**GWE Business West**

**Market Intelligence Database**

**(International Trade)**

**INVITATION TO TENDER (ITT)**

**Date: 26th February 2020**

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# Section 1 Instructions for BIDDers

## Introduction

GWE Business West Ltd (Business West) is seeking to appoint a provider that can deliver an online market intelligence database for an international trade project known as the CIOS Trade Forum, using the Open Procedure as defined in the Public Contracts Regulations 2015.

Business West requires the information sought in this Invitation to Tender (ITT) from applicants responding to the Opportunity published on Contracts Finder Market Intelligence Database (International Trade) and on the Business West Website.

Business West intends to award any Contract based on the most economically advantageous tender (MEAT). Business West will not be bound to accept the lowest price of any Tender submitted, but will be looking to ensure the correct balance between quality and price.

The contract will be awarded for a period of 3 years commencing 1st April 2020.

## Purpose of the ITT

The purpose of this ITT is to:

1. 1. Receive competitive tender returns for evaluation.
	2. Enable Bidders to describe their approach to providing the international business development support outlined in the Scope of Works.
	3. Enable Business West to select suitably qualified and experienced provider to deliver the support required.

## Terms of Agreement and commencement

* 1. It is anticipated that the contract issued as a result of this procurement process will be awarded for the period 01 April 2020 to 31st March 2023.
	2. The contract award is subject to satisfactory performance. Business West reserves the right to terminate the contract should the required Market Intelligence Database not meet the needs of Business Westor the allocation of financial resources makes continuation not viable.

## Submission of Tenders

* 1. The closing date for receipt of Tenders is 12:00 hrs GMT on 13th March 2020. Tenders received by Business West after this time will be rejected and returned unopened to the Bidder.
	2. Tenders should demonstrate Bidders detailed knowledge and understanding of Business West’s requirements as specified in Section 2 (Scope of Works). Bidders should ensure their Financial Proposals are within the budget provided in [Section 2 (2. ‘Financial Requirement'](#Lots)).
	3. Tenders should be valid for acceptance and negotiation for a period of 90 days following the closing date of this ITT.

Bidders are requested to supply completed ITTs as follows:

* 1. One soft copy: submitted via email by 13th March 2020 no later than 12:00 GMT. (Please ensure the soft copy contains all annexes and attachments)

**Email**: procurement@businesswest.co.uk

**Title**: ITT for Provision of Market Intelligence Database (International Trade)

**THE DEADLINE FOR RECEIPT OF ITT RESPONSES IS 12:00 HRS GMT ON 13th March 2020**

Should any response be received after the deadline this will be recorded and the application will be rejected.

* 1. **Clarification questions** - Any questions relating to the clarification of any aspect of this ITT must be made in writing via email:

**To:** *Andrew Erskine*

**Email:** *contracts@businesswest.co.uk*

**Subject:** ITT for Provision of Market Intelligence Database

Received no later than: 12:00 GMT on 5th March 2020

Business West will post responses to such requests on the Business West website (including a description of the enquiry without identifying the source) on or before 6th March 2020. [Tender Opportunities | Business West](http://www.businesswest.co.uk/about/tenders)

## Tender Process Timetable

|  |  |
| --- | --- |
| **Action** | **Target Date for Completion** |
| Contract Notice published | *27th February 2020*  |
| Deadline for receipt of written ITT clarification questions from Bidders (by 12:00 hrs GMT) | *5th March 2020*  |
| Responses to ITT clarification questions | *6th March 2020* |
| Closing date for receipt of Tenders(by 12:00 hrs GMT) | *13th March 2020* |
| Evaluation | *16th March 2020*  |
| Notification of award | *19th March 2020*  |
| Signing of Contract | *24th March 2020* |
| Commencement | *1st April 2020*  |

## Evaluation Approach

* 1. Tenders will be evaluated by the Tender Evaluation Panel in order to identify the most economically advantageous tender (MEAT). Specifically for this contract, Business West will be evaluating Tenders on the basis of:

85% Quality of Technical Proposal

15% Price of Financial Proposal

* 1. Business West may award the Contract to the Supplier that achieves the highest overall score (Price/Quality) being weighted as above and combined.

All Tender submissions will be reviewed for completeness. Bidders will be disqualified if you do not complete a fully complete RESPONSE FORM (Section 3).

Additionally, the following are critical requirements. Response will be scored on a Pass/Fail basis. The outcome will determine whether a supplier remains in the procurement process:

|  |
| --- |
| Mandatory Exclusion |
| Compliance with Terms and Conditions of Purchase |
| Price quoted is more than maximum requested |
| Ability to perform activity from proposed Start Date |

* 1. **Quality of Technical Proposal 85%**
		1. **Technical Proposal:**

The Technical Proposal will be evaluated against the Scoring Matrix below. Please note that individual question responses are not equally weighted, the weighting used for each question is stated in Score Sheet (Annex 2).

**Table – Scoring Matrix for Quality Service Delivery**

|  |  |  |
| --- | --- | --- |
| **Response** | **Score** | **Definition** |
| No Response or failed response | 0 | Not completed or completely fails to meet the requirements. |
| Very Poor | 1 | Most or all of the requirements have not been met, contains significant shortcomings or is inconsistent with other proposals. |
| Poor | 2 | Some of the requirements have not been met or only met in part. |
| Good | 3 | Satisfies the requirements in all material respects. |
| Very Good | 4 | Satisfies the requirements in all material respects and exceeds some requirements – demonstrating some added value. |
| Excellent | 5 | Satisfies the requirements in all material respects and exceeds all requirements – demonstrates significant added value. |

* + - 1. Tender responses are required to achieve a score of 3 or higher to be considered for award of the contract. Tender responses that score 2 or lower for any of the quality questions in Section 3 may lead to the tender being disqualified.
		1. **Price 15%**
			1. **Section 3.7 – Financial Proposal:**

Tenders submitted for the service will be evaluated on price. The proposal with the lowest price will receive the maximum score and the remaining quotes will have their scores applied pro-rata; i.e. divided into the lowest price, and the result multiplied by the maximum score. The Tender price submitted for the service shall be the total price for the contract.

* 1. Mathematical errors detected by Business West in the submission of Financial Proposals will be corrected in the following manner:
		1. Errors in the addition of total costs or unit price extensions will be corrected and the total amount reflected in the total bid price.
		2. Any Bidder affected by mathematical errors will be advised of the corrected bid price immediately. Bidders must confirm their acceptance of this modification within 24 hours or their tender response will be rejected.

## General Notices

Tender responses are only sought from organisations that are agreeable to the following arrangements:

1. 1. Any Contract resulting from this tender process will incorporate Business West's Standard Terms & Conditions of Purchase (ANNEX 1). Any material amendments proposed by the Bidder may be construed as a rejection of the terms leading to the disqualification of the Tender.
	2. The issue of this document does not commit Business West to award any Contract pursuant to the tender process nor does it constitute an offer to enter into a contractual relationship.
	3. Business West may seek independent financial and market advice to validate information declared or to assist in the evaluation.
	4. Business West reserves the right to accept or reject any tender, and to annul the ITT process and reject all Tenders at any time, without thereby incurring any liability to the Bidders.

