



HM Government

# Help to Grow: Digital

Vendor terms and conditions

**HELP TO GROW.**  
**DIGITAL**



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## 1 Introduction

- 1.1 The Help to Grow: Digital Scheme is a token grant scheme which supports the purchase and adoption for eligible SMEs in the UK of certain Eligible Software Products.
- 1.2 These Terms and Conditions must be accepted by Vendors wishing to participate in the Scheme as Registered Vendors.
- 1.3 Vendors may apply to be registered with the Scheme following the registration procedures referred to in these Terms and Conditions.
- 1.4 Once accepted by the Vendor, these Terms and Conditions shall form a legally binding contract to the exclusion of any other terms that the Vendor may seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 1.5 Grant Tokens under the Scheme will be offered to SME's who meet certain eligibility requirements, and have accepted the SME Scheme Terms and Conditions.
- 1.6 BEIS will administer the Scheme initially and will then appoint a Scheme Administrator who will support BEIS in the administration of the Scheme on behalf of BEIS, which may include applying eligibility criteria and issuing Grant Tokens, provided that the applicable terms and conditions are complied with.
- 1.7 The Scheme is funded by BEIS and any payments of grant funding under the Scheme may be processed and administered by the Scheme Administrator on behalf of BEIS.

## 2 Definitions and Interpretation

- 2.1 Capitalised words and expressions used in these Terms and Conditions shall have the meanings given to them in Annex A to these Terms and Conditions.
- 2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 A reference to a party includes its successors and permitted assigns.
- 2.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 2.5 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.6 A reference to writing or written includes emails.

### 3 Vendor Eligibility and Registration

- 3.1 Vendors who meet the Vendor Eligibility Criteria must apply to BEIS (and/or the Scheme Administrator at BEIS' direction) to become Registered Vendors for the purposes of the Scheme.
- 3.2 The Vendor shall apply by following the registration procedure (as updated from time to time and available at: [www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor](http://www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor))
- 3.3 In applying to be a Registered Vendor, the Vendor confirms and warrants and undertakes:
  - 3.3.1 that it meets and will comply with the Vendor Eligibility Criteria (and as updated from time to time);
  - 3.3.2 that it accepts these Terms and Conditions; and
  - 3.3.3 that any information provided by it to BEIS (and/or the Scheme Administrator) in support of its application and ongoing eligibility is complete, true and accurate at the time it is provided.
- 3.4 The Vendor shall provide all reasonable information and assistance to BEIS (and/or the Scheme Administrator at BEIS' direction) in determining the Vendor's eligibility to become a Registered Vendor.
- 3.5 Following receipt of the Vendor's application information, BEIS (and/or the Scheme Administrator at BEIS' direction) may carry out any checks and investigations it deems reasonably necessary and shall determine at its discretion if the Vendor is eligible to become a Registered Vendor.
- 3.6 Neither BEIS nor the Scheme Administrator give any representation or warranty that any application will be accepted, or that any application will be responded to within any particular timescale.
- 3.7 The Vendor agrees and acknowledges that:
  - 3.7.1 the Vendor Eligibility Criteria may be updated from time to time and Vendor shall submit any additional information, in whatever form as reasonably requested by BEIS (and/or the Scheme Administrator) to demonstrate its continued eligibility;
  - 3.7.2 BEIS (and/or the Scheme Administrator at BEIS' direction) may undertake such checks as reasonably required to confirm ongoing eligibility of the Vendor;
  - 3.7.3 the Vendor shall notify BEIS (and/or the Scheme Administrator at BEIS' direction) as soon as reasonably practicable and in any event within 7 calendar days of any change in any information previously provided to BEIS (and/or the Scheme Administrator) to demonstrate eligibility;

3.7.4 the Vendor will comply with the relevant policies or processes mandated by BEIS (and/or the Scheme Administrator at BEIS' direction) with respect to the administration of the Scheme.

3.8 In the event that the Vendor disputes any decision taken by BEIS (and/or the Scheme Administrator at BEIS' direction) in relation to its application, it may follow the Appeals Process.

## 4 Software Eligibility

4.1 The Vendor may apply to BEIS (and/or the Scheme Administrator at BEIS' direction) for registration to the Scheme and for any Software meeting the Software Eligibility Criteria to be registered as an Eligible Software Product.

4.2 Registered Vendors shall apply by following the registration procedure (as updated from time to time and available at: [www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor](http://www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor))

4.3 In submitting any Software, the Vendor warrants that:

4.3.1 the Software meets and will comply with the Software Eligibility Criteria;

4.3.2 the Software will demonstrably meet recognisable industry standards and guidance related to cyber security as stated in the application guidance;

4.3.3 it accepts these Terms and Conditions; and

4.3.4 any information provided by it in support of such application is complete, true and accurate.

