



HM Government

# Help to Grow: Digital

Heads of Terms for provider contract for one-to-one advice

Without prejudice and subject to contract

25 July 2022

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



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# Heads of Terms

## Without prejudice and subject to contract

### Background

- (A) BEIS is seeking to contract with existing organisations who act as marketplaces for bespoke (free or paid-for) one-to-one advice for SMEs as part of the Help to Grow: Digital scheme (HtG: D). The aim is to test and deliver a one-to-one pilot service that supports SMEs to successfully adopt productivity boosting digital technology.
- (B) The one-to-one advice offering is not intended to provide SMEs with general business advice. The focus of the advice should only be on digital technology adoption.
- (C) Providers will not be expected to provide advice services directly but instead function as a marketplace/platform for Advisors to offer their services to SMEs. BEIS is not intending to provide funding or payments to Providers. Where this is a paid for advice service BEIS will fund eligible costs of up to 50%, up to a maximum value of £5,000 per SME.
- (D) Selected Providers will be expected to make it easy for SMEs to connect with Advisors relevant to HTG: D.
- (E) Selected Providers may be required to provide the marketplace/platform for Advisors to display their services to SMEs both through electronic or digital means; and through directories or hardcopy catalogues.

### Key terms

#### 1. Defined terms:

<b>Advisor(s)</b>	means persons or organisations that meet the Advisor Eligibility Criteria, offering free or paid for advice to SMEs through the Catalogue.
<b>Advisor Eligibility Criteria</b>	means the objective criteria published by BEIS for Advisors wishing to join the Scheme from time to time.
<b>BEIS</b>	is the Department for Business, Energy and Industrial Strategy.
<b>Catalogue</b>	means the Provider's list of Advisors and their Free or Paid Services, including the costs of Paid Services and any other information which Advisors are required to provide to SMEs under the Mandatory Scheme Conditions. This can be online or offline.

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<b>Cyber Essentials Certification</b>	means certification under the Cyber Essentials scheme operated by the National Cyber Security Centre.
<b>Data Protection Legislation</b>	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 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
<b>Eligible SMEs</b>	means SMEs that are eligible for the Paid Services.
<b>Free Service(s)</b>	means Services that SMEs can obtain from Advisors, which are free of any charges or fees.
<b>HtG: D scheme or HtG: D</b>	means the Help to Grow: Digital scheme hosted by BEIS here: <a href="https://www.gov.uk/business-finance-support/help-to-grow-digital-uk">https://www.gov.uk/business-finance-support/help-to-grow-digital-uk</a> .
<b>Landing Pages</b>	means the website pages on the online Platform, which will be first visited by SMEs wishing to access the online Platform.
<b>Mandatory Scheme Conditions</b>	means the mandatory terms and conditions which BEIS require Providers to impose on Advisors or SMEs admitted to the Scheme.
<b>Paid Service(s)</b>	means the Services that Eligible SMEs can obtain from Advisors, which the SME is required to pay for, which may or may not be subsidised by BEIS.
<b>Platform</b>	means the Provider's marketplace platform which will host the Services for SMEs as part of the Scheme. This can be online or offline.
<b>Personal Data</b>	as defined in Data Protection Legislation.
<b>Provider Eligibility Criteria</b>	means the objective criteria published by BEIS for Providers wishing to join the Scheme from time to time.
<b>Providers</b>	means organisations who act as marketplaces for bespoke one to one advice for SMEs.
<b>Scheme</b>	means the Help to Grow: Digital scheme for one-to-one advice , displayed in the Catalogue or on the Platform.
<b>Services</b>	means advisory services for the successful adoption of productivity boosting digital technology by SMEs.

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<b>Selected Providers</b>	means Providers who meet the Provider Eligibility Criteria.
<b>SMEs</b>	means small and medium-sized enterprises eligible for the Scheme.
<b>SME Eligibility Criteria</b>	means the objective criteria published by BEIS for SMEs wishing to receive Paid Services.
<b>UK GDPR</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
<b>Working Day(s)</b>	means Monday to Friday, excluding any public holidays in England and Wales.

## Nature of Agreement and Contract Formation

2. These heads of terms are not exhaustive and are not intended to be legally binding between BEIS and Providers. These heads of terms will form the basis of the terms and conditions to be accepted by Providers wishing to participate in the Scheme.
3. The Provider Contract is intended to mirror these heads of terms and will be a legally binding agreement between each Provider and BEIS. The Provider Contract must be executed by duly authorised representatives of each party.
4. Until such time as the Provider Contract is executed, the Provider's participation in the Scheme will be at risk and any dispute in relation to the operation of the Scheme will be decided by BEIS in its absolute discretion.

## Application for Registration and Appeals Process

5. Providers will be selected through a public call for applications. Objective criteria and requirements for Providers will be published with the application advert.
6. BEIS will set up a panel to assess the applications based on the published criteria. BEIS reserve the right to cancel the application process at any time, to award to some organisations or and not award to any or all of the organisations that bid.
7. BEIS will aim to review all applications and inform applicants of the outcome within 4 weeks of the application window closing. Successful applicants will be onboarded and will be required to execute a formal contract which mirrors these head of terms with BEIS.
8. Unsuccessful applicants will have the right to appeal BEIS' decision within 10 Working Days.

