



Department
for Education

DATED:

**Contract
For**

The Provision of the High Potential Initial Teacher Training Programme

Between

THE SECRETARY OF STATE FOR EDUCATION

And

TEACH FIRST

CONTRACT REFERENCE NUMBER: 6709

THIS CONTRACT is made on the 10th day of July 2020

between the Parties

- 1 **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT (the "**Authority**"); and
- 2 **TEACH FIRST** whose registered office is at 6 Mitre Passage, Greenwich Peninsula, London, SE10 0ER and whose company number is 04478840 (the "**Contractor**");
each a "**Party**" and together the "**Parties**".

It is agreed that:

1. this contract, together with the attached Schedules and annexes, collectively form the "**Contract**"; and
2. if there is a conflict between the provisions of the clauses of the Contract and the provisions of the Schedules, the following order of precedence shall apply:
 - (a) Schedule 2 (Terms and Conditions);
 - (b) Schedule 1 (Specification);
 - (c) Schedules 3 to 13; and
 - (d) Schedule 14 (Contractor's Solution).

The Contract has been executed on the date stated at the beginning of this page.

SIGNED for and on behalf of:	SIGNED by for and on behalf of:
 (the Contractor)	 The Secretary of State for Education (the Authority)
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:
In the presence of:	In the presence of:
Witness Signature:	Witness Signature
Name:	Name:
Position	Position
Address:	Address:
Date:	Date:

Table of Contents
Contract Schedules

Schedule 1	Specification
Schedule 2	Terms and Conditions
Schedule 3	Financials
Schedule 4	Performance Levels
Schedule 5	Implementation Plan
Schedule 6	Change Control Procedure
Schedule 7	Key Contractor Staff and Key Sub-Contractors
Schedule 8	Data, Systems Handling and Security
Schedule 9	Commercially Sensitive Information
Schedule 10	Staff Transfer
Schedule 11	Financial Distress
Schedule 12	Guarantee
Schedule 13	Financial Reports And Audit Rights
Schedule 14	Contractor's Solution

SCHEDULE 1
THE SPECIFICATION

The following additional documents shall be deemed to be incorporated into this Contract:

Schedule 9.1 in v1.08A (England & Wales) of the Model Services Contract; Combined Schedules issued by the Cabinet Office on 4 June 2019 as published online, as amended or revised and published online as so amended or revised as a new version by or with the authority of the Cabinet Office from time to time, and modified as provided for in the definition of MSC Schedule 9.1 in Paragraph 1 of Schedule 10 to this Contract.

SCHEDULE 2
TERMS AND CONDITIONS
CONTENTS

CLAUSE

SCHEDULE 1	3
SCHEDULE 2.....	4
1 DEFINITIONS AND INTERPRETATION	6
2 TERM.....	14
3 THE SERVICES.....	14
4 CONSORTIA	15
5 TRANSFER AND SUB-CONTRACTING	15
6 TUPE.....	17
7 CONTRACTOR STAFF	17
8 CHARGES	18
9 FINANCIAL DISTRESS	20
10 TAX AND VAT	20
11 PREVENTION OF CORRUPTION.....	21
12 DISCRIMINATION	22
13 INTELLECTUAL PROPERTY	22
14 DATA, SYSTEMS HANDLING AND SECURITY	24
15 PUBLICITY AND PROMOTION	24
16 CONFIDENTIALITY	25
17 FREEDOM OF INFORMATION.....	26
18 OFFICIAL SECRETS ACTS AND FINANCE ACT	26
19 LIABILITY	26
20 WARRANTIES AND REPRESENTATIONS.....	28
21 FORCE MAJEURE	29
22 MONITORING AND REMEDIATION.....	29
23 ANNUAL REVIEW	30
24 STEP IN RIGHTS	30
25 TERMINATION.....	32
26 RETENDERING AND HANDOVER.....	36
27 EXIT MANAGEMENT.....	36
28 AUDIT RIGHTS AND FINANCIAL REPORTS	37
29 ENTIRE AGREEMENT	37
30 PARTNERSHIP	38
31 WAIVER	38
32 CHANGE CONTROL	38
33 COUNTERPARTS	38

34	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	38
35	CONFLICTS OF INTEREST	38
36	FURTHER ASSURANCE	39
37	NOTICES	39
38	DISPUTE RESOLUTION.....	39
39	GOVERNING LAW AND JURISDICTION.....	39
	SCHEDULE 3	41
	SCHEDULE 4	47
	SCHEDULE 5	52
	SCHEDULE 6	53
	SCHEDULE 7	56
	SCHEDULE 8	62
	SCHEDULE 9	76
	SCHEDULE 10.....	76
	SCHEDULE 11	93
	SCHEDULE 12.....	96
	SCHEDULE 13.....	105
	SCHEDULE 14.....	108

1 DEFINITIONS AND INTERPRETATION

1.1 In the Contract, the following expressions have the following meanings, unless inconsistent with the context:

“ABI Model Form of Guarantee Bond” means the model form of guarantee bond published by the Association of British Insurers;

“Affiliate” 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.

“Annual Review” means the process and meeting set out in clause 23.

“Area” means the geographical area within England in respect of which the Contractor is appointed to provide the Services.

“Associated Company” means any company which is, in relation to another company, its holding company or its subsidiary or a subsidiary of its holding company. “Holding company” and “subsidiary” will have the meanings attributed to them in section 736 and 736A of the Companies Act 1985 and section 1159 of the Companies Act 2006.

“Audit” means any exercise by the Authority of its Audit Rights pursuant to clause 28 (Audit Rights and Financial Reporting) and Schedule 13 (Financial Reports and Audit Rights);

“Audit Agents” means:

- (a) the Authority’s internal and external auditors
- (b) the Authority’s 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 the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

“Audit Rights” means the audit and access rights referred to in clause 28 and Schedule 13 (Financial Reports and Audit Rights);

“Authority Premises” means any premises owned by, leased or hired to or otherwise controlled by Authority or which Authority nominates as such by notice in writing to the Contractor.

“Authority Security Standards” means the security standards as set out in Schedule 8.

“Authority Trade Marks” means proprietary trade mark rights of Authority including those notified to the Contractor by Authority from time to time.

“Business Days” means Mondays to Fridays (inclusive) in each week, excluding bank and other public holidays in England.

“Candidate” a person who has expressed an interest in applying for the Programme or who has applied for the Programme.

“CCN” means a Change Control Note in the form set out in Schedule 6.

“Change Control Procedure” has the meaning given to it in clause 32.

“Charges” means the fees subject to clause 8 payable to the Contractor for the provision of the Services calculated in accordance with Schedule 3.

“Commercially Sensitive Information” means the information set out in Schedule 9 comprising the information of a commercially sensitive nature relating to:

- (a) the Charges
- (b) details of the Contractor’s Intellectual Property Rights; and
- (c) the Contractor’s business and investment plans

which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.

“Confidential Information” means any information which has 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 information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Consortium” means an association of 2 or more persons acting together to deliver the Services but excludes Sub-Contractors.

“Consortium Agreement” means, if the Contractor is a Consortium, an agreement:

- (a) signed by all the Consortium Members as at the Effective Date; and
- (b) adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence

which sets out, amongst other things, how the Consortium Members will work together to deliver the Services.

“Consortium Member” means a member of a Consortium (if any).

“Contractor Equipment” means the Contractor’s ICT equipment.

“Contract Date” means the date on which this Contract becomes effective as set out above.

“Contract Year” means (a) a period of twelve (12) months commencing on the Effective Date; or (b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date; provided that the final Contract Year shall end on the Expiry Date

“Contractor’s Solution” means the Contractor’s proposal submitted in response to the Authority’s invitation to tender attached at Schedule 14.

“Contractor Staff” means all directors, officers, employees, workers, agents, consultants and contractors of the Contractor or of any Sub-Contractor engaged in the performance of the Contractor’s obligations under this Contract.

“Contract Management Plans” means the Implementation Plan, Risk Management Plan and Resource Plan.

“Contracts Finder” means the Government’s publishing portal for public sector procurement opportunities.

“Copyright” means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **“Crown Body”** is an emanation of the foregoing.

“Database of Trainee Teachers and Providers (“DTTP”) means the Authority’s data collection system for initial teacher training providers enabling them to register trainees

“Database Rights” means rights in databases as defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Deed of Adherence” means a deed under which a new Consortium Member shall covenant with the other Consortium Members to adhere to the terms of the Consortium Agreement which shall be in a form approved by the Authority in writing.

“Default” means breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Contractor Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“Dispute” means any dispute between the Parties in connection with the Contract.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“Data Protection Legislation” means the (i) the General Data Protection Regulation 2016/679 (“GDPR”), the Law Enforcement Directive 2016/680 (“LED”) and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy

“Effective Date” means 10th July 2020

“EIR” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to them.

“Eligible School” means schools serving low income communities with high numbers of disadvantaged and low attaining pupils as set out in paragraph 9 of Schedule 1 (Specification).

“Employment Liabilities” means all actions, proceedings, costs (including reasonable legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities connected with or arising from all and any laws including, without limitation,

directives, statutes, secondary legislation, orders, codes of practice, contractual obligations and other common law rights whether of the European Union, United Kingdom or any other relevant authority relating to or connected with:

- (a) the engagement, employment and dismissal of employees (including their health and safety at work); and
- (b) the engagement, use and termination of individuals other than employees who provide services (including their health and safety at work),

and all wages, holiday pay and employment benefit costs due in respect of (a) or (b) above, including claims for protective awards and PAYE deductions and any other liabilities in respect of income tax or NICs and any penalties, costs or interest payable in respect of any such deductions or liabilities.

“English Regions” means the regions of East Midlands, East of England, London, North East, North West, South East, South West, West Midlands, and Yorkshire as defined by the Office for National Statistics.

“Existing IPR” means any and all IPR that are owned by or licensed to either Party which are or have been developed independently of the Contract prior to the Contract Date.

“Expiry Date” means the date on which the Contract is terminated or 31 October 2023, whichever is the earlier.

“Financial Distress Event” means the occurrence of one or more of the events listed in Paragraph 2.1 of Schedule 11 (Financial Distress).

“Financial Distress Business Continuity Plan” means a plan setting out how the Contractor will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs.

“FOIA” means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to it.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor's or any of its Sub-Contractor's organisation, or otherwise involving the Contractor Staff; or
- (b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any sub-contract.

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

“Good Industry Practice” means the standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Guarantee Criteria” means that the Contractor or the Guarantor must demonstrate in respect of their latest statutory accounts that it has:

- a current ratio (being current assets divided by current liabilities) of one or more; and
- an acid test ratio (being current assets less stock divided by current liabilities) of one or more; and

a tangible net worth (being total assets less total intangible fixed assets less total liabilities) of more than zero.

“Guarantor” means an Affiliate of the Contractor that fulfils the criteria set out in Paragraph 1.1(a) of Schedule 11 (Financial Distress).

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“HMRC” means Her Majesty’s Revenue and Customs.

“ICT” means information and communications technology.

“Income Deprivation Affecting Children Index” and “IDACI” means the Income Deprivation Affecting Children Index, which measures the proportion of children under the age of 16 that live in low income households in a local area

“Implementation Plan” means the plan and time schedule for the completion of the obligations of the Contractor under the Contract as set out in Schedule 5 as the same may be replaced by any subsequent more detailed plan and time schedule as the Parties may agree in writing from time to time.

“Intellectual Property Rights” means patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade and/or business names, rights in confidential information and know how, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“IP Materials” means any materials used or developed for the purposes of the Contract including any programme materials, guidance, papers and research data, results, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

“Key Performance Indicators” means the key performance indicators in relation to the Services set out in Table 1 of Schedule 4 (Performance Levels) which the Contractor shall comply with.

“Key Contractor Staff” means any of the Contractor Staff identified as such in Schedule 7.

“Key Sub-Contractor” means any Sub-Contractor identified as such in Schedule 7 or otherwise identified as such by the Authority.

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses 9, 10, 12, 15, 17 and 35 and in Schedule 8.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Ofsted” means the Office for Standards in Education, Children’s Services and Skills. Ofsted inspects services providing education and skills for learners of all ages.

“Open Book Data” has the meaning given in Schedule 13 (Financial Reports and Audit Rights).

“Opportunity Areas” means a social mobility “cold spot” where the Authority is prioritising resource and bringing local and national partners together, to break the link between background and destination to improve social mobility for children and young people, including those from disadvantaged backgrounds.