## Complaints regarding the procurement process

* 1. Any complaints regarding the procurement process should be made in writing and directed as follows:

To: Phil Smith, Managing Director

Address: GWE Business West Ltd

Leigh Court

Abbots Leigh

Bristol, BS8 3RA

Email: phil.smith@businesswest.co.uk

# Section 2 scope of works

## The Technical Requirement

* 1. **Background**

GWE Business West Ltd, trading as Business West (BW), is one of the most influential business leadership organisations in the UK, representing over 6,000 businesses across our Chamber of Commerce network in Bath, Bristol and Gloucestershire. We operate major publicly-funded programmes providing support for business start ups, businesses with high growth aspirations and businesses that trade (and wish to trade) internationally. We provide managed workspace solutions, both in physical and virtual format, international trade services and offer meeting venues and events management services.

* 1. **The Opportunity**

As part of a new international trade support project part funded by ERDF and DIT, Business West are seeking a service provider to deliver a market intelligence database to support the International Market Research team. The International Market Research service forms a key part of a package of support which Business West has designed to help SME’s to become more effective in exporting.

The International Market Research team provide desk research to individual SME clients. Information is drawn from trade associations and professional bodies, government sources, trade journals and other print media, published reports, industry networks and databases.

We wish to extend the range of tools available to the Research team and are looking for quotes in respect of a subscription-based market intelligence database, including market reports. The information from the market intelligence database and reports will be used in wider research reports that the team compile for SME clients.

We require a comprehensive market intelligence database to include:

* Data on a number of consumer product categories, including but not limited to: food and drink, health and personal care, apparel and footwear, consumer appliances, consumer electronics, consumer foodservice, home and garden, toys and games, luxury goods, ethical labels, travel and tourism.
* Data on industrial markets including but not limited to: agriculture, mining, manufacturing, construction, wholesale and retail, hotels and restaurants, transport, storage and communication, financial services, business and technical services, public services and defence, education, personal services.
* Data to include as wide a range of countries as possible including core countries: EU, UK, Switzerland, Norway, Russia, USA, Canada, Mexico, Brazil, Chile, China, Hong Kong, Singapore, Malaysia, India, Japan, South Korea, Indonesia, Australia, New Zealand, UAE, Saudi Arabia, Qatar, South Africa, Kenya, Ghana, Nigeria.

## The Financial Requirement

* 1. The maximum Budget for the market intelligence database is £75,000 over the Term, this amounts exclude VAT. The contract will be reviewed and subject to a performance review on an annual basis.
	2. Business West is seeking to secure the most economically advantageous tender (MEAT). In this instance, MEAT is defined as the optimum balance between how effectively the proposals will deliver the service (quality) and the cost of the service (price).
	3. We are seeking a proposition that is billed annually with a minimum term of 12 months.
	4. All Financial Proposals should be quoted exclusive of VAT. The financial proposals should be broken down to show clearly the costs of each of the following elements:
* Any "one-off" cost.
* Unit delivery cost.
* Travel and subsistence for personnel (if required).

# Section 3 RESPONSE FORM

## Details of your Organisation

**Organisation Details**

|  |  |
| --- | --- |
| Full name of organisation tendering (or of organisation acting as lead contact where a consortium bid is being submitted) |  |

|  |  |
| --- | --- |
| Registered Office Address |  |
| Company or charity registration number |  |
| VAT registration number |  |
| Date of formation/incorporation |  |
| Name of immediate parent company |  |
| Name of ultimate parent company |  |
| Type of organisation (e.g. Sole trader, Partnership, Private Limited Company, if other please specify) |  |

##

**Contact Details**

Contact details for enquiries about this ITT

|  |  |
| --- | --- |
| Name |  |
| Address |  |
| Post code |  |
| Country |  |
| Phone |  |
| Mobile |  |
| Email |  |

## Mandatory Grounds For Exclusion

**Important Notice**

In some circumstances Business West is required to exclude you from participating further in procurement. If you cannot answer ‘no’ to every question in this part it is very unlikely that your tender will be accepted, and you should contact us for advice before completing this form.

Has your organisation or any directors or partners or any other person who has powers of representation, decision or control been convicted of any of the following offences;

* 1. conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime;

Yes/No (delete as appropriate) PASS/FAIL

* 1. corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

Yes/No (delete as appropriate) PASS/FAIL

* 1. where the offence relates to fraud affecting the European Communities’ financial interests as defined by Article 1 of the Convention on the protection of the financial interests of the European Communities;

Yes/No (delete as appropriate) PASS/FAIL

* 1. any offence listed;
1. in section 41 of the Counter Terrorism Act 2008; or
2. in Schedule 2 to that Act where the court has determined that there is a terrorist connection

Yes/No (delete as appropriate) PASS/FAIL

* 1. money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002 or terrorist financing

Yes/No (delete as appropriate) PASS/FAIL

* 1. child labour and other forms of trafficking in human beings

Yes/No (delete as appropriate) PASS/FAIL

* 1. been in breach of its obligations relating to the payment of taxes with the breach established by a judicial or administrative decision having a final and binding effect in accordance with the provision of the United Kingdom

Yes/No (delete as appropriate) PASS/FAIL

* 1. been in breach of its obligations relating to the payment of social security contributions with the breach established by a judicial or administrative decision having a final and binding effect in accordance with the provision of the United Kingdom

Yes/No (delete as appropriate) PASS/FAIL

##  Discretionary Grounds For Exclusion

We may exclude you from consideration if you cannot answer “no” to every question. In the event that any of the following do apply, please set out (in a separate Annex) full details of the relevant incident and any remedial action taken subsequently. The information provided will be taken into account in considering whether or not you will be able to proceed any further in respect of this procurement exercise.

Has your organisation

* 1. been found guilty of a violation of obligations under child labour law and other trafficking in human beings;

Yes/No (delete as appropriate) PASS/FAIL

* 1. been convicted of breaking environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator of authority;

Yes/No (delete as appropriate) PASS/FAIL

* 1. been made bankrupt or the subject of insolvency or winding-up proceedings, where your assets are being administered by a liquidator or by the court, where you are in an arrangement with creditors, where your business activities are suspended or you are in any analogous situation arising from a similar procedure under the laws and regulations of any State;

Yes/No (delete as appropriate) PASS/FAIL

* 1. been guilty of grave professional misconduct, which renders its integrity questionable;

Yes/No (delete as appropriate) PASS/FAIL

* 1. entered into agreements with other economic operators aimed at distorting competition;

Yes/No (delete as appropriate) PASS/FAIL

* 1. aware of any conflict of interest due to the participation in the procurement procedure;

Yes/No (delete as appropriate) PASS/FAIL

* 1. been involved in the preparation of the procurement procedure which has resulted in the distortion of the competition;

Yes/No (delete as appropriate) PASS/FAIL

* 1. shown significant or persistent deficiencies in the performance of a prior contract which led to early termination of that prior contract, damages or other comparable sanctions;

Yes/No (delete as appropriate) PASS/FAIL

* 1. been guilty of serious misrepresentation in supplying information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria

Yes/No (delete as appropriate) PASS/FAIL

* 1. applied undue influence to the decision-making process of the contracting authority, or obtained confidential information that may give undue advantages in the procurement procedure

Yes/No (delete as appropriate) PASS/FAIL

* 1. negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award

Yes/No (delete as appropriate) PASS/FAIL

* 1. been in breach of labour law obligations.

