

CPG/2310/2017

Provision of a Japan Cyber Security Market Intelligence toolkit

ATTACHMENT 1 – RFQ COVER AND INSTRUCTIONS

1. On behalf of the Foreign and Commonwealth Office (FCO) as represented by the British Embassy Tokyo, I am looking for supplier(s) that could provide a Japan Cyber Security Market Intelligence toolkit. Further details on the requirement are set out in the attached Specification/Terms of Reference.
2. Please include in your reply a nominated point of contact with telephone, e-mail and postal address details.
3. Estimated contract duration is until 31 March 2018.
4. Payments for under GBP1,500 will be made through credit card and a Purchase Order will be provided for purchase over GBP1,500.
5. Your quote should remain valid for 90 days from the required date of receipt and all costs should be stated in Japanese Yen. Your quotation should be inclusive all costs. British Embassy Tokyo enjoys tax exemption for purchase of goods over JPY40,000 from designated store but we do not enjoy exemption on purchase of Services.
6. Your quote must be received on or before **1700H on 08 November 2017 (Japan time)**. Late bids will not be accepted.
7. Send your response to APAC.Procurement@fco.gov.uk
8. Please use title: **Japan Cyber Security**
9. If you have any questions, please contact APAC.Procurement@fco.gov.uk
Answers will be shared with all bidders. Use the title: **Japan Cyber Security Query**.
10. Should your quotation be accepted, this request, the attached Specification, and your response will form a legally binding contract between you and the FCO under the terms and conditions set out in the 'Attachment 2.'
11. This Request for a Quote does not imply any commitment on the part of the FCO.
12. From 2nd April 2014 the Government is introducing its new Government Security Classifications (GSC) classification scheme to replace the current Government Protective Marking Scheme (GPMS). A key aspect of this is the reduction in the number of security classifications used. All potential suppliers should make themselves aware of the changes as it may impact on this Requirement. The following link to the Gov.uk website provides information on the new GSC - <https://www.gov.uk/government/publications/government-security-classifications>

ATTACHMENT 2 - TERMS OF CONTRACT FOR THE PROVISION OF SERVICES

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TERMS AND CONDITIONS OF CONTRACT FOR PROVISION OF SERVICES

1. DEFINITIONS

1.1 The expressions set out below shall have the following meanings:

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that body corporate from time to time;

"Authority" means the Secretary of State for Foreign and Commonwealth Affairs and includes the Authority's Representative. In this Contract, the Authority is acting as part of the Crown;

"Authority's Data" means all (a) data, information, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible medium, and which are: (i) supplied or in respect of which access is granted to the Contractor by the Authority under this Contract, or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Authority is the Data Controller;

"Authority's Property" means any physical property, other than land and buildings, issued or made available to the Contractor or paid for by the Authority in connection with the Contract;

"Authority Proprietary Material" means all Intellectual Property Rights which were created or used by the Authority prior to the Commencement Date or which are created independently of the delivery of the Services and Deliverables;

"Authority's Representative" means the person appointed by the Authority and listed in Clause 5.2 (Representatives) or otherwise notified in writing by the Authority to the Contractor from time to time;

"Commencement Date" means the date of this Contract or the actual date of commencement of the Services, whichever is the earliest;

"Commercially Sensitive Information" means the information (i) listed in the Commercially Sensitive Information Schedule or (ii) notified to the Authority in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information:

(a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule or notification; and/or

(b) which constitutes a trade secret;

"Completion Date" means 6 months after receipt of official FCO contract;

"Confidential Information" means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, products/services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 including the Authority's Data;

"Contract" means this agreement between the Authority and the Contractor consisting of the Form of Tender, Price Schedule; Specification, Terms and Conditions of Contract and any attached Schedules and Appendices;

"Contractor" means your company

"Contractor Proprietary Material" means all Intellectual Property Rights which were created or used by the Contractor prior to the Commencement Date or which are created independently of the delivery of the Services and Deliverables;

"Contractor's Representative" means the person appointed by the Contractor and listed in Clause 5.1 (Representatives) or otherwise notified in writing by the Contractor to the Authority from time to time;

"Crown Body" means any department, office or agency of the Crown;

"Data Protection Legislation" means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

"Default" means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, contractors, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other;

"Deliverables" means any and all literature, manuals, reports, research papers, data, flow charts, drawings, designs, diagrams, tables, software or other information or goods or materials (in whatever form and on whatever media) developed, designed or otherwise provided during the course of this Contract, to be provided as part of the Services;

"Environmental Information Regulations" means the Environmental Information Regulations 2004 as the same may be amended or updated from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

“Equality Enactments” means the Equality Act 2010;

“Equipment” means any equipment, material, goods, vehicles and associated services financed by and purchased on behalf of, or provided by, the Authority, necessarily required for use in providing the Services. Equipment may only be used in providing the Services. Unauthorised personal use is not permitted. The Equipment shall be the property of the Authority and shall remain the property of the FCO on completion of the Contract;

“FOI Act” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“Force Majeure” has the meaning set out in Clause 40;

“Gateway” means a review which may be conducted by or for a government department into whether or not a programme, project or any activity is making progress in line with agreed objectives;

“Good Industry Practice” means at any time the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider of services similar to the Services seeking in good faith to comply with its contractual obligations and complying with all relevant laws;

“Intellectual Property Rights” means any patents, trademarks, design rights (registered or unregistered), applications for any of the foregoing, copyright, (including future copyright), database right, know-how, trade names, brand names, logos and business names and any other similar or equivalent rights arising or subsisting in any country in the world;

“Information” means all records and information obtained, created, collected or held by the Contractor in relation to this Contract, and which has the meaning given under section 84 of the Freedom of Information Act 2000;

“Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

“Party” means a party to this Contract;

“Premises” means any premises of the Authority at which the Contractor performs the Services;

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly.

“Requests for Information” shall have the meaning set out in the FOI Act or any apparent request for information under the FOI Act, the Environmental Information Regulations or the Code of Practice on Access to Government Information (2nd Edition), as the same may be amended or replaced from time to time;

“Service Provider” means the Contractor appointed to deliver the Service;

“Services” means the services to be performed by the Contractor under this Contract as specified in the Specification;

“Staff Vetting Procedures” means the Authority's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;

“Sub-Contract” means any contract or proposed contract between the Contractor and any third party in respect of any material part of this Contract. The terms "Sub-Contractor" and "Sub-Contracting" shall be similarly construed;

“The Crown” means any central government department of the United Kingdom, including the Devolved Administrations, and other bodies which are legally defined as being Crown Bodies, and.

