

**APPENDIX 3 – OBSERVATIONS TO THE CONTRACT
TENDER FOR THE PROVISION OF DPO AS A SERVICE**

To be returned by **Noon 11th October 2021**

Tender for: **DPO as a Service**

Tender Ref: **GoJ/2021/594**

The GoJ has issued its standard Terms and Conditions, which shall apply to services procured under this process. Tenderers are invited to provide any observations they may have in relation to these standard terms during the Tender Period. The Government shall review any and all observations received and may issue an amendment to its Standard Terms and Conditions in accordance with the Tender Timetable. The Government is not obliged to accept any Observations to the Contract.

Clause Number/Schedule Reference	Observation/Comments
GENERAL	The terms and conditions are template (for services) and not bespoke to the DPOaaS service. Matters specific to the nature of the role to be considered and included (and the Terms and Conditions amended accordingly), primarily the statutory obligations imposed on the DPO and the support required from the Authority
Definition of "Default"	Suggest this be amended to reference <u>material</u> breaches of the obligations of either party (currently refers to any breach)
"Monitoring Schedule"	Presumably, not applicable?
Definition of "Quality Standards"	As none such for DPO, suggest it be amended as follows (insertion in red); - <p style="text-align: center;">"Quality Standards" means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, and, in the absence of any such published standards, those quality standards that a skilled and experienced operator engaged in the same type of industry or business as the Contractor would reasonably and ordinarily be expected to comply as supplemented by the Specification.</p>

Clause Number/Schedule Reference	Observation/Comments
11.3	While appreciating that service delivery must be as contracted, oversight of this must be balanced against the independence necessary for a DPO to meet their statutory role. As such, the Contractor may not be obliged to conduct services in a manner requested by the Authority if the Contractor believes that contradicts or undermines the role of DPO. Suggest appropriate language included.
11.5	Reimbursement for delay – it should be phrased in accordance with the principle expressed above (against 11.3)
13.3	The manner in which the DPO role is performed is a matter for the Contractor and is not set by the Authority (see GENERAL comment above)
13.5	All such policies to be provided in advance
14	Customer satisfaction survey – suggest this is not relevant to the post of DPO and should be removed
15.2	Suggest any replacements to Key Personnel require Approval, (being the written consent of the Contract Manager) rather than the agreement of the Authority
15.3	Suggest the 3 month period stated be reduced to one month – Contractor may not be in a position to provide 3 months' notice (of a change in Key personnel)
15.5	Given there will be one/two Key Personnel, the phrase “where there is a change to Key Personnel of 25% or more during any 12 month period.....may amount to a Default” should be removed
22	Offers of employment – given the specialist skills being provided, the non-solicitation of personnel must be reciprocal, to protect the Contractor.
24.2	Retention of 20% of total Price pending completion – not applicable and to be removed
24.5	Ability of Authority to unilaterally reduce Price – to be removed; undermines the independence of the DPO

Clause Number/Schedule Reference	Observation/Comments
24.7	Consideration to be given to circumstances where the Authority refuses to take the DPO's advice, allowing the Contractor to suspend services
33	Criminal Records check – Suggest that subclauses (b) a. and b. be removed (search of Safeguarding of Vulnerable Groups list, and search of list held under Care Standards Act) as not applicable to the position.
35.3	It refers to Service Data (as a defined term) but no definition of the term provided for
38.1	The Contractor's obligation should be to provide adequate technical and organisational measures to protect the confidential information it holds. If Approval is required, such Approval to be provided as part of the Agreement, so that the required standards are agreed and the Authority's entitlement to look for subsequent alteration (to the security measures) interpreted accordingly
41	Intellectual Property Rights – a distinction to be made between the IP retained by the Contractor and that provided to the Authority as part of the Services, to protect the Contractor's IPR
42	Audit – this requires the Contractor to maintain records for 12 years post-agreement – is there scope for this period to be reduced?
45	Variation of the Services – suggest removal – this is a fixed price contract
47	Remedies in the event of inadequate performance – as above, there any restriction on the DPO's ability to perform the Services must be interpreted in accordance with legislation. Further, clause 47.2 to be removed, as clauses 47.4 and 47.5 provide the necessary remedies and conflict with the terms of clause 47.2
49	Monitoring of Performance – as noted above, no definition of Monitoring provided – suggest removal as not applicable
51.1	The Authority shall be obliged to ensure any Transferee is under no less an obligation of confidentiality as the Authority, prior to transfer

Clause Number/Schedule Reference	Observation/Comments
52	Indemnity and insurance 52.2 – Suggest removal. ██ ██████████
53	Please clarify the level of PI cover required. We can offer PI cover o ██████ but will have difficulty in raising that cover to ██████, as suggested by the tender document. Also suggest that ██████ is an excessive level of cover for a contract where the liability will be capped at an amount much less than that.
55	Change of control should not be grounds for termination
56	Termination on Default – as above, suggest definition of Default be amended such that it applies to material defaults only, (as anticipated by clause 56.1 c)) failing which the Authority is entitled to terminate for any breach of the agreement, no matter how trivial and whether or not capable of remedy
56.3	The period of 60 Working Days to be reduced to 20. Further, as mentioned above, consideration to be given to the Contractor's ability to suspend/terminate in circumstances where the Authority fails to consider (reasonable and appropriate) advice given by the DPO
57	Break – to be removed
63	Dispute Resolution – suggest a fast-track method of DR be considered, in light of the nature of the Services.