“Partial Termination” means the partial termination of this Contract (to the extent that it relates to the provision of any part of the Services) as provided for in clauses 25.1, 25.2, 25.3, 25.4, 25.5, 25.7, 25.8, 25.9, 25.11, 25.13 and 25.18 or otherwise by mutual agreement of the Parties;

“Participant” means a person who has been accepted to take part in the Programme.

“Performance Indicators” means the Key Performance Indicators, Subsidiary Performance Indicators and the Service Levels

“Performance Measures/Standards” means the measures and standards as set out in Schedule 4 (Performance Measures) which the Contractor will be measured against in respect of the delivery of the Services aligned to defined Key Performance Indicators

“Performance Monitoring Reports” means the monthly, fortnightly, quarterly and annual reports set out in Table 4 of Schedule 4 (Performance Levels) which the Contractor shall provide.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for 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 Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Programme” or **“HPITT”** means the Authority’s two year High Potential Initial Teacher Training and Leadership Development Programme.

“Qualified Teacher Status” and **“QTS”** means the Qualified Teacher Status (QTS) required in England and Wales to work as a teacher of children in state schools under local authority control and in special education schools

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

“Regulations” means the Public Contract Regulations 2015.

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen 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 the Contract or any other affairs of the Authority.

“Relevant Conviction” means a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services.

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

“Relevant Tax Authority” means HMRC or, if applicable, a tax Authority in the jurisdiction in which the Contractor is established.

“Replacement Contract” means a contract entered into by a Replacement Contractor with the Authority for Replacement Services.

“Replacement Contractor” means any third party provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing Replacement Services for its own account, the Authority).

“Replacement Services” means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Authority internally or by any third party.

“Request for Information” means a request for information under the FOIA or the EIR.

“Restricted Country” means:

- (a) any country outside the United Kingdom; and
- (b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC

“Russell Group Universities” means the 24 UK universities that are members of the Russell Group.

“Services” means the services described in the Specification

“Service Commencement Date” means the date on which the Contractor begins to deliver the Services or any part of the Services.

“Service Level” means the levels of Service defined in Table 4 of Schedule 4 (Performance Levels);

“Service Period” means the following:

- (a) the first Service Period of the Contract shall begin on the Services Commencement Date and shall expire at the end of the calendar month in which the Service Commencement Date falls; and
- (b) after the first Service Period of the Contract a Service Period shall be a calendar month during the Contract save that the final Service Period of the Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract.

“Service Termination Thresholds” means the thresholds set out in Schedule 4 which, if reached by the Contractor in its performance of the Service, trigger (without prejudice to its other rights and remedies) the Authority’s right of termination under clause 25.18

“Service Users” means those receiving the Services.

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

“SME MI Reporting Template” means the departmental contract SME data collection template found [here](#) and referred to in clause 22.9 which may be amended from time to time.

“Specification” means the description of the Services to be supplied under the Contract set out in Schedule 1.

“Sub-Contract” means a contract between 2 or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of (a) performing (or contributing to the performance of) the whole or any part of the Contract or (b) providing (or contributing to the provision of) any Replacement Services, and **“Sub-Contractor”** shall be construed accordingly.

“Subsidiary Performance Indicator” means the subsidiary performance indicators set out in Table 3 of Schedule 4.

“Term” means the period from the Effective Date until the Expiry Date unless terminated in accordance with the provisions of this Contract in which case such earlier date of termination shall take effect before the Expiry Date and Term shall be interpreted accordingly.

“**Termination Services**” means the services and activities to be performed by the Contractor pursuant to the Exit Plan.

“**TFEU**” means the Treaty on the Functioning of the European Union.

“**Treaties**” means the TFEU and the Treaty on European Union.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“**Variation**” means any variation to the Contract requiring a Change Control Note to be completed in accordance with Schedule 6.

“**VCSE**” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

1.2 The following notes of construction and interpretation apply to the Contract:

- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;
- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or Schedule is a reference to a clause or Schedule of the Contract and references in any Schedule to paragraphs relate to the paragraphs in that Schedule;
- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
- 1.2.7 the Schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the Schedules.

2 TERM

2.1 The Contract commences on the Effective Date and, subject to any provision of this Contract for earlier termination, will terminate on the Expiry Date.

3 THE SERVICES

3.1 The Contractor shall provide the Services in the Area in accordance with the Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.

3.2 The Authority may appoint other Contractors for the Services in the Area.

3.3 The Contractor shall, in performing its obligations under the Contract:

- 3.3.1 conform to the requirements of the Specification and the Contractor’s Solution or as otherwise agreed in writing between the Parties;
- 3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the Authority specified by the Authority from time to time;
- 3.3.3 comply with Good Industry Practice;
- 3.3.4 ensure that the Services are provided by competent and appropriately trained Staff;

- 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - 3.3.6 comply with the Performance Indicators set out in Schedule 4;
 - 3.3.7 comply with the Implementation Plan;
 - 3.3.8 in so far as is reasonably practicable, comply with any policies and procedures adopted by the Authority from time to time within 14 days of the same being brought to the attention of the Contractor by the Authority in writing;
 - 3.3.9 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
 - 3.3.10 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Contractor Staff, employees of the Authority, the Service Users and all other persons including members of the public; and
 - 3.3.11 comply with all safety, security, acceptable use and other policies of the Authority from time to time notified to it and procure that the Contractor Staff also comply.
- 3.4 The Authority may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
- 3.5 All equipment and other property brought onto Authority Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the Authority.
- 3.6 Any land or Authority Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Authority Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or Authority Premises was made available.
- 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Contractor Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any Authority Premises in any manner.

4 CONSORTIA

- 4.1 If the Contractor is a Consortium it shall comply with the terms of this clause 4.
- 4.2 The Contractor may appoint additional or replacement Consortium Members to assist it in carrying out its obligations under the Contract subject to compliance with clause 4.3.
- 4.3 No new person or entity may become a Consortium Member until:
 - 4.3.1 the Authority has given its prior written consent to the new Consortium Member;
 - 4.3.2 the new Consortium Member has signed a Deed of Adherence; and
 - 4.3.3 a copy of the Deed of Adherence has been given to the Authority.
- 4.4 The Contractor shall promptly inform the Authority if and how any Consortium Member breaches the terms of the Consortium Agreement.

5 TRANSFER AND SUB-CONTRACTING

- 5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a "Transfer") without the prior written consent of the Authority which shall not be unreasonably withheld.
- 5.2 If the Authority consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.

- 5.3 The Contractor may award Sub-Contracts with a value per annum not exceeding £10,000 without the Authority's consent.
- 5.4 Where the Authority has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- 5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the Authority's prior written consent.
- 5.6 The Authority may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the Authority's right of termination pursuant to clause 25 unless the Sub-Contractor can remedy the breach to the Authority's satisfaction within 21 days of receipt by the Contractor of written notice from the Authority requiring the Sub-Contract to be terminated.
- 5.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.8 If the Authority believes there are:
 - 5.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
 - 5.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.
- 5.9 The Contractor shall:
 - 5.9.1 subject to clause 5.9.7, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Term;
 - 5.9.2 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
 - 5.9.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - 5.9.4 provide reports on the information at clause 5.9.3 to the Authority in the format and frequency as reasonably specified by the Authority;
 - 5.9.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
 - 5.9.6 Each advertisement referred to at clause 5.9.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
 - 5.9.7 The obligation at clause 5.9.1 shall only apply in respect of subcontract opportunities arising after the contract award date.
 - 5.9.8 Notwithstanding clause 5.9.1, the Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.
- 5.10 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, on request and at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Authority including:
 - 5.10.1 the total contract revenue received directly on a specific contract;
 - 5.10.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
 - 5.10.3 the total value of sub-contracted revenues to SMEs and VCSEs.

6 TUPE

- 6.1 The Parties agree that:
- 6.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers of Transferring Former Contractor Employees, Part A of Schedule 10 shall apply and Part B of Schedule 10 shall not apply; and
 - 6.1.2 where the commencement of the provision of the Services or any part of the Services does not result in a Relevant Transfer of Transferring Former Contractor Employees, Part B of Schedule 10 shall apply and Part A of Schedule 10 shall not apply; and
 - 6.1.3 Part C of Schedule 10 shall apply on the expiry or termination of the Services or any part of the Services, including in relation to pension issues on such expiry or termination.
- 6.2 The Contractor agrees that, in performing the Contract, it will, unless otherwise reasonably required by the Authority or permitted in writing by it (such permission not to be unreasonably withheld or delayed), maintain:
- 6.2.1 the division of the Services into four separate parts as listed in sub-paragraphs (i), (ii), (iii) and (iv) of Paragraph 1.1(b) of Part A of Schedule 10; and
 - 6.2.2 the division of the Contractor Staff into four separate organised groupings within the meaning of regulation 3(3)(a)(i) of TUPE, each such grouping corresponding to, and the members of it separately assigned (within the meaning of regulation 4(1) of TUPE on an ongoing basis) to one only of, each such part of the Services as so listed,

such that, should the Authority so require, the transfer of the Services to a Replacement Contractor or Replacement Sub-Contractor (as defined in the Definitions in Paragraph 1 of Schedule 10) may be undertaken in four phases corresponding to those set out in Paragraph 1.1(b) of Part A of Schedule 10, so that (unless TUPE does not apply for any other reason that is outside the Contractor's control) the commencement of the relevant part of the Services in respect of each such phase will be a Service Transfer and a Relevant Transfer and the date of commencement of each such phase will be a Service Transfer Date and a Relevant Transfer Date.

7 CONTRACTOR STAFF

- 7.1 The Authority may refuse admission to Authority Premises and/or direct the Contractor to end the involvement in the Services of any Contractor Staff whom the Authority believes is a security risk.
- 7.2 If the Authority require the removal of any Contractor Staff pursuant to clause 7.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.
- 7.3 The Contractor shall use its reasonable endeavours to ensure continuity of Contractor Staff and to ensure that the turnover rate of Contractor Staff is at least as good as the prevailing industry norm for similar services, locations and environments.
- 7.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the Authority's prior written consent.
- 7.5 For each of the Contractor Staff who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Authority owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as having an inappropriate record.
- 7.6 The Contractor acknowledges that Key Contractor Staff and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the

appointment of Key Contractor Staff and Key Sub-Contractors listed in Schedule 7 as at the Effective Date.

- 7.7 Key Contractor Staff shall not be released from supplying the Services without the Authority's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 7.8 Any replacements of Key Contractor Staff shall be subject to the Authority's consent and shall be of at least equal status, experience and skills to Key Contractor Staff being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 7.9 The Authority shall not unreasonably withhold consent under clauses 7.7 or 7.8. Such consent shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Contractor Staff or Key Sub-Contractors.
- 7.10 The Authority may require the Contractor to remove any Key Contractor Staff who the Authority considers in any respect unsatisfactory.
- 7.11 The Authority shall not be liable for the cost of replacing any Key Contractor Staff and the Contractor shall indemnify the Authority against all Employment Liabilities that may arise in this respect.
- 7.12 Except in respect of any transfer of Staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any Staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof whether as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at any Staff of the other Party.

8 CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the Authority for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the Authority shall pay the Charges in accordance with the Schedule 3 subject to the receipt of correct invoices pursuant to clause 8.9 being issued by the Contractor.
- 8.3 The Contractor shall submit the first invoice by 17th August 2020 and subsequent invoices shall be submitted by the 12th Business Day of the month following the month in respect to which the invoice relates.
- 8.4 The Department shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 8.5 Except where otherwise expressly stated in Schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in Schedule 3 throughout the Term.
- 8.6 The Charges are exclusive of Value Added Tax ("VAT") and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the Authority of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 8.7 Payment of the Charges by the Authority shall be without prejudice to any rights the Authority may have by reason of any Services, or any part thereof, failing to comply with

- any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the Authority by reason of such payment.
- 8.8 The Authority may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.9 Invoices shall be submitted electronically by email to accountspayable.OCR@education.gov.uk by the relevant date as specified in Clause **Error! Reference source not found.** To request a statement, please email ccountspayable.BC@education.gov.uk
- 8.10 There is no postal address. Paper invoices or supporting documents will not be accepted. All supporting documents must be sent digitally along with the invoice to accountspayable.OCR@education.gov.uk.
- 8.11 An invoice is a "Valid Invoice" if it is legible and includes:
- 8.11.1 the date of the invoice;
 - 8.11.2 Contractor's full name and address;
 - 8.11.3 Contract reference number;
 - 8.11.4 Purchase Order number
 - 8.11.5 the charging period;
 - 8.11.6 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
 - 8.11.7 days and times worked (if applicable);
 - 8.11.8 Not used); and
 - 8.11.9 VAT if applicable.
- 8.12 The Authority shall not pay an invoice which is not a Valid Invoice.
- 8.13 The Authority intends to pay Valid Invoices within 5 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 8.132 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.14 The Authority shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.15 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the Authority. The final invoice shall be submitted not later than 30 days after the end of the Term.
- 8.16 The Authority shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service.
- 8.17 The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- 8.18 If the Authority disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. The Authority may withhold the disputed amount pending resolution of the dispute.
- 8.19 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 38.

