



Government
Legal Department

THE SECRETARY OF STATE FOR INTERNATIONAL TRADE

and

SHARP MONKEYS LIMITED

and

WEST MIDLANDS INTERNATIONAL TRADE LLP

NOVATION AGREEMENT

RELATING TO

A CONTRACT FOR THE PROVISION

OF DIGITAL TRADE CLINICS

THIS AGREEMENT IS DATED 21ST JULY 2022

BETWEEN:

(1) THE SECRETARY OF STATE FOR INTERNATIONAL TRADE of Old Admiralty Building London, SW1A 2BL (the “**Authority**”); and

(2) SHARP MONKEYS LIMITED a company registered in England and Wales under registered number 05504986 whose registered office is at 56 The Tything Worcester England WR1 1JT (the “**Contractor**”); and

(3) WEST MIDLANDS INTERNATIONAL TRADE LLP a limited liability partnership of Chamber of Commerce House, Suite 304, Avix Business Centre, 42-46 Hagley Road, Birmingham B16 8PE (the “**Client**”)

together the “**Parties**” and each a “**Party**”.

BACKGROUND:

- A. The Authority and the Client were parties to a contract dated 30th April 2015 whereby the Client contracted for services to be provided to the Authority, including a contract with the Contractor for the provision of Digital Trade clinics (the “**Contract**”), a copy of which is attached at Schedule 1 to this Agreement.
- B. The Contract between the Client and Contractor is valid until 30th November 2022. As a result, the Authority, the Client and the Contractor wish to transfer the Client’s rights and obligations under the Contract to the Authority who will replace the Client under the Contract with the Contractor.
- C. The Authority, the Client and the Contractor have therefore agreed to novate the Client’s rights and obligations under the Contract to the Authority on the terms of this Agreement with effect from 1st July 2022 (the “**Effective Date**”).

IT IS AGREED as follows:

1 WARRANTY

- 1.1 Each Party warrants and represents that it has the full power and authority and has taken all action necessary, including obtaining all necessary approvals or consents, to enable it to enter into and perform this Agreement.

1A CONSIDERATION

- 1.1A In consideration of the Contractor carrying out its obligations under this Agreement the Authority shall pay the sum of one pound (£1.00) to the Contractor, receipt of which is hereby acknowledged.

2 NOVATION

With effect from the Effective Date:

- (a) the Client transfers all its rights and obligations under the Contract to the Authority;
- (b) the Authority shall enjoy all the rights and benefits of the Client under the Contract;
- (c) the Contractor agrees to observe and perform the Contract and be bound by its terms in every way as if the Authority were the original party to the Contract with the Contractor;
- (d) the Authority agrees to observe and perform the Contract and be bound by its terms in every way as if it were the original party to the Contract with the Contractor; and
- (e) all references to the Client in the Contract shall be read and construed as references to the Authority.

2A. VARIATION TO THE CONTRACT

2A.1 The Parties agree with effect from the Effective Date that clause 4 and Annex A of the Contract shall be varied as set out in Schedule 2 of this Agreement.

2A.2 Subject to the variations set out in Schedule 2 of this Agreement, the Contract shall continue in full force and effect in all respects.

- 2A.1 In addition to the amendments set out in Schedule 2 of this Agreement, the Contract shall be construed and interpreted with such further consequential amendments as are necessary to give effect to the amendments set out in Schedule 2 of this Agreement.

3 RELEASE OF OBLIGATIONS

- 3.1 With effect from the Effective Date, the Client and the Contractor release each other from all future obligations to the other under or in connection with the Contract.
- 3.2 Nothing in this Agreement shall affect or prejudice any claim or demand that the Client or the Contractor may have against the other under or in connection with the Contract with respect to matters occurring before the Effective Date.
- 3.3 If and to the extent that, with reference to the circumstances existing as at the Effective Date, the entry into this Agreement would result in the Authority becoming liable for any increased or further obligations or liabilities under the Contract in addition to those that the Authority is already subject to under the Contract, the Authority shall not be liable for such increased or further obligations or liabilities (whatsoever) and the Contract shall be interpreted accordingly.
- 3.4 The Client is not, as at the Effective Date, aware of any matters or circumstances that would entitle the Client to take action or pursue a claim or demand against the Contractor under or in connection with the Contract, nor any matters or circumstances that may reasonably be expected to give rise to such action, claim or demand by the Client against the Contractor.
- 3.5 The Contractor agrees that the Client has paid all sums due and payable under the Contract as at the Effective Date.

4 INDEMNITY

- 4.1 The Client shall indemnify the Authority against all liabilities, costs, expenses, damages and losses that the Authority suffers or incurs under or in connection with the Contract as a result of the Client's failure to perform the Contract before the Effective Date.
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- 4.2 The Contractor shall indemnify the Authority against all liabilities, costs, expenses, damages and losses that the Authority suffers or incurs under or in connection with the Contract as a result of the Contractor's failure to perform the Contract on or after the Effective Date.