4.4 The Vendor shall provide all reasonable assistance to BEIS (and/or the Scheme Administrator at BEIS' direction) in determining Software eligibility to be an Eligible Software Product.

4.5 Following receipt of the Vendor's software application, BEIS (and/or the Scheme Administrator at BEIS' direction) shall carry out any checks and investigations it deems reasonably necessary and shall determine at its discretion, if the Software is eligible to become an Eligible Software Product.

4.6 Neither BEIS nor any Scheme Administrator give any representation or warranty that any application will be accepted, or that any application will be responded to within any particular timescale.

4.7 The Vendor agrees and acknowledges that:

4.7.1 the Software Eligibility Criteria may be updated from time to time and Vendor shall submit any additional information, in whatever form as reasonably requested by BEIS (and/or the Scheme Administrator at BEIS' direction) to demonstrate the continued eligibility of the Software; and

4.7.2 BEIS (and/or the Scheme Administrator) may undertake such checks as reasonably required to confirm ongoing eligibility of Software.

- 4.8 The Vendor shall notify BEIS (and/or the Scheme Administrator at BEIS' direction) as soon as reasonably practicable and in any event within seven (7) calendar days of any change in any information previously provided to BEIS (and/or the Scheme Administrator) to demonstrate the Software eligibility.

## 5 Help to Grow: Digital Platform

- 5.1 BEIS may make available an online platform (the "Help to Grow: Digital Platform") to publish details of Registered Vendors and Eligible Software Products to SMEs.
- 5.2 The Vendor may be permitted to access the Help to Grow: Digital Platform, in accordance with any terms and conditions published on the Help to Grow: Digital Platform from time to time.
- 5.3 The Vendor shall provide to BEIS (and/or the Scheme Administrator at BEIS' direction) for prior approval by BEIS all requested descriptions of Eligible Software Products and information about the functionality of any Eligible Software Products, for publication on the Help to Grow: Digital Platform.
- 5.4 The Vendor may submit any changes or additional information to BEIS concerning the Eligible Software Product for publication on the Help to Grow: Digital Platform, provided that any such materials shall be subject to prior written approval by BEIS (and/or the Scheme Administrator at BEIS' direction).
- 5.5 The Vendor warrants that any information or other materials provided to be published on the Help to Grow: Digital Platform:
- 5.5.1 are complete, true and accurate;
  - 5.5.2 are in compliance with any Laws and regulations and are not in any way defamatory or offensive.
- 5.6 BEIS provide no warranty or guarantee about the availability, content or functionality of the Help to Grow: Digital Platform and may administer the Scheme by alternate means.

## 6 Closure/Suspension and Removal from the Scheme

- 6.1 Neither BEIS nor the Scheme Administrator give any representation or warranty as to:
- 6.1.1 any volume or value of business resulting from participating in the Scheme;
  - 6.1.2 the amounts of grant available to SMEs;
  - 6.1.3 the credit worthiness or otherwise of SMEs.
- 6.2 BEIS may amend or close the Scheme at any time (in whole or in respect of any Vendor(s)) by providing not less than 30 days' notification to the affected Vendor(s) via the Help to Grow: Digital Platform or otherwise in writing.
- 6.3 BEIS may suspend the Scheme (in whole or in respect of any Vendor(s)) for any reason, at any time, without prior notice.

- 6.4 In the event of any change in Vendor’s eligibility status, or in the event of any breach of the Vendor Terms and Conditions or any actual or suspected fraud or misrepresentation on the part of the Vendor, BEIS may immediately either temporarily suspend or terminate the Vendor Terms and Conditions and remove the Vendor from the Scheme.
- 6.5 In the event of any change in Software eligibility status, or in the event of any breach of the Vendor Terms and Conditions or any actual or suspected fraud or misrepresentation on the part of the Vendor, BEIS may immediately either temporarily suspend or remove the Software from the Scheme.
- 6.6 The Vendor may:
- 6.6.1 by giving not less than 30 days prior written notice to BEIS (and/or the Scheme Administrator at BEIS’ direction) request to be removed from the Scheme; and/or
  - 6.6.2 by giving not less than 30 days prior written notice to BEIS (and/or the Scheme Administrator at BEIS’ direction) request to remove any Eligible Software Product from the Scheme.
- and the Vendor shall upon the expiry of such notice, cease to represent itself and/or any removed Software as being part of the Scheme and BEIS (and/or the Scheme Administrator at BEIS’ direction) may cease to issue Grant Tokens in respect of the Vendor and/or Eligible Software Product.
- 6.7 In the event of closure/suspension of the Scheme or any removal from the Scheme:
- 6.7.1 the Vendor shall continue to accept Grant Tokens issued prior to the date of closure/suspension/removal provided that the Grant Tokens are redeemed prior to the relevant Grant Token Expiry Date.
  - 6.7.2 Grant Tokens which are issued under it and redeemed prior to closure or suspension will be reimbursed save in the event of breach, fraud or misrepresentation, where Grant Tokens may not be reimbursed (and/or the clawback provisions at clause 12 may apply);
  - 6.7.3 the Vendor shall cease to represent itself (and/or any Software) and being part of the Scheme.