9 FINANCIAL DISTRESS

- 9.1 The Parties shall comply with the provisions of Schedule 11 (Financial Distress) in relation to the assessment of the financial standing of the Contractor and the consequences of a change to that financial standing.

10 TAX AND VAT

- 10.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 10.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.
- 10.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 10.4 The Authority may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 10.1 to 10.3 or why those clauses do not apply to it.
- 10.5 A request under clause 10.4 may specify the information which the Contractor must provide and the period within which that information must be provided.
- 10.6 The Authority may terminate this Contract if:
- 10.6.1 in the case of a request mentioned in clause 10.4 the Contractor:
- (a) fails to provide information in response to the request within a reasonable time; or
 - (b) provides information which does not demonstrate either how the Contractor complies with clauses 10.1 or why those clauses 10.1 to 10.3 do not apply to it;
- 10.6.2 it receives information which demonstrates that, if clauses 10.1 to 10.3 apply, the Contractor is not complying with those clauses.
- 10.7 The Authority may supply any information which it receives under clause 10.4 to HMRC.
- 10.8 The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.
- 10.9 The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract. The Contractor shall indemnify the Authority against any liability, assessment or claim made by the HMRC or any other relevant Authority arising out of the performance by the Contractor of its obligations under the Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the Authority in connection with any such assessment or claim.
- 10.10 The Contractor authorises the Authority to provide HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under the Contract whether or not the Authority is obliged as a matter of law to comply with such request.
- 10.11 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 10.11.1 notify the Authority in writing of such fact within 5 Business Days of its occurrence; and
- 10.11.2 promptly give the Authority:

- (a) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

11 PREVENTION OF CORRUPTION

- 11.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor Staff, have at any time prior to the Effective Date:
- 11.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
 - 11.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 11.2 The Contractor shall not:
- 11.2.1 commit a Prohibited Act; or
 - 11.2.2 do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 11.3 The Contractor shall:
- 11.3.1 procure that its Sub-Contractors shall, establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 11.3.2 keep appropriate records of its compliance with its obligations under clause 11.3.1 and make such records available to the Authority on request.
- 11.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of clauses 11.1 and/or 11.2, or has reason to believe that it has or any of the Contractor Staff have:
- 11.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 11.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
 - 11.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 11.5 If the Contractor notifies the Authority pursuant to clause 11.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and any other relevant documentation.
- 11.6 If the Contractor is in Default under clauses 11.1 and/or 11.2, the Authority may by notice:
- 11.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
 - 11.6.2 immediately terminate the Contract.
- 11.7 Any notice served by the Authority under clause 11.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

12 DISCRIMINATION

- 12.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable equality law.
- 12.2 The Contractor shall comply with Authority's equality and diversity policy as given to the Contractor from time to time and any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under equality law.
- 12.3 The Contractor indemnifies the Authority in full from and against all Employment Liabilities that may arise as a result of any claims brought against the Authority by any of its employees, agents, consultants and contractors ("**Authority Contractor Staff**") and/or any of the Contractor Staff where such claim arises from any act or omission of the Contractor Staff in respect of anti-discrimination legislation. The Contractor will also provide all reasonable cooperation, assistance and information as the Authority may request in connection with any investigation by the Authority into any complaint or other grievance received by it from any of the Authority Contractor Staff or Contractor Staff in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any Contractor Staff.

13 INTELLECTUAL PROPERTY

- 13.1 All Intellectual Property Rights in materials:
- 13.1.1 that are Existing IPR remain in the ownership of the Party that owns them. The Contractor gives the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Contractor's Existing IPR to enable it to both:
- (a) receive and use the Services
 - (b) make use of the services provided by a Replacement Contractor.
- 13.1.2 furnished to or made available to the Contractor by or on behalf of the Authority (the "**Authority IP Materials**") shall remain the property of the Authority (save for Copyright and Database Rights which shall remain the property of the Crown); and
- 13.1.3 prepared by or for the Contractor on behalf of the Authority in connection with the Contract (the "**Service Specific IP Materials**") shall vest in the Authority (save for Copyright and Database Rights which shall vest in the Crown)
- (together the "**IP Materials**").
- 13.2 The Contractor shall not, and shall ensure that Contractor Staff shall not, use or disclose IP Materials (except the Contractor's Existing IPR) without the Authority's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.
- 13.3 The Contractor hereby assigns to the Authority or undertakes to procure the assignment to the Authority of all Intellectual Property Rights which may subsist in the Service Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials and shall include, without limitation, an assignment to the Authority (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by the Authority and necessary to execute and perfect these assignments and to otherwise evidence the Authority's or the Crown's ownership of such rights.
- 13.4 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Contract or the performance of the Contract.

- 13.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify the Authority of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service Specific IP Materials.
- 13.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the Authority and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause 13, except to the extent that any such claim arises from:
- 13.6.1 items or materials supplied by the Authority; or
 - 13.6.2 the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- 13.7 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.
- 13.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the Authority, provided always that the Contractor shall:
- 13.8.1 consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 13.8.2 take due and proper account of the interests and concerns of the Authority; and
 - 13.8.3 not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 13.9 Notwithstanding clause 13.8 the Authority may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the Authority takes action the Contractor shall at the request of the Authority afford to the Contractor all reasonable assistance to the Authority for the purpose of contesting such claim.
- 13.10 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the Authority on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 13.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use reasonable endeavours to:
- 13.11.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 13 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or

- 13.11.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.
- 13.12 If the Contractor is unable to comply with clauses 13.11.1 and 13.11.2 within 20 Business Days of receipt of the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.
- 13.13 The Contractor grants to the Authority and, if requested by Authority, to a Replacement Contractor, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights the Contractor owned or developed prior to the Effective Date or otherwise not in connection with the Contract ("**Contractor IP**") and which the Authority (or a Replacement Contractor) reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided and the use and further development of the IP Materials.
- 13.14 The Authority shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
- 13.15 If the Contractor is not able to grant to the Authority a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:
- 13.15.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Contract grants to the Authority a licence on the terms set out in clause 13.13; or
- 13.15.2 if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the Authority a sub-licence on the terms set out in clause 13.13.
- 13.16 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the Authority IP Materials any act or thing which:
- 13.16.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or
- 13.16.2 would or might prejudice the right or title of the Authority to any of the Authority IP Materials.
- 13.17 The Contractor shall comply with the Authority's branding guidelines and shall not use any other branding, including its own, other than as set out in the Authority's branding guidelines or as otherwise agreed with the Authority.
- 13.18 When using Authority Trade Marks the Contractor shall observe all reasonable directions given by the Authority from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:
- 13.18.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any Authority Trade Mark, or unfairly competes with any Authority Trade Mark; or
- 13.18.2 apply anywhere in the world to register any trade marks identical to or so nearly resembling any Authority Trade Mark as to be likely to deceive or cause confusion.

14 DATA, SYSTEMS HANDLING AND SECURITY

- 14.1 The Parties shall comply with the provisions of Schedule 8.

15 PUBLICITY AND PROMOTION

- 15.1 Subject to clause 16.2, without prejudice to the Authority's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

- 15.2 The Contractor shall use reasonable endeavours to ensure its Contractor Staff comply with clause 15.1
- 15.3 Without prejudice to the generality of clauses 13.18 and 15.1, the Contractor shall not itself, and shall procure that Consortium Members shall not, use the Authority's name, brand or Authority Trade Marks or the Personal Data of the Authority to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.
- 15.4 Subject to clauses 13 and 16 Authority may disclose, copy and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Services or comprised in any work relating to the Services.
- 15.5 Any marketing activity planned by the Contractor must be approved by or on behalf of the Authority's Director of Communications. In addition, if the proposed marketing activity will cost £100,000 or more, it must be approved in writing by the Cabinet Office.
- 15.6 In order to apply for Cabinet Office approval as set out in clause 15.5, the Contractor must complete a Professional Assurance (PASS) application in conjunction with the Authority using the PASS form which the Authority will provide to the Contractor. The proposed marketing activity must be approved in writing by the Cabinet Office before any material expense on is incurred in relation to it.
- 15.7 The Contractor must comply with any amendments to the marketing activity that are required by the Authority and / or the Cabinet Office.

16 CONFIDENTIALITY

- 16.1 Except to the extent set out in this clause 16 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- 16.2 The Contractor hereby gives its consent for the Authority to publish the whole Contract including from time to time agreed changes to the Contract.
- 16.3 The Contractor may only disclose the Authority's Confidential Information to those Contractor Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Contractor Staff are aware of and shall comply with these obligations as to confidentiality.
- 16.4 The Contractor shall not, and shall procure that Contractor Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- 16.5 Clause 16.1 shall not apply to the extent that:
- 16.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - 16.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 16.5.3 such information was obtained from a third party without obligation of confidentiality;
 - 16.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 16.5.5 it is independently developed without access to the other Party's Confidential Information.
- 16.6 Nothing in this clause 16 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:
- 16.6.1 for the purpose of the examination and certification of the Authority's accounts;

- 16.6.2 for the purpose of 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;
 - 16.6.3 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
 - 16.6.4 to any consultant, contractor or other person engaged by the Authority provided that in disclosing information under clauses 16.6.2 and 16.6.3 the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 16.7 Nothing in clauses 16.1 to 16.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 16.8 The Authority shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the Authority's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the Authority's obligations of confidentiality.
- 16.9 If the Contractor does not comply with clauses 16.1 to 16.5 the Authority may terminate the Contract immediately on notice to the Contractor.

17 FREEDOM OF INFORMATION

- 17.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- 17.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receipt:
- 17.2.1 give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Business Days (or such other period as the Authority may specify) of the Authority's request;
 - 17.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
 - 17.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.
- 17.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

18 OFFICIAL SECRETS ACTS AND FINANCE ACT

- 18.1 The Contractor shall comply with the provisions of:
- 18.1.1 the Official Secrets Acts 1911 to 1989; and
 - 18.1.2 section 182 of the Finance Act 1989.

19 LIABILITY

- 19.1 Neither Party excludes or limits its liability (if any) to the other:
- 19.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - 19.1.2 for personal injury or death resulting from its negligence;
 - 19.1.3 under section 2(3) Consumer Protection Act 1987;
 - 19.1.4 any breach of clause 16 or Schedule 8;
 - 19.1.5 for its own fraud; or

- 19.1.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
- 19.2 Subject to clauses 19.1 and 19.3, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Contractor Staff on the Premises, including in respect of death or personal injury, loss of or damage to property (including the personal property of a Participant), financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- 19.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 13 (Intellectual Property) and 10 (Tax).
- 19.4 Subject to clauses 19.1, 19.3 and 19.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:
- 19.4.1 for any losses of an indirect or consequential nature;
- 19.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
- 19.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 19.5 Subject to clauses 19.1 and 19.3, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:
- 19.5.1 in respect of damage to property is limited to £10m in respect of any one incident or series of connected incidents; and
- 19.5.2 in respect of any claim not covered by clause 19.5.1, is limited in each calendar year in aggregate to 150% of the sum of the Charges payable in that year.
- 19.6 The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:
- 19.6.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the default;
- 19.6.2 any wasted expenditure or charges;
- 19.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and/or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- 19.6.4 any compensation or interest paid to a third party by the Authority; and
- 19.6.5 any fine or penalty incurred by the Authority and any costs incurred by the Authority in defending any proceedings which result in such a fine or penalty.
- 19.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 19.8 All property of the Contractor whilst on the Authority's premises shall be there at the risk of the Contractor and the Authority shall accept no liability for any loss or damage howsoever occurring to it.
- 19.9 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the Authority deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the Authority deems

to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.