Yes/No (delete as appropriate) PASS/FAIL

* 1. in the last 3 years had a court or tribunal find a case of unlawful discrimination on the grounds of race sex or disability against you?

Yes/No (delete as appropriate) PASS/FAIL

* 1. Are the assets of the organisation being administered by a liquidator of the court

Yes/No (delete as appropriate) PASS/FAIL

## Selection Criteria

* 1. Has your organisation a minimum yearly turnover of £150,000?

Yes/No (delete as appropriate)

* 1. Has your organisation an appropriate level of professional risk indemnity insurance?

Yes/No (delete as appropriate)

* 1. Has your organisation the necessary human and technical resources and experience?

Yes/No (delete as appropriate)

* 1. Has your organisation sufficient levels of experience demonstrated by suitable references for past work?

Yes/No (delete as appropriate)

**Standards**

***Quality Assurance***

* 1. Please state if your organisation has, or is seeking, certification under any international, European, British or other quality standards (e.g. BS EN ISO 9000, Customer First, etc).

Yes/No (Delete as appropriate)

*If “yes” please state the relevant quality standards, the date of the award and the renewal period, together with the Certifying Body and enclose any appropriate documentary evidence.*

**Response:**

*If “no” please explain whether your organisation has a Quality Policy and provide a copy in support of your response to this PQQ.*

**Response:**

***Environmental Management***

* 1. Please state if your organisation has, or is seeking, certification under any international, European, British or other environmental management standards (e.g. BS EN ISO 14000 etc).

Yes/No (Delete as appropriate)

*If “yes” please state the relevant environmental management standards, the date of the award and the renewal period, together with the Certifying Body and enclose any appropriate documentary evidence.*

**Response:**

*If “no” please explain whether your organisation has an Environmental Management Policy and provide a copy in support of your response to this ITT.*

**Response:**

* 1. If you use sub-contractors, do you have a process to check whether any of these organisations have been convicted or had noticed served upon them for infringement of environmental legislation?

Yes/No (delete as appropriate)

***Information Security Management***

* 1. Please state if your organisation has, or is seeking, certification under any international, European, British or other information security management standards (e.g. BS EN ISO 28000 etc).

Yes/No (delete as appropriate)

*If “yes” please state the relevant information security management standards, the date of the award and the renewal period, together with the Certifying Body and enclose any appropriate documentary evidence.*

**Response:**

*If “no” please explain whether your organisation has an Information Security Management Policy and provide a copy in support of your response to this ITT.*

**Response:**

***Health & Safety***

* 1. Does your organisation have a written health and safety at work policy or an alternative system to manage health at safety and work?

Yes/No (delete as appropriate)

*If “yes” please enclose appropriate documentary evidence alongside your response to this ITT.*

* 1. Please detail any enforcement action taken against your organisation in the past three years by the Health and Safety Executive or other enforcement body with responsibility for health and safety matters

**Response:**

* 1. If you use sub-contractors, do you have a process to check whether any of the above circumstances apply to these organisations?

Yes/No (delete as appropriate)

***Equal Opportunities***

* 1. Does your organisation have an equal opportunities policy?

Yes/No (delete as appropriate)

*If “yes” please enclose appropriate documentary evidence alongside your response to this ITT.*

Yes/No (delete as appropriate)

*If yes please provide details.*

**Response:**

Yes/No (delete as appropriate)

* 1. If you use sub-contractors, do you have a process to check whether any of the above circumstances apply to these organisations?

Yes/No (delete as appropriate)

*If “yes” please provide details.*

**Response:**

***Bribery & Corruption***

* 1. Does your organisation have a Bribery & Corruption policy?

Yes/No (delete as appropriate)

*If “yes” please enclose appropriate documentary evidence alongside your response to this ITT.*

***Data Processing***

* 1. Does your organisation comply with the Data Protection Act 2018 (the General Data Protection Regulations – GDPR)

Yes/No (delete as appropriate)

* 1. Does your organisation transfer personal data beyond the European Union (EU)

Yes/No (delete as appropriate)

*If “yes “please state which to countries your organisation transfers personal data.*

* 1. Do you intend to subcontract any aspect of the personal data processing?

Yes/No (delete as appropriate)

*If “yes” please state to whom you intend to subcontract*

## Award Criteria

***Technical and Professional Ability***

(Where the potential provider is a special purpose vehicle and not intending to be the main provider of the goods or services, the information should be provided in respect of the principle intended provider of the goods or services0

***Experience and Contract Examples***

* 1. Please provide a brief description of the organisation’s primary business and main services (in no more than 300 words).

**Response:**

* 1. Please provide evidence of the markets and sectors that your service covers.

**Response:**

* 1. Please provide details of three examples of your market intelligence data output and reports produced within the last 12 months.

**Response:**

*If you cannot provide at least one example, please briefly explain why (100 words max)*

**Response:**

5.4. Please provide details of the contents of the market reports and data available for each sector in each country.

**Response:**

5.5 Please provide details of your online platform for analysis and downloading information.

**Response:**

5.6. Please provide an overview of your approach to customer service, including availability, query response times, flexibility of market and coverage, and training.

**Response:**

5.7 Please provide, alongside your response to this ITT, a profile for key people who will be directly involved with managing and delivering market intelligence database services, demonstrating their experience in the areas set out in questions 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6.

5.8 Please confirm you accept Business West Standard Terms and Conditions of Purchase

Yes/No (delete as appropriate)

5.9 Please confirm you are able to provide the service if requested from 1st April 2020

Yes/No (delete as appropriate

##

## Declaration and signature

This form should be signed below by a duly authorised partner, or by two individuals from the lead organisation / prime contractor who has the authority to commit the organisation to the value of any contract that may be offered by Business West Ltd for the delivery of the Service described in the tender. Where the Bidder is a consortium, by one director from each member of the consortium. See Section 1, 7 General Notices in the ITT document.

|  |  |
| --- | --- |
| Tender Title | Market Intelligence Database |

To: - Business West

I / We the undersigned, having examined the Conditions of Contract and Invitation to Tender Specification, hereby submit my/our Tender and undertake to execute and complete the programme, the whole of the programme described in the foregoing Specification and Schedules, in accordance with the Pricing Schedule.

I/We also hereby declare that it is a condition of this tender that my / our fixed price tender shall remain open for acceptance for a period of 90 days from the date of tendering.