## 7 Changes to the Scheme

- 7.1 BEIS may update and amend these Terms and Conditions, and any other procedure, policy or criteria referred to herein by providing not less than 14 days prior notice via the Help to Grow: Digital Platform or otherwise in writing.
- 7.2 Where BEIS makes any change to the Vendor Eligibility Criteria, Software Eligibility Criteria, or amounts of funding available to any Eligible Software Product, the Vendor Terms and Conditions shall be treated as having been varied accordingly (in respect of any Grant Tokens that are issued after the changes come into effect).
- 7.3 In certain circumstances Grant Tokens may be amended or rescinded by BEIS or the Scheme Administrator in accordance with the SME Terms and Conditions. Vendors



shall co-operate with and assist BEIS (and/or the Scheme Administrator at BEIS' direction) to implement such changes.

- 7.4 Where the Vendor wishes to update the pricing and/or description of an Eligible Software Product, it shall notify BEIS (and/or the Scheme Administrator at BEIS' direction) promptly (and within seven (7) days) and the parties will work in good faith to agree any changes to the Eligible Software Product on the Help to Grow: Digital Platform.

## 8 General Vendor Obligations

- 8.1 The Vendor shall:

8.1.1 not participate in the Scheme or represent itself as being part of the Scheme unless it is Registered.

8.1.2 not pass off or advertise any software that is not a part of the Scheme as an Eligible Software Product;

8.1.3 co-operate with requests from Scheme Administrator and/or BEIS and assist with the identification and prevention of any fraudulent practices arising in connection with the Scheme;

8.1.4 provide a named person to act as an authorised representative of the Vendor in dealing with any requests from BEIS and/or Scheme Administrator;

8.1.5 provide any information, assistance or responses reasonably requested in connection with the Scheme by BEIS or the Scheme Administrator promptly and in any event within three (3) Working Days.

- 8.2 The Vendor agrees and acknowledges that BEIS (and/or the Scheme Administrator) may conduct spot checks at any time during the Vendor's registration on the Scheme to investigate:

8.2.1 any suspicion of fraudulent activity;

8.2.2 any suspicion of false representation; and

8.2.3 any suspicion of changes to the Vendor/product lists inconsistent with the Vendor Eligibility Criteria and Software Eligibility Criteria.

- 8.3 The Vendor shall provide all reasonable support and information in connection with any such spot checks.

- 8.4 The Vendor shall notify BEIS (and/or the Scheme Administrator at BEIS' direction) as soon as possible if it becomes aware of anything which might affect the eligibility of an SME.

- 8.5 The Vendor shall take out and maintain in accordance with Good Industry Practice suitable insurances in respect of any of its liabilities under these Terms and Conditions and the Software Terms and Conditions (including without limitation Product Liability Insurance, Professional Indemnity Insurance, Cyber Liability Insurance, and Employers Liability Insurance), and shall provide BIES (and/or the Scheme Administrator at BEIS'

direction) with evidence of such insurances when it applies to be Registered or upon BEIS' request. The Vendor shall retain such insurances for so long as it is Registered, and for a period of 6 years following any closure of the Scheme or termination of these Terms and Conditions.

- 8.6 The Vendor warrants that it has all necessary certifications, licenses, consents, authorisations to take part in the Scheme and to sell the Eligible Software Products and shall immediately notify BEIS (and/or the Scheme Administrator at BEIS' direction) if it ceases to hold any of the same.
- 8.7 The Vendor warrants that it is duly authorised to enter into these Terms and Conditions and an authorised signatory has either signed or indicated acceptance of these Terms and Conditions electronically.
- 8.8 The Vendor shall not make any representations about the Scheme, BEIS or the Scheme Administrator, other than those set out in any pre-agreed materials and guidance provided by BEIS (and/or the Scheme Administrator at BEIS' direction).
- 8.9 The Vendor shall have no authority to and shall not act in any way which will incur any liabilities on behalf of BEIS or the Scheme Administrator.
- 8.10 The Vendor at all times act honestly and fairly and shall not make any statement or act in any way which would bring BEIS, the Scheme or the Scheme Administrator into disrepute.
- 8.11 The Vendor shall comply with any reasonable instructions, policies and/or procedures of BEIS, the Scheme Administrator in its participation in the Scheme.
- 8.12 The Vendor shall promptly notify BEIS (and/or the Scheme Administrator at BEIS' direction) in the event that its licence for the Eligible Software Product is cancelled or terminated within the Initial Period.