- 19.10 The Contractor shall supply to the Authority on demand copies of the insurance policies maintained under clause 19.9.
- 19.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 19.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

20 WARRANTIES AND REPRESENTATIONS

20.1 The Contractor warrants and represents that:

- 20.1.1 it has full capacity and Authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 20.1.2 in entering the Contract it has not committed any fraud;
- 20.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- 20.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;
- 20.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 20.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 20.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 20.1.7 the use by the Authority of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 20.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 20.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- 20.1.10 it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

21 FORCE MAJEURE

- 21.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 21.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 21.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 21.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

22 MONITORING AND REMEDIATION

- 22.1 The Contractor shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the Contractor's performance.
- 22.2 The Authority reserves the right to verify any aspect of this Agreement either with the Contractor or independently including through requesting information, records or data from the Contractor and / or from a third party.
- 22.3 The Authority or its authorised representatives may visit on reasonable notice to the Contractor any premises of the Contractor, any Consortium Member or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Services.
- 22.4 During such visits, the Authority may inspect and take copies of such of the records of the Contractor and any Consortium Member as relate to the performance of their obligations under the Contract.
- 22.5 If the Authority reasonably considers that any provision of the Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:
- 22.5.1 require the Contractor to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the Authority (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and
- 22.5.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the Authority reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the Authority in this regard.
- 22.6 If the Contractor fails to comply with any provision of the Contract or fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the Authority may direct.
- 22.7 The Authority may review from time to time the progress of the Contractor against the Implementation Plan. The Contractor shall cooperate with the Authority in this regard and provide any information and evidence reasonably required by the Authority.

- 22.8 The Authority may instruct the Contractor to take appropriate remedial action where the Authority reasonably considers that the Implementation Plan is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.
- 22.9 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information (MI) reports to the DFE which incorporate the data described in the SME MI Reporting Template which is:
- 22.9.1 the total contract revenue received directly on a specific contract;
- 22.9.2 the total value of sub-contracted revenues under the contract (including revenues for non-SME/non-VCSEs); and
- 22.9.3 the total value of sub-contracted revenues to SMEs and BCSEs.
- 22.10 The SME management information reports shall be provided in the correct format as required by the SME MI Reporting Template and any guidance issued by the DFE from time to time. The DFE may change the SME MI Reporting Template from time to time (including the data required and/or format) by issuing a replacement version. The DFE shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 22.11 The Contractor further agrees and acknowledges that it may not make any amendment to the then current SME MI Reporting Template without the prior written approval of the DFE.

23 ANNUAL REVIEW

- 23.1 The parties shall undertake an Annual Review of the Services and Charges in each Contract Year. The first Annual Review shall take place no earlier than the first anniversary of the Service Commencement Date and no later than 30 November 2021. Subsequent Annual Reviews shall take place in each Contract Year on the anniversary of the first Annual Review or such other date as the Authority and the Contractor agree.
- 23.2 During each Annual Review, the parties shall:
- 23.2.1 review the Contractor's performance against the Performance Indicators;
- 23.2.2 consider potential improvements in the Performance Indicators and the Service Levels which underpin them;
- 23.2.3 consider potential improvements in the delivery of the Services;
- 23.2.4 review and agree amendments as relevant to the Contractor's Contract Management Plans including but not limited to risk management.
- 23.2.5 review the Charges and the provisions of Schedule 3 with a view to identifying potential efficiencies and cost savings
- 23.2.6 initiate the gain share mechanism outlined in Schedule 3;
- 23.3 Any changes to the Charges or Performance Indicators or Services shall be subject to agreement in accordance with the Change Control Procedures set out in Schedule 6 and the Charges shall be calculated utilising the Financial Model.
- 23.4 In the event of a dispute arising between the Authority and the Contractor at Annual Review, such dispute shall be dealt with in accordance with the dispute resolution provisions in clause 38.

24 STEP IN RIGHTS

- 24.1 Without prejudice to the Authority's rights of termination under clause 25 the Authority may exercise one or more of the rights set out in this clause 24 ("**Step In Rights**") if:
- 24.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;
- 24.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
- 24.1.3 a Regulatory Body has advised the Authority that exercise by the Authority of its Step In Rights is necessary;

- 24.1.4 a serious risk exists to the health and safety of persons, property or the environment;
 - 24.1.5 it is necessary to discharge a statutory duty; or
 - 24.1.6 the Contractor becomes insolvent.
- 24.2 If the Authority has a Step In Right it may serve notice on the Contractor (a **“Step-In Notice”**) that it will take action under this clause 24 either itself or with the assistance of a third party.
- 24.3 The Step-In Notice shall set out:
- 24.3.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);
 - 24.3.2 the event triggering the Step In Rights and whether the Authority believes that the Required Action is due to the Contractor's Default;
 - 24.3.3 the date on which it wishes to commence the Required Action;
 - 24.3.4 the time period which it believes will be necessary for the Required Action;
 - 24.3.5 whether the Authority will require access to the Contractor's premises; and
 - 24.3.6 to the extent practicable, the effect the Authority anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.
- 24.4 Following service of a Step-In Notice, the Authority shall:
- 24.4.1 take the Required Action set out in the Step-In Notice and any consequential
 - 24.4.2 additional action as it reasonably believes is necessary to achieve the Required Action;
 - 24.4.3 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
 - 24.4.4 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the Authority is not assuming control; and
 - 24.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result
 - 24.4.6 of the exercise of the Step In Rights.
- 24.5 For as long as and to the extent that the Required Action continues:
- 24.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
 - 24.5.2 the Authority shall pay the Contractor the Charges after subtracting the Authority's costs of taking the Required Action.
- 24.6 If the Contractor demonstrates to the Authority's reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the Authority not taken the Required Action, the Authority may adjust the Charges.
- 24.7 Before ceasing to exercise its Step In Rights the Authority shall deliver a written notice to the Contractor (a **“Step-Out Notice”**), specifying:
- 24.7.1 the Required Action it has taken; and
 - 24.7.2 the date on which the Authority plans to end the Required Action subject to the Authority being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 24.8.
- 24.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 24.7.2, develop for the Authority's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.

- 24.9 If the Authority does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the Authority for approval. The Authority shall not withhold or delay its approval of the draft plan unreasonably.
- 24.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 24, provided that the Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the Authority under clauses 24.1.2 to 24.1.5 (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of a Contractor's Default).

25 TERMINATION

- 25.1 The Authority may terminate the Contract (or any part of it) with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- 25.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - 25.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 25.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - 25.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 25.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 25.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 25.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 25.1.8 any event similar to those listed in clauses 25.1.1 to 25.1.7 occurs under the law of any other jurisdiction.
- 25.2 The Authority may terminate the Contract (or any part of it) with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:
- 25.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
 - 25.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
 - 25.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
 - 25.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
 - 25.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued

- against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- 25.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- 25.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 25.2.8 any event similar to those listed in clauses 25.2.1 to 25.2.7 occurs under the law of any other jurisdiction.
- 25.3 The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The Authority may terminate the Contract (or any part of it) with immediate effect by notice and without compensation to the Contractor within 6 months of:
- 25.3.1 being notified that a Change of Control has occurred; or
- 25.3.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control
- but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 25.4 The Authority may terminate the Contract (or any part of it) with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:
- 25.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- 25.4.2 it is for any reason dissolved;
- 25.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
- 25.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;
- 25.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- 25.4.6 any of the following occurs in relation to any of its partners:
- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
- (b) a petition is presented for his bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of his assets; or
- (d) any event similar to those listed in clauses 25.4.1 to 25.4.6 occurs under the law of any other jurisdiction.
- 25.5 The Authority may terminate the Contract (or any part of it) with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:
- 25.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- 25.5.2 it is for any reason dissolved;

- 25.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
 - 25.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
 - 25.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
 - 25.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets;
or
 - 25.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 25.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 25.5.9 any event similar to those listed in clauses 25.5.1 to 25.5.8 occurs under the law of any other jurisdiction.
- 25.6 References to the Insolvency Act 1986 in clause 25.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 25.7 The Authority may terminate the Contract (or any part of it) with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 25.7.1 the Contractor has not remedied the Default to the satisfaction of the Authority within 21 Business Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
 - 25.7.2 the Default is not, in the opinion of the Authority, capable of remedy; or
 - 25.7.3 the Default is a Material Breach; or
 - 25.7.4 the Default (not being a Material Breach) has occurred twice in any three month period.
- 25.8 The Authority may terminate the Contract (or any part of it) with immediate effect and without paying compensation to the Contractor if:
- 25.8.1 the Contractor's warranty in clause 20.1.10 is materially untrue;
 - 25.8.2 the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Non-Tax Compliance;
 - 25.8.3 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
 - 25.8.4 the Contractor is in breach of paragraph 3 of Schedule 11 (Financial Distress).
- 25.9 The Authority may terminate the Contract (or any part of it) with immediate effect and without paying compensation to the Contractor if:
- 25.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
 - 25.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract;
or
 - 25.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

- 25.10 If the Authority terminates the Contract (or any part of it) under clauses 25.7, 25.8 or 25.9:
- 25.10.1 and makes other arrangements for the supply of the Services (or any part of the Services), the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
 - 25.10.2 the Authority shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause 25.
- 25.11 The Authority may terminate the Contract (or any part of it) at any time during the Term by giving at least 3 months' prior written notice to the other Party.
- 25.12 If the Authority terminates the Contract under clause 25.11 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination where the payment has yet to be made by the Authority for Termination Services agreed with the Authority in accordance with the Contract.
- 25.13 If any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Contract (or any part of it) cannot reasonably continue the Authority may terminate the Contract (or that part of it) by serving 3 months' written notice on the Contractor.
- 25.14 If the Authority terminates the Contract (or any part of it) under clause 25.13 the Authority shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy or other severance costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavoidability of such costs.
- 25.15 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 25.16 If the Authority fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 30 Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights of deduction and / or set-off under clause 8.8 or to Force Majeure.
- 25.17 Save as otherwise expressly provided in the Contract:
- 25.17.1 termination or expiry of the Contract (or any part of it) shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - 25.17.2 termination of the Contract (or any part of it) shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses 8 (Payment), 10 (Tax and VAT), 11 (Prevention of Fraud), 13 (Intellectual Property Rights), 14 (Data), 16 (Confidentiality), 17 (Freedom of Information), 18 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 19 (Liability), 20 (Warranties and Representations), 25 (Termination), 27 (Exit Management), 28 (Audit), 39 (Governing Law and Jurisdiction) and Schedule 10 (Staff Transfer).
- 25.18 The Authority may terminate the Contract (or any part of it) with immediate effect and without paying compensation to the Contractor in the event that the Contractor's

performance of the Service is such that any Service Termination Threshold is reached or exceeded

26 RETENDERING AND HANDOVER

- 26.1 Within 30 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the Authority to issue tender documents for the future provision of replacement services. This will include but is not limited to the information required to be disclosed by the Contractor in accordance with Part C of Schedule 10 (Staff Transfer).
- 26.2 The Authority shall take reasonable precautions to ensure that the information referred to in clause 26.1 is given only to potential contractors who have qualified to tender for the future provision of the replacement services.
- 26.3 The Authority shall require that all potential Contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- 26.4 The Contractor shall allow access to the Premises in the presence of the Authority's authorised representative, to any person representing any potential contractor whom the Authority has selected to tender for the future provision of the Services.
- 26.5 If access is required to the Contractor's Premises for the purposes of clause 26.4, the Authority shall give the Contractor 7 days' notice of a proposed visit together with the names of all persons who will be visiting.
- 26.6 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 26.7 Within 10 Business Days of being requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

27 EXIT MANAGEMENT

- 27.1 If the Authority requires a continuation of all or any of the Services at the end of the Term or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor, either by performing them itself or by engaging a third party to perform them as a Replacement Contractor or otherwise, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services or the relevant part of the Services without disruption to routine operational requirements.
- 27.2 The Contractor will, within 3 months of the Effective Date, deliver to the Authority, a plan in accordance with paragraph 13.1.1 of Schedule 1 (Specification) which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the Authority and/or its Replacement Contractor at the end of the Term or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor (an "**Exit Plan**").
- 27.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 38.
- 27.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the Authority for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the

revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 38.

27.5 If the Contractor:

27.5.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or

27.5.2 reasonably incurs additional costs

the Parties shall agree a variation of the Charges.

27.6 If the Authority requests, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

27.7 Within one month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

27.8 The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority or any other Replacement Contractor at the end of the Term or on the earlier termination of any part of the Contract or cessation of the provision of any part of the Services by the Contractor and shall provide the Authority free of charge with full access to Contractor Staff, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than 15 Business Days from the date that that request was made.

28 AUDIT RIGHTS AND FINANCIAL REPORTS

28.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.

28.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services

28.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

28.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

28.5 The Contractor shall comply with the provisions of Part A of Schedule 13 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data.

28.6 The Parties shall comply with the provisions of Part B of Schedule 13 (Financial Reports and Audit Rights) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

29 ENTIRE AGREEMENT

29.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.