I / We declare that the work will be carried out by directly employed labour unless otherwise stated clearly in our Tender.

I / We also hereby declare that I / We have not communicated, and will not at any time communicate, to any person other than Business West the amount of our tender; and further that I / We have not adjusted, and will not at any time adjust, these amounts in accordance with any agreement or arrangement between myself / ourselves and any person other than the said Business West.

Name:……...................……………………………... Position in Organisation:...…..............……………………

Signature: ……………....................................………………………… Dated: .....….…………………………

Name:……...................……………………………... Position in Organisation:...…..............……………………

Signature: ……………....................................………………………… Dated: .....….…………………………

**Duly authorised to sign for and on behalf of** (Organisation):

………………………………………...................................................................…………

## Financial Proposal

*Please complete the tables below detailing your financial offer.*

*THIS QUESTION OF THE PROPOSAL CARRIES A WEIGHTING OF 15%*

The maximum Budget for the market intelligence database is £75,000

We are seeking a proposition that is billed annually with a minimum term of 12 months.

**Delivery Costs**

|  |  |
| --- | --- |
|  | **£** |
| **Annual licence fee** |  |
| **Any other charges related to this service** |  |
| **TOTAL ONE OFF COSTS (excluding VAT)** |  |

## Non-Collusive Tendering Certificate

In recognition of the principle that the essence of selective tendering is that Business West shall receive bona fide competitive tenders from all those tendering, this certificate should be signed by a duly authorised partner, or by two individuals from the lead organisation/prime contractor. Where the Bidder is a consortium, by one director from each member of the consortium. See Section 1, *7 General Notices* in the ITT document.

**WE (the prime contractor) CERTIFY THAT:**

1. The tender submitted herewith is a bona fide tender intended to be competitive.

2. We have not fixed or adjusted the amount of the tender under or in accordance with any agreement or arrangement with any other person.

3. We have not done, and we undertake that we will not do, at any time any of the following acts:-

1. communicated to a person other than the person calling for this tender the amount or approximate amount of the proposed tender (except where the disclosure, in confidence, of the approximate amount of the tender was essential to obtain insurance premium quotations required for the preparation of the Tender);
2. entered into any agreement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted; and
3. offered or paid or given or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender any act or thing of the sort described above.

In this certificate:-

1. “Person” shall include any individual or any company or association corporate or incorporate.
2. “Any agreement or arrangement” shall include any transaction of the sort described above, formal or informal and whether legally binding or not.

Name: …………………………………….................... Position in Organisation: …....………………………

Signature: ………………………………………………..........................….. Dated: ….…………………………

Name:……...................……………………………... Position in Organisation:...…..............……………………

Signature: ……………....................................………………………… Dated: .....….…………………………

**Duly authorised to sign for and on behalf of** (Organisation):

## References

|  |
| --- |
| **REFERENCES**Please provide details of three referees with whom your organisation has worked and delivered a similar or comparable service to that required by Business West in the last 3 years, at least one must be a current contract. |
| **Name of Organisation****& Address** | **Contact Name &** **Telephone Number** | **Value of Contract** | **Date of contract** | **Description of service carried out** |
| 1) |  |  |  |  |
| 2) |  |  |  |  |
| 3) |  |  |  |  |
| Do you authorise Business West to approach any of the above named for a reference or further information if required? | Y / N |

# ANNEX 1 - BUSINESS WEST – STANDARD TERMS AND CONDITIONS

1. **INTERPRETATION**

In these Conditions:

**“Background IPR”** means information, techniques, Know How, software and materials (regardless of the form or medium in which they are stored) that have been created by the Parties and whether owned or provided by the Parties prior to the date of the Agreement or developed otherwise than for the purpose of this Agreement.

**“Business Day”** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**“Complaint”** means any formal complaint raised by Us in relation to the performance of obligations due under the Agreement in accordance with Clause 21.

**“Conditions”** means the standard terms and conditions set out in this document and (unless the Agreement otherwise requires) includes any special terms agreed in writing between Us and You

**“Confidential** means any confidential information, know how and data (in any

**Information”** form or medium) which relates to Us or You and all information relating to staff, finances, policies and procedures. This includes information identified as confidential in the Agreement or the Conditions (if any), or otherwise identified to the other party as confidential.

**“Customer Materials”** means all information (including Confidential Information), equipment and tools, drawings, specifications, data, software and any other materials supplied by Us to You.

**“Deliverables”** means all Documents, goods, products and materials developed by You or Your employees, agents and contractors as part of, or in relation to, the Services in any form, including computer programs, data, reports and specifications (including drafts).

**“Delivery address”** means the address stated in the Agreement or such address as may be specified by Us at anytime prior to delivery.

**“Intellectual Property** means all patents, rights to inventions, utility models, copyright

**Rights or IPR”** and related rights (including moral rights), trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including Know-How and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**“Know-How”** means unpatented technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain.

**“Public Body”** means any part of the government of the United Kingdom including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

**“Services”** means the services, including without limitation any Deliverables, to be provided by You under the Agreement.

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.

**“Us/We/Our ”** means GWE Business West Ltd.

**“Working Day”** means any Business Day excluding 27, 28, 29, 30 and 31 December in any year.

**“You/Your”** means the individual or organisation or company identified as the Service Provider.

No variation to these Conditions or the Agreement shall be binding unless agreed in writing between Us and You.