## 9 Vendor Obligations to SMEs

- 9.1 The Vendor shall:
  - 9.1.1 inform SMEs that Scheme funding is separate from any other incentives offered by Vendor;
  - 9.1.2 ensure that all information provided to the SMEs in connection with the Scheme is clear and appropriate;
  - 9.1.3 not engage in any miss-selling in relation to the Scheme or make any statements which suggest or imply that the Vendor is recommended or endorsed by BEIS, government or the Scheme Administrator;
  - 9.1.4 provide clear pricing to SMEs in relation to any Eligible Software Product and ensure that any price for the Eligible Software Product offered to SMEs is equal to or lower than the price advertised on the Vendor website to other customers.
  - 9.1.5 offer the same discount/trial period and other incentives to SMEs as it advertises on the Vendor website to its other customers;

- 9.1.6 comply with all Laws in relation to its activities under the Scheme and with the SMEs;
  - 9.1.7 make Grant Token redemption available to SMEs up to the relevant Grant Token Expiry Date;
  - 9.1.8 ensure that all Eligible Software Products are supported and maintained in accordance with Good Industry Practice, and on the same terms as offered to its other customers; and
  - 9.1.9 respond to any request to purchase Eligible Software Products by an SME promptly.
- 9.2 The terms offered to SME's for the Software shall:
- 9.2.1 be compliant with all Laws and regulations (including consumer laws and regulations) and save as set out below be consistent with the terms and conditions for such Software generally offered to the market;
  - 9.2.2 be compliant with the Mandatory Scheme Conditions.
- 9.3 The Vendor agrees and acknowledges that the Grant Token shall be calculated on the basis of the Software Licence Fees (agreed with BEIS (and/or the Scheme Administrator at BEIS' direction) excluding VAT and published on the Help to Grow: Digital Platform at the time of the issue of the Grant Token. Vendors should ensure the Software Licence Fees on the Help to Grow: Digital Platform reflects a price equal to or less than the price available to the wider market and inform BEIS (and/or the Scheme Administrator at BEIS' direction) of any changes to the Software Licence Fees in accordance with clause 3.7
- 9.4 The Vendor shall not seek to increase the Software Licence Fee (as published on the Help to Grow: Digital Platform at the date on which the Grant Token is issued) during the Initial Term. This clause 9.4 shall not prohibit the Vendor from requiring additional licence fees in relation to any request from the SME to add additional users for the Eligible Software Product but the Vendor agrees and acknowledges that such additional licence fees shall reflect a price not greater than the price available to the wider market for additional users and that the Grant Token shall not apply to such additional licence fees.

## 10 Software Delivery

- 10.1 Upon receiving a request for an Eligible Software Product from an SME, the Vendor shall:
- 10.1.1 confirm the identity of the SME, validity of the Grant Token, and take reasonable steps to identify any fraudulent misuse of Grant Tokens;
  - 10.1.2 identify and notify BEIS (and/or the Scheme Administrator) if an SME is an existing customer of the Vendor for the relevant Software product;
  - 10.1.3 where fraud is reasonably suspected or where the SME is an existing customer of the Vendor for the relevant Software product, notify BEIS (and/or

the Scheme Administrator at BEIS' direction) and refuse acceptance of the Grant Token;

- 10.1.4 where the SME and Grant Token are eligible and valid, supply the Eligible Software Product in accordance with the Software Terms and Conditions, Good Industry Practice and within a similar timeline to external customers;
- 10.1.5 honour any licence free period or other incentives offered to its other customers and/or which are advertised on its website;
- 10.1.6 reduce the Software Licence Fees (excluding the value of any licence free period or other incentives offered to its other customers and/or which are advertised on its website in respect of the Eligible Software Product) in accordance with the Grant Token value.

## 11 Grant Token Reimbursement Process

- 11.1 Following delivery of Eligible Software Products, the Vendor shall:
  - 11.1.1 upload to the Help to Grow: Digital Platform all information reasonably required by BEIS (and/or the Scheme Administrator at BEIS' direction) in connection with the sale of the Eligible Software Product;
  - 11.1.2 at its option either daily, monthly or quarterly in arrears provide a consolidated invoice to BEIS (and/or the Scheme Administrator) in respect of the any Grant Tokens which has been redeemed by SMEs in respect of Eligible Software Products (including details of any free trial period);
  - 11.1.3 where a Grant Token is redeemed against a monthly subscription, the Vendor shall redeem the Grant Token value pro-rata on a monthly basis over the Initial Term (no more than 12 months) to which the Grant Token relates;
  - 11.1.4 provide all required information for redemption to Help to Grow: Digital Platform in accordance with the Grant Token reimbursement process as amended from time to time and available at: [www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor](http://www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor)
  - 11.1.5 not seek any reimbursement beyond the value of the relevant Grant Tokens issued under the Help to Grow: Digital Scheme or any VAT accruing in relation to the Eligible Software Product.
- 11.2 BEIS (and/or the Scheme Administrator at BEIS' direction) shall review the invoices submitted against its records of Grant Tokens issued and any sums which have been correctly submitted by the first calendar day of each month shall be paid by no later than the final calendar day of that month. BEIS may withhold payment of any sums which do not match its records of issued Grant Tokens.
- 11.3 Should the Vendor dispute the sums paid further to the invoicing procedure it may follow the Appeals Process.
- 11.4 The Vendor agrees and acknowledges that all payments made by BEIS (and/or the Scheme Administrator at BEIS' direction) shall be made in arrears.

