**GWE Business West**

**Kickstart Gateway**

**Kickstart Employment Programme**

**Employability Wrap around service**

**Terms and Conditions**

**Date: 20th April 2021**

# 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. 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.
   3. All amounts payable by Us under the Agreement are inclusive of amounts in respect of value added tax (VAT) chargeable for the time being.
   4. 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.
   5. 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:

To provide a pilot an **‘Employability Wraparound Service’** for Kickstart Candidates’ as outlined in the service specification set out in addition to this Agreement.

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.

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

Personal details, including any information that identifies the data subject and their personal characteristics, including: name, address, contact details, age, date of birth, sex, and physical description.

Education and training details, including information which relates to the education and any professional training of the data subject, including academic records, qualifications, skills, training records, professional expertise, student and pupil records.

Employment details, including information relating to the employment of the data subject, including employment and career history, recruitment and termination details, attendance records, health and safety records, performance appraisals, training records, and security records.

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** 
   1. GWE Business West Ltd and the service provider will hold joint Intellectual Property Rights (IPR) on all products and resources developed and delivered relating to the Kickstart Employability Wrap Around Service (EWS).
   2. Joint IPR will remain in place for all products developed within the dates of this contract and for the duration of this contract. During the duration of this contract, either party is free to use all products directly related to the Kickstart Programme, where the intended use is directly related to the Programme delivery.
   3. After the cessation of this contract, each party will retain joint IPR on all products developed under this contract. Either party must seek permission from the other if they wish to use any product or service developed under this contract for any purpose outside of the Kickstart Programme. Each party has the right to refuse permission for such use.
   4. GWE Business West Ltd retains the IPR on all products and services developed by them for use on the Kickstart Programme outside of the EWS. For the duration of this contract the service provider is allowed to use said products in order to deliver the EWS and only for this purpose. Once this contract ceases, the provider will not be allowed to use said products, except for activities relating directly to the Kickstart Programme.’
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.