## Provider Obligations

9. Providers will give SMEs easy access to Advisors that are eligible for the HtG: D scheme, through a Platform approved by BEIS.

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10. Where appropriate, Providers will provide an up-to-date, signposting to the HtG: D scheme, to give SMEs access to the Platform and will display Services from Advisors on the Platform. For online services, Providers will create Landing Pages which will be approved by BEIS and will be created collaboratively by the Providers with input from BEIS in accordance with the Mandatory Scheme Conditions.
  11. Providers will provide information to support SMEs to understand the skills, knowledge and quality of the Service offered (e.g. list of skills, services, customer reviews and ratings). SMEs must be able to select what they are interested in and preview the Services on offer through the Catalogue or on the Platform.
  12. Providers will provide transparent pricing information that is visible to SMEs prior to their purchase of any Paid Services.
  13. Providers will be responsible for entering into appropriate legal arrangements with Advisors and SMEs to enable their use of the Catalogue or the Platform in accordance with the Mandatory Scheme Conditions, the Advisor Eligibility Criteria and the SME Eligibility Criteria respectively.
  14. Providers may be responsible for some aspects of the vetting and assessing Advisors against the Advisor Eligibility Criteria. However BEIS may carry out sanctions screening, credit and fraud checks on Advisors eligible to be paid for the Paid Services.
  15. Providers will need to have an established complaints and appeals process for handling SME and BEIS complaints in relation to poor Advisor conduct or Advisor underperformance issues and will be responsible for delisting Advisors from the Scheme who fall foul of the law or the Advisor Eligibility Criteria. BEIS will only reimburse Advisors for Paid Services that continue to meet the Advisor Eligibility Criteria at the time the Paid Services are delivered to the eligible SMEs.
  16. SMEs should be able to access Paid Services at their full prices, at their own cost.

## BEIS Obligations

17. SMEs that want a Paid Service will be able to apply to BEIS for a grant token. If eligible, SMEs will receive a discount of up to 50% on the Paid Services of the Advisor they choose, up to a maximum value of £5,000. BEIS intend to reimburse Advisors directly for eligible costs.
18. BEIS will publish SME Eligibility Criteria and carry out the assessment of SMEs for the purposes of the Paid Services only.
19. BEIS will be responsible for complaints from SMEs or Advisors in relation to the operation of the grant token for the Paid Services.

## Use of the platform and the catalogue

20. Providers are not permitted to use the Platform for the purposes of third-party advertising or to generate any advertising revenue without the prior consent of BEIS.
21. BEIS reserves the right to request information from Providers on the revenues they generate from the Scheme and to require Providers to take measure to limit excess

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profits in accordance with strategic objectives of the Scheme (set by BEIS) and subsidy control legislation.

22. Providers will ensure that the Catalogue or the Landing Pages are user friendly and that any materials or information on the Platform or in the Catalogue relating to the Scheme or to BEIS or HtG: D (including the use of names or logos) are accurate, comply with all applicable laws and do not harm the reputation of BEIS.
23. Providers shall use reasonable endeavours to maintain access to the Platform or the Catalogue for SMEs during normal working hours and shall carry out any maintenance that removes access for SMEs, outside of normal working hours.

## Changes to the Scheme

24. BEIS reserves the right to amend, vary, revoke or replace the following at any time and without prior notice to Providers:
  - 24.1 Provider Eligibility Criteria;
  - 24.2 Advisor Eligibility Criteria;
  - 24.3 SME Eligibility Criteria; and
  - 24.4 value of SME grant token for Paid Services and method of payment.
25. Where changes to the items listed in clause 24 above negatively impact the existing Providers, BEIS will seek to consult with Providers to ascertain their views and shall have due regard to those views in implementing any changes to the items listed in clause 24.

## Record Keeping and Reporting Requirements

26. The Catalogue or the Landing Pages should promote the Scheme and Providers must be able to track the SME journey from first entry to the completion of the Services.
27. Providers will be required to work alongside BEIS to capture key data for the Scheme. BEIS may use a third-party evaluation partner to assess the process and impact of the Scheme. Providers will need to share their data with both BEIS and the evaluation partner (if appointed).
28. Providers will track data on SME visitors to the Platform or their use of the Catalogue that come from the Scheme. BEIS will require reporting from Providers on the number of SMEs that:
  - 28.1 use the Catalogue or visit the Platform (or the Landing Pages);
  - 28.2 select an Advisor; and
  - 28.3 successfully receive Free Services or Paid Services, with sectoral and size breakdowns.

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29. Providers will be required to implement evaluation exercises such as delivering surveys and user questionnaires and will need to share feedback and obtain volunteers for interviews with BEIS or it's the evaluation partner (if appointed).
  30. The Provider will comply with Data Protection Legislation and maintain Cyber Essentials Certification to protect Personal Data and BEIS data. Providers will put into place appropriate data sharing agreements and privacy notices ahead of the launch of the Scheme.