“Working Day” means a day other than a bank holiday, a Saturday or a Sunday in England and Wales.

1.2 As used in this Contract:

1.2.1 the masculine includes the feminine and the neuter; and

1.2.2 the singular includes the plural and vice versa.

1.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.4 A reference to any document other than as specified in Clause 1.3 (Definitions) shall be construed as a reference to the document as at the date of execution of this Contract.

1.5 Each party shall comply with any express obligation in this Contract to comply with any document statute, enactment, order, regulation or other similar instrument that is referenced in this Contract.

1.6 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.7 In the event and to the extent only of any conflict between the Clauses together with the Price Schedule or the Services Scope, the Clauses shall prevail.

1.8 Except as otherwise expressly provided in this Contract, all remedies available to the Contractor or to the Authority under this Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

2. ENTIRE AGREEMENT

2.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

3. OBJECTIVES

The provision of a policy proposal and a research

4. CONTRACT PERIOD

4.1 The target completion date is on **31st March 2018**.

5. REPRESENTATIVES

5.1 The Contractor's Representative means the following person who shall be the agent of the Contractor for all purposes in connection with the Contract:

Name [insert]
Telephone Number [insert]
Facsimile Number [insert]
Address [insert]
E-Mail Address [insert]

5.2 The Authority's Representative means the following person who shall be the agent of the Authority for all purposes in connection with the Contract: APAC.Procurement@fco.gov.uk

6. SERVICES

6.1 In consideration of the payment of the Charges, the Contractor shall perform the Services and provide the Deliverables from the Commencement Date.

6.2 The Services shall only be varied by application in line with Clause 7 (Variation) and such other process as the Authority may specify.

7. VARIATION

7.1 The Contract will not be varied unless such variation is agreed by the duly authorised representatives of the parties. The Authority shall have the right to order any variations to the Services that are within the capability and resources of the Contractor. Any increase or decrease in the cost of the Services resulting from such order shall be determined by the Authority in conjunction with the Contractor.

8. CHARGES

8.1 In consideration of the performance of the Services in accordance with the terms of this Contract, the Authority shall pay the Charges set out in the Price Schedule.

8.2 Unless otherwise stated in the Price Schedule, payment will be made within 30 days of receipt and agreement of invoices, submitted every three months in arrears for work under a Services Scope completed to the satisfaction of the Authority. For the avoidance of doubt, all costs and expenses for services performed by the Contractor and not agreed to by the Authority will be borne by the Contractor and not included in any invoice. The sums due under this Contract may be calculated on either a fixed price basis or a time and materials basis and the provisions of Clauses 8.3 and 8.4 (Charges) will apply.

8.3 Where the parties have agreed in the Price Schedule that the Services will be provided on a fixed price basis, then the fixed price shall be paid according to the schedule of payments as detailed in the Price Schedule which may relate to the achievement of specific predefined milestones, dates or acceptance and shall be inclusive of all Contractor costs.

8.4 Where the parties have agreed in the Price Schedule that the Services will be provided on a time and materials basis then:

8.4.1 The Services shall be provided in accordance with the rate card set out in the Price Schedule;

8.4.2 The parties shall agree an original the Parties shall agree an original estimate which shall include but not be limited to a resource profile, a fixed date to start and to complete and a set of deliverables, further details of which shall be agreed by the Parties in the Price Schedule ("Original Estimate");

8.4.3 From the date of the contract and every month thereafter, the Contractor shall provide a brief narrative report of activities undertaken under the Project and an assessment of the progress made against project outputs as

set out in Annex A. This assessment should provide evidence that the quality and timing criteria have met, as set out in Annex A.

- 8.4.4 The Contractor shall attach to each invoice records of the time spent and materially used in providing the Services, together with all supporting documentation including but not limited to any relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates, including details of any consultants' fees and travel expenses and a reference to the Contract and Price Schedule details, as well as any other information as reasonably requested by the Authority from time to time; and
- 8.4.5 The Contractor must notify the Authority as soon as it becomes apparent that the cost to complete the Services is likely to be in excess of the Original Estimate, and shall only proceed with and be paid for work in excess of the Original Estimate with the prior written consent of the Authority.
- 8.5 The Authority may elect to pay for the Services by Government Procurement Card or such other method as the Parties may agree.
- 8.6 Payment by the Authority shall be without prejudice to any Clauses or rights which the Authority may have against the Contractor and shall not constitute any admission by the Authority as to the performance of the Contractor of its obligations hereunder.
- 8.7 Once the project has been completed, a final payment will only be made when a final report (a "Project Completion Report") has been submitted to such person and in such a form as is required by the Authority.
- 8.8 The Authority reserves the right to commission an external audit of the financial report covering the implementation of the Project at any time.
- 8.9 Value Added Tax, where applicable, will be shown separately on all invoices as a strictly net extra charge. All other taxes, imposts and expenses will be borne by the Contractor and must not be included in any invoice.
- 8.10 The Contractor will submit invoices to the Authority denominated in Sterling, save where otherwise agreed.
- 8.11 If the Authority, acting in good faith, has a dispute in respect of any invoice, the Authority shall be entitled to withhold payment of the disputed amount, provided that it has notified the Contractor of the disputed amount and the nature of the dispute prior to the due date for payment of the invoice, and has paid any undisputed portion of the invoice to the Contractor. The parties will negotiate in good faith to resolve the dispute, and, failing resolution within five working days after receipt by the Contractor of the Authority's notification, the dispute will be referred to dispute resolution in accordance with Clause 45 (Dispute Resolution).
- 8.12 In the event that the United Kingdom joins the Euro Monetary Union (and conversion between Sterling and Euro has been fixed), the Authority may, at any time thereafter, be entitled to require the Contractor at no additional charge to the Authority to convert the charges relating to the Services from Sterling into Euros (in accordance with EC Regulation 1103/97).
- 8.13 Payments which are not received by the Contractor when due will be considered overdue and remain payable by the Authority together with interest for late payment from the date payable both at the rate of 2% per annum above the base rate for the time being of the Bank of England. This interest will accrue daily and be payable on demand.