29.2 Nothing in this clause 29 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

30 PARTNERSHIP

- 30.1 Nothing in the Contract is intended to or shall operate to create a legal partnership between the Parties or to authorise either Party to act as an agent for the other, and neither Party shall have Authority to act in the name or on behalf of or otherwise to bind the other in any way (including making any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

31 WAIVER

- 31.1 No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

32 CHANGE CONTROL

- 32.1 Either Party may at any time request in writing a Variation in accordance with the change control procedure set out in Schedule 6 (the "**Change Control Procedure**"). No Variation shall be effective unless made in accordance with the Change Control Procedure.

33 COUNTERPARTS

- 33.1 The Contract may be executed in any number of counterparts, each of which so executed and delivered shall constitute an original, but together shall constitute one and the same instrument.

34 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 34.1 The provisions of clauses 7.5 and 13.6 confer benefits on a Replacement Contractor and are intended to be enforceable by a Replacement Contractor by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**").
- 34.2 Subject to clause 34.1, a person who is not a Party has no right under CRTPA to enforce provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 34.3 A Replacement Contractor may not enforce or take steps to enforce the provisions of clauses 7.5 or 13.6 without the Authority's prior written consent.
- 34.4 The Parties may amend the Contract without the consent of any Replacement Contractor.

35 CONFLICTS OF INTEREST

- 35.1 The Contractor shall:
- 35.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and
 - 35.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Contractor Staff is placed in a position 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 or any of the Contractor Staff and the duties owed to the Authority under the provisions of the Contract in either case, referred to in this clause 35 as a "**Conflict of Interest**".
- 35.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 35 the Contractor shall forthwith provide full particulars to the Authority.
- 35.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.
- 35.4 Without prejudice to the foregoing provisions of this clause 35.1, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:

- 35.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the Authority (acting reasonably); and
 - 35.4.2 give the Authority a comprehensive and detailed written statement of the action it had taken.
- 35.5 If the Authority is not satisfied with the Contractor's actions, the Contractor shall, on request by the Authority promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).
- 35.6 Without prejudice to any other right or remedy it may have, the Authority may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is any continuing breach by the Contractor of the provisions of this clause 35.

36 FURTHER ASSURANCE

- 36.1 The Parties shall do or procure the doing of all such acts and things and will execute or procure the execution of all such documents as may be reasonably required including on or subsequent to the end of the Contract to vest in the relevant all rights granted under the Contract and otherwise to comply with its terms.

37 NOTICES

- 37.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).
- 37.2 The notice, demand or communication shall be deemed to have been duly served:
- 37.2.1 if delivered by hand, when left at the proper address for service;
 - 37.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;
 - 37.2.3 if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
- 37.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

38 DISPUTE RESOLUTION

- 38.1 Any Dispute shall be dealt with in accordance with this clause 38.
- 38.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
- 38.3 If a Dispute cannot be resolved by negotiation as referred to in clause 38.2 within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

39 GOVERNING LAW AND JURISDICTION

- 39.1 The Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.

- 39.2 The courts of England shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Contract.
- 39.3 If any provision of the Contract is held by any court or other competent Authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

SCHEDULE 3

FINANCIALS

1 DEFINITIONS

1.1 In this Schedule, the following terms shall have the meanings set out below:

“Gainshare Payment” has the meaning set out in paragraph 2.8 of this Schedule;

“Interim Payment” means an advance payment made to the Contractor in order to support the cash-flow requirements of the Contract;

“Milestones” means the stages in the Implementation Plan which once achieved by the Contractor will trigger a payment in accordance with Paragraph 2.2.2

“Output” means the successful completion of specific deliverables per Participant as set out in Table 1 of Schedule 4 (Performance Levels).

“Output Payment” means the price the Authority will pay the Contractor per Output achieved in accordance with Paragraph 2.4

“Paragraph” means a paragraph of this Schedule 3 unless expressly indicated to the contrary.

“Pricing Model” means the pricing workbook submitted by the Contractor with its Tender in response to the requirements for the same set out in the Invitation to Tender;

“Profit Margin” has the meaning given to it in Paragraph 2.5.1;

“Service Fee” means a monthly fee paid with effect from the Service Commencement Date calculated in accordance with Paragraph 2.3

“Set Up Costs” means costs incurred by the Contractor to establish the necessary infrastructure to enable operational delivery calculated in accordance with Paragraph 2.1 of this Schedule.

“Total Contract Value” means the total value of the Services to be delivered during the Term as included in the Pricing Model by the Contractor.

2 APPLICABLE PRICING METHODOLOGY

2.1 General

The Charges payable to the Contractor by the Authority shall consist of:

- 2.1.1 The Set up Costs;
- 2.1.2 The Service Fee;
- 2.1.3 The Output Payment;
- 2.1.4 Profit Margin; and
- 2.1.5 Incentive Payment.

All subject to and in accordance with the provisions of this Contract.

2.2 Set Up Costs

- 2.2.1 The Set Up Costs for which the Contractor is entitled to be reimbursed by the Authority under this Contract are capped at a total of £1,000,000 for all Set Up Costs as set out in the Pricing Model
- 2.2.2 Set Up Costs up to 30 September 2021 will be paid in accordance with the Milestones defined by the Contractor and as replicated in Table 1, after validation of an invoice submitted by the Contractor has been carried out by or on behalf of the Authority. The Contractor may claim an Interim Payment in relation to each milestone of 50% of the value of that milestone in accordance with the Paragraph 2.7 of this Schedule.

Table 1 – Set Up Costs

Milestone Payments:

Milestone	Date of Delivery	Deliverables	Amount
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Total

2.3 Service Fee

2.3.1 Subject to the terms of the Contract, the Service Fee will be paid to the Contractor on a monthly basis, with effect from the Service Commencement Date on the basis set out in paragraph 2.3.3 2.3.2 for a period of between 24 and 36 months, as determined by the Contractor within the Pricing Model.

2.3.2 The Service Fee is capped at 25% of the Total Contract Value.

2.3.3 The Service Fee will be a fixed amount per month, based on the total Service Fee sum in the Pricing Model, divided by the period for which the Contractor has requested in accordance with Paragraph 2.3.1.

2.4 Output Payment

2.4.1 Subject to the terms of the Contract, the Authority shall pay the Contractor the applicable Output Price for each Output that is achieved in accordance with the requirements of the Contract.

2.4.2 Payment will be made based upon the successful delivery of each individual Output as set out in Table 1 (Key Performance Indicators) of Schedule 4 (Performance Levels).

2.4.3 Not used

2.4.4 The total Output Payment made in respect of performance against each KPI is capped at 2000 Outputs

2.4.5 The Output Payment to be made for each of the KPIs as referred to in Paragraph 2.4.2 are set out in Table 3 of this Schedule.

Table 3

Output Payments for KPIs 1 to 4

The following volume based Output Payments shall apply during the Contract:

Output Number	Output Payment by Outcome (£)
KPI 1	£ 6,152.19
KPI 2	£ 3,417.88

KPI 3	£ 5,126.83
KPI 4	£ 1,788.43

2.5 Profit Margin

- 2.5.1 The Pricing Model includes a fixed percentage margin which will apply to the Set-Up Costs, Service Fee and Output Payment only.
- 2.5.2 The Profit Margin will be paid alongside other regular invoices and purchase orders.

2.6 Incentive Payment

- 2.6.1 The Authority will make an Incentive Payment to the Contractor if it achieves a retention rate in relation to second year Participants that exceeds KPI 4 as set out in Table 1 of Schedule 4 (in excess of 86%), subject to the provisions of the following paragraphs.
- 2.6.2 The Contractor will only be eligible for the Incentive Payment if the Contractor has achieved at least 100% in relation to KPI 1 as set out in Table 1 of Schedule 4 in relation to 1,750 Participants.
- 2.6.3 If, in accordance with paragraphs 2.6.1 and 2.6.2, the Incentive Payment is payable, it shall be calculated on the basis of it being £4,000¹ per Participant subject to a maximum Incentive Payment of £1,000,000.

2.7 Interim Payments

- 2.7.1 Where the Contractor requests an Interim Payment to assist its cashflow, the Authority shall give such a request its consideration.
- 2.7.2 If the Authority agrees to a request made by the Contractor in accordance with paragraph 2.7.1, the Interim Payment will be calculated as being an amount equivalent to 60% of the maximum estimated total Output Payment for each Output, and it shall be paid as an equal payment in each of the eleven months (i.e. 5.45% of total Output Payment x 11 months) prior to the expected completion date for the Output.
- 2.7.3 The cumulative Interim Payments made in respect of Output Payments for KPI 3 performance up to and including October 2022, shall be no more than 90% of the actual measured performance recorded in August 2022. The remaining Output Payment for KPI 3 performance will be made in October 2023 and take account of the final actual measured performance recorded in August 2023.
- 2.7.4 If the Authority agrees to a request made by the Contractor for an Interim Payment in accordance with paragraph 2.7.1 in relation to a milestone as set out in Table 1 – Set Up Costs, the Interim Payment will be calculated as being an amount equivalent to 50% of the relevant milestone payment as set out in Table 1 – Set Up Costs. It shall be paid one month prior to the expected completion of the milestone.
- 2.7.5 Where the Contractor fails to successfully deliver a milestone as set out in Table 1 – Set Up Costs and / or the forecast Output by the completion date for that Output, any Interim Payment that has been paid in relation to that milestone and / or Output will be recovered by the Authority. Where possible, the Authority will recover the Interim Payment by deducting and / or setting off the Interim Payment against sums owed by the Authority to the Contractor in accordance with clause 8.8. Where this is not possible, the Authority will issue an invoice to the Contractor for the recovery of the Interim Payment.

2.8 Gainshare Payment

- 2.8.1 Where it transpires during the Term, whether through an Annual Review carried out in accordance with clause 23 or through another route, that the cost of

¹ Figure of £4,000 per Participant is subject to final confirmation
v1.0 3 Feb 2020

delivering the Services is less than those set out in the Pricing Model, a Gainshare Payment will apply on the basis of the Authority and the Contractor sharing equally the savings generated.

- 2.8.2 Savings which may be eligible for a Gainshare Payment may be generated either by way of the Contractor delivering the Services more efficiently through continuous improvement and / or or through the Contractor submitting to the Authority a Change Control Note for a Variation through the Change Control Procedure (Schedule 6).
- 2.8.3 For example, if the Contract identifies an efficiency saving that would reduce the cost of the Output Payment 4 per Participant by 15%, the Authority would receive a 7.5% saving as a Gainshare Payment on the per Participant Output Payment cost, and the Contractor would receive the remaining 7.5% saving as a Gainshare Payment.
- 2.8.4 In addition to the provisions of 2.8.1, in the event that measures imposed to restrict the spread of Covid 19 affects the ability of the Contractor to deliver the Services in part, the Parties will agree rephased and replacement activity. Subject to this, the Contractor will identify any savings that arise as a result of of the agreed rephased and replacement activity and repay the whole amount of any identified savings to the Authority. The Contractor shall:
- a) provide a financial forecast of the cost of the Service as part of the finance report. This forecast shall identify any related costs and activities that are subject to change due to the impact of Covid 19.
 - b) provide Open Book Data relating to the actual cost incurred in the delivery of the Services and identify and quantify any Covid 19 related savings on a quarterly basis. The first submission of this data shall be supplied with the invoice submitted in October 2020. The final submission of Open Book Data for the purposes of identifying savings associated with Clause 2.8.4 shall be submitted with the invoice submitted in October 2021
- 2.8.5 Any savings shall be credited to the invoice submitted to the Authority immediately after the quarterly period in which the savings have been realised. For example, any savings that were realised in November 2020 shall be credited to the invoice submitted to the Authority in January 2021. For the avoidance of doubt in accordance with the Change Control Procedure (Schedule 6) the Authority may at its absolute discretion reject any request for a Variation proposed by the Contractor.
- 2.8.6 The Authority will discuss with the Contractor when and how the relevant Gainshare Payment is made.