5 THIRD PARTY RIGHTS

- 5.1 A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

6 GOVERNING LAW AND JURISDICTION

- 6.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 6.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.
- 6.3 Execution of the Contract is carried out in accordance with the Electronic Communications Act 2000 and the Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/89) (the UK eIDAS Regulation).
- 6.4 Unless agreed otherwise by the Authority, each Party agrees to sign this Agreement by electronic signature using DocuSign and agree that this method of signature is as conclusive of their intention to be bound by this the Agreement as if signed by each Party's manuscript signature.
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Signed for and on behalf of THE SECRETARY OF STATE FOR INTERNATIONAL TRADE	Signed for and on behalf of SHARP MONKEYS LIMITED
Name:	Name:
Date:	Date:
Signature:	Signature:
Signed for and on behalf of WEST MIDLANDS INTERNATIONAL TRADE LLP	
Name:	
Date:	
Signature:	

Schedule 1

The Contract

DATED

15th September 2021

(1) WEST MIDLANDS INTERNATIONAL TRADE LLP

-and-

(2) SHARPMONKEYS

CONSULTANCY AGREEMENT



West Midlands International Trade LLP, Suite 304, Avix Business Centre, 42-46 Hagley Road, Birmingham, B16 8PE, tel: 0121-607-1795

THIS CONSULTANCY AGREEMENT is made the Fifteenth day of September 2021

BETWEEN:

(1) **WEST MIDLANDS INTERNATIONAL TRADE LLP** of Chamber of Commerce House, Suite 304, Avix Business Centre, 42-46 Hagley Road, Birmingham B16 8PE (hereinafter called the "**Client**"); and

(2) **Sharpmonkeys**, 56 The Tything, Worcester WR1 1JT) (hereinafter called the "**Consultant**")

WHEREAS:

(A) The Consultant has certain skills and abilities which may be useful to the Client from time to time.

(B) The Consultant is an independent contractor willing to provide services to the Client as set out below.

IT IS AGREED as follows:

1. CONSULTANCY SERVICES

The Client engages the Consultant to provide consultancy services to the Client relating to the provision of Digital Trade clinics and the Consultant agrees to provide such services upon the terms and conditions set out below.

2. DURATION

This Agreement shall commence on 15th September 2021 and shall continue for a fixed period of 14 months terminating on 30th November 2022 or until terminated by either party giving to the other not less than thirty (30) days written notice

3. CONSULTANT'S SERVICES

3.1 The Consultant is retained on the terms set out herein to deliver weekly Digital Trade clinics. The details of the Consultant's appointment shall be more specifically set out in Annex 1

3.2 The Consultant shall provide its services with reasonable care and skill and

to the best of its ability and comply with all relevant health and safety legislation whilst carrying out the Services.

3.3 The Consultant shall provide the Services solely through its personnel. In the event that the Consultant is unable to provide the Services of John Chacksfield, it shall provide a suitable substitute acceptable to the Client to carry out the Services.

a. 3.4 The Consultant shall meet with the Client (at the times requested by the Client) to review and discuss its performance hereunder.

4. FEE

The Client shall pay to the Consultant an all-inclusive fee of £500 per day for pre and post work relating to the provision of Digital Trade clinics, and for the delivery of the Digital Trade clinics (such fee to be exclusive of value added tax if applicable); (the "Fee"), The Consultant shall submit a valid invoice to the Client in respect of the Fee and provided such invoice is received by the Client prior to the 20th day of the month, payment shall be made to the Consultant no later than the last day of the following month.

5. EXPENSES

Digital Trade clinics will be delivered virtually, using MS Teams, Zoom or other on-line webinar platforms and as such no expenses are due.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 The Consultant hereby acknowledges that in carrying out the consultancy services the Consultant may have access to and/or permission to use certain Client-owned owned materials for the purposes anticipated by this Agreement (the "Client Materials"). All Intellectual Property (which term shall include but not be limited to trademarks or trade names (whether common-law or registered), copyright (whether published or unpublished), trade secrets, know-how, moral rights, rights in databases, methods, processes, work-flow, inventions, proprietary

information) in the Client Materials and any amendments or variations thereto shall remain the property of the Client.

6.2 The Consultant shall do all such things and sign all documents or instruments reasonably necessary to enable the Client to obtain, defend and enforce its rights in the Project Materials.

6.3 Upon request by the Client, and in any event upon the expiration or termination of this Agreement, the Consultant shall at its expense promptly deliver to the Client all copies of the Project Materials then in the Consultant's custody, control or possession.

7. TERMINATION

7.1 Without limitation the Client may by notice in writing immediately terminate this Agreement if the Consultant shall:

7.1.1 be in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Consultant within 21 days of receipt by the Consultant of a notice from the Client specifying the breach and requiring its remedy.

7.1.2 fail or refuse after written warning to provide the services reasonably and properly required of him hereunder.

6.2 Either party may by notice in writing terminate this Agreement for any reasons upon providing the other party with thirty (30) days' notice.

8. CONFIDENTIAL INFORMATION

The Consultant agrees to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to the Client's technology, or other know-how, business plans or finances or any such information relating to a subsidiary, supplier, customer or client of the Client where the information was received during the period of this Agreement and upon termination of this Agreement for whatever reason the Consultant shall

deliver up to the Client all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant either to this Agreement or to any previous obligation owed to the Client.