1. **BASIS OF AGREEMENT**
	1. The Agreement constitutes an offer by Us to purchase the Services subject to its terms, including these Conditions.
	2. No terms or conditions other than those set out in this Agreement, including these Conditions, shall apply to the Agreement. Any other terms and conditions on which any quotation has been given by You or subject to which the Agreement is accepted or purported to be accepted by You shall be of no effect.
2. **Supply of Services**
	1. In providing the Services, You shall:
		1. co-operate with Us in all matters relating to the Services, and comply with all Our instructions;
		2. perform the Services with the best care, skill and diligence in accordance with best practice in Your industry, profession or trade.
		3. acknowledge our Corporate Services Standards, a copy of which is available at [Service Standards](https://www.businesswest.co.uk/about/our-story/service-standards)(www.businesswest.co.uk/about/our-story/service-standards)
		4. use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Your obligations are fulfilled in accordance with the Agreement;
		5. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Agreement, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to You by Us;
		6. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
		7. use the appropriate goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Us, will be free from defects in workmanship, installation and design;
		8. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations; and
	2. Not do or omit to do anything which may cause Us to lose any licence, authority, consent or permission on which We rely for the purposes of conducting Our business, and You acknowledge that We may rely or act on the Services.
	3. Not commit any act or omission that will bring Us into disrepute.
	4. Our rights under the Agreement are without prejudice to any act of law or other applicable legislation.
	5. Without prejudice to Our statutory rights, We will not be deemed to have accepted any Deliverables until We have had at least 14 Working Days after delivery to inspect them and We also have the right to reject any Deliverables as though they had not been accepted for 14 Working Days after any latent defect in the Deliverables has become apparent (and We will be promptly reimbursed in full for such Deliverables).
	6. If, in connection with the supply of the Services, We permit any of Your employees, agents and contractors to have access to any of Our premises, You will ensure that, whilst on Our premises, Your employees and representatives comply with:
		1. all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and
		2. any of Our policies, regulations, codes of practice or instructions relating to health and safety, security, the environment or access to and use of any of Our facilities or equipment which is brought to their attention or given to them whilst they are on Our premises by any of Our employees or representatives.
	7. You warrant that the provision of Services shall not give rise to a transfer of any Your employees or any third party to Us pursuant to TUPE.
	8. You acknowledge that all Customer Materials and all rights in the Customer Materials, are and shall remain at all times Our exclusive property. You shall keep the Customer Materials in safe custody at Your own risk, maintain them in good condition until returned to Us, and not dispose or use the same other than for the sole purpose of performing Your obligations under the Agreement and in accordance with Our written instructions or authorisation.
3. **Our obligations**
	1. We shall:
		1. provide You with reasonable access at reasonable times to Our premises for the purpose of providing the Services; and
		2. provide such information to You as You may reasonably request and We consider reasonably necessary for the purpose of providing the Services.
4. **Charges and payment**
	1. The Charges for the Services shall be set out in the Agreement and shall be Your full and exclusive remuneration in respect of the performance of the Services. Unless otherwise agreed in writing by Us, the Charges shall include every cost and expense directly or indirectly incurred by You in connection with the performance of the Services. All prices will remain fixed for the duration of the Agreement.
	2. We will reimburse You at cost for all reasonable travel, subsistence and other expenses incurred by individuals engaged by You in providing the Services to Us provided that Our prior written approval is obtained before incurring any such expenses, and that all invoices for such expenses are accompanied by valid receipts.
	3. In consideration of the supply of the Services by You, We shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice. Payment shall be made to the bank account nominated in writing by You unless We agree in writing to another payment method.
	4. All amounts payable by Us under the Agreement are exclusive of amounts in respect of value added tax (VAT) chargeable for the time being. Where any taxable supply for VAT purposes is made under the Agreement by You to Us, We shall, on receipt of a valid VAT invoice from You, pay You such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
	5. You shall not be entitled to assert any credit, set-off or counterclaim against Us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting any other rights or remedies We may have, set off any amount owed to Us by You against any amounts payable by Us to You under the Agreement.
	6. You acknowledge and agree that You will pay correctly rendered invoices from any of Your suppliers or other sub-contractors within 30 days of receipt of the invoice.
5. **Termination**
	1. We may terminate the Agreement with immediate effect by giving written notice to You if:
		1. the circumstances set out in clauses 13, 14, 17 or 24 apply; or
		2. You breach any term of the Agreement and (if such breach is remediable) you fail to remedy that breach within 30 days of being notified in writing of the breach; or
		3. You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or admit inability to pay Your debts or (being a company) are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay Your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) have any partner to whom any of the foregoing apply; or
		4. You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or make a proposal for or enter into any compromise or arrangement with Your creditors; or
		5. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Your winding up; or
		6. (being an individual) You are the subject of a bankruptcy petition or order; or
		7. Your creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against the whole or any part of Your assets and such attachment or process is not discharged within 14 days; or
		8. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over You; or
		9. (being a company) a floating charge holder over Your assets has become entitled to appoint or has appointed an administrative receiver; or
		10. a person becomes entitled to appoint a receiver over Your assets or a receiver is appointed over Your assets; or
		11. any event occurs, or proceeding is taken, with respect to You in any jurisdiction to which You are subject that has an effect equivalent or similar to any of the events mentioned in clause [6.2.3](#_bookmark3) to clause 6.2.10 inclusive; or
		12. there is a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010); or
		13. You suspend, or threaten to suspend, or cease or threaten to cease to carry on, all or substantially the whole of Your business; or
		14. Your financial position deteriorates to such an extent that in Our opinion Your capability to adequately fulfil Your obligations under the Agreement has been placed in jeopardy; or
		15. (being an individual) You die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing Your own affairs or you become a patient under any mental health legislation.
	2. Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination or expiry of the Agreement shall continue in full force and effect.
	3. Without prejudice to clause 6.2, any provision of this Agreement that expressly or by implication is intended to continue in force on or after this Agreement ends shall remain in full force and effect.
	4. Upon termination or expiry of the Agreement, You shall immediately:
		1. cease all work on the Agreement;
		2. deliver to Us all Deliverables and all work-in-progress whether or not then complete. If You fail to do so, then We may enter Your premises and take possession of them. Until they have been returned or delivered, You shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement; and
		3. cease use of and return (or, at Our election, destroy) all Our Customer Materials in Your possession or control.
	5. Such termination shall be effective immediately or at such later date as is specified in the notice. We shall not incur any liability to You by reason of such termination and shall not be required to pay any costs, losses or damage to You. Termination under this clause shall be without prejudice to any other of Our rights.
6. **DATA PROTECTION**
	1. **DEFINITIONS**

**"Data Protection Legislation”** means (whilst they are in force):

* + 1. the Data Protection Act 2018;
		2. the EU General Protection Regulation (“GDPR”) whilst it is directly applicable in the UK; and
		3. any successor legislation to the Data Protection Act 2018 or the GDPR and any other applicable laws and regulations relating to the processing of personal data and privacy.

**“Personal Data”**, **“data controller”, “data processor”, “data subject”** and **“process”** are as defined in the Data Protection Legislation.

* 1. **BOTH PARTIES AS DATA CONTROLLERS**

Where it is agreed that both BW and the Service Provider will be data controllers in respect of Personal data used or processed in respect of the arrangements between us, the following provisions shall apply:

* + 1. In respect of any Personal Data that is provided by one of us to the other under this Agreement, the providing party confirms that is has all necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data to the receiving party, and the processing and/or other use of the Personal Data by the receiving party as agreed between us.

The providing party will give full information to any data subject whose Personal Data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by or as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

* + 1. Under this Agreement the receiving party shall:
			1. process the Shared Personal Data only for the Agreed Purposes;
			2. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
			3. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
			4. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
			5. not transfer the Shared Personal Data outside of the UK and/or EEA without the providing party’s written consent.
		2. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
			1. consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
			2. promptly inform the other party about the receipt of any data subject access request;
			3. provide the other party with reasonable assistance in complying with any data subject access request;
			4. not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party where possible;
			5. assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
			6. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
			7. at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the personal data;
			8. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
			9. maintain complete and accurate records and information to demonstrate its compliance with its obligations in respect of data protection and allow for audits by the other party or the other party’s designated auditor; and
			10. provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties’ compliance with the Data Protection Legislation.
		3. For the purposes hereof, the following words and expressions shall have the following meanings:

Agreed Purposes:

STATE THE PURPOSES FOR WHICH THE PERSONAL DATA IS TO BE HELD.

