past criminal behaviour. The schedule allows the Buyer to specify that the Supplier ensures that staff involved in performance of the contract are subject to, and satisfy, checks in respect of relevant convictions.

**Order Schedule 19 Scottish Law** – This schedule will be required for contracts awarded by Scottish Buyers, introducing amendments to contract content in line with Scots law and rendering the contract subject to the jurisdiction of the Scottish courts.

**Order Schedule 20 Order Specification** – You may want to use this schedule if you've carried out a competition and want to incorporate your specification in the contract. You may also use this schedule to capture Deliverables that are too complex for the Order Form, such as the success criteria agreed to measure the ethical dimensions of a tender, including transparency, interpretability and explainability of the AI technology and ethical considerations in relation to data limitations, fairness and bias.

**Order Schedule 21 Northern Ireland Law** – This schedule is required for contracts awarded by Northern Ireland Buyers fulfilling an equivalent function to Schedule 19.

**Order Schedule 22 Secret Matters** – this schedule contains government-standard provisions applicable to circumstances in which the Supplier may be exposed to highly sensitive information.

**Order Schedule 23 Collaboration Agreement** - If your contract relates to an environment in which the service delivered has interdependencies with services provided by other suppliers, across multiple agreements, then terms may be needed to facilitate service integration and collaboration between suppliers. Where this applies the Supplier will need to enter into a Collaboration Agreement in the form set out in this schedule.

## **b) Joint Schedules**

**Joint Schedule 1 Definitions** – This is an essential element of your contract defining significant words and phrases used in the Core Terms and template schedules. You should augment the basic content with any new definitions specifically required for your contract, documenting these as Special Terms in your Order Form.

**Joint Schedule 2 Variation Form** – A necessary element for your contract defining the format for formally documenting contract changes.

**Joint Schedule 3 Insurance Requirements** – An essential schedule that captures the Supplier’s basic obligations in respect of Required Insurances at the DPS level, and mandating that the Supplier must provide any Additional Insurances that you specify in your Order Form.

**Joint Schedule 4 Commercially Sensitive Information** – You should ask your Supplier to tell you if any of the information they provided is commercially sensitive such that they would not want it disclosed in response to a Freedom of Information request. The response will provide the content for this schedule but ultimately it will be your decision as to whether the relevant information would be withheld if a pertinent FOI request was received.

**Joint Schedule 5 Corporate Social Responsibility** – This is a core schedule that sets out basic Corporate Social Responsibility/Social Value requirements applicable to all DPS Suppliers. You may have your own CSR/SV requirements to be included in your contract where you have specified as part of a competition that these must be satisfied.

**Joint Schedule 6 Key Subcontractors** – This will only be required where the Supplier will use one or more Key-Subcontractors to fulfil its obligations under your contract.

**Joint Schedule 7 Financial Difficulties** – This schedule sets out the Duns & Bradstreet (D&B) Financial Threshold set for the DPS, the minimum credit rating level for the Monitored company, and what suppliers must do if they are in financial trouble.

**Joint Schedule 8 Guarantee** – You may choose to use this schedule where the financial status of your Supplier is such that you want the assurance provided by a third party Guarantor that the Supplier’s obligations will be performed.

**Joint Schedule 10 Rectification Plan** - An essential schedule that defines the format for any Rectification Plan that your Supplier may have to provide in the event that you so specify in the wake of a Supplier Default.

**Joint Schedule 11 Processing Data** – This schedule is needed to address any processing of personal data associated with the performance of your contract. Normally, in terms of Data Protection rules the Buyer will be the Controller, specifying the purpose and means of

processing personal data, while the Supplier will be the Processor, carrying out such processing under the instructions of the Controller. Under such circumstances you will need to clearly set out the processing of personal data that you authorise the Supplier to undertake in the data processing template provided in the Schedule.

Under certain circumstances the Buyer and the Supplier may determine that they have a Joint Controller relationship in respect of the processing of certain personal Data in relation to an Order contract, in which case Annex 2 of the schedule must be used to govern such a relationship and the data to which such a relationship applies must be documented in the data processing template.

Finally, there may be circumstances under which for certain Personal Data the Supplier will maintain that they will be the Controller without the Buyer being either a Joint Controller or Processor. Under such circumstances this should be reflected in the completed data processing template

### **c) How the contract works**

Requirements are sent to the DPS registered suppliers who are then invited to submit a specific tender to fulfil these requirements.

You will invite suppliers by conducting an Order Procedure for Deliverables in accordance with the Regulations and detail in DPS Schedule 7 Order Procedure and Award Criteria.

You must use DPS Schedule 7 (Order Procedure) and must state your requirements using DPS Schedule 6 (Order Form Template and Order Schedules) when you to buy Deliverables under this DPS Contract.

The tender documents will set out:

- the specifics of the service being procured
- timescales for responding
- the expected format of the response
- how bids will be evaluated

The tender process should be proportionate to the value and complexity of your requirement.

If allowed by the Regulations, you can:

- make changes to DPS Schedule 6 (Order Form Template and Order Schedules)
- create new Order Schedules
- exclude optional template Order Schedules
- use Special Terms in the Order Form to add or change terms

Each Order Contract:

- is a separate Contract from the DPS Contract
-

- is between a Supplier and a Buyer
- includes Core Terms, Schedules and any other changes or items in the completed

The Order Form:

- survives the termination of the DPS Contract

The Order Contract should:

- state the deliverables
- state the tender submitted by the successful supplier
- state the charging method
- provide feedback to unsuccessful suppliers

An Order Contract can only be created using the electronic procedures described in the OJEU Notice as required by the Regulations.

A Supplier can only receive Orders under the DPS Contract while it meets the basic access requirements for the DPS stated in the OJEU Notice.


Further information can be found in the DPS Core terms and in each of the DPS, Order and Joint Schedules.

Please visit [The Public Sector Contract](#) for more guidance on using the Core Terms and relevant schedules.

## Further information

For further information, please contact:

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You can also learn more about what we offer online:

 [www.gov.uk/ccs](http://www.gov.uk/ccs)

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