3 PRICING OF CHANGES

- 3.1 The provisions of this paragraph 3 shall apply to the pricing of any Change (or proposed Change) and the calculation of any change to the Charges consequent upon a Change (or proposed Change).
- 3.2 The Parties acknowledge that a Change or proposed Change may have an impact on the Charges in one or more of the following ways –
- 3.2.1 One-off cost, in which case paragraph 3.5 shall apply;
 - 3.2.2 Process Change requiring a change to the Output Prices on which the Charges are based, in which case paragraph 3.6 shall apply;
 - 3.2.3 Process Change as in paragraph 3.2.2 above together with the cost of any required up-front investment by the Contractor, in which case paragraph 3.7 shall apply.
- 3.3 In any of the cases referred to in paragraphs 3.2.1 to 3.2.3 above, and without prejudice to paragraph 4, the Contractor shall use the Authority's finance template and change control finance annex at Appendix 1 (the "**Finance Template**") to demonstrate and justify any claim for additional or reduced Charges and/or proposed revisions to the

- Output Payment on which the Charges are based arising as a result of any proposed Change.
- 3.4 Where a Change is requested by either Party under the Change Control Procedure then, subject to the terms of the Change Control Procedure, the Contractor shall at its own cost prepare, populate and submit for the Authority's approval a specific version of the Finance Template (a "**Contractor Finance Template Submission**") which shall:
- 3.4.1 Be based on and reflect the principles of the Pricing Model having regard to any stated price affecting assumptions stated in the Pricing Model;
 - 3.4.2 Include estimated volumes of each type of resource to be employed and the applicable average annual salary for resource employed specified in the Pricing Model;
 - 3.4.3 Include full disclosure of any assumptions underlying such quotation. The Authority reserves the right to request further clarity around these assumptions and the underlying calculations until it is satisfied as to their validity; and
 - 3.4.4 Include evidence of the cost of any assets required for the Change.
- 3.5 Where paragraph 3.2.1 applies:
- 3.5.1 The Contractor shall be paid in full upon completion, or by an agreed schedule of milestone payments (both payment options subject to meeting specified acceptance criteria agreed at the outset).
 - 3.5.2 The Authority shall issue a separate purchase order and the Contractor shall raise a separate invoice or credit note in respect of the one-off cost.
- 3.6 Where paragraph 3.2.2 applies:
- 3.6.1 Any necessary changes to the Output Prices for any or all of the volume bandings shall be effected by means of changes to the relevant Output Prices set out in Table 3.
 - 3.6.2 Any necessary changes to the Output Prices will be in accordance with the original requirements for the completion of the Pricing Schedule as set out in the Invitation to Tender, for example the maximum cap on Service Fee will still apply.
 - 3.6.3 The Output Prices shall not be adjusted more than once a quarter. The date any Output Price adjustment ("Price Adjustment Effective Date") takes effect shall be at the start of the quarter (1 January, 1 April, 1 July, and 1 October) immediately following implementation of the Change in question. For example, where a Change to which paragraph 3.2.2 and this paragraph applies (a "Process Change") is implemented during the month of September in a Contract Year; the relevant Output Prices shall be adjusted with effect from 1 October in that Contract Year. If there are several adjustments in one quarter, these will be aggregated to make one adjustment at the start of the next quarter.
 - 3.6.4 The Authority shall provide the Contractor with a revised Table 3 of this Schedule by the date any such Change takes effect (1 January, 1 April, 1 July, 1 October).
 - 3.6.5 A Process Change shall be implemented timeously and such implementation shall not await the Price Adjustment Effective Date.
 - 3.6.6 ²If a Process Change is implemented and there is a demonstrable financial loss to a Party due to the relevant Output Payment(s) not being adjusted until the Price Adjustment Effective Date (first day of next quarter), then either Party can seek recovery of the amount due in the following manner
 - (a) If the Contractor, it should submit a separate invoice and supporting documentation; or

² Figure of £4,000 per Participant subject to final confirmation
v1.0 3 Feb 2020

(b) If the Authority, it should issue a credit note request and supporting documentation.

3.6.7 Any request to seek recovery of such an amount must be submitted within 3 Months of the Price Adjustment Effective Date.

3.7 Where paragraph 3.2.3 applies, the Process Change element shall be dealt with in accordance with paragraph 3.6 above and any up-front investment required to implement such a Process Change shall itself be dealt with through an adjustment to the relevant Output Price(s) under paragraph 3.6 above or treated as a one-off cost in accordance with paragraph 3.5 above.

3.8 Following implementation of a Change, the Authority shall make any necessary consequential changes and/or updates to Table 3 of this Schedule 3.

4 INDEXATION

4.1 Indexation shall not apply to the Charges under this Contract.

Appendix 1 – Finance Template to be provided as part of the change control procedure

SCHEDULE 4

PERFORMANCE LEVELS

1 OBJECTIVES

- 1.1 The objectives of the Performance Indicators are to:
 - 1.1.1 ensure that the Services delivered by the Contractor are of a consistently high quality and meet the requirements of the Authority;
 - 1.1.2 provide a mechanism whereby the Authority can, without prejudice to its other rights and remedies, attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the level of Service in relation to particular Performance Indicators which it has contracted to deliver; and
 - 1.1.3 incentivise the Contractor to meet the Performance Indicators and to remedy any failure to meet the Performance Indicators expeditiously.

2 PERFORMANCE INDICATORS

- 2.1 This Schedule 4 sets out the Performance Indicators against which the Contractor shall measure its performance.
- 2.2 The Contractor shall provide the Services in such a manner so as to meet or exceed the Performance Indicators from the Service Commencement Date.
- 2.3 The Contractor shall monitor its performance against of each of the Performance Indicators and send the Authority a report detailing the Performance Indicators which were achieved in accordance with the provisions of this Schedule 4.
- 2.4 The Contractor shall achieve or better the standards specified for each identified Performance Indicator as set out in Table 1, Table 3 and Table 4 below within the agreed Service Period.
- 2.5 Where a Performance Indicator is stated with reference to percentages, it shall be calculated, and rounded up or down to the nearest 0.1%.

3 REPORTS

- 3.1 The Contractor shall provide the Authority with the reports specified in Table 4 of this Schedule 4.

4 NOT USED

5 ANNUAL REVIEW

- 5.1 The Performance Indicators may be revised each Contract Year in accordance with the Annual Review process as set out in clause 23.
- 5.2 The Contractor shall submit to the Authority by the tenth Business Day of November in each Contract Year an annual report that includes the content as set out in Table 4 below.

Table 1 – Key Performance Indicators

KPI Reference	KPI Description and Standard	Monitoring Method
KPI1	Participant Starts 1750 Participants will Start Year 1 of the Programme	Measure is taken at the start of Year 1 of the Programme on 10 September 2021 Success will be measured against the validated total number of Starts on Year 1 of the Programme taken from the Authority's Database of Trainee Teachers and Providers
KPI 2	Participant Year 1 Retention 90% of Participants who start Year 1 of the Programme will complete Year 1 of the Programme	Measure is taken at the end of Year 1 of the Programme on 31 August 2022 Success will be measured against the validated total number of Participants who complete Year 1 of the Programme taken from the Authority's Database of Trainee Teachers and Providers
KPI 3	Participant Achievement of QTS 90% of Participants who start Year 1 of the Programme will achieve QTS by the end of the Programme	Measure is taken at the end of Year 1 of the Programme on 31 August 2022 and again at the end of Year 2 of the Programme on 31 August 2023 and Success will be measured against the validated total number Participants who have achieved QTS taken from the Authority's Database of Qualified Teachers
KPI 4	Participant Year 2 Retention 86% of Participants who start Year 1 of the Programme will complete Year 2 of the Programme	Measure is taken at the end of Year 2 of the Programme on 31 August 2023 Success will be measured against the validated total number Participants who complete Year 2 of the Programme taken from the Authority's Database of Trainee Teachers and Providers

Table 2 – Not Used

Table 3 – Subsidiary Performance Indicators

SPI No.	SPI Title	SPI Description and Standard	Monitoring Period	Monitoring Method
SPI 1	Priority Subjects	At least 600 (or 34 % whichever is higher) Participants will start Year 1 of the Programme in Priority Subjects as defined in	Measured in September 2021	MI to be submitted in the 2021 Annual Report. The data will be validated on the Authority's Database of

		Schedule 1 – Specification		Trainee Teacher and Providers
SPI 2	Participant University	At least 60% of Participants that start Year 1 of the Programme will hold a degree from a Russell Group University	Measured in September 2021	MI to be submitted in the 2021 Annual Report.
SPI 3	Participant Degree Class	At least 90% of Participants that start Year 1 of the Programme will have a 2:1 or higher degree classification	Measured in September 2021	MI to be submitted in the 2021 Annual Report.
SPI 4	Placement of Participants in Eligible Schools	No less than 90% of Participants that start Year 1 of the Programme will be placed in and will remain working in Eligible Schools for the full duration of the Programme	Measured in September 2021 and annually until July 2023.	MI to be submitted in the 2021 Annual Report and annually thereafter.
SPI 5	Geographical Placement of Participants	At least 5% of Participants who start Year 1 of the Programme will be placed in each English Region (as defined in Schedule 1 – Specification) and a maximum of 40% of Participants who start Year 1 the Programme will be placed in London (as defined in Schedule 1 – Specification)	Measured in September 2021	MI to be submitted in the 2021 Annual Report.
SPI 6	Participant Exit Reviews	At least 90% of Participants that start the Programme will receive an Exit Review on leaving the Programme whether this is because the Participant has completed the Programme or left the Programme early	Measured Quarterly each year in October, January, April and July until October 2023.	MI to be submitted in each Quarterly Report
SPI 7	Participant Satisfaction	At least 90% of Participants rate their experience of being on the Programme as good or better measured by the Satisfaction Survey and at their Exit Review.	Satisfaction Survey measured at the end of Year 1 (July 2022). Exit reviews measured quarterly each year at the end of October, January, April and July until October 2023	MI to be submitted in each Quarterly Report
SPI 8	School Satisfaction	At least 90% of schools rate their experience of	Measured Annually in	MI to be submitted in the October 2022 and

		the Programme as good or better	September until September 2023	October 2023 Annual Reports.
SPI 9	Placement of Participants in Opportunity Areas	At least 215 Participants that start the Programme will be placed in Opportunity Areas (as defined in Schedule 1 - Specification)	Measured in Sept 2021	MI to be submitted in the October 2021 Annual Report.

Table 4 – Service Levels

Service Level	Standard
Performance Monitoring Reports	Monthly reporting: Report to be submitted monthly by the 10th Business Day of the following month. Report format and content to be agreed with the Authority.
	Fortnightly reporting: Recruitment Report to be submitted fortnightly during the recruitment cycle to align with ministerial reporting submissions. Report format and content to be agreed with the Authority. The Authority reserve the right to increase the frequency of this report to weekly.
	Quarterly reporting: for periods ending January, April and July each year. Report to be submitted within 10 Business Days of the end of each quarter. Report to include including performance and narrative against KPIs/SPIs, financial reports with commentary and updated risks and issues logs. Report format and content to be agreed with the Authority.
	Annual Report: Annual Report to be submitted by the 10th Business Day of November each year. Report to include performance and narrative against KPIs/SPIs and delivery of the Services; commentary on overall progress and impact of programme and any lessons learned and proposed improvements; a review of Charges and costs of delivery and any potential efficiencies and cost savings. The Contractor must also submit financial reports with commentary, Open Book Accounts and an updated risks and issues log financial reports and costs of delivery with commentary, updated risks and issues logs. Report format and detailed content to be agreed with the Authority.
Marketing	Marketing and Recruitment plan: Costed marketing plan to be submitted in line with the Authority requirements and, if required, Cabinet Office requirements which identifies if/how Authority funding will be spent. To be provided annually in accordance with Cabinet Office requirements.
Meetings	Contract Management Meetings: Attend Contract Management Meetings on a monthly basis (unless otherwise agreed). The Contract Management Meetings will be the forum for the review by the Contractor and the Authority of the Performance Monitoring Reports, the Contractor's compliance with contractual obligations and, as appropriate, resolving any disputes and/or dealing with contractual breaches.
	Annual Contract Review Meeting: Attend Annual Contract Review Meetings in November of each Year. The Annual Review Meeting will be the forum for the review by the Contractor and the Authority of the Contractor's delivery of the Service, the Contractor's Performance of Contractual Obligations, the Contractor's risks and issues log, the Contractor's costs, charges and Open Book Accounts.
	Ad-hoc meetings: as required
Data management and validation	Ensure that all records are maintained and kept up to date throughout the Term.
	Ensure that the Authority's Database of Trainee Teachers and Providers (DTTP) for any future service is kept up to date and data is validated in a timely fashion to meet requirements to be agreed with the Authority.
	Ensure that data of unsuccessful applicants is sent to the Authority. Report format, content and frequency to be agreed with Authority.