## Liability, Warranties and Insurance

31. BEIS will not be liable for the performance of the Free Services or the Paid Services, the content of advice, or for consequences of advice provided to SMEs by Advisors or for any content or resources (such as e-seminars, workshops etc), or for consequences of using the Services on the Platform or in the Catalogue.
32. BEIS 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 Provider's participation in the Scheme.
33. BEIS does not give any representation or warranty to Providers as to:
  - 33.1 any revenue, volume or value of business resulting from the Provider's participating in the Scheme; or
  - 33.2 the value of grant tokens or amounts of grant available to SMEs purchasing Paid Services.
34. The Provider warrants that it has all necessary certifications, licenses, consents, authorisations to take part in the Schemes and shall immediately notify BEIS if it ceases to hold any of the same.
35. The Providers must be suitably insured in accordance with the law and to meet their potential liabilities to Advisors and SMEs using the Platform or the Catalogue.

## Cancellation of the Scheme

36. BEIS may amend, suspend or close the Scheme (in part or whole) at any time by providing not less than 48 hours notification to Providers.
37. In the event of any change in Advisor or SME eligibility status, or in the event of any breach of the terms and conditions imposed on Advisors or SMEs by BEIS or any actual or suspected fraud or misrepresentation on the part of Advisors or SMEs, BEIS may immediately:
  - 37.1 temporarily suspend Advisors or SMEs access to the Scheme; or
  - 37.2 terminate the Advisors or SMEs participation in the Scheme; and
  - 37.3 require the Provider to remove the Advisors or SMEs from the Catalogue.



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## Termination of the Provider Contract

38. Providers may give 30 days prior written notice to BEIS to end their participation in the Scheme.
39. BEIS may give 30 days prior written notice to Providers to end their participation in the Scheme.
40. Both parties shall complete any outstanding contractual obligations following the service of a notice to terminate and termination of the Provider Contract to allow SMEs and Advisors to complete any incomplete transactions for the Services.

## Intellectual Property Rights

41. Providers will be granted a royalty-free licence to use the BEIS Scheme logo on the Catalogue or the Landing Pages.
42. Providers will grant BEIS a royalty-free licence to use their brand logos on the HtG: D website for the purpose of signposting the Scheme.

## Miscellaneous

43. Boiler plate standard clauses suitable for government contracts will be included in the Provider Contract as follows:
  - 43.1 **Freedom of Information & Confidentiality** - standard Freedom of Information Act & Environmental Information Regulations provisions and standard mutual confidentiality undertakings.
  - 43.2 **Dispute Resolution** – by authorised reps and escalation to CEDR process if unresolved.
  - 43.3 **Termination for Breach** – without notice and with immediate effect in scenarios to include: material breach by Providers; irredeemable or persistent breach; insolvency; prohibited acts; force majeure and unauthorised change of control.
  - 43.4 **Consequences of termination** – cease to use HtG: D and BEIS IPRs and logos.
  - 43.5 **Prevention of bribery** – breach of Bribery legislation and other prohibited acts that could bring BEIS into disrepute.
  - 43.6 **Subcontracting and payment of Sub-contractors** - within 30 days in line with government policy.
  - 43.7 **Force Majeure** – no breach by either party and standard FM events definition.
  - 43.8 **Transfer and assignment** – not without BEIS' prior written consent.
  - 43.9 **Variation** – mutual consent of the parties and to be evidenced in writing.

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- 43.10 **Entire Agreement** – standard clause.
  - 43.11 **Waiver** – standard clause.
  - 43.12 **Severance** – standard clause.
  - 43.13 **Notices** – by email and within business hours.
  - 43.14 **Third Party Rights** – standard exclusion clause
  - 43.15 **Agency or partnership** - standard exclusion clause
  - 43.16 **Counterpart & electronic signature** – standard clause for quicker execution of the contract.
  - 43.17 **Jurisdiction and Governing Laws** – laws of England and Wales and under the exclusive jurisdiction of the courts of England and Wales.

## Mandatory Scheme Conditions

- 44. Mandatory Scheme Conditions likely to be imposed by BEIS for inclusion in the agreements made by the Providers with Advisors or imposed on the SMEs to include (non-exhaustive list):
  - 44.1 compliance with all applicable laws and good industry practice and standards in relation to the delivery of Services;
  - 44.2 Catalogue specifications – to meet accessibility requirements and BEIS public sector equality duties;
  - 44.3 Landing Pages of the Platform specifications - to meet accessibility requirements and BEIS public sector equality duties;
  - 44.4 specific checks on Advisors in accordance with the Advisor Eligibility Criteria;
  - 44.5 provision of a free, no obligation advice session to allow SMEs to determine whether an Advisor meets their needs and decide whether to proceed with their Paid service or speak to another Advisor;
  - 44.6 obligations to comply with consumer protection laws (if applicable);
  - 44.7 fair and reasonable cancellation policies and complaints procedures applicable to SMEs;
  - 44.8 pass down of data gathering and data sharing obligations in the Provider Contract to Advisors and SMEs; and
  - 44.9 provisions of privacy notices that are compliant with Data Protection Legislation to Advisors and SMEs.

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