



## Contract to Provide a Digital Platform for Business Assistance in Exporting to Japan

### REQUEST FOR PROPOSAL

#### ATTACHMENT 1 – RFP COVER AND INSTRUCTIONS

1. The Department of International Trade is looking to appoint an organisation for the hosting and providing of an online platform, to assist British businesses in exporting to Japan. Further details on the requirement are set out in Section 2 – Statement of Requirements.
2. The contract will commence on 1<sup>st</sup> April 2022 and end on 31<sup>st</sup> March 2023.
3. A Purchase Order number for this requirement will be provided.
4. Your quote should remain valid for 90 days from the required date of receipt and all costs should be stated in GBP. Your quotation should be inclusive all applicable costs.
5. The deadline for bids is **16<sup>th</sup> March 2022**. Late submissions will not be accepted.
6. Bids should be set to Joseph Sheldon [joseph.sheldon@fcdo.gov.uk](mailto:joseph.sheldon@fcdo.gov.uk) and Marie-Claire Joyce [Marie-Claire.Joyce@fcdo.gov.uk](mailto:Marie-Claire.Joyce@fcdo.gov.uk) using the reference **<provide a contract ref # to help identify the project>**.
7. Bids should take the form of two (2) documents. The first document should contain your response to the Technical Questions 1-6 in Section 3. The second document should be the completed Excel sheet with the pricing information. Any pricing information contained in the technical answers may result in your bid being removed from the process.
8. Should your quotation be accepted, this request, the attached Specification, and your response will form a legally binding contract between you and the Authority under the terms and conditions set out in the associated Contract as set out in Section 4 – Terms and Conditions for the Provision of Services.
9. This Request for Proposal does not imply any commitment on the part of the Authority.

## SECTION 2 – STATEMENT OF REQUIREMENTS

<b>1.0 Title</b>
Contract to Provide a Digital Platform for Business Assistance in Exporting to Japan
<b>1.1 Background</b>
British businesses are attracted by the opportunities in Japan, but exporting to Japan can be a daunting experience. We want an online hub where businesses can learn about opportunities, find tips on how to do business in Japan, view event schedules, and contact a team to have their queries answered.
<b>1.2 Summary</b>
DIT Japan is looking for a partner to provide an online platform which will host digital content and provide an enquiry service with the aim of aiding British businesses find opportunities in Japan.
<b>1.3 Requirement</b>
<ul style="list-style-type: none"><li>• Create a digital platform to host information related to exporting to Japan.</li><li>• Provide market information, reports and digital content via the digital platform.<ul style="list-style-type: none"><li>○ Produce one podcast per month.</li><li>○ Plan and implement a payable export business support service, and respond to requests via that service within 3 business days.</li><li>○ Host, join and support 20 digital events (e.g. webinars) with DIT teams in the UK and Japan per year.</li><li>○ Create export business support guides on the digital platform and update them within 1 week of any substantial change.</li><li>○ Create list of, and engage with, key UK-Japan export stakeholders (a Partner Programme), and maintain the Partner Programme within 1 working day of any change.</li><li>○ Create and maintain blog-style sector-specific industry advice pages on the digital platform, including publishing event invites and newsletters when required.</li></ul></li><li>• Provide a general enquiry validation and handling service.<ul style="list-style-type: none"><li>○ Respond to all enquiries, between 500-900 per year, received via the digital platform's <i>Contact Us</i> page within 3 business days.</li><li>○ Implement and respond to enquiries received through a <i>Chat Now</i> function on the digital platform.</li><li>○ Work with DIT Japan to develop a workflow to handle enquiries depending on an agreed sector priority list, which is subject to change throughout the year.</li><li>○ Provide DIT director with a twice-yearly report of the enquiries and their outcomes with a sample of 10 responses for governance purposes.</li></ul></li><li>• Create and maintain an online sign-up system for trade missions, and host information packs for mission members as required working with DIT Japan.</li><li>• Create a sign-up system with analytics tracking, ideally through Google Analytics, that's compliant with Government privacy regulations and periodically sharing this data with DIT. Specific metrics and sharing schedule to be agreed with the successful supplier upon award. Privacy regulations are detailed in point 9 of the Service Standard: <a href="https://www.gov.uk/service-manual/service-standard/point-9-create-a-secure-service">https://www.gov.uk/service-manual/service-standard/point-9-create-a-secure-service</a></li><li>• Working with DIT Japan, issue newsletters and event invitations to signed-up users.</li><li>• Create content accessible only to signed-up users.</li><li>• Optimise search engine results for the digital platform.</li><li>• General maintenance of the digital platform, working with DIT, including logos and branding.</li><li>• Maintain the database of registered users securely in accordance with data protection laws.</li></ul>