9. INSPECTION

- 9.1 The Services shall be subject to inspection at all times by the Authority's Representative and shall be done to a standard considered reasonable by it. The Contractor warrants that it has the experience and capability to execute the Services in a manner satisfactory to the Authority and in accordance with the clauses of this Contract.

10. AUDIT

- 10.1 The Authority shall have the right upon giving reasonable notice to the Contractor to audit and take copies of extracts from all books, accounts, records and original documents relating to the Contract. The Contractor shall preserve such books, accounts, records and documents for two years after the termination of the Contract.
- 10.2 Except where an audit is imposed on the Authority by a Regulatory Body (in which case the Authority may carry out the audit required without prejudice to its other rights) the Authority may conduct an audit:
 - 10.2.1 To review the integrity, confidentiality and security of the Authority Data;
 - 10.2.2 to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with Clause 32 (Data Protection) and 33 (Freedom of Information) and any other legislation applicable to the Services.
- 10.3 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - 10.3.1 all information requested by the Authority within the permitted scope of the audit;
 - 10.3.2 reasonable access to any sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 10.3.3 access to the Contractor's system; and
 - 10.3.4 access to any person employed or engaged by the Contractor, or by a Sub-contractor and providing the Services.

11. AUTHORITY POLICIES AND SECURITY

Policies

- 11.1 Where the Services or part of it is to be performed within the Foreign and Commonwealth Office, or any other Government establishment, the Contractor must comply with any applicable policies, rules and regulations as to conduct, etiquette and working conditions or practices.
- 11.2 Any land or Premises (including temporary buildings) made available to the Contractor by the Authority in connection with this Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing this Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same upon the termination or expiry of this Contract or at such earlier date as the Authority may determine.
- 11.3 The Authority shall be responsible for maintaining the security of such land or Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its employees, agents and subcontractors shall likewise comply with such requirements. The Authority shall provide the Contractor upon request with copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its relevant physical security arrangements as applicable.

Security

- 11.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 8.4.5 (Charges) the Contractor shall continue to perform the Services in accordance with its existing obligations.
- 11.5 The Contractor shall provide to the Authority upon request and to the extent permitted by the Data Protection Act 1998 any and all information regarding each of its employees and sub-contractors (including confidential personnel information) as the Authority may require in order to carry out any security checks which the Authority (in its absolute discretion) deems necessary.
- 11.6 The Contractor agrees that the Authority may require its staff, and those of its sub-contractors who are involved in the project, to undergo such security vetting and attend such security training as the Authority reasonably deems necessary prior to their commencing work on the Project.

12. DISCRIMINATION

- 12.1 The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 12.2 The Contractor shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Contractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all contractors, employees or agents of the Contractor and all suppliers and Sub-contractors employed in the execution of this Contract.
- 12.3 The Contractor will comply with any request by the Authority to assist the Authority in meeting its obligations under the Equality Act 2010 and to allow the Authority to assess the Contractor's compliance with its obligations under the Equality Act 2010.
- 12.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub contractors, or Staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor will indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.
- 12.5 Where in the reasonable opinion of the authority the Contractor has breached its obligations under Clauses 12.1 or 12.2 (Discrimination) the Authority may terminate this Contract with immediate effect.

13. SECRECY

- 13.1 The Contractor:
- 13.1.1 Must not pass on any information obtained during or in connection with the performance of the Contract, except where necessary for the performance of the Contract or where authorised;
- 13.1.2 Must not contravene the Official Secrets Acts 1911 to 1989;
- 13.1.3 Must familiarise itself with these Acts and take all reasonable steps to ensure that its suppliers and its and their employees and agents are familiar with and comply with them.

14. TRANSPARENCY

- 14.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOI Act. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOI Act redacted) including from time to time agreed changes to the Contract, to the general public.
- 14.1.1 The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.
- 14.1.2 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

15. CONFIDENTIALITY

- 15.1 Without prejudice to Clause 17 (Publicity), except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall
- 15.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly]; and
- 15.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 15.2 Clause 15.1 (Confidentiality) shall not apply to the extent that:
- 15.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 34 (Freedom of Information);
- 15.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 15.2.3 such information was obtained from a third party without obligation of confidentiality;
- 15.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 15.2.5 it is independently developed without access to the other party's Confidential Information.
- 15.4 The Contractor may only disclose the Authority's Confidential Information to the persons it has employed or engaged who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such persons are aware of and shall comply with these obligations as to confidentiality.
- 15.5 The Contractor shall not, and shall procure that the persons it has employed or engaged do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 15.6 At the written request of the Authority, the Contractor shall procure that those persons it has employed or engaged identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 15.7 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 15.7.1 to any Crown Body or Overseas Governments. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
- 15.7.2 to any consultant, contractor or other person engaged by the Authority or any person conducting a Gateway or other assurance review;
- 15.7.3 for the purpose of the examination and certification of the Authority's accounts; or
- 15.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 15.8 The Authority shall use all reasonable endeavours to ensure that any Crown Body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause 15.7 (Confidentiality) is made aware of the Authority's obligations of confidentiality.
- 15.9 Nothing in this Clause 15 (Confidentiality) shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.10 In the event that the Contractor fails to comply with this Clause 14 (Confidentiality), the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.
- 15.11 The provisions under this Clause 15 (Confidentiality) are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Intellectual Property Rights in the Services and any Deliverables under this Contract shall be vested in and owned absolutely by the Contractor (save that the Authority will retain ownership of any Authority Proprietary Materials which become imbedded in such Deliverables).
- 16.2 The Contractor will grant the Authority a perpetual, non-exclusive, transferable, worldwide, royalty-free licence in respect of Intellectual Property Rights in the Services or any Deliverables under this Contract (including for the purposes of their adaptation, modification and/or reproduction).
- 16.3 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the license set out in Clause 16.2 (Intellectual Property Rights). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.