## 12 Clawback terms

- 12.1 BEIS shall be entitled to a refund of any sums paid to the Vendor in connection with Grant Token redemptions which are in breach of the Vendor Terms and Conditions or are otherwise fraudulent or misrepresented invoices.
- 12.2 BEIS shall be entitled to a refund of any sums paid to the Vendor in connection with Grant Token redemptions for Eligible Software which are subsequently cancelled within the Initial Period by an SME in accordance with the Software Terms and Conditions. The Vendor shall within 3 Working Days of such cancellation notify BEIS (or the Scheme Administrator at BEIS' direction) and shall issue such refund to BEIS in respect of the cancelled period (or the Scheme Administrator at BEIS' direction) promptly and in any event within 30 calendar days of such notification.
- 12.3 Any such refunds shall be without prejudice to any other rights or remedies available to BEIS in the case of breach of the Vendor Terms and Conditions, fraud or misrepresentation.
- 12.4 BEIS (and/or the Scheme Administrator) will notify the Vendor immediately in the event that it suspends or rescinds a Grant Token due to SME fraudulent activity or breach of the SME Scheme Terms and Conditions, and the Vendor shall upon receiving such notice decline to redeem any such Grant Tokens from the applicable SME. In the event that the Vendor subsequently redeems such a Grant Token it agrees and acknowledges that BEIS may decline to reimburse such Grant Token value.
- 12.5 In the event that an SME seeks to redeem a Grant Token fraudulently or otherwise in breach of the SME Scheme Terms and Conditions then provided that the Vendor has not received notice in accordance with clause 12.4 above, then provided that the Vendor has otherwise complied with these Terms and Conditions then the Vendor may submit an invoice to BEIS (or the Scheme Administrator at BEIS' direction) in accordance with these Terms and Conditions.
- 12.6 Any rights to recover sums paid to the Vendor as described in this clause 12 shall survive the termination of the Vendor Terms and Conditions or cancellation and/or suspension of Scheme.

## 13 Complaints Procedure

- 13.1 The Vendor shall comply with the Complaints Procedure.
- 13.2 The Vendor shall at its own cost provide all reasonable information and assistance to BEIS (and/or the Scheme Administrator) in its handling of any complaint from any SME and agrees and acknowledges that neither BEIS nor the Scheme Administrator shall have any liability or responsibility in respect of any complaint raised by an SME in connection with the Software Terms and Conditions or the Eligible Software Product (which the Vendor shall handle in accordance with Good Industry Practice and any Law).

## 14 IPR

- 14.1 Save as set out in these Terms and Conditions, neither BEIS, the Scheme Administrator nor the Vendor, shall receive any rights, title or interest in the Intellectual Property Rights of the other by participating in the Scheme.
- 14.2 The Vendor shall not use any name, logo, trade mark or other Intellectual Property Rights of BEIS, the Help to Grow: Digital Brand or the Scheme Administrator, without the prior written consent of BEIS (or where applicable the Scheme Administrator at BEIS' direction) and subject to such reasonable terms as BEIS and/or the Scheme Administrator may require for such use.
- 14.3 The Vendor hereby grants to BEIS and Scheme Administrator a royalty-free, sub-licensable and non-exclusive licence to use applicable names and logos relating to the Vendor and any Eligible Software Product, for the term of these Terms and Conditions for the purposes of the administration of the Scheme.

## 15 Records and Audit

- 15.1 The Vendor shall keep Relevant Records for at least 6 years following delivery to an SME of any Eligible Software Product.
- 15.2 The Vendor will allow Audit Agents of BEIS and/or the Scheme Administrator at BEIS' direction to take copies and audit Relevant Records.

## 16 Data Protection

- 16.1 The Vendor shall be responsible for ensuring compliance with Data Protection Legislation and shall ensure that its Software Terms and Conditions are compliant with respect to any personal data it collects from SMEs.
- 16.2 The Vendor shall indemnify BEIS and/or the Scheme Administrator for any losses suffered from a data breach or breach of Data Protection Legislation on the part of the Vendor.