**1.4a Anticipated Start Date**1<sup>st</sup> April 2022**1.4b Anticipated End Date**31<sup>st</sup> March 2023**1.5 Deliverables**

Deliverable	Description	Format	Due Date(s)
12 Podcasts	To be hosted on the platform itself, and popular podcast streaming platforms.	Audio only	Throughout the duration
20 digital events	Webinars, hosted or supported.	Online	Throughout the duration
500-900 query responses	Businesses will use the platform to submit queries about exporting to Japan.	Email	Throughout the duration
Digital platform	The online platform, ready to host information/podcasts etc. and a full sign-up system.	Website	2 weeks from contract start date.

**1.6 Deliverable Acceptance Criteria**

At a quarterly review beginning 3 months after the contract start, DIT Japan will review the podcasts created and planned, the events supported, and the queries responded to.

**1.7 Cyber / Data Protection**

*What data, in particular sensitive data, will be being processed (as controller vs. processor?) / GDPR?*

The supplier is expected to handle user information, business information, and staff information in order to provide the service.

The solution should adhere to the Technology Code of Practice, Digital Service Standard and Government Accessibility Standards.

- <https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
- <https://www.gov.uk/service-manual/service-standard>
- <https://accessibility.18f.gov/checklist/>

**1.8 Training and/or On-going Support**

The supplier will have access to DIT Japan's staff and expertise, should it be required to provide the service.

**1.9 Options**

There is an option to extend this contract for a further 12 months.

**1.10 On-boarding & Off-boarding**

At the end of the contract, all user information from site signups will be handed over to DIT Japan.

**1.11 Quality accreditations**

The team may be required to pass a GDS service assessment upon delivery of the platform.

**1.12 Intellectual Property Rights (IPR)**

The supplier will retain full copyright of all content developed for the service.

The digital platform and/or its licensors own the intellectual property rights in the website and material on the website.

**1.13 Contract Management**

There will be a quarterly meeting to manage the ongoing service.

**1.14 Constraints**

The supplier will not have access to information deemed Official by DIT Japan, and must rely on publically available information to provide the service.

**SUB-CONTRACTING ARRANGEMENTS**

Bidders need to clearly indicate at bidding stage whether they will sub-contract project activities.

**1.15 Duty of Care**

The supplier of the consulting services is responsible for the safety and well-being of their Personnel and Third Parties affected by their activities under this contract, including appropriate security arrangements. They will also be responsible for the provision of suitable security arrangements for their domestic and business property. FCDO will share available information with the Supplier on security status and developments in-country where appropriate.

The Supplier is responsible for ensuring appropriate safety and security briefings for all of their Personnel working under this contract and ensuring that their Personnel register and receive a briefing as outlined above. Travel advice is also available on the FCDO website and the Supplier is responsible for and must ensure they (and their Personnel) are up to date with the latest position.

Suppliers must develop their Proposal on the basis of being fully responsible for Duty of Care. They must confirm in their Proposal that:

- They fully accept responsibility for Security and Duty of Care.
- They understand Proposal the potential risks and have the knowledge and experience to develop an effective risk plan.
- They have the capability to manage their Duty of Care responsibilities throughout the life of the contract.

Acceptance of responsibility must be supported with evidence of capability (no more than two A4 pages and the FCDO reserves the right to clarify any aspect of this evidence).

In providing evidence Suppliers should consider the following questions:

- Have you completed an initial assessment of potential risks that demonstrates your knowledge and understanding, and are you satisfied that you understand the risk management implications (not solely relying on information provided by the FCDO)?
- Have you prepared an outline plan that you consider appropriate to manage these risks at this stage (or will you do so if you are awarded the contract) and are you confident/comfortable that you can implement this effectively?
- Have you ensured or will you ensure that your staff are appropriately trained (including specialist training where required) before they are deployed and will you ensure that on-going training is provided where necessary?
- Have you an appropriate mechanism in place to monitor risk on a live / on-going basis (or will you put one in place if you are awarded the contract)?
- Have you ensured or will you ensure that your staff are provided with and have access to suitable equipment and will you ensure that this is reviewed and provided on an on-going basis?
- Have you appropriate systems in place to manage an emergency / incident if one arises?