Permitted Recipients:

Both of the parties to this Agreement, together with our employees, any third parties engaged by either of us to perform obligations in connection with this Agreement, and [ADD ANY OTHER PERMITTED RECIPIENTS].

Shared Personal Data:

The personal data to be shared between the parties under this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

1. [type of personal data];
2. [type of personal data]; and
3. [type of personal data].
	* 1. The parties will each agree to any reasonable amendment to this Agreement required to bring it into line with any amendment to or
		re-enactment of any Data Protection Legislation, or to allow each of the parties to comply with any requirement or recommendation of the information Commissioner or any other data protection or supervisory authority in relation to the processing of personal data.
	1. **BW AS DATA CONTROLLER TO THE SERVICE PROVIDER AS DATA PROCESSOR**

Where BW is the data controller in respect of personal data used or processed in performing the obligations under this Agreement, the following provisions shall apply:

* + 1. You shall be the Data Processor in respect of Personal Data processed by you on our behalf in performing the obligations under this Agreement. We shall be solely responsible for determining the purposes for which and the manner in which such Personal Data is processed. However, you shall further be authorised to process the Personal Data if it is required so to do by the laws of the UK or of any member of the EU, or by the laws of the EU applicable to you to process Personal Data (“Applicable Laws”). Where you rely on laws of the UK, or a member of the EU or EU law as the basis for Processing Personal Data, you shall promptly notify us of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit you from so notifying us.
		2. You shall at all times during the term of this Agreement comply with all applicable requirements of the Data Protection Legislation in relation to the Processing of Personal Data.
		3. Where and to the extent required to do so by Data Protection Legislation, you will maintain a written log of all Processing of Personal Data performed on our behalf, and provide us with a copy of such log on request. The written log shall include the following information:
			1. the categories of recipients to whom Personal Data have been or will be disclosed;
			2. a list of any transfers of Personal Data to a third party outside the EEA and UK (including the name of the relevant non-EEA country and organisation), and documentation of the suitable safeguards in place for such transfers. For the avoidance of doubt, all such transfers are subject always to our consent in accordance with this Agreement; and
			3. a general description of the technical and organisational security measures referred to in this Agreement.
		4. Where you process Personal Data on our behalf, you shall, in respect of such Personal Data:
			1. not access or use Personal Data except as is necessary to provide the Services, and then only as reasonably necessary for the performance of this Agreement;
			2. act strictly in accordance with this Agreement and on our written instructions received from time to time;
			3. comply promptly with any request from us to amend, delete or transfer Personal Data;
			4. not disclose Personal Data to any employee, director, agent, contractor or affiliate of yours (“your Personnel”), or any third party, except as is necessary for the performance of the Services, or to comply with applicable laws, or with our prior written consent;
			5. implement and maintain appropriate technical and organisational measures:
1. to protect the security and confidentiality of Personal Data processed by you in providing the Services;
2. to protect Personal Data at all times against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, access, or Processing; or
3. as required under the Data Protection Legislation;
	* + 1. notify us of any request made by a Data Subject under Data Protection Legislation in relation to or in connection with Personal Data processed by you on our behalf and at all times cooperate with and assist us to execute our obligations under the Data Protection Legislation in relation to such Data Subject requests
			2. process the Personal Data in accordance with the specified duration, purpose, type and categories of Data Subjects as set out in Annex 4 (or as otherwise notified by us to you).
		1. You shall within 24 hours, or earlier if reasonably practicable, of becoming aware, notify us in writing of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data. The notice provided will specify:
			1. the categories and number of the individuals and the records concerned;
			2. the likely consequences of the breach;
			3. any steps taken to mitigate and address the breach; and
			4. specify an appropriate point of contact within your organisation who we can contact about the breach.

You will promptly give us the detail we request to allow us to understand the impact of the breach. You will promptly comply with any instructions provided by us, and cooperate with us, in relation to the data breach.