Administration/ Communication	Respond to 100% of FOIA and parliamentary question requests within 24 hours of receipt.
	In delivering the Services offer a responsive and supportive service to the Authority and Participants. Respond to 100% of queries, correspondence and complaints within 3 Business Days of receipt.
Finance	Ensure that invoices are submitted by the 12th Business Day of the month following the month in respect to which the invoice relates
Complaints	Ensure that all administrative Staff are aware of and abide by relevant complaints procedures.
	Where a formal complaint is made by a Participant about the Services, report this to the Authority in the next monthly report. If the complaint will cause reputational damage to the Authority, report it within 3 Business Days.
Evaluation	Co-operate fully with any evaluation of the Programme that is undertaken by the Authority. As such, the Authority may require access to identifying records for schools/individuals so that they can contact them for evaluation purposes

SCHEDULE 5
IMPLEMENTATION PLAN

- 1 The Contractor shall provide the Services in accordance with the Implementation Plan set out below.
- 2 The Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
- 3 The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Service Commencement Date the Contractor is able to provide the Services:
 - 3.1 in accordance with the provisions of the Contract; and
 - 3.2 in a manner that maintains the continuity of Services to the Authority.
- 4 The Contractor shall monitor its performance against the Implementation Plan and report to the Authority monthly (or more frequently if so required by the Authority) on its performance.

SCHEDULE 6
CHANGE CONTROL PROCEDURE

- 1 The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Parties' respective contract managers.
- 2 The Contractor shall use reasonable endeavours to incorporate minor changes requested by the Authority within the current Charges and shall not serve a Contractor Notice of Change unless the change involves a demonstrable material increase to its costs or requires a material change to the Contract.
- 3 Either Party may request a Variation provided that such Variation does not amount to a material change.
- 4 The Authority may request a Variation by completing the Change Control Note and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Charges are required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing within 21 days of receiving the Change Control Note.
- 5 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Charges, the Authority may allow the Contractor to fulfil its obligations under the Contract without Variation or if the Parties cannot agree to the Variation the Dispute will be determined in accordance with clause 38.
- 6 If the Contractor wishes to introduce a change to the Contract it may request a Variation by serving the Change Control Note on the Authority.
- 7 The Authority shall evaluate the Contractor's proposed Variation in good faith, taking into account all relevant issues.
- 8 The Authority shall confirm in writing within 21 days of receiving the Change Control Note if it accepts or rejects the Variation.
- 9 The Authority may at its absolute discretion reject any request for a Variation proposed by the Contractor.

Change Control Note

Contract Number		Authority Contract / Programme Manager
Contractor		Original Contract Value (£)
Contract Start Date		Contract Expiry Date

Variation Requested	
Originator of Variation (tick as appropriate)	Authority <input type="checkbox"/> Contractor <input type="checkbox"/>
Date	
Reason for Variation	
Summary of Variation (e.g. specification, finances, Term)	
Date of Variation commencement	
Date of Variation expiry (if applicable)	
Total Value of Variation £ (if applicable)	
Payment Profile (if applicable) e.g. milestone payments	
Revised daily rate (if applicable)	
Impact on original contract (if applicable)	

Supporting Information (please attach all supporting documentation for this Change Control)	
Terms and Conditions	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.
Variation Agreed	
For the Contractor:	For the Authority:
Signature.....	Signature.....
Full Name.....	Full Name.....
Title.....	Title.....
Date.....	Date.....

Please note that no works/services described in this form should be undertaken, and no invoices will be paid until both copies of the CCN are signed, returned and counter-signed.

To be entered by the Commercial department:			
Commercial Contact		Reference Number	
Date received		EC Reference	

SCHEDULE 7

KEY CONTRACTOR STAFF AND KEY SUB CONTRACTORS

Key Contractor Staff

The individuals listed in the table below are Key Contractor Staff:

Name	Role	Period of Involvement
		

Key Sub-Contractors

The Contractor may sub-contract its obligations under the Contract to the Sub-Contractors listed in the table below.

Key Contractor Name and Address (if not the same as the registered office)	Sub-Office and Company Number	Registered Office and Company Number	Related Product/Service Description	Sub-contract Price*expressed as a percentage of total projected Charges over Term	Role in delivery of the Services

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

*£amounts are illustrative.

SCHEDULE 8
DATA, SYSTEMS HANDLING AND SECURITY

Definitions

"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" are interpreted accordingly;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
"DPA"	Data Protection Act 2018
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Subject Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
"Controller", "Processor," "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"	shall have the meanings given in the GDPR;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679)
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Processor Contractor Staff"	employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract.

“Protective Measures”

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those set out in the Contract.

“Sub-processor”

any third Party appointed to process Personal Data on behalf of the Processor related to this Contract

- 1.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 8 Annex 2. The only processing that the Processor is authorised to do is listed in Schedule 8 Annex 2 by the Controller and may not be determined by the Processor
- 1.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - (a) process that Personal Data only in accordance with Schedule 8 Annex 2 , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Processor Contractor Staff do not process Personal Data except in accordance with this Contract (and in particular this Schedule 8);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Contractor Staff who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 1.5. Subject to clause 1.6, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory Authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6. The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 Staff, unless:
 - (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
 - (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13. The Controller may, at any time on not less than 30 Business Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Business Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

SCHEDULE 8 – ANNEX 1

AUTHORITY SECURITY STANDARDS

<p>“BPSS” “Baseline Contractor Staff Security Standard”</p>	<p>a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at: https://www.gov.uk/government/publications/government-baseline-contractor-staff-security-standard</p>
<p>“CCSC” “Certified Cyber Security Consultancy”</p>	<p>is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website: https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</p>
<p>“CCP” “Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website: https://www.ncsc.gov.uk/scheme/certified-professional</p>
<p>“CC” “Common Criteria”</p>	<p>the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.</p>
<p>“CPA” “Commercial Product Assurance” [formerly called “CESG Product Assurance”]</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website: https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</p>
<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p> <p>There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: https://www.iasme.co.uk/apply-for-self-assessment/</p>
<p>"Department's Data" "Department's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made</p>

	<p>up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>“Authority” “Department”</p>	<p>means the Department for Education</p>
<p>“Departmental Security Standards”</p>	<p>means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>
<p>“Digital Marketplace / GCloud”</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.</p>
<p>“FIPS 140-2”</p>	<p>this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.</p>
<p>“Good Industry Practice” “Industry Good Practice”</p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>“Good Industry Standard” “Industry Good Standard”</p>	<p>means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>“GSC” “GSCP”</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications</p>
<p>“HMG”</p>	<p>means Her Majesty’s Government</p>
<p>“ICT”</p>	<p>means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together</p>

	of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing”	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
“Need-to-Know”	the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Authority for Information Assurance. The NCSC website is https://www.ncsc.gov.uk
“OFFICIAL” “OFFICIAL-SENSITIVE”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services. the ‘OFFICIAL–SENSITIVE’ caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.
“Secure Sanitisation”	Secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure Sanitisation” (“IS5”) issued by the former CESG. Guidance can now be found at: https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction
“Security and Information Risk Advisor” “CCP SIRA” “SIRA”	the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: https://www.ncsc.gov.uk/articles/about-certified-professional-scheme

<p>“SPF” “HMG Security Policy Framework”</p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. https://www.gov.uk/government/publications/security-policy-framework</p>
<p>”Tailored Assurance” [formerly called “CTAS”, or, ”CESG Tailored Assurance”]</p>	<p>is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks. https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology</p>

- 1.1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2. Where the Contractor will provide ICT products or services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 1.3. The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 1.5. Departmental Data being handled in the course of providing an ICT solution or service must be segregated from all other data on the Contractor’s or sub-contractor’s own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 1.14.
- 1.6. The Contractor shall have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas
- 1.7. The Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised Staff have access to Departmental Data.
- 1.8. The Contractor shall have in place and shall maintain procedural, Staff, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.9. Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 1.10. Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 1.11 and 1.12 below.
- 1.11. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.

- 1.12. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.13. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.14. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.15. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.16. Access by Contractor or sub-contractor Staff to Departmental Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Contractor Staff Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor Staff must complete this process before access to Departmental Data is permitted.
- 1.17. All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.18. The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.19. Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.20. The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.

- 1.21. The Contractor or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 1.22. The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-contractors, compliance with the clauses contained in this Section.
- 1.23. The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.
- 1.24. Contractor and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. Contractor and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the Authority Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Contractor's and sub-contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA)

SCHEDULE 8- ANNEX 2

Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

- 1 The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
- 2 The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
- 3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Schedule 8 Clause 1.1.
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract. Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]
Type of Personal Data	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]

<p>Categories of Data Subject</p>	<p>[Examples include: Staff (including volunteers, agents, and temporary workers), Departments/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</p>
<p>Plan for return and destruction of the data</p> <p>once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>[Describe how long the data will be retained for, how it be returned or destroyed]</p>

Schedule 8 Annex 3 Joint Controller Agreement

In this Schedule the Parties must outline each party's responsibilities for:

- (a) providing information to data subjects under [Article 13 and 14](#) of the GDPR.
- (b) responding to data subject requests under [Articles 15-22](#) of the GDPR
- (c) notifying the Information Commissioner (and data subjects) where necessary about data breaches
- (d) maintaining records of processing under [Article 30](#) of the GDPR
- (e) carrying out any required Data Protection Impact Assessment
- (f) The agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Schedule 8 Clause 1.2-1.14.

You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.

Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Schedule 8 Annex 3 should be used instead of Schedule 8 Clause 1.1-1.15 and Schedule 8 Annex 2.

SCHEDULE 9
COMMERCIALLY SENSITIVE INFORMATION

This is as set out in Part C of 'HPITT Appendix 3 Teach First - Response Document', the clarifications and all non-public information provided in the SQ and Mandatory questions

SCHEDULE 10
STAFF TRANSFER

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Acquired Rights Directive”** the European Council Directive 2001/23/EC on the approximation of the laws of the member states of the European Union relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
- “Contractor’s Final Staff List”** a list provided by the Contractor of all Staff who will transfer under TUPE on the relevant Service Transfer Date;
- “Contractor’s Provisional Staff List”** a list prepared and updated by the Contractor of all Contractor Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services (such list to be broken down between the four groupings of Contractor Staff referred to in clause 6.2.2 of Schedule 2) or (if required by the Authority) any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;
- “Employee”** has the meaning given to that term in regulation 2(1) of TUPE;
- “Fair Deal Employees”** any of:
- (i) Transferring Former Contractor Employees;
 - (ii) employees who are not Transferring Former Contractor Employees but to whom TUPE applies on the Relevant Transfer Date to transfer their employment to the Contractor or a Sub-contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.5 of Part A or 1.4 of Part B of this Schedule 10; or
 - (iii) where a Former Contractor becomes the Contractor, employees,
- who at the Service Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Authority.
- “Former Contractor”** a contractor supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services), including Teach First, and shall include any Sub-contractor of such contractor (or any sub-contractor of any such Sub-contractor);

“MSC Schedule 9.1”	Schedule 9.1 in v1.08A (England & Wales) of the Model Services Contract Combined Schedules issued by the Cabinet Office on 4 June 2019 as published online, as amended or revised and published online as so amended or revised as a new version by or with the authority of the Cabinet Office from time to time, and referred to in Schedule 1 to this Contract, substituting for the definition of Fair Deal Employees in Paragraph 1 of Part D of the said Schedule 9.1 the definition of Fair Deal Employees in this Paragraph 1 of this Schedule 10.
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 including: <ul style="list-style-type: none"> (i) any amendments to that document immediately prior to the Relevant Transfer Date; (ii) any similar pension protection in accordance with the Annexes D1 to D3 inclusive to Part D of MSA Schedule 9.1 as notified to the Contractor by the Authority.
“Old Fair Deal”	HM Treasury Guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions” issued in June 1999 including the supplementary guidance “Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues” issued in June 2004.
“Relevant Transfer”	a transfer of employment to which TUPE applies.
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
“Replacement Sub-Contractor”	a Sub-Contractor of any Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date.
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-Contractor to a Replacement Contractor or a Replacement Sub-Contractor.
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer, as the context requires.
“Statutory Schemes”	means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of MSC Schedule 9.1.
“Teach First”	Teach First, a private limited company by guarantee without share capital incorporated and registered in England and Wales with company number 04478840 whose registered office is at 6 Mitre Passage, Greenwich Peninsula, London, England, SE10 0ER, and being a Former Contractor;
“Transferring Employees”	Contractor those employees of the Contractor or the Contractor’s Sub-Contractors to whom TUPE will apply on the relevant Service Transfer Date;

“Transferring Former Contractor Employees”

in relation to a Former Contractor, those employees of the Former Contractor to whom TUPE will apply on the Relevant Transfer Date; and

“TUPE Information”

in relation to all persons identified on the Contractor’s Provisional Staff List or the Contractor’s Final Staff List, as the case may be, all information that the Authority may reasonably request, including the following:

- i. their ages, dates of commencement of employment or engagement, gender and place of work;
- ii. details of whether they are employed, self-employed contractors or consultants, workers, agency workers or otherwise;
- iii. the identity of the employer or relevant contracting party;
- iv. their relevant contractual notice periods and all other terms and conditions of their employment or engagement, including all other terms relating to the termination of their employment or engagement, including redundancy procedures and redundancy and any other severance payments, and their job titles and qualifications;
- v. their wages, salaries, bonuses, profit sharing arrangements and any other remuneration, and any future pay settlements;
- vi. details of all other employment-related benefits, including (without limitation) pension or any other retirement benefits or entitlements, medical insurance, life assurance, share option schemes and company car or similar benefits;
- vii. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- viii. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- ix. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such employees);
- x. details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened;
- xi. details of all collective agreements with a brief summary of the current state of negotiations with any relevant trade unions or other representative bodies and details of any current industrial disputes or claims for recognition by any trade union; and
- xii. any other “employee liability information” as such term is defined in regulation 11 of TUPE.