### SECTION 3 – ASSESSMENT SCORE AND EVALUATION CRITERIA

1. The tender process will be conducted to ensure that the tenders are evaluated fairly to ascertain the most economically advantageous tender from the point of view of the purchasing Authority.
2. Account will be taken of any factor emerging from the tendering process which impacts a Bidder's suitability and relates to information previously provided by the Bidder as part of the pre-qualification process, in particular any additional information which comes to light in respect of its financial standing.
3. Your response to our requirement will be evaluated under the following headings based on a 60:40 split between the quality/technical aspects to your tender and the pricing thereof.
4. No importance should be attached to the order in which these criteria are listed. Any tender that is not compliant with the Conditions of Contract may be rejected.
5. Bidders are requested to ensure their answers are concise and relevant to this specific contract, and refrain from uploading extensive generic corporate documentation or marketing literature. Excessive generic material may result in the bid being deemed unacceptable and excluded from the process.
6. The Authority will evaluate each response in line with the published scoring methodology and reserves the right to exclude any bid that scores either;
  - a) a "Fail" against question 6
  - b) an "Unacceptable-Non compliant" for any question or
  - c) scores two (2) or more "Serious Reservations"
7. The Authority wishes to advise all bidders that there is a limited budget for this work. All proposals will be assessed from both technical and commercial perspectives to ensure that best value for Tax Payer's money is being achieved. Should the highest scoring bid be unaffordable (i.e. over the maximum budget set), the Authority reserves the right to seek clarification on the rates and hours submitted and if necessary reduce the scope of work involved in order to maximise the budget available. If the solution cannot be tailored to meet budget, the Authority may elect to move to the next highest scoring bid that is affordable.

#### EVALUATION CRITERIA

Qualification	
Evaluation Criteria	Criteria Weighting
<ul style="list-style-type: none"> <li>Acceptance of FCDO terms and conditions as detailed in Section 4;</li> <li>The FCDO reserves the right to seek and act upon independent legal, financial or market advice to corroborate information provided or to assist in its evaluation;</li> <li>The Authority will conduct its own due diligence prior to contract signing.</li> </ul>	Mandatory

Evaluation Criteria – Quality/Technical (Questions 1 - 6) <i>You must provide answers (no more than two pages for each answer) to the relevant section of this envelope</i>	Criteria Weighting	Evaluation Methodology
<b>1. Knowledge</b>  Please demonstrate a thorough understanding of the Authority's requirement and evidence of your knowledge about the subject matter within the context of Japan and the UK.	15	0 – 4 score
<b>2. Experience</b>	20	0 – 4 score

Please provide relevant track records of successful <u>operation or implementation</u> of similar projects, including the results and impacts made. This must include digital content creation.		
<b>3. Influence &amp; Resources</b>  Provide details about your existing resources, including expertise, connections, UK and Japanese partners, and supporting networks that could be made useful or leveraged to deliver stipulated outputs and maximize impacts.	15	0 – 4 score
<b>4. Operational Capacity</b>  Please provide detailed description of the management structure and governance arrangement you will employ to operate this project.  Details on project management and delivery capacity, relevant evidence of your capacity to operate this project in both the UK and Japan.  Capability in managing in sub-contractors, if applicable; where sub-contractors will play a significant role in the delivery of the services, a separate annex with details of supply chains is required	15	0 – 4 score
<b>5. Project Plan &amp; Risk Management</b>  Please provide the following: <ul style="list-style-type: none"> <li>• A project plan referring to the Statement of Requirements, detailing milestones, deliverables, and timeline.</li> <li>• Identify any key risks and explain how they will be mitigated.</li> <li>• Indicate how the project will be monitored to ensure it is delivered in terms of quality, timeliness and cost.</li> <li>• Ensuring a people-centred approach &amp; Gender Equality Act compliance for quality programme delivery.</li> </ul>	10	0 – 4 score
<b>6. Duty of Care</b> <ul style="list-style-type: none"> <li>• Please refer to the Duty of Care section within the Terms of Reference. Outline how you will fulfil your obligations under this requirement and provide all necessary statements</li> </ul>	Pass / Fail	Pass /Fail
<b>TOTAL – Quality/Technical</b>	<b>60%</b>	<b>Max Score 240</b>

<b>Evaluation Criteria – Pricing &amp; Commercial</b>	<b>Criteria Weighting</b>	<b>Evaluation Methodology</b>
Competitiveness of fee rates and overall project cost in relation to the market to demonstrate value for money.  Please complete and submit Attachment 2a for the pricing structure.	40%	Inverse Percentage
<b>TOTAL – Pricing &amp; Commercial</b>	<b>40%</b>	<b>Max Score 160</b>
<b>GRAND TOTAL EVALUATION CRITERIA</b>	<b>100%</b>	<b>Max Score 400</b>

#### Assessment Score

All tenders will be scored as above in accordance with the marking system set out below:

Score Key Assessment	Score	Interpretation
Good	4	Satisfies the requirement with additional benefits. Above average demonstration by the Tenderer of the understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services. Response identifies factors that will offer potential added value, with evidence to support the response.
Acceptable	3	Satisfies the requirement. Demonstration by the Tenderer of the understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services.
Minor Reservations	2	Satisfies the requirement with minor reservations. Some minor reservations of the Tenderer's understanding and proposed methodology, with limited evidence to support the response. Tenderer has accepted FCDO standard terms and conditions of contract.
Serious Reservations	1	Satisfies the requirement with major reservations. Major reservations of the Tenderer's understanding and proposed methodology, with little or no evidence to support the response.
Unacceptable	0	Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the Tenderer has the understanding or suitable methodology, with little or no evidence to support the response. Tenderer has rejected FCDO standard terms and conditions of contract.
Price / Commercial	Score awarded on inverse percentage difference from most financially attractive offer to the Authority	

Prices will be benchmarked and scores awarded based on the lowest compliant bid. The most financially attractive offer to the Foreign, Commonwealth & Development Office following detailed analysis will receive the maximum score available with the remaining bids awarded scores based upon an inverse percentage of the difference in price.

[example: Bid A = £75K = 200 pts, Bid B = £80K = 187.5 pts ( $\frac{£75K}{£150K} \times 80$ )]. The weighting will then be applied to the scores.]



## **SECTION 4 – TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES**

### **Terms and Conditions of Contract**

- 1 Interpretation
- 2 Basis of Agreement
- 3 Supply of Services
- 4 Term
- 5 NOT USED
- 6 NOT USED
- 7 Charges, Payment and Recovery of Sums Due
- 8 Premises and Equipment
- 9 Staff and Key Personnel
- 10 Assignment and Sub-Contracting
- 11 Intellectual Property Rights
- 12 Governance and Records
- 13 Confidentiality
- 14 Data Protection
- 15 Liability
- 16 Force Majeure
- 17 Termination
- 18 Compliance
- 19 Prevention of Fraud and Corruption
- 20 Dispute Resolution
- 21 NOT USED
- 22 NOT USED
- 23 General
- 24 Notices
- 25 Governing Law and Jurisdiction

## 1 INTERPRETATION

### 1.1 In these terms and conditions:

"Agreement"	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier's countersignature of the Award Letter and includes the Award Letter and Annexes;
"Authority"	means the Secretary of State for Foreign, Commonwealth and Development Affairs and includes the Authority's Representative. In this Contract, the Authority is acting as part of the Crown.
"Authority's Representative"	means the individual authorised to act on behalf of the Authority for the purposes of the Contract.
"Award Letter"	means the letter from the Customer to the Supplier printed above these terms and conditions;
"Central Government Body"	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><li>(a) Government Department;</li><li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(c) Non-Ministerial Department; or</li><li>(d) Executive Agency;</li></ul>
"Charges"	means the charges specified in the Award Letter;
"Code of Conduct"	Means the Agreement at Annex 5 to this Contract
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Contract Period"	Is the term of the contract from the Commencement Date till the expiry date
"Contracts Finder"	Is the Government's publishing portal for public sector procurement opportunities
"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer"	take the meaning given in the GDPR;
"Credit Transfer"	is a payment instruction from the Authority to its bank or payment service provider to transfer an amount of money to another account.
"Customer"	means the person named as Customer in the Award Letter who is the "Authorities Representative";
"Data Protection Legislation"	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [ subject to Royal Assent ] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Loss Event“	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Subject Access Request“	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Date of Delivery“	means that date by which the Goods must be Delivered to the Customer, as specified in the Award Letter.
“Deliver“	means hand over the Goods to the Customer at the address and on the date specified in the Award Letter, which shall include unloading and any other specific arrangements agreed in accordance with Condition 5 (Delivery). Delivered and Delivery shall be construed accordingly.
“DPA“	means the Data Protection Act 2018;
“EIR“	means Environmental Information Regulations 2004;
“Expiry Date“	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA“	means the Freedom of Information Act 2000;
“GDPR“	means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> )
“Goods“	means the goods to be supplied by the Supplier to the Customer under the Agreement;
“GPC“	means the Government Procurement credit card used for purchasing and/or making payment;
“Information“	has the meaning given under section 84 of the FOIA;
“Intellectual Property Rights“	means patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
“Key Personnel“	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
“LED“	means Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> )
“Law“	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
“Notice“	means information from either Party to the other Party about a particular action that has been taken;
“Party“	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data“	means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Protective Measures“	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“Purchase Order”	means the form, on the other side of these Conditions or attached separately, which the Authority sends to the Contractor setting out the Authority’s specific requirements, the contract terms which apply to the Goods and/or Services and any documents referred to therein;
“Purchase Order Number”	means the Customer’s unique number relating to the Contract;
“Regulatory Body”	means any organisation/authority that is authorised to set directions for or monitor standards set out in law;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“SME”	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services or Services (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement;
“Supplier”	means the person named as Supplier in the Award Letter;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with Condition 4 (Term) or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“VCSE”	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2 In these terms and conditions, unless the context otherwise requires:
  - 1.2.1 references to numbered Conditions are references to the relevant Condition in these terms and conditions;
  - 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
  - 1.2.3 the headings to the Conditions of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
  - 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
  - 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

## 2 BASIS OF AGREEMENT

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance

with the terms and conditions of the Agreement.

- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within 7 days of the date of the Award Letter.

### **3 SUPPLY OF SERVICES**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
- 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

### **4 TERM**

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with Condition 4 (Term) or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

### **5 NOT USED**

### **6 NOT USED**

### **7 CHARGES, PAYMENT AND RECOVERY OF SUMS DUE**

- 7.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 7.2 The Contractor shall add VAT to the Agreement Price at the prevailing rate as applicable
- 7.3 The Authority may elect to pay for the services by invoice via credit transfer, Government Procurement Card or such other method as the Parties may agree. To enable the Customer to verify the accuracy of the charges, the Supplier shall provide supportive information as the Customer requires, including a breakdown of the Services supplied.
- If the Authority elects to pay against an invoice, The Authority shall pay the Contractor within 30 days of receipt of an undisputed invoice by payment direct to the Contractors bank account as a credit transfer.
- 7.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the charges no later than 30 days after verifying that the charge is valid and undisputed. If paying by invoice, a valid Purchase Order Number is required.
- 7.5 If the Customer fails to consider and verify a charge in a timely fashion the charge shall be regarded as valid and undisputed for the purpose of Condition 7.4 (Charges, Payment and Recovery of Sums Due) after a reasonable time has passed
- 7.6 The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 7.7 If there is a dispute between the Parties as to the amount charged, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with Condition 15 (Termination). Any disputed

amounts shall be resolved through the dispute resolution procedure detailed in Condition 20 (Dispute Resolution).

- 7.8 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.9 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
  - 7.9.1 provisions having the same effects as Conditions 7.3 to 7.7 (Charges, Payment and Recovery of Sums Due) of this Agreement; and
  - 7.9.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as Conditions 7.3 to 7.8 (Charges, Payment and Recovery of Sums Due) of this Agreement.
  - 7.9.3 In this Condition 7.8 (Charges, Payment and Recovery of Sums Due), "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 7.10 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **8 PREMISES AND EQUIPMENT**

- 8.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 8.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 8.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 8.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 8.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 8.6 Without prejudice to Condition 3 (Supply of Services), any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 8.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## **9 STAFF AND KEY PERSONNEL**

- 9.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
  - 9.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 9.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 9.1.3 require that the Supplier replace any person removed under this Condition with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered, and the Supplier shall comply with any such notice.
- 9.2 The Supplier shall:

- 9.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
- 9.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
- 9.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 9.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 9.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **10 ASSIGNMENT AND SUB-CONTRACTING**

- 10.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 10.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 10.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## **11 INTELLECTUAL PROPERTY RIGHTS**

- 11.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 11.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 11.3 The Supplier hereby grants the Customer:
  - 11.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
  - 11.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
    - (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
    - (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services, including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
- 11.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

## **12 GOVERNANCE AND RECORDS**

- 12.1 The Supplier shall:
  - 12.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
  - 12.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

- 12.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

### **13 CONFIDENTIALITY**

- 13.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- 13.2 The Authority may consult with the Contractor to inform its decision regarding any exemptions to FOIA but the Authority shall have the final decision in its absolute discretion.
- 13.3 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.
- 13.4 Condition 13.2 (Confidentiality) shall not apply to the extent that:
- 13.4.1 Such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR, save that the Contractor shall not disclose any information relating to the Contract or the Authority's activities without the prior written consent of the Authority, which shall not be unreasonably withheld.
- 13.4.2 Such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 13.4.3 Such information was obtained from a third party without obligation of confidentiality;
- 13.4.4 Such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 13.4.5 It is independently developed without access to the other party's Confidential Information.
- 13.5 The Contractor may only disclose the Authority's Confidential Information to the persons it has employed or engaged who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such persons are aware of and shall comply with these obligations as to confidentiality.
- 13.6 The Contractor shall not, and shall procure that the persons it has employed or engaged do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 13.7 At the written request of the Authority, the Contractor shall procure that those persons it has employed or engaged identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 13.8 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 13.8.1 To any Crown Body or Overseas Governments. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
- 13.8.2 To any consultant, contractor or other person engaged by the Authority or any person conducting a Gateway or other assurance review;
- 13.8.3 For the purpose of the examination and certification of the Authority's accounts; or
- 13.8.4 For any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 13.9 The Authority shall use all reasonable endeavours to ensure that any Crown Body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Condition 13.8 (Confidentiality) is made aware of the Authority's obligations of confidentiality.
- 13.10 Nothing in this Condition 13 (Confidentiality) shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 13.11 In the event that the Contractor fails to comply with this Condition 13 (Confidentiality), the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.