* + 1. You must obtain our prior written consent before engaging a subcontractor to process Personal Data on our behalf. Where that consent is given, it will be conditional upon you having executed a written contract with the third party which contains terms for the protection of Personal Data which are no less protective than the terms set out in this Agreement.
		2. You shall not, and shall procure that your subcontractors shall not, transfer or process, any Personal Data outside the EEA and/or the UK without our prior written consent. We shall notify you of the terms we would require for our consent to be given.
		3. You shall provide us with such reasonable assistance as we require in relation to any complaints made by Data Subjects or investigations or enquiries made by any regulator or supervisory authority relating to us or our obligations under the Data Protection Legislation
		4. In relation to Personal Data processed by you under this Agreement, you shall co-operate with us to the extent reasonably necessary to enable us to adequately discharge our responsibility as a data controller under Data Protection Legislation (including in respect of the preparation of data protection impact assessments).
		5. We shall have the right to audit you and relevant records and materials as necessary to demonstrate your compliance with your obligations under this Agreement and Data Protection Legislation. At any time you will co-operate fully to allow and assist such audits, including on-site inspections of your business premises or processing facilities, conducted by us or our auditor.
		6. You will tell us immediately if you are asked to do something which might infringe the Data Protection Legislation or other data protection law of the EU or a member state.
		7. You shall ensure that any of your Personnel with access to Personal Data are both bound by confidentiality obligations in respect of access, use or processing of such Personal Data, and have received appropriate training.
		8. At our request, you shall provide a copy of all Personal Data held by you in the format and on the media reasonably specified by us.
		9. On termination or expiry of this Agreement, at our request, you shall delete or return to us all Personal Data processed by you on our behalf, and you shall delete existing copies of such Personal Data except where necessary to retain such Personal Data strictly for the purposes of compliance with UK, EU or EU Member State Laws applicable to you.
		10. We shall each be responsible for bearing the costs of our obligations under this Agreement.
		11. The provisions of this Data Protection Clause shall survive termination of the Agreement.
		12. We will each agree to any reasonable amendment to this Agreement required to bring it into line with any amendment to or re-enactment of any Data Protection Legislation, in particular to reflect the GDPR, or to allow each of the Parties to comply with any requirement or recommendation of the Information Commissioner or any other data protection or supervisory authority in relation to the Processing of Personal Data.
1. **Intellectual Property Rights [THIS WORDING MAY NEED TO BE AMENDED]**
	1. In respect of any goods that are transferred to Us under the Agreement, including without limitation the Deliverables or any part of them You warrant that You have full clear and unencumbered title to all such items, and that at the date of delivery of such items to Us, You will have full and unrestricted rights to transfer all such items to Us.
	2. You assign to Us, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. Where those products or Deliverables incorporate any Intellectual Property Rights owned by or licensed to You which are not assigned under this clause (including Background IPR), You grant to Us a worldwide, irrevocable, royalty- free, transferable licence, with the right to grant sub-licences, under those Intellectual Property Rights to maintain, repair, adapt, copy and use those products and Deliverables for any purpose.
	3. You shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
	4. You shall, promptly at Our request, do (or procure to be done) all such further acts and things and execute all such other documents as We may from time to time require for the purpose of securing for Us the full benefit of the Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to Us in accordance with clause 8.2.
2. **Indemnity**
	1. You shall indemnify Us, and shall keep Us indemnified, in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Us as a result of or in connection with:
		1. any claim made against Us by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by You, Your employees, agents or subcontractors;
		2. any claim brought against Us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services; and
		3. any claim made against Us arising out of or in connection with a breach by You of clauses [3.6](#_bookmark7), 7 and/or 12 of these Standard Terms and Conditions.
3. **Insurance**
	1. During the term of the Agreement and for a period of 3 years thereafter, You shall maintain in force the following insurance policies with reputable insurance companies:
		1. professional insurance for not less than £2 million per claim;
		2. public liability insurance for not less than £2 million per claim; and
		3. employer liability insurance for not less than £5 million per claim; and
	2. On Our written request, You shall provide Us with copies of the insurance policy certificates and details of the cover provided.
	3. You shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the Agreement which they are contracted to fulfil.
	4. You shall:
		1. do nothing to invalidate any insurance policy or to prejudice Our entitlement under it; and
		2. notify Us if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
	5. Your liabilities under the Agreement shall not be deemed to be released or limited by You taking out the insurance policies referred to in clause 10.1
	6. If You fail or are unable to maintain insurance in accordance with clause 10.1, We may, so far as We are able, purchase such alternative insurance cover as We deem to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from You.
4. **Liability**
	1. In this clause [11](#_bookmark19), a reference to Our liability for something is a reference to any liability whatsoever which We might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Agreement, in tort or otherwise, and even if it results from Our negligence or from negligence for which We would otherwise be liable.
	2. We will not be in breach of the Agreement, and neither will we have any liability for anything, to the extent that the apparent breach or liability is attributable to Your breach of the Agreement.
	3. Subject to clause [11.](#_bookmark20)5, We shall have no liability for:
		1. any indirect or consequential loss or damage;
		2. any loss of business, rent, profit or anticipated savings;
		3. any damage to goodwill or reputation;
		4. loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto Our premises by You or on Your behalf; or
		5. any loss, damage, costs or expenses suffered or incurred by any third party.
		6. Subject to clause [11.](#_bookmark20)5, Our total liability in connection with this Agreement shall be limited to the Charges paid by us under this Agreement.
	4. Your liability pursuant to clauses 9 and [11.](#_bookmark20)5 shall be unlimited. Subject to the foregoing, your total liability in connection with the Agreement shall be limited to the higher of (a) 200% of the total sums payable under the Agreement and (b) £1,000,000.
	5. Nothing in the Agreement restricts either party’s liability for anything which cannot legally be limited, including:
		1. death or personal injury resulting from its negligence; or
		2. its fraud (including fraudulent misrepresentation); or
		3. breach of any obligations as to title implied by any act of law.
5. **Confidential information**
	1. A party who receives Confidential Information relating to the other party shall keep in strict confidence (both during the term of the Agreement and after its expiry or termination) all Confidential Information which is disclosed to it. That party shall only disclose such Confidential Information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging that party's obligations under the Agreement, and shall ensure that such employees, agents or subcontractors shall keep all such information confidential in accordance with this clause 12. Neither party shall, without the prior written consent of the other party, disclose to any third party any Confidential Information, unless the information:
		1. was public knowledge or already known to that party at the time of disclosure; or
		2. subsequently becomes public knowledge other than by breach of the Agreement; or
		3. subsequently comes lawfully into the possession of that party from a third party; or
		4. is agreed by the parties not to be confidential or to be disclosable.
	2. To the extent necessary to implement the provisions of the Agreement (but not further or otherwise), either party may disclose the Confidential Information to any relevant governmental or other authority or regulatory body, provided that before any such disclosure the party shall make those persons aware of its obligations of confidentiality under the Agreement and shall use reasonable endeavours to obtain a binding undertaking as to confidentiality from all such persons.
	3. All documents and other records (in whatever form) containing Confidential Information supplied to or acquired by a party from the other party shall be returned promptly to the other party (or, at Our election, destroyed promptly) on expiry or termination of the Agreement, and no copies shall be kept.
6. **Corruption**
	1. We shall be entitled to terminate the Agreement immediately and to recover from You the amount of any loss resulting from such termination if You:
		1. offer or agree to give any person working for or engaged by Us or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Agreement, or any other Agreement between You and Us or any Public Body, including its award to You and any of the rights and obligations contained within it;
		2. have entered into the Agreement if You have knowledge that, in connection with the Agreement, any money has been, or will be, paid to any person working for or engaged by Us or any Public Body by or for You, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to Us before the Agreement is entered into;
		3. breach the provisions of the Bribery Act 2010; or
		4. give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
	2. For the purposes of clause 13, "loss" shall include, but shall not be limited to:
		1. Our costs in finding a replacement supplier;
		2. direct, indirect and consequential losses; and
		3. any loss suffered by Us as a result of a delay in the performance of the Services.
7. **ANTI-FACILITATION OF TAX EVASION**
	1. You shall:
		1. not engage in any activity, practice or conduct which would constitute either:
		2. a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
		3. a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
		4. have and shall maintain in place throughout the term of this Agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation our employees) and to ensure compliance with clause 14.1.1;
		5. promptly report to Us any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of this Agreement; and
		6. within 2 months of the date of this Agreement, and annually thereafter, certify to Us in writing signed by one of Your officers, compliance with this Clause 14 by You and all persons associated with it under [Clause 14.2](https://uk.practicallaw.thomsonreuters.com/Document/I1cb8a1ed8e9211e79bef99c0ee06c731/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62af000000160081a18e74281112b%3FNav%3DKNOWHOW_UK%26fragmentIdentifier%3DI1cb8a1ed8e9211e79bef99c0ee06c731%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=ad5de29f6428ca64ac2611f7939225b2&list=KNOWHOW_UK&rank=1&sessionScopeId=407e7d5f0b12c86a8f45037186829349fc91e0c1130baf69a6eba6e969a7b829&originationContext=Search%20Result&transitionType=SearchItem&contextData=(sc.Search)&navId=C1C9A2687F532459AB3C79D53B90B0A2&comp=pluk#co_anchor_a106345). You shall provide such supporting evidence of compliance as We may reasonably request.
	2. You shall ensure that any person associated with You who is performing services and providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on You in this Clause 14. You shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Us for any breach by such persons of any of the Relevant Terms.
	3. We shall be entitled to terminate the Agreement immediately and to recover from You the amount of any loss resulting from such termination if You breach this Clause 14. For the purposes of clause 14, "loss" shall include, but shall not be limited to:
		1. Our costs in finding a replacement supplier;
		2. direct, indirect and consequential losses; and
		3. any loss suffered by Us as a result of a delay in the performance of the Services.
	4. For the purposes of Clause 14, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with You includes but is not limited to any of Your subcontractors.
8. **MODERN SLAVERY**
	1. You warrant that Neither You nor any one of Your agents or contractors will commit an offence under the Modern Slavery Act 2015, and that You will remain alert to any circumstances within Your supply chains that could give rise to a potential offence under the abovementioned Act. You will notify Us immediately in writing if You become aware or have reason to believe that You or any of Your agents or contractors have breached or potentially breached its obligations under the Act.
9. **SUSTAINABLE PROCUREMENT**
	1. You shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, You shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by Us.
	2. You shall provide the Services in such a way as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the use of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
	3. You shall meet all reasonable requests by Us for information evidencing compliance with the provision of this clause 16 by You.
10. **EQUALITY AND DIVERSITY**
	1. In providing the Services, You shall undertake that Your employees, agents or contractors shall comply with any applicable anti-discrimination legislation and with Our equality and diversity policy, as may be amended from time to time, which will be provided to You on Your written request.
	2. Should You or any of Your employees, agents or contractors breach any part of clause 17.1 We shall be entitled to terminate the Agreement immediately and to recover from You the amount of any loss resulting from such termination. For the purposes of clause 17, "loss" shall include, but shall not be limited to:
		1. Our costs in finding a replacement supplier;
		2. direct, indirect and consequential losses; and
		3. any loss suffered by Us as a result of a delay in the performance of the Services.
11. **ASSIGNMENT AND SUBCONTRACTING**
	1. We may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of Our rights or obligations under the Agreement.
	2. You may not assign, transfer, charge, subcontract or deal in any other manner with any or all of Your rights or obligations under the Agreement without Our prior written consent.
	3. We may (without cost to or liability of Us) require You to replace any subcontractor where in Our reasonable opinion any mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015 apply to the subcontractor.
12. **SEVERANCE**
	1. If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
	2. If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
13. **WAIVER**
	1. A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
14. **COMPLAINTS HANDLING AND RESOLUTIONS**
	1. Without prejudice to any rights and remedies that a complainant may have at law, and without prejudice to any obligation You may have to take remedial action You shall use all reasonable endeavours to resolve the Complaint and in so doing, shall deal with the complaint fully, expeditiously and fairly.
	2. Within three (3) Working Days of a request by Us, You shall provide full details of Your response to a Complaint to Us, including details of steps taken to its resolution.
15. **DISPUTE RESOLUTION**
	1. Save where there is a statutory process with mandatory application for the resolution of a specific type of dispute between You and Us, we shall both attempt in good faith to negotiate a settlement to any dispute within twenty (20) Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Head of Procurement (or equivalent) of each party.
	2. Nothing in this dispute resolution procedure shall prevent either of us from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
	3. If the dispute cannot be resolved pursuant to clause 22.1 both of us shall apply to the Centre for Effective Dispute Resolution (CEDR), or such other similar body as is agreed, to appoint a Mediator.
	4. The obligations under the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and You and your Staff shall comply fully with the requirements of the Agreement at all times.
16. **RIGHTS OF EXAMINATION WHERE GOVERNMENT FUNDS ARE INVOLVED**
	1. Where any part of the price paid to or due to You that was or is to be provided by way of money from any governmental department or organisation You shall:
		1. permit Us at any reasonable time and/or representatives of the Secretary of State for Housing, Communities and Local Government (MHCLG), the Secretary of State for Business, Energy and Industrial Strategy (BEIS) or the Secretary of State for International Trade (DIT) to examine all of Your records and to assess the design management and delivery of Services provided or to be provided and to carry out examinations into the economy efficiency and effectiveness with which You have used the said government funds;
		2. permit representatives of the National Audit Office to examine all of Your records for the purpose of certification of the MHCLG, BEIS or DIT accounts;
		3. permit representatives of the European Commission or the European Court of Auditors to examine Your records;
		4. provide all reasonable assistance to any person exercising the rights of examination conferred in this clause and to provide copies of all relevant documents that any such person may require.
17. **FORCE MAJEURE**
	1. If any event or circumstance that is beyond Your reasonable control, and which by its nature could not have been foreseen by You or, if it could have been foreseen, was unavoidable, (provided that You shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Agreement) prevent You from carrying out Your obligations under the Agreement for a continuous period of more than 10 Business Days, We may terminate this Agreement immediately by giving written notice to You.
18. **GENERAL**
	1. The Agreement constitutes the entire agreement between the parties in relation to the supply of the Services and the Agreement supersedes any earlier agreements, arrangements and understandings relating to that subject matter.
	2. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such address as may at the relevant time have been notified under this provision to the party giving the notice.
	3. Nothing in the Agreement creates any partnership or joint venture, nor any relationship of employment, between You and Us. Nothing in the Agreement creates any agency between You and Us.
	4. A person who is not a party to this Agreement shall not have any rights under or in connection with it.
	5. Any variation to the Agreement, including any changes to the Services or the Agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by or on behalf of Us and You.
	6. Subject to clause 25.7, the Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
	7. We shall be free to enforce Our Intellectual Property Rights in any jurisdiction.