## 17 Confidentiality

- 17.1 For the purposes of this clause 16.1, the term "Disclosing Party" shall mean a party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the party which receives or obtains directly or indirectly Confidential Information.
- 17.2 The Recipient shall:
- 17.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - 17.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in these Terms and Conditions or without obtaining the owner's prior written consent;

- 17.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under these Terms and Conditions; and
  - 17.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 17.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party:
- 17.3.1 where the Recipient is required to disclose the Confidential Information by Law, provided that clause 18 (FOIA and EIRs) shall apply to disclosures required under the FOIA or the EIRs;
  - 17.3.2 to staff who are directly involved in the provision of the Scheme and need to know the Confidential Information to enable performance of the Scheme;
  - 17.3.3 to its auditors; and
  - 17.3.4 to its professional advisers for the purposes of obtaining advice in relation to the Scheme.
  - 17.3.5 where the need for such disclosure arises out of or in connection with:
    - (i) any legal challenge or potential legal challenge against BEIS arising out of or in connection with the Scheme;
    - (ii) the examination and certification of BEIS' accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which SMEs are making use of any Eligible Software Product provided under the Scheme; or
    - (iii) the conduct of a central government body review in respect of the Scheme; or
    - (iv) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

## 18 FOIA and EIRs

- 18.1 The Vendor acknowledges that BEIS is subject to the requirements of the FOIA and the EIRs. The Vendor shall:
- 18.1.1 provide all necessary assistance and cooperation as reasonably requested by BEIS to enable the BEIS to comply with its obligations under the FOIA and EIRs;
  - 18.1.2 transfer to BEIS all requests for information relating to the FOIA or EIRs with respect to the Scheme that it receives as soon as practicable and in any event

within five (5) days of receipt (or such other period as BEIS may reasonably specify);

18.1.3 provide BEIS with a copy of all information belonging to BEIS requested in the request for information relating to the FOIA or EIRs, which is in its possession or control, in the form that BEIS requires within ten (10) days (or such other period as BEIS may reasonably specify) of BEIS' request for such Information; and

18.1.4 not respond directly to a request for information relating to the FOIA or EIRs, unless authorised in writing to do so by BEIS.

18.2 The Vendor acknowledges that BEIS may be required under the FOIA and EIRs to disclose information (including Confidential Information) without consulting or obtaining consent from the Vendor.

18.3 BEIS shall take reasonable steps to notify the Vendor of a request for information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in these Terms and Conditions) BEIS shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## 19 Limitation of Liability

19.1 BEIS and the Scheme Administrator shall have no liability whatsoever for any direct, indirect or consequential losses, loss of business, loss of sales, loss of profit and loss of goodwill arising out of or in connection with the Vendor's participation in the Scheme.

19.2 In particular and without limitation, BEIS and the Scheme Administrator shall have no liability for any loss or damage incurred as a result of:

19.2.1 any refusal or delay in the acceptance of the Vendor or Software as a Registered Vendor or Eligible Software Product;

19.2.2 any refusal or delay in the issuing of a Grant Token to an SME;

19.2.3 any cancellation, suspension or removal of the Scheme or any Grant Token;

19.2.4 any other matter beyond their reasonable control.

19.3 BEIS and the Scheme Administrator shall have no liability to the Vendor for any loss or damage incurred in the event that due to an action or default of the SME or a change in the SME's circumstances the Grant Token ceases to be valid.

19.4 BEIS and the Scheme Administrator have no liability whatsoever in connection with:

19.4.1 the provision of the Eligible Software Products by the Vendor;

19.4.2 the receipt or use of the Eligible Software Products by any SME;



- 19.4.3 the payment of any licence fees (other than in respect of Grant Token reimbursement);
- 19.4.4 any other terms and conditions of the Software Terms and Conditions.
- 19.5 BEIS shall not be in breach of these Terms and Conditions for any delay or failure in performing its obligations under those Terms and Conditions where such delay or failure is caused by events beyond the reasonable control of BEIS (and/or the Scheme Administrator).
- 19.6 Nothing in these Terms and Conditions will have the effect of excluding or limiting the liability of the Scheme Administrator or BEIS for death or personal injury caused by (respectively) the negligence of the Scheme Administrator or BEIS or (respectively) any fraud or fraudulent misrepresentation by the Scheme Administrator or BEIS, or any other matter which, by Law, may not be excluded or limited.
- 19.7 Subject to and without prejudice to clauses 19.1 to 19.6, the total aggregate liability of BEIS and any Scheme Administrator in respect of any loss or damage incurred by the Vendor under or in connection with these Terms and Conditions and the Vendor's participation in the Scheme shall in no event exceed a sum equal to the 100% of the value of the Grant Tokens actually reimbursed by BEIS to the Vendor in the Initial Term.