- 13.12 The provisions under this Condition 13 (Confidentiality) are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

#### **14 DATA PROTECTION**

- 14.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Annex 4 to the Contract (Processing Data Schedule) by the Customer and may not be determined by the Contractor.
- 14.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 14.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 14.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Annex 4 to the Contract (Processing Data Schedule), unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex 4 to the Contract (Processing Data Schedule));
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Contractor's duties under this condition;
      - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 14.5 Subject to Condition 14.6 (Data Protection), the Contractor shall notify the Customer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- or
- (f) becomes aware of a Data Loss Event.
- 14.6 The Contractor's obligation to notify under Condition 14.5 (Data Protection) shall include the provision of further information to the Customer in phases, as details become available.
- 14.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Condition 14.5 (Data Protection) (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Customer following any Data Loss Event;
  - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 14.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this condition. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
  - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 14.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 14.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 14.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Customer;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Condition 14 (Data Protection) (such that they apply to the Sub-processor; and
  - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 14.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

- 14.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this condition by replacing it with any applicable controller to processor standard conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 14.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **15 LIABILITY**

- 15.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 15.2 Subject always to condition 15.3 and 15.4 (Liability):
- 15.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
- 15.2.2 except in the case of claims arising under conditions 11 (Intellectual Property Rights) and 19 (Prevention of Fraud and Corruption), in no event shall the Supplier be liable to the Customer for any:
- (a) loss of profits;
  - (b) loss of business;
  - (c) loss of revenue;
  - (d) loss of or damage to goodwill;
  - (e) loss of savings (whether anticipated or otherwise); and/or
  - (f) any indirect, special or consequential loss or damage.
- 15.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 15.3.1 death or personal injury caused by its negligence or that of its Staff;
- 15.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
- 15.3.3 any other matter which, by law, may not be excluded or limited.
- 15.4 The Supplier's liability under the indemnity in conditions 11 (Intellectual Property Rights) and 19 (Prevention of Fraud and Corruption) shall be unlimited.

## **16 FORCE MAJEURE**

- 16.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## **17 TERMINATION**

- 17.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 17.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
- 17.2.1 (without prejudice to condition 16 Force Majeure), is in material breach of any obligation under the Agreement which is not capable of remedy;
- 17.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
- 17.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
- 17.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- 17.2.5 breaches any of the provisions of conditions 9 (Staff and Key Personnel), 13 (Confidentiality), 14 (Data Protection) and 18 (Compliance);

- 17.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this condition 17 (Termination) in consequence of debt in any jurisdiction; or
- 17.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 17.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in condition 17 (Termination) or any potential such change of control.
- 17.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 17.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this Condition and conditions 2 (Basis of Agreement), 3.2 (Supply of Services/Goods), 3.3 (Supply of Services/Goods), 9 (Staff and Key Personnel), 11 (Intellectual Property Rights / Intellectual Property Rights and Indemnity), 11.2 (Intellectual Property Rights / Intellectual Property Rights and Indemnity), 13 (Confidentiality), 14 (Data Protection), 15 (Liability), 17.5 (Termination), 18.4 (Compliance), 19.3 (Prevention of Fraud and Corruption), 20 (Dispute Resolution) and 21.7 (General) or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 17.6 Upon termination or expiry of the Agreement, the Supplier shall:
  - 17.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
  - 17.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **18 COMPLIANCE**

- 18.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 18.2 The Supplier shall:
  - 18.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
  - 18.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 18.3 The Supplier shall:
  - 18.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
  - 18.3.2 take all reasonable steps to secure the observance of condition 18 (Compliance) by all Staff.
- 18.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 18.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
  - 18.5.1 the Official Secrets Acts 1911 to 1989; and
  - 18.5.2 section 182 of the Finance Act 1989.

## **19 PREVENTION OF FRAUD AND CORRUPTION**

- 19.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 19.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3 If the Supplier or the Staff engages in conduct prohibited by condition 19 (Prevention of Fraud and Corruption) or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
  - 19.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer

resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

- 19.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this Condition.

## **20 DISPUTE RESOLUTION**

- 20.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 20.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in condition 20 (Dispute Resolution), the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 20.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **21 NOT USED**

## **22 NOT USED**

## **23 GENERAL**

- 23.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 23.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 23.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 23.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this Condition shall exclude liability for fraud or fraudulent misrepresentation.
- 23.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 23.6 The Agreement shall not 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 the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 23.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 23.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **24 NOTICES**

- 24.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to [condition 23 \(General\)](#), e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this Condition:
- 24.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 24.3 Notices under [conditions 16 \(Force Majeure\)](#) and [17 \(Termination\)](#) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in

## 25 GOVERNING LAW AND JURISDICTION

25.1 This Agreement will be governed by and construed in accordance with English law and the Contractor hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction will not (and will not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, nor will the taking of proceedings by the Authority in any one or more jurisdictions preclude the taking of proceedings by the Authority in any other jurisdiction, whether concurrently or not.

## PROCESSING DATA SCHEDULE

## ANNEX 1

1. The Contractor shall comply with any further written instructions with respect to processing issued by the Authority.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>The processing of Personal Data is needed in order to ensure that the Contractor can effectively deliver the Services under the Contract to provide a service to members of the public.</i>
Duration of the processing	<p><b>Personal Data of the Authority's trade advisors</b></p> <p><i>The duration of the processing of any Personal Data of the Authority's trade advisors shall be for the Term only.</i></p> <p><b>Personal Data of Users of the platform website</b></p> <p><i>The duration of the processing of any Personal Data of users of the platform website remains in effect for the duration of the membership agreement between the Contractor and the Data Subject, or any other permission provided by the Data Subject for the processing of their Personal Data, and ends once the Data Subject requests deletion of their Personal Data.</i></p> <p><b>Business contact details of the Parties' Staff</b></p> <p><i>The duration of the processing of any business contact details of the Parties' Staff remains in effect for the Term and for such longer period as is necessary for any legitimate business purposes of either Party, subject to any Data Subject Request requiring the deletion of the Data Subject's Personal Data.</i></p> <p><b>Personal Data of guests and organisers attending Authority events</b></p> <p><i>The duration of the processing of any Personal Data of guests and organisers attending any Authority events remains in effect for the duration of the permission provided by the Data Subject for the processing of their Personal Data, subject to any Data Subject Request requiring the deletion of the Data Subject's Personal Data.</i></p>
Nature and purposes of the processing	<i>In order to carry out the activities set out in the Contract, the Contractor shall:</i> <i>(a) acting as Processor, process the Personal Data of the Authority's trade advisors; and</i>

	<p><i>(b) acting as independent Controller, process the Personal Data of members of the public and the Authority's Staff.</i></p> <p><i>In order to exercise its rights and carry out its obligations under the Contract, the Authority, acting as independent Controller, shall process the Personal Data of the Contractor's Staff.</i></p> <p><i>The specific processing activities to be carried out are: collection, recording, structuring, modification, extraction, consultation, use, disclosure by transmission, dissemination or otherwise making available, restriction, matching process and erasure or destruction of data by both manual and automated means.</i></p> <p><i>The purposes of processing are: recruitment for events such as webinars and trade missions, matching purposes to promote export opportunities and to provide a consultation service to resolve enquiries, and to liaise in relation to matters relating to the Services.</i></p>
Type of Personal Data	<p><b><i>The Authority's trade advisors</i></b>  <i>Name and photograph.</i></p> <p><b><i>Users of the platform website</i></b>  <i>IP address, name, email address, company address, country, telephone number, job title, company name, industry, dietary requirements, past and current export experience, names of clients and partners, company turnover.</i></p> <p><b><i>The Parties' Staff</i></b>  <i>Name, job title, company name and address, telephone number, email address.</i></p> <p><b><i>Guests and organisers attending Authority events</i></b>  <i>Name, photograph, image.</i></p>
Categories of Data Subject	<ul style="list-style-type: none"> <li>• <i>The Authority's trade advisors</i></li> <li>• <i>Users and Members of the platform website</i></li> <li>• <i>The Parties' Staff</i></li> <li>• <i>Guests and organisers attending Authority events</i></li> </ul>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p><b><i>Personal Data of the Authority's trade advisors</i></b>  <i>The Contractor will delete the Personal Data of the Authority's trade advisors on the expiry or termination of the Contract.</i></p> <p><b><i>Users of the platform website</i></b>  <i>The Contractor will ensure all Personal Data is kept secure and encrypted and stored for the duration of the Data Subject's membership of the platform website, or any other permission provided by the Data Subject for the</i></p>