17. PUBLICITY

- 17.1 Subject to Clause 15 (Confidentiality), neither party shall make any press announcements or publicise this Contract in any way without the written consent of the other party.
- 17.2 Both parties shall take all reasonable steps to ensure the observance of the provisions of Clause 17.1 (Publicity) by all their servants, employees, agents, and contractors. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 17.1 (Publicity) by its Sub-Contractors.
- 17.3 Notwithstanding the provisions of Clause 17.1 (Publicity), the Authority shall be entitled to publicise this Contract in accordance with any legal obligation upon the Authority, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

18. CONTRACTOR WARRANTIES

- 18.1 The Contractor warrants, represents and undertakes that, throughout the Term:
 - 18.1.1 the Contractor has and will continue to hold full capacity and authority and all necessary consents and regulatory approvals to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
 - 18.1.2 all components of the Services shall operate in accordance with the technical specifications and the standards in the Services Scope;
 - 18.1.3 the Contractor has the full capacity and authority to perform the Services;
 - 18.1.4 The Services and Deliverables shall be supplied and rendered with all due skill, care and diligence by appropriately experienced, qualified and trained personnel.
 - 18.1.5 all persons employed or engaged by the Contractor, or by a Sub-contractor and providing the Services are and will be vetted in accordance with Good Industry Practice.
 - 18.1.6 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 18 (Contractor Warranties) in accordance with its own established internal procedures;
 - 18.1.7 it has and will continue to have all necessary rights in and to the Intellectual Property Rights in all materials used by the Contractor for the purpose of providing the Services and/or delivered to the Authority.
 - 18.1.8 as at the Commencement Date all statements and representations by the Contractor are to the best of its knowledge, information and belief, true and accurate and that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
 - 18.1.9 it shall, and the person employed or engaged by the Contractor and involved in providing the Services shall, at all times comply with the Law in carrying out their obligations under this Contract.
 - 18.1.10 the Contractor shall comply with all applicable laws in its provision of the Services; and
 - 18.1.11 except as expressly stated in this Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

19. COORDINATION

- 19.1 The Contractor shall coordinate its activities in the provision of the Services with all Personnel and other contractors engaged by the Authority, when required by the Authority.

20. MANNER OF PROVIDING THE SERVICES

20.1 The Contractor shall perform the Services with all due care, skill and diligence, and in accordance with Good Industry Practice. Timely provision of the Services is of the essence of the Contract.

21. STANDARDS

21.1 At the request of the Authority's Representative, the Contractor shall provide evidence to the Authority's reasonable satisfaction that the materials and processes used, or to be used conform to those standards of Service to which the Contractor may be reasonably held and any other standards that are relevant to the delivery of the Services and which the Authority communicates to the Contractor in writing.

22 MONITORING OF CONTRACT PERFORMANCE

22.1 Prior to the Commencement Date the Authority shall agree in consultation with the Contractor the arrangements for the purpose of monitoring the Contractor's performance of its obligations under this Contract.

22.2 These arrangements will include but not be limited to the following:

22.2.1 regular meetings;

22.2.2 monthly report on Key Performance Indicators;

22.2.3 the regular delivery of written management reports

22.3 The arrangements outlined in Condition 22.2 shall be carried out by the Contractor in a timely manner, as reasonably required by the Authority, and in line with Good Industry Practice.

23 EVALUATION (PROGRESS REPORTS)

23.1 The Authority will supervise the progress of the Contract throughout and the Authority may undertake post project evaluation of the impact and cost-effectiveness of Contract. The method and timing of the evaluation of the Contract will be at the discretion of the Authority. The Contractor shall, if required, assist the Authority in connection with the Contract and shall give all reasonable cooperation to the evaluators appointed by the Authority.

24 CONTRACTOR'S PERSONNEL

24.1 The Contractor shall comply with the Staff Vetting Procedures in respect of all persons employed or engaged by the Contractor, or by a Sub-Contractor and providing the Services. The Contractor confirms that all such persons were vetted at the Commencement Date and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

24.2 The Authority reserves the right under this Contract to refuse to admit to any premises occupied by or on behalf of the Authority any person employed or engaged by the Contractor, or by a Sub-Contractor, whose admission would be, in the opinion of the Authority, undesirable.

24.3 If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of this Contract to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Authority may reasonably require.

24.4 If and when directed by the Authority, the Contractor shall secure that any person employed or engaged by the Contractor or by a Sub-Contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 apply to him both during the term of and after the expiry or termination of this Contract.

24.5 The Contractor's representatives, engaged within the boundaries of a Government establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

24.6 If the Contractor shall fail to comply with Clause 24.2 (Contractor's Personnel) and if the Authority (whose decision shall be final and conclusive) shall decide that such failure is prejudicial to the interests of the Authority and if the Contractor does not comply with the provisions of Clause 24.2 (Contractor's Personnel) within a reasonable time of written notice so to do then the Authority may terminate this Contract in accordance with Clause 29 (Termination) provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

24.7 The decision of the Authority as to whether any person is to be refused admission to any premises occupied by or on behalf of the Authority and as to whether the Contractor has failed to comply with Clause 24.2 (Contractor's Personnel) shall be final and conclusive.

25 CONTRACTOR'S STATUS

25.1 Nothing in the Contract shall be construed to create a partnership, joint venture, agency or employer/employee relationship between the parties.

25.2 In carrying out the Services the Contractor will be acting as principal and not as the agent to the Authority. Accordingly:

- 25.2.1 The Contractor will not (and will procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority, and
- 25.2.2 Nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents.
- 25.3 Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.
- 25.4 The sub-contract shall also include a provision enabling the Authority to have the ability to directly enforce the benefit of the sub-contract under the Contracts (Rights of Third Parties) Act 1999, obligations in respect of security and secrecy, intellectual property and audit rights for the benefit of the Authority corresponding to those placed on the Contractor, but with such variations as the Authority reasonably considers necessary. The Contractor shall not include in any sub-contract any provision the effect of which would be to limit the ability of the Sub-contractor to contract directly with the Authority or a replacement provider of Services.
- 25.5 For the avoidance of doubt, in this Contract all persons engaged by the Services Provider and used under this Contract (whether permanent or temporary) will be used as part of the Services provision offered by the Service Provider. Any and all persons engaged by the Services Provider shall sign terms of engagement with the Service Provider and shall not be deemed to have an employment or co-employment relationship with the Authority. In respect of its staff and all other persons engaged by it to deliver the Services under the Contract, the Services Provider is responsible for ensuring the payment of remuneration, for making statutory deductions and for payment of all statutory contributions in respect of earnings related National Insurance and the administration of income tax (PAYE) which is applicable by law. All Parties shall adhere to all employment legislation.

26 RECOVERY OF SUMS DUE

- 26.1 Any sum which is recoverable from or payable by the Contractor may be deducted from or reduced by any sum or sums then due or which may thereafter become due to the Contractor under or in respect of the Contract or any other contract with the Authority or any other government department or the Crown.