# ANNEX 2: ITT Tender Submission Score Sheet

*[Example 1 this section needs to be tailored to the particular tender requirement]*

|  | ***Submission Score Sheet*** |
| --- | --- |
| ***Bidder:*** |  |  |
| ***Panel Member:*** |  |  |
| ***Date:*** |  |  |
| ***Element of Technical Proposal 85%*** | ***Maximum******Score*** | ***Weighting*** | ***Score Allocated*** | ***Comments*** |
| *Country Coverage* | *5* | *3* |  |  |
| *Market Coverage* | *5* | *3* |  |  |
| *Information provided for each sector in each country* | *5* | *1* |  |  |
| *Ability to download information for analysis and creating reports* | *5* | *1* |  |  |
| *Product flexibility for adding other modules if requirements change* | *5* | *1* |  |  |
| *Supplier support, training and helpdesk* | *5* | *1* |  |  |
| *Supplier reliability, quality and response for assistance* | *5* | *1* |  |  |
| ***Experience*** |  |  |  |  |
| *Primary Business – clearly demonstrates relevance to* | *5* | *2* |  |  |
| *Relevant Work – clearly demonstrates relevance to* | *5* | *2* |  |  |
| ***Standards*** |  |  |  |  |
| *Quality Assurance* | *1* | *1* |  |  |
| *Environmental Management* | *1* | *1* |  |  |
| *Health & Safety* | *1* | *1* |  |  |
| *Equal Opportunities* | *1* | *1* |  |  |
| *Bribery & Corruption* | *1* | *1* |  |  |
| ***Approach to Work***  |  |  |  |  |
| *Methodology – clearly demonstrates how the methodology meets the Requirements* | *5* | *1* |  |  |
| ***Subtotal*** | ***85*** |  |  |
| ***2. Finance (15%)*** |  |  |  |  |
| *Score for Financial Proposal* | ***15*** | *1* |  |  |
| ***Subtotal*** | ***15*** |  |  |
| ***TOTAL SCORE*** | ***100*** |  |  |