	<p><i>processing of their Personal Data. The Personal Data can be modified to reflect changes and only deleted upon request from the concerned Data Subject.</i></p> <p><i>Data Subjects have the option to opt out at any time. Data is reviewed regularly by automatic means and inactive contact records can be identified and queried. The Contractor will retain certain information such as membership numbers and other industry choices for historical membership details and reporting.</i></p> <p><b><i>The Parties' Staff</i></b></p> <p><i>Each Party shall delete the contact details of the other Party's Staff either: (a) at such time the Party no longer requires such details for any legitimate business purpose; or (b) following any Data Subject Request requiring the deletion of the Data Subject's Personal Data. Personal Data of guests and organisers attending Authority events The Contractor will delete the Personal Data of any guests and organisers attending Authority events following either: (a) the expiry of the duration of the permission provided by the Data Subject for the processing of their Personal Data; or (b) any Data Subject Request requiring the deletion of the Data Subject's Personal Data.</i></p>
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**1. What we expect from our Suppliers**

- 1.1 In September 2017, HM Government published a Supplier Code of Conduct ("the Code") setting out the standards and behaviours expected of suppliers who work with government.  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-13\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf))
- 1.2 The FCDO (henceforth known as "the Authority") expects its Suppliers and its Suppliers' Subcontractors to meet the standards set out in the Code. In addition, the FCDO expects its Suppliers and its Suppliers' Subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Authority may have additional requirements in relation to corporate social responsibility. The Supplier and the Suppliers' Subcontractors shall comply with such corporate social responsibility requirements as the Authority may notify to the Supplier from time to time.

**2. Equality and Accessibility**

- 2.1 Without prejudice to the generality of its rights and obligations under each Contract, the Supplier shall support the Authority in fulfilling its public sector equality duty under S149 of the Equality Act 2010 by ensuring, so far as reasonably practicable, that it (the Supplier) fulfils its obligations under each Contract in way that has due regard to the need to:
- 2.1.1 eliminate discrimination, harassment or victimisation and any other conducted that is prohibited under the 2010 Act; and
- 2.1.2 advance equality of opportunity and foster good relations between those who share a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

**3. Modern Slavery, Child Labour and Inhumane Treatment**

The "Modern Slavery Helpline" refers to the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 3.1 The Supplier:
- 3.1.1 shall not use, or allow its Subcontractors to use, forced, bonded or involuntary prison labour;
- 3.1.2 shall not require any Supplier staff or Subcontractor staff to lodge deposits or identify papers with the Employer or deny Supplier staff freedom to leave their employer after reasonable notice;
- 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
- 3.1.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its subcontractors anti-slavery and human trafficking provisions;

- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- 3.1.8 shall prepare and deliver to the FCDO at the commencement of each Contract and updated on a frequency defined by the Authority, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- 3.1.9 shall not use, or allow its employees or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use, or allow its Subcontractors to use, child or slave labour;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Authority and Modern Slavery Helpline.

#### **4. INCOME SECURITY**

- 4.1 The Supplier shall:
  - 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
  - 4.1.2 ensure that all workers are provided with written and understandable information about their terms and conditions of employment, and in particular in respect of wages, before they enter employment, and about the particulars of their wages for the pay period concerned each time that they are paid;
  - 4.1.3 not make deductions from wages as a disciplinary measure except
    - (a) where permitted by law; and
    - (b) upon express permission of the worker concerned.”
  - 4.1.4 record all disciplinary measures taken against Supplier Staff throughout the term of each contract; and
  - 4.1.5 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

#### **5. WORKING HOURS**

- 5.1 The Supplier shall:
  - 5.1.1 ensure that the working hours of Supplier staff comply with national laws, and any collective agreements;
  - 5.1.2 ensure that the working hours of Supplier staff, excluding overtime, are defined by contract, and do not exceed 48 hours per week unless the individual has lawfully agreed so in writing;
  - 5.1.3 ensure that overtime is used responsibly, taking into account:
    - (a) the extent;
    - (b) frequency; and
    - (c) hours workedby reference to individuals and the Supplier staff as a whole;
- 5.2 The total hours worked by an individual in any seven-day period shall not exceed 60 hours, unless the criteria set out in paragraph 5.3 are satisfied.

- 5.3 Working hours may exceed 60 hours in any seven-day period only where all of the following are met:
- 5.3.1 this is allowed by national law;
  - 5.3.2 this is expressly authorised by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
  - 5.3.3 appropriate safeguards are taken to protect the workers' health and safety; and
  - 5.3.4 the employer can demonstrate that exceptional circumstances apply.
- 5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## **6. SUSTAINABILITY**

- 6.1 The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-thegovernment-buying-standards-gbs>