27 LIABILITY

- 27.1 Neither party excludes or limits liability to the other party for:
 - 27.1.1 death or personal injury caused by its negligence; or
 - 27.1.2 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 27.1.3 Fraud;
 - 27.1.4 Fraudulent misrepresentation;
 - 27.1.5 Breach of Clause 15 (Confidentiality);
 - 27.1.6 Breach of Clause 16 (Intellectual Property Rights); and
 - 27.1.7 Breach of Clause 33 (Data Protection)
- 27.2 Subject always to Clause 27.1 and 27.6, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, legal costs, expenses and other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any staff on the premises, including without limitation, in respect of death or any personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor or their subcontractors.
- 27.3 The Contractor shall not be responsible for any injury, loss or damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the contract.
- 27.4 Subject always to Clause 27.1, the annual aggregate liability of either party for all Defaults resulting in direct loss including, but not limited to, direct loss or damage to the property of the other under or in connection with the Contract, and for all Defaults under this Contract shall in no event exceed [£.....] per contract year.
- 27.5 Subject to Clauses 27.1 and 27.5 (Liability), in no event shall either party be liable to the other for:
 - 27.5.1 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the party has been advised of the possibility of such losses occurring; and/or
 - 27.5.2 any direct or indirect loss of profits, business, revenue, goodwill or anticipated savings.
- 27.6 The provisions of Clause 27.2 (Liability) shall not be taken as limiting the right of either party to claim from the other party for:

- 27.6.1 additional operational and administrative costs and expenses; and/or
 - 27.6.2 any costs or expenses rendered nugatory,
 - 27.6.3 resulting directly from the Default of the other party.
- 27.7 The parties expressly agree that neither party shall be entitled to an order for specific performance to enforce any provision hereunder.
- 27.8 The parties expressly agree that should any limitation or provision contained in this Clause 27 (Liability) be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

28 INSURANCE

- 28.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period.
- 28.2 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force. The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

29 TERMINATION

- 29.1 The Authority may terminate the Contract by written notice having immediate effect if:
- 29.1.1 the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
 - 29.1.2 where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against it; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of Section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
 - 29.1.3 where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- 29.2 The Authority may terminate the Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:
- 29.2.1 the Contractor has not remedied the default to the satisfaction of the Authority within 30 days after service of written notice specifying the default and requiring it to be remedied; or
 - 29.2.2 the default is not capable of remedy; or
 - 29.2.3 the default is a fundamental breach of the contract.
- 29.3 The Authority will have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving one months' written notice to the Contractor. Termination under this provision will not affect the rights of the parties that have accrued up to the date of termination.
- 29.4 If the Authority terminates the Contract under Clause 29.2 (Termination) or terminates the provision of any part of the Services under that Clause, and then makes other arrangements for the provision of the Services, the Authority will be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Term. Where the Contract is terminated under Clause 29.2 (Termination) no further payments will be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.
- 29.5 If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Clause 29.3 (Termination), the Authority will reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor immediately uses its best endeavours, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with Sub-Contractors on the best available terms, to cancel all capital and recurring cost commitments, to reduce equipment and labour costs as appropriate, and to do any other thing reasonably required to mitigate such loss.
- 29.6 For the purposes of Clause 29.5 (Termination) the Contractor will submit within 20 working days after service of the termination notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as

a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.

- 29.7 The Authority will not be liable under Clause 20 (Manner of Providing the Services) to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total such that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.
- 29.8 The termination or expiry of this Contract will not prejudice or affect any right of action or remedy which has accrued or may thereafter accrue to either party.
- 29.9 In the event of termination of this Contract, the provisions of Clauses 7(Variation), 10 to 13 (Audit, Authority Policies and Security, Discrimination, Secrecy), 18 (Contractor Warranties), 24 Contractor's Personnel), 25 (Contractor's Status), 29.4 to 29.8 (Termination), 34 (Freedom of Information), 35 (Health and Safety Hazards), 36 (Notices), 38 (Waivers), 39 (Severability), 40 (Assignment), 42 (Conflict of Interest) and this Clause 29.9 will survive termination.

30 LOSS OF DATA

- 30.1 The Contractor acknowledges that the Authority's Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority's Data. The Contractor shall not delete or remove any notices contained within or relating to the Authority's Data.
- 30.2 The Contractor shall not store, copy, disclose, or use the Authority's Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 30.3 To the extent that Authority's Data is held and/or processed by the Contractor, the Contractor shall supply that Authority's Data to the Authority as requested by the Authority in the format specified in Section (Services Scope).
- 30.4 The Contractor shall take responsibility for preserving the integrity of the Authority's Data and preventing the corruption or loss of the Authority's Data.
- 30.5 The Contractor shall perform secure back-ups of all Authority's Data and shall ensure that up-to-date back-ups are stored off-site. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than three monthly intervals.
- 30.6 In the event that the Authority's Data is corrupted, lost or sufficiently degraded as a result of any Default by the Contractor the Authority may, in addition to any other remedies that may be available to it either under this Contract or otherwise:
- 30.6.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than one month; and/or
- 30.6.2 the Authority may itself restore or procure restoration of the Authority's Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 30.7 If at any time the Contractor suspects or has reason to believe that the Authority's Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

31 ENVIRONMENTAL REQUIREMENTS

- 31.1 The Contractor shall provide the Services and Deliverables required under the Contract in accordance with the Authority's environmental policy, which includes conserving energy, water and other resources, reducing waste and phasing out the use of ozone depleting substances and minimising the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.
- 31.2 All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

32 CORRUPT GIFTS AND PAYMENT OF COMMISSION

- 32.1 The Contractor shall neither:
- 32.1.1 Offer or give or agree to give any person employed, engaged or otherwise contracted to provide goods or services, by the crown, any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not done any act in relation to the obtaining or performance of this contract or any other agreement with the crown or for showing or forbearing to show favour or disfavour to any person in relation to this contract; nor
- 32.1.2 Enter into this Contract if in connection with it commission has been paid or agreed to be paid by the Contractor or on the Contractor's behalf or to the Contractor's knowledge to any person employed, engaged or otherwise contracted to provide goods or services, by the Crown, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Authority.
- 32.2 In the event of any breach of this Clause 32 (Corrupt Gifts And Payment Of Commission) by the Contractor or by anyone employed by the Contractor or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by the Contractor or acting on

behalf of the Contractor under the Bribery Act 2010 in relation to this or any other contract with the Crown, the Authority may summarily terminate this Contract by notice in writing to the Contractor. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and provided always that the Authority may recover from the Contractor the amount or value of any such gift, consideration or commission.

- 32.3 The decision of the Authority shall be final and conclusive in any dispute, difference or question arising in respect of:
- 32.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Contractor under Clause 32.2 (Corrupt Gifts And Payment Of Commission) in respect of any loss resulting from such termination of this Contract); or
 - 32.3.2 The right of the Authority under this Clause 32 (Corrupt Gifts And Payment Of Commission) to terminate this Contract; or
 - 32.3.3 The amount or value of any such gift, consideration or commission.

33 DATA PROTECTION

33.1 With respect to the parties' rights and obligations under this Contract, the parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor. "Data Controller", "Data Processor", "Data Subject" and "Personal Data" shall have the meaning as set out in the Data Protection Act 1998. "Process" shall also have the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing.

33.2 The Contractor shall:

- 33.2.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Authority to the Contractor during the Term);
- 33.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 33.2.3 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 33.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- 33.2.5 obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractors or Affiliates for the provision of the Services;
- 33.2.6 ensure that all Contractor's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 32 (Data Protection).
- 33.2.7 ensure that none of Contractor's personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 33.2.8 notify the Authority (within [five] Working Days) if it receives:
 - i. a request from a Data Subject to have access to that person's Personal Data; or
 - ii. a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 33.2.9 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - i. providing the Authority with full details of the complaint or request;
 - ii. complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - iii. providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - iv. providing the Authority with any information requested by the Authority;
- 33.2.10 permit the Authority or the Authority's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 10 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- 33.2.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and
- 33.2.12 not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:

- i. the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - ii. any reasonable instructions notified to it by the Authority.
- 33.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 33.4 The Contractor shall indemnify and keep the Authority fully indemnified against any financial penalties arising from or in connection with any breach by the Contractor or its Staff of any of the provisions of this Clause 33 (Data Protection), or any misuse, loss or unauthorised use or disclosure by the Contractor or its Staff of any Personal Data or sensitive personal data (as defined by the Data Protection Act 1998) relating to any person, where such misuse arises in connection with the Contractor's provision of the Services or the performance of its obligations under this Contract.

34 FREEDOM OF INFORMATION

- 34.1 The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Access to Government Information, the FOI Act and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure obligations.
- 34.2 The Contractor shall and shall procure that its sub-contractors shall:
- 34.2.1 Transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 34.2.2 Provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within [five] Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - 34.2.3 Provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOI Act or regulation 5 of the Environmental Information Regulations.
- 34.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
- 34.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 34.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 24) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOI Act, or the Environmental Information Regulations or the Services to disclose Information:-
- 34.5.1 in certain circumstances without consulting with the Contractor, or
 - 34.5.2 following consultation with the Contractor and having taken its views into account, provided always that where Clause 34.5.1 (Freedom of Information) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure
- 34.6 The Contractor shall ensure that all information s retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 34.7 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such Confidential Information or commercially sensitive information.

35 HEALTH AND SAFETY HAZARDS

- 35.1 The Contractor shall notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.
- 35.2 The Authority shall notify the Contractor of any health and safety hazards of which it is aware and which may exist or arise at the Premises and which may affect the Contractor. The Contractor shall draw these hazards to the attention of its employees and Sub-Contractors or any persons engaged by the Contractor in the performance of this Contract at the Premises.
- 35.3 The Contractor shall inform all persons engaged in the performance of this Contract at the Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.
- 35.4 Both parties shall comply with their respective obligations under The Construction (Design and Management) Regulations 2007.

36 NOTICES

36.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by fax or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the Party's representative as specified in Clause 5 (Representatives), or to such other address as the party may by notice to the other have submitted therefore, will be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

37 THIRD PARTIES

37.1 This Contract is enforceable by the original Parties to it and by their successors in title and permitted assignees. No provision of this Contract will be enforceable by any person who is not a Party to it pursuant to the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available independently of that Act.

38 WAIVER

38.1 The failure of either party to insist upon strict performance of any provision of this Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.

38.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

38.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 36 (Notices).

39. SEVERABILITY

39.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

40. ASSIGNMENT

40.1 The Contractor must not assign, sub-contract or transfer the Contract or any part share or interest in it without the Authority's prior written permission.

40.2 Notwithstanding Clause 40.1 (Assignment), the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Charges or any part thereof due to the Contractor under the Contract. Any assignment under this Clause 40.2 (Assignment) shall be subject to:

40.2.1 deduction of any sums in respect of which the Authority exercises its right of recovery under Condition 25 (Recovery of Sums Due); and

40.2.2 all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid.

41 FORCE MAJEURE

41.1 For the purposes of this Contract the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its contractors, agents or employees.

41.2 For the avoidance of doubt, both parties agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Contract.

41.3 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

41.4 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

41.5 It is expressly agreed that any failure by the Contractor to perform or any delay by the Contractor in performing its obligations under this Contract which results from any failure or delay in the performance of its obligations by any

person, firm or company with which the Contractor shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

41.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

42 CONFLICT OF INTEREST

42.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between the Parties, howsoever arising.

42.2 The Contractor shall notify the Authority immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation. The Contractor shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with the Authority with the aim of avoiding a conflict or remedy a conflict.

42.3 The Authority reserves the right to terminate this contract immediately by notice in writing and/or to take such steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of this contract. The actions of the Authority pursuant to this Article will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Authority.

42.4 In addition to its obligations under Clause 17 (Publicity), the Contractor shall:

- (a) Avoid expressing views which may prejudice the position of the Authority;
- (b) Make clear when it is expressing views on behalf of the Authority and/or the Government of the United Kingdom, and when it is expressing personal views;
- (c) Check with the Authority first if they are unsure whether expressing views might be caught by (a) and (b); and
- (d) Not carry out any acts on behalf of third parties in the course of performing the Services, without the Authority's permission.

42.5 Pursuant to Clause 42.2 (Conflict of Interest), the Authority shall have the right to require that the Contractor puts in place "Ethical Walls" and will ensure and satisfy the Authority that all information relating to the Contract and to the Services and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, contractors or agents of the Contractor and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Contractor.

42.6 In the event of a failure to maintain the "Ethical Walls" as described above arising during the course of this Contract, the Authority reserves the right to immediately terminate the Contract on giving written notice to the Contractor and to pursue the Contractor for damages.

42.7 To the extent that any of the Contractor's staff breach this Conflict of Interest Clause, the Contractor undertakes to keep the Authority fully and effectively indemnified in respect of all costs, losses and liabilities arising from any wrongful disclosure or misuse of the Confidential Information by the Contractor's staff. This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Authority may be entitled to, but for the avoidance of doubt shall be subject to the limitations of liability (including without limitation the cap on liability) set out in this Contract.

43 AUTHORITY'S PROPERTY

43.1 All Authority's Property shall remain the property of the Authority and shall be used in the performance of the Contract and for no other purpose without prior approval from the Authority.

43.2 The Contractor shall be liable for any loss of or damage to any Authority's Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or default of the Authority.

43.3 The Contractor shall not in any circumstances have a lien on any Authority's Property and shall take all steps necessary to ensure that the title of the Authority and the exclusion of any lien are brought to the attention of any third party dealing with any Authority's Property.

43.4 The Contractor shall be responsible for his own costs resulting from any failure of the Authority's Property, unless he can demonstrate that the Authority had caused undue delay in its replacement or repair.

43.5 The Contractor shall maintain all items of Authority's Property in good and serviceable condition, fair wear and tear, in accordance with the manufacturer's recommendations.

44 RESPONSIBILITY FOR EQUIPMENT

44.1 The Contractor shall use all reasonable endeavours to ensure that Equipment is kept and treated in a proper and workmanlike manner and shall maintain an inventory of the Equipment throughout the Contract. At the conclusion of the

Contract, the Contractor shall apply for instructions from the Authority for the disposal of the Equipment and shall arrange disposal in accordance with such instructions. At such time the Equipment shall be in good condition after making due allowance for fair wear and tear. Equipment lost or damaged must be reported at the time of such loss or damage and the reasons immediately explained in writing to the Authority. Where it is concluded that such loss has occurred as a result of the Contractor's breach of contract or negligence, the Contractor shall be responsible for the costs of reinstatement and the amount of such costs shall be repaid to the Authority or deducted from sums otherwise due to be paid to the Contractor at the discretion of the Authority.

44.2 From the time of purchase to the time of disposal of Equipment the Contractor shall indemnify and keep indemnified the Authority in respect of any and all claims in respect of the use or operation of the Equipment including but not limited to any claims by or on behalf of third parties.

45 DISPUTE RESOLUTION

45.1 The parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

45.2 If the dispute cannot be resolved by the parties pursuant to Clause 45.1 (Dispute Resolution) the dispute may, by agreement between the parties, be referred to mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (the "ADR Notice") to the other party to the notice requesting mediation. A copy of the ADR Notice should be sent to CEDR. The mediation will start no later than 14 days after the date of the ADR Notice.

45.3 The performance of the Services will not cease or be delayed by the reference of a dispute to mediation pursuant to Clause 45.2 (Dispute Resolution).

46 LAW

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

ATTACHMENT 3 – STATEMENT OF SERVICE REQUIREMENTS

BACKGROUND

This project aims to help the UK companies to capture business opportunities in the Japanese market, by producing Japan Cyber Security Market Intelligence toolkit. The toolkit will be shared with the UK companies via webinar, UK seminars and ongoing our work.

Although UK's expertise on cyber is well recognized in Japan, and despite intensive discussion/collaboration at government and academia levels, success in UK business has been relatively limited. Production of this toolkit would enable the UK companies to understand the current Japanese market situation and make better informed decision on whether enter the market and how to take their next steps.

Key outputs

The successful bidder should produce a Cyber Security Market Intelligence toolkit by mid February. The toolkit will:

- build on the previous one in 2016 (<http://www.exporttojapan.co.uk/reports/cyber-security-policies-and-opportunities-japan>) to help UK cyber security businesses in Japan;
- cover every aspect of what UK companies need to know in order to successfully win business in Japanese cyber security market;
- include information on Japanese cyber policies, governance, market trend and opportunities; and
- facilitate (1) the highest number of relevant UK companies to seek opportunities, and (2) to maximise the export revenue for each of those UK companies.

The successful bidder should also deliver Presentations for the webinar by end of February or March; as well as for the seminar in the UK in March. Details should be discussed and confirmed with the successful bidder.

If you have any queries, please contact APAC.Procurement@fco.gov.uk

ASSESSMENT SCORE

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

Score Key Assessment	Score	Interpretation
Excellent	5	Satisfies the requirement and demonstrates exceptional understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services. Response identifies factors that will offer potential added value, with evidence to support the response. Tenderer has fully accepted FCO standard terms and conditions of contact.
Good	4	Satisfies the requirement with minor additional benefits. Above average demonstration by the Tenderer of the understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services. Response identifies factors that will offer potential added value, with evidence to support the response.
Acceptable	3	Satisfies the requirement. Demonstration by the Tenderer of the understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services.
Minor Reservations	2	Satisfies the requirement with minor reservations. Some minor reservations of the Tenderer's understanding and proposed methodology, with limited evidence to support the response. Tenderer has accepted FCO standard terms and conditions of contract.
Serious Reservations / Non compliant	1	Satisfies the requirement with major reservations. Major reservations of the Tenderer's understanding and proposed methodology, with little or no evidence to support the response.
Unacceptable/ Non compliant	0	Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the Tenderer has the understanding or suitable methodology, with little or no evidence to support the response. Tenderer has rejected FCO standard terms and conditions of contract.
Price / Commercial	5 = most financially attractive to Authority	Score awarded on inverse percentage difference from most financially attractive offer to the Authority

EVALUATION CRITERIA

Qualification Questions	Criteria Weighting
<p>Satisfactory completion of all aspects of Qualification Envelope. This includes:</p> <p>1.1 Acceptance of FCO terms and conditions as detailed in Attachment X; Please confirm acceptance of FCO terms and conditions in the final contract, which states that <u>Agreement will be governed by and construed in accordance with English law and the Contractor irrevocably submits to the jurisdiction of the English courts</u></p> <p>1.2 Satisfactory demonstration of financial health by submitting your audited financial statement for the last 2 years. The FCO reserves the right to seek and act upon independent legal, financial or market advice to corroborate information provided or to assist in its evaluation.</p> <p>1.3 Completion of Attachment 5 – Certificate of Bona Fide Tendering</p> <p>1.4 Completion of Attachment 6 – Declaration by Tenderer</p> <p>1.5 INSURANCE: Please indicate your current level of insurance cover below:</p> <p style="padding-left: 20px;">1.5.1 Employer's Liability Insurance: £ _____</p> <p style="padding-left: 20px;">1.5.2 Public Liability Insurance: £ _____</p> <p style="padding-left: 20px;">Professional Indemnity Insurance: £ _____</p>	Mandatory

Evaluation Criteria – Quality/Technical (Questions 2.1 – 2.4)	Criteria Weighting	Evaluation Methodology
2.1 Demonstrate knowledge of Japanese Cyber Security Market	30	0 – 5 score
2.2 Demonstrate knowledge of UK Cyber Security businesses	15	0 – 5 score
2.3 Have relevant experiences of past successful projects.	10	0 – 5 score
2.4 Convincing information on how the project will be delivered, including a method and a timeline.	5	0 – 5 score
TOTAL – Quality/Technical	60	Max Score - 300
TOTAL – Pricing & Commercial	40	Max Score - 200
GRAND TOTAL EVALUATION CRITERIA	100	Max Score - 500

ATTACHMENT 4 – SCHEDULE OF PRICES AND RATES

In the cost estimate, please describe the cost drilldowns as follows:

- Produce a Cyber Security Market Intelligence toolkit by mid February
e.g. [Unit cost: an expert fee/day] x the number of people x the number of days
- Deliver a presentation for the webinar by end of February or March
The webinar will be broadcasted from the embassy, and the video will be shared with UK businesses.
e.g. [Unit cost: an expert fee]
- Deliver a presentation for the 1 day seminar in the UK in March.
e.g. [Unit cost: an expert fee/day] x 1 people x the number of days
e.g. Travel costs: UK flight+ accommodation

1. SOLE REIMBURSEMENT

The rates stated below constitute the amount payable by the Authority to the Contractor for the provision of a service detailed on Attachment. The rates shall include all costs and expenses incurred either directly or indirectly by the Contractor in providing the Services.

2. CONTRACT PRICE

This is a firm-fixed-price contract and is not subject to any adjustment on the basis of the Contractor's cost experience in performing the contract. The fixed Contract Price above shall be made up as follows:

- (a) Direct labour costs
All wages, allowances, bonuses and shift allowances paid to the Staff employed either partly or wholly to perform the Services under the Contract.
- (b) Indirect labour costs
All costs associated with those employed at 2.1(a) above covering all taxes and contributions required by law and employer's liability and insurance. All costs associated with the Contractor's standard employment benefit such as sick leave with pay, pension, health and life assurance, and training
- (c) Overheads
All contributions to Head Office incurred by the contractor. This includes management information costs, area management and account management costs, operational finance function, management/financial accounting function including banking department, information technology and specialist consultancy advice. This also includes all equipment and associated consumables, customer support including surveys and questionnaires, office accommodation and associated costs, including all risks insurance.
- (d) Management Fees and Profits
All allowances for profit.

3. **VALUE FOR MONEY**

The Contractor undertakes to make all reasonable efforts to ensure that all goods and Services purchased in support of this Contract are purchased at the best possible market price, in line with the Authority's requirements to ensure 'value for money'. For the purpose of this Contract, 'value for money' is defined as the optimum combination of whole life costs and quality to meet the Authority's requirements.

ATTACHMENT 5 - CERTIFICATE OF BONA FIDE TENDERING

1. I declare that this is a bona fide tender, intended to be competitive and that I have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person ('person' includes any persons, anybody or association, corporate or incorporate; and) except as disclosed on this Certificate under 7 below.
2. I declare that the Company is not aware of any connection with a member of the Authority's staff which could affect the outcome of the bidding process.
3. I declare that I have not done and I undertake that I will not do at any time any of the following:-
 - a) communicate to any person, including the addressee calling for the tender, the amount or approximate amount of the proposed tender;
 - b) enter into any agreement or arrangement with any other person or body that he or it shall refrain from tendering or as to the amount of any tender to be submitted;
 - c) enter into any agreement or arrangement with any other person or body that we will refrain from tendering on a future occasion;
 - d) offer or pay or agree to pay any sum of money or valuable consideration directly or indirectly to any person for doing or causing to be done in relation to any other tender for the said work any act of the kind described above;
 - e) canvass or solicit the Authority staff.
4. I understand that any instances of illegal cartels or market sharing arrangements suspected by the Authority will be referred to the Office of Fair Trading for investigation.
5. I understand that any misrepresentations may also be the subject of criminal investigation or used as a basis for civil action.
6. In this Certificate "agreement" or "arrangement" includes any transaction private or open, or collusion, formal or informal, and whether or not legally binding.
7. Disclosure: ____

Signed: _____ Name: _____ Title:

On behalf of: _____ Date: / / 2017

To: The Secretary of State for Foreign & Commonwealth Affairs
Date: / / 2017

ATTACHMENT 6 – DECLARATION BY TENDERER

1. I have examined the documents inclusive enclosed under cover of your Invitation To Tender letter dated on _____ October 2017 and have taken account of subsequent Amendments.
2. I hereby offer to enter into a Contract with the Secretary of State for Foreign & Commonwealth Affairs, as represented by the British Embassy Tokyo for a policy proposal and a research paper to realize higher market access for UK financial institutions into Japan, upon the Conditions in the proposed Contract documents set out in the RFQ Attachment 2.
3. I warrant that I have all the requisite corporate authority to sign this tender.
4. I understand that the Authority is not bound to accept the lowest or any Tender. I also understand the Authority has the right to accept only part of a Tender unless I have expressly stipulated otherwise.
5. This Tender shall remain open for acceptance by the Authority for a period of 3 months after the due date for return of tenders specified in your Invitation to Tender.
6. We acknowledge that the information set out in the Request for Quotation is confidential to the Authority and contains documentation which is subject to Crown copyright. We undertake not to copy or disseminate this information or documentation and if required by the Authority to return all such information and documentation in its possession to the Authority or else certify its destruction.

Signed:

Date:

Name:

In the capacity of:

Duly authorised to sign Tenders on behalf
of: (Name of Company)