## 20 General

- 20.1 Prevention of bribery. The Vendor shall ensure that while it a member of the Scheme it does not commit a Prohibited Act.
- 20.2 Payment of Sub-contractors. Where the Vendor enters into a sub-contract for the provision of Eligible Software Products, the Vendor shall include in that sub-contract provisions to ensure payment of any sums due under such sub-contract no later than a period of 30 days from the date on which the Vendor has determined that an invoice is valid and undisputed.
- 20.3 Health and Safety. The Vendor shall perform its obligations under these Terms and Conditions in accordance with all applicable Law regarding health and safety and shall notify BEIS or the Scheme Administrator as soon as practicable after becoming aware of any defects in Eligible Software Products.
- 20.4 Force Majeure:
  - 20.4.1 Neither party shall be in breach of these Terms and Conditions nor liable for delay in performing, or failure to perform, any of its obligations under these Terms and Conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for one (1) month, the party not affected may withdraw from the Scheme by giving one (1) month' written notice to the affected party.
- 20.5 Transfer:

- 20.5.1 BEIS may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Terms and Conditions.
- 20.5.2 The Vendor may not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Terms and Conditions without the prior written consent of BEIS.
- 20.6 Entire agreement. These Terms and Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.7 Waiver. No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.8 Severance. If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these Terms and Conditions. If any provision of these Terms and Conditions is deemed deleted under this clause 20.1 the Scheme Administrator or BEIS shall provide replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.9 Notices. Any notice given to a party under or in connection with these Terms and Conditions shall be in writing and shall be delivered by the contact name and contact address for the parties set out in the registration application for the Scheme.
- 20.10 Third party rights. Unless it expressly states otherwise, these Terms and Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 20.11 Jurisdiction. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and Conditions or its subject matter or formation of a contract.
- 20.12 Governing law. These Terms and Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the Law of England and Wales.

## Annex 1 – Defined Terms

“**Appeals Process**” means the appeals process as amended from time to time and set out at: [www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor](http://www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor)

“**Audit Agents**” means:

- a) BEIS’ internal and external auditors.
- b) BEIS’ statutory or regulatory auditors.
- c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office.
- d) HM Treasury or the Cabinet Office.
- e) any party formally appointed by BEIS to carry out audit or similar review functions.
- f) successors or assigns of any of the above.

“**BEIS**” means the Secretary of State for Business, Energy and Industrial Strategy;

“**Complaints Procedure**” means the complaints procedure as amended from time to time and set out at: [www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor](http://www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor)

“**Confidential Information**” means all confidential information (however recorded or preserved) disclosed by a party or its representatives to the other party and that party's representatives in connection with the Scheme, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out the Scheme;
- c) personal data as defined by Data Protection Legislation; and
- d) any commercially sensitive information which either party has indicated that, if disclosed by the other party, would cause significant commercial disadvantage or material financial loss;

“**Data Protection Legislation**” means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party;

“**Eligible Software Product**” means Software which has been approved by BEIS as meeting the Software Eligibility Criteria in accordance with these Terms and Conditions;

“**EIR**” means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**“FOIA”** means the Freedom of Information Act 2000, and any subordinate legislation made under the Act 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 legislation;

**“Good Industry Practice”** means the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of software similar to the Eligible Software Products;

**“Grant Token”** means the grant token issued to a SME by the Scheme Administrator by way of the offer of a particular amount of grant funding for the purchase of Eligible Software Products;

**“Grant Token Expiry Date”** means the date of expiry specified by BEIS or the Scheme Administrator or stated on the Token;

**“Help to Grow: Digital Platform”** shall be as described in clause 5 of these Terms and Conditions;

**“Initial Period”** means the initial term for the Software Terms and Conditions to which the Grant Token relates which shall be unless specified otherwise on the Help to Grow: Digital Platform (or elsewhere), a period of 12 months (excluding any free trial period but including any discount period);

**“Intellectual Property Rights”** means (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in confidential information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;

**“Law”** means any legal provision the Supplier must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, whether in the UK or elsewhere, with which the Vendor is bound to comply;

**“Mandatory Scheme Conditions”** means the following (as amended from time to time):

- a) the Software Terms and Conditions must be compliant with all applicable Laws;
- b) if the Software Terms and Conditions are entered into before the SME has been issued with a Grant Token, any obligation on the SME to proceed with the purchase of the Eligible Software Product or to payment to the Vendor must be strictly conditional on a Grant Token being issued which covers the Eligible Software Product and identifies the Vendor as the Registered Vendor who will be providing the Eligible Software Product;
- c) the Software Terms and Conditions must provide that if at any time prior to delivery of the Eligible Software Product, the Vendor ceases to be Registered or the Eligible Software Product ceases to be eligible, the SME will have a right to cancel the contract on a no liability basis (such that the SME is not required to make any payment to the Vendor in respect of the relevant Eligible Software Product) and provide for the return of any deposit or part payment made by the SME in respect of the Eligible Software Product;

- d) the Software Terms and Conditions must provide that the SME is not required to redeem its Grant Token unless and until, prior to the relevant Grant Token Expiry Date, the Grant Token has become redeemable in accordance with the SME Terms and Conditions;
- e) the Software Terms and Conditions must provide that if any Grant Token expires before its redemption or is cancelled and/or payment of any grant funding in connection with the Grant Token is withheld or clawed-back, in each case for any reason other than due to a SME default (as defined in the following paragraph), the risk of that expiry, cancellation, withholding or clawback is to be borne by the Vendor alone and the SME will not be required to make any additional payment to the Vendor in respect of the resulting shortfall in what the Vendor will have been paid for the Eligible Software Product.
- f) for these purposes, a SME default means any of the following: (i) a breach of the Software Terms and Conditions and/or SME Terms and Conditions by the SME; (iii) any fraud by the SME; (iv) a failure on the part of the SME, within a the specified period on the Grant Token after the Grant Token has become redeemable, to take the steps the SME needs to take under the SME Terms and Conditions in order to redeem the Grant Token;
- g) the Software Terms and Conditions must provide that, except where a SME default (as defined above) has caused the SME's Grant Token to be cancelled and/or payment of the grant funding covered by that Grant Token to be rescinded, the SME will not be required to make any payment to the Vendor (whether before or after delivery of Eligible Software Products) in respect of the relevant costs covered by the value of the Grant Token which were, or were due to be, covered by the relevant grant funding.

**“Prohibited Act”** means

- a) to directly or indirectly offer, promise or give any person working for or engaged by BEIS a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Scheme;
- c) an offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; (iii) of defrauding, attempting to defraud or conspiring to defraud BEIS (including offences by the Vendor under Part 3 of the Criminal Finances Act 2017);
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

**“Scheme”** means the **“Help to Grow: Digital”** scheme established by BEIS to support the purchase and adoption of Eligible Software Products by SMEs;

**“Scheme Administrator”** means [TBC], being the contractor appointed by BEIS to administer the Scheme;

**“SME”** means an organisation meeting the SME Eligibility Criteria.

**“SME Eligibility Criteria”** means the requirements in place from time to time and specified at [www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor](http://www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor), being the requirements which a SME must meet in order to be eligible to apply for and receive a Grant Token;

**“SME Terms and Conditions”** means the relevant terms and conditions which apply to SMEs under the Scheme from time to time;

**“Software”** any Vendor software product which the Vendor wishes to make available to SMEs in accordance with the Scheme as an Eligible Software Product;

**“Software Eligibility Criteria”** means the requirements in place from time to time and specified at [www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor](http://www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor), being the product criteria and any other requirements which a Vendor must demonstrate are met by Software in order to be deemed an Eligible Software Product;

**“Software Terms and Conditions”** means the terms and conditions for the licence and use of an Eligible Software Product, meeting the Mandatory Scheme Conditions and which shall be entered into directly between the Vendor and the SME;

**“Relevant Records”** means complete and accurate financial and non-financial information which is sufficient to enable BEIS to verify Grant Tokens already paid or payable and forecasts to be paid during the remainder of the Initial Period, including details and all assumptions relating to Eligible Software Products prices (including any licence free period, trial period or other incentives offered to SMEs);

**“Registered”**(and related expressions such as **“Registration”**) refers to the process administered by the Scheme Administrator whereby an Vendor may, following an application made to the Scheme Administrator, be registered by the Scheme Administrator for the purposes of being permitted to participate in the Scheme;

**“Registered Vendor”** means any Vendor meeting the Vendor Eligibility Criteria, which has been successfully Registered to participate in the Scheme.

**“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

**“Vendor”** means the sole trader, company or other organisation who wishes to participate as a Registered Vendor in the Scheme. Where any such sole trader, company or other organisation applies to BEIS to be Registered and/or is Registered, references to the “Vendor” in these Terms and Conditions will (unless the context otherwise requires) be treated as applying to the particular organisation which has made that application;

**“Vendor Eligibility Criteria”** means the requirements in place from time to time and specified at [www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor](http://www.gov.uk/guidance/help-to-grow-digital-apply-to-become-a-vendor), being the requirements which a Vendor must meet in order to be eligible to participate in the Scheme as a Registered Vendor;

**“Vendor Terms and Conditions”** means these terms and conditions entered into between BEIS and any Vendor wishing to take part in the Scheme;

**“Working Day”** any day other than a Saturday, Sunday or public holiday in England and Wales;

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[www.gov.uk/government/publications/help-to-grow-digital-vendor-application-documents](https://www.gov.uk/government/publications/help-to-grow-digital-vendor-application-documents)

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