9. STATUS AND TAX LIABILITIES

The parties declare that it is their intention that the Consultant shall not be entitled to any pension, bonus or other fringe benefits from the Client and it is agreed that the Consultant shall be responsible for all income tax liabilities and National Insurance or similar contributions in respect of his fees and the Consultant agrees to indemnify the Client against all demands for any income tax, penalties and interest made against it in respect of the Consultant's services hereunder and against its costs of dealing with such demands.

10. COMPLIANCE WITH LEGISLATIVE AND OTHER LEGAL REQUIREMENTS

The Consultant shall, when dealing with "personal data" within the meaning of the Data Protection Act 1998 comply at all times with the provisions of the Data Protection Act 1998. The Consultant shall also ensure that it is at all times compliant with any and all other relevant legislation or legal requirements applicable to the Services and/or to the Consultant fulfilling its obligations hereunder.

11. NOTICE

Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be served by sending the same by registered post or recorded delivery to the last known address of the other party and any receipt issued by the postal authorities shall be conclusive evidence of the fact and date of posting of any such notice.

12. THIRD PARTY RIGHTS

The parties to this Agreement expressly exclude any rights of third parties who may otherwise be entitled to enforce the terms of this Agreement as if they were a party to it or otherwise be able to rely on the provisions of the Contracts (Rights of Third Parties Act 1999, as enacted or modified)

13. FORCE MAJEURE

Neither party shall be deemed to be in default of their obligations hereunder or liable to the other party to the extent it is unable to perform any or all of its obligations hereunder by reasons of fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lock-out, riot, civil disturbance, act of public enemy, natural catastrophe, embargo, war or act of God, or any ordinance or law or any executive or judicial orders.

14. ENTIRE AGREEMENT

This Agreement sets out the entire agreement of the parties and supersedes all prior agreements and understandings relating to its subject matter.

15. LAW

This Agreement shall be governed by and construed in accordance with English Law. The parties submit to the exclusive jurisdiction of the English courts.

SIGNED by [REDACTED] as the Consultant Date 15/09/2021	 [REDACTED]
SIGNED by [REDACTED] Managing Director, for and on behalf of the Client Date	

SERVICES TO BE PROVIDED TO THE CLIENT BY Sharpmonkeys

2. The consultant will deliver weekly Digital Trade clinics to SMEs, with a maximum of 4 businesses per day. The clinic will include a review of the client website, feedback using a standardised report and a discussion around future developments and support available to develop International Trade.

3. The Client will pay the Consultant a day rate of £500+vat with a schedule of two working days per week. The breakdown of the work will be as follows;

3.1 Half a day for preparation, research and reviewing customer website based on their completion of a digital review form.

3.2 One day for delivery of digital clinic workshops, one on one with clients via MS Teams.

3.3 Half a day for completion of action plan, report and recommendations back to client and ITA in the form of a written report, analysis and action plan.

4. The Consultant will make dates available on a weekly basis, at least one month in advance, and the Client will arrange bookings via the team of International Trade Advisers. The client will provide details of the SMEs booked in for each clinic at least 1 week in advance, to enable the Consultant to undertake a review of the SME website.

5. The Consultant will produce a report for each SME that they support in a standardised format, and email that to both the SME and the client within 5 working days of the clinic.

6. Where a client fails to attend an arranged clinic, the Consultant may claim the full fee.

7. Where the client is unable to generate sufficient bookings for a full set of appointments during a clinic, the Consultant may claim the full fee.

8. The client may cancel a scheduled clinic where insufficient demand warrants it. If the cancellation is more than 14 days prior to the clinic date, no fee will be claimable by the Consultant. Where the cancellation is between 7-14 days of the clinic, the Consultant may claim £500 for the clinic, but no fee will be payable for the pre and post work. Where the cancellation is within 7 days of the scheduled clinic date, £500 will be claimable for the clinic and £500 for the pre and post work.

9. International Trade Advisers may wish to join the client meetings, and this should be accommodated by the Consultant.

Schedule 2

Variations to the Contract

Clause 4 and Annex A of the Contract shall be amended to read:

4.1 In consideration of the provision of the Services by the Consultant in accordance with the terms and condition of this Contract, the Client shall pay the Consultant an all-inclusive fee of £500 per day for pre and post work as detailed in Annex A (such fee to be exclusive of value added tax if applicable); (the "Fee"). The Fee due for the duration of the Contract is as set out below:

Month	Days Required	Cost	VAT	Total Cost
July	8	£4,000.00	£800.00	£4,800.00
August	10	£5,000.00	£1,000.00	£6,000.00
September	8	£4,000.00	£800.00	£4,800.00
October	8	£4,000.00	£800.00	£4,800.00
	34	£17,000.00	£3,400.00	£20,400.00

4.2 The Consultant shall submit a valid invoice to the Client in respect of the Fee and provided such invoice is received by the Client prior to the 20th day of the month, payment shall be made to the Consultant no later than the last day of the following month.