2 INTERPRETATION

Where a provision in this Schedule or (if applicable) in Part D of MSC Schedule 9.1 imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Contractor, Replacement Contractor or Replacement Sub-Contractor, as the case may be.

PART A: TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Contractor agrees that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the relevant Transferring Former Contractor Employees;
- (b) in performing the Contract, the Contractor will, unless otherwise required or permitted in writing by the Authority, commence those parts of the Services listed in subparagraphs (i), (ii), (iii) and (iv) below in four phases as set out in the said subparagraphs and that, in each case, this will require the Contractor to commence carrying out activities on behalf of the Authority that are the same, or fundamentally the same, as activities carried out on behalf of the Authority by Teach First in its capacity as a Former Contractor immediately prior to such commencement, and that accordingly paragraph (a) above will apply in respect of the commencement of each phase, and that the date of commencement of each phase will be a Relevant Transfer Date:
 - (i) data and financial management services dedicated to the Programme, on or within 1 month after the Effective Date;
 - (ii) recruitment and marketing services dedicated to the Programme, on or within 1 month after the Effective Date;
 - (iii) programme delivery services dedicated to Year 1 of the Programme, on or within 1 month after the first anniversary of the Effective Date; and
 - (iv) programme delivery services dedicated to Year 2 of the Programme, on or within 1 month after the second anniversary of the Effective Date;
- (c) as a result of the operation of TUPE, the contracts of employment between each Former Contractor and the Transferring Former Contractor Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of TUPE) shall have effect on and from the Relevant Transfer Date as if originally made between the Contractor or any relevant Sub-Contractor and each such Transferring Former Contractor Employee.

1.2 The Authority shall procure that each Former Contractor shall comply with all its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Former Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Contractor shall make, and the Authority shall procure that each Former Contractor makes, any necessary apportionments in respect of any periodic payments.

2 FORMER CONTRACTOR INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Contractor shall indemnify and keep indemnified the Contractor and any relevant Sub-Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:

- (a) the provision of any TUPE information by the Former Contractor;
- (b) any claim or demand by any Transferring Former Contractor Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Former Contractor or any of its sub-contractors in respect of any Transferring Former Contractor Employee in the period up to (but not including) the Relevant Transfer Date relating to that Transferring Former Contractor Employee;

- (c) any failure by the Former Contractor or any of its sub-contractors to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE;
 - (d) any court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Former Contractor or any of its sub-contractors to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Former Contractor to the Contractor who has not, prior to the Relevant Transfer Date, been identified to the Contractor as a Transferring Former Contractor Employee.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the relevant liabilities arise from or are attributable to any act or omission of the Contractor or any Sub-Contractor, whether occurring or having its origin before, on or after the Relevant Transfer Date, including any such liabilities:
- (a) arising out of the resignation of any Transferring Former Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his or her working conditions proposed by the Contractor or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - (b) arising from any failure by the Contractor or any Sub-Contractor to comply with its obligations under TUPE.
- 2.3 If any person who is not identified by the Authority as a Transferring Former Contractor Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Contractor Employee, that his or her contract of employment has been transferred from a Former Contractor to the Contractor or any Sub-Contractor pursuant to TUPE or the Acquired Rights Directive then:
- (a) the Contractor shall, or shall procure that the relevant Sub-Contractor shall, within 5 Business Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Contractor; and
 - (b) the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Business Days of the notification by the Contractor or the Sub-Contractor (as the case may be) or take such other reasonable steps as the Former Contractor considers appropriate to deal with the matter, provided always that such steps are in compliance with any applicable law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Contractor or the Authority, the Contractor shall, or shall procure that the relevant Sub-Contractor shall, immediately release the person from his or her employment or alleged employment.
- 2.5 If by the end of the 15 Business Day period specified in Paragraph 2.3(b)
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Supplier or the Sub-Contractor (as appropriate) may within 5 Business Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Contractor or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in law, the Authority shall procure that the Former Contractor indemnifies the Contractor or the relevant Sub-Contractor (as the case may be) against all liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5, provided that the Contractor takes, and procures that the relevant Sub-Contractor takes, all reasonable steps to minimise any such liabilities.

- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 in any case in relation to any alleged act or omission of the Contractor or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Contractor or any Sub-Contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Contractor or the relevant Sub-Contractor (as appropriate) to the Authority and, if applicable, the Former Contractor, within 6 months of the Relevant Transfer Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Contractor nor dismissed by the Contractor or the relevant Sub-Contractor within the time-scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Contractor or the relevant Sub-Contractor and the Contractor shall, or shall procure that the relevant Sub-Contractor shall, comply with such obligations as may be imposed upon it under law.

3 CONTRACTOR INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Contractor shall indemnify the Authority and any Former Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
- (a) any act or omission by the Contractor or any Sub-Contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Contractor Employee whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Contractor Employee;
 - (ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Contractor or any Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees to their material detriment on or after their transfer to the Contractor or any Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated by the Contractor or any Sub-Contractor to, or any action undertaken by the Contractor or any Sub-Contractor in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
 - (f) any proceeding, claim or demand by HMRC or any other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his or her employment from the Former Contractor to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - (g) any failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - (h) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to obligations under regulation 13 of TUPE, except to the extent that the liability arises from the Former Contractor's failure to comply with its obligations under regulation 13 of TUPE.
- 3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the relevant liabilities arise or are attributable to any act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any such liabilities arising from the Former Contractor's failure to comply with its obligations under TUPE.
- 3.3 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE (including without limitation its obligation to inform and consult in accordance with regulation 13 of TUPE) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under any Admission Agreement (as the same is defined in Part D of MSC Schedule 9.1) which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contractor and the Former Contractor.

4 INFORMATION

The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and, at the Authority's direction, the Former Contractor, in writing such information as is necessary to enable the Authority and the Former Contractor to carry out their respective duties under regulation 13 of TUPE.

5 PENSIONS

5.1 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with:

- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- (b) Part D of MSC Schedule 9.1, which shall apply mutatis mutandis as if it formed part of this Schedule.

5.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Contractor Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and
- (d) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part A, where in this Part A the Authority accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Contractor contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Contractor.

PART B: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority or any Former Contractor.
- 1.2 If any employee of the Authority or a Former Contractor claims, or it is determined in relation to any employee of the Authority or a Former Contractor, that his or her contract of employment or engagement has been transferred from the Authority or the Former Contractor to the Contractor or any Sub-Contractor pursuant to TUPE or the Acquired Rights Directive, then:
- (a) the Contractor shall, or shall procure that the relevant Sub-Contractor shall, within 5 Business Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Contractor; and
 - (b) the Authority or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Business Days of the notification by the Contractor or the Sub-Contractor (as the case may be) or take such other reasonable steps as the Authority or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with any applicable law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted or if the situation has otherwise been resolved by the Authority or the Former Contractor, the Contractor shall, or shall procure that the Sub-Contractor shall, immediately release the person from his or her employment or alleged employment.
- 1.4 If by the end of the 15 Business Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Contractor or the Sub-Contractor (as appropriate) may within 5 Business Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1 Subject to the Contractor or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Contractor or the relevant Sub-Contractor (as the case may be) against all liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4, provided that the Contractor takes, and procures that the relevant Sub-Contractor takes, all reasonable steps to minimise any such liabilities; and
 - (b) procure that the Former Contractor indemnifies the Contractor or the relevant Sub-Contractor against all liabilities arising out of the termination of the employment of the employees of the Former Contractor referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4, provided that the Contractor takes, and procures that the relevant Sub-Contractor takes, all reasonable steps to minimise any such liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by the Authority or the Former Contractor as appropriate nor dismissed by the Contractor or the relevant Sub-Contractor within the 15 Business Day period referred to in Paragraph 1.4, such person shall be treated as having transferred to the Contractor or the Sub-Contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under law.

- 2.3 Where any person remains employed by the Contractor and/or any Sub-Contractor pursuant to Paragraph 2.2, all liabilities in relation to such employee shall remain with the Contractor or the relevant Sub-Contractor (as the case may be) and the Contractor shall indemnify the Authority and any Former Contractor, and shall procure that the Sub-Contractor shall indemnify the Authority and any Former Contractor, against any such liabilities that either of them may incur in respect of any such employees of the Contractor or any relevant Sub-Contractor.
- 2.4 The indemnities in Paragraph 2.1:
- (c) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Contractor or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Contractor or any Sub-Contractor neglected to follow a fair dismissal procedure; and
 - (d) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Contractor or the relevant Sub-Contractor to the Authority and, if applicable, the Former Contractor within 6 months of the Relevant Transfer Date.

3 PROCUREMENT OBLIGATIONS

Where in this Part B the Authority accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Contractor contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

4 PENSIONS

- 4.1 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with:
- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005, if and to the extent that the same shall apply to any transferring staff; and
 - (b) Part D of MSC Schedule 9.1, which shall apply mutatis mutandis as if it formed part of this Schedule, if and to the extent that the same shall apply to any transferring staff.

PART C: EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Contractor agrees that within 20 Business Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - (c) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
 - (d) the date which is [18] months before the end of the Term; and
 - (e) receipt of a written request by the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with applicable Data Protection Legislation, the Contractor's Provisional Staff List, together with the TUPE Information in relation to the Contractor's Provisional Staff List and it shall provide an updated Contractor's Provisional Staff List at such intervals as are reasonably requested by the Authority.
- 1.2 At least 20 Business Days prior to the Service Transfer Date, the Contractor shall provide to the Authority or at the direction of the Authority to any Replacement Contractor or any Replacement Sub-Contractor:
- (a) the Contractor's Final Staff List, which shall identify which members of the Contractor's Staff are Transferring Contractor Employees; and
 - (f) the TUPE Information in relation to the Contractor's Final Staff List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Contractor or Replacement Sub-Contractor.
- 1.4 The Contractor warrants, for the benefit of the Authority, any Replacement Contractor and any Replacement Sub-Contractor, that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraphs 1.1(a), 1.1(b) and 1.1(c), the Contractor agrees that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services or the relevant part of the Services who is not listed on the Contractor's Provisional Staff List and shall not, and shall procure that each Sub-Contractor shall not, without the approval of the Authority (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any member of the Contractor Staff listed on the Contractor's Provisional Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he or she replaces;
 - (g) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of any of the Contractor Staff (including any payments connected with the termination of employment);
 - (h) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Staff, save for fulfilling assignments and projects previously scheduled and agreed;
 - (i) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List;
 - (j) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- terminate or give notice to terminate the employment or engagement of any persons on the

Contractor's Provisional Staff List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Contractor and any Replacement Sub-Contractor of any notice to terminate employment given by the Contractor or relevant Sub-Contractor or received from any persons listed on the Contractor's Provisional Contractor Staff List regardless of when such notice takes effect.

- 1.6 During the Term, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services or any part of the Services are organised and provided, which shall include:
- (a) the numbers of employees engaged in providing the Services (broken down between the four groupings of Contractor Staff referred to in clause 6.2.2 of Schedule 2) or the relevant part of the Services;
 - (b) the percentage of time spent by each employee so engaged in providing the Services or the relevant part of the Services;
 - (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable (as defined in Paragraph 1 of Part D of MSC Schedule 9.1) scheme set up pursuant to the provisions of any of the annexes to Part D of MSC Schedule 9.1 (as appropriate); and
 - (d) a description of the nature of the work undertaken by each employee by location.
- 1.7 The Contractor shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Contractor and any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date, including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Business Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Contractor or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Contractor's Final Staff List who is a Transferring Contractor Employee:
- (a) the most recent month's copy pay slip data;
 - (b) details of cumulative pay for tax and pension purposes;
 - (c) details of cumulative tax paid;
 - (d) tax code;
 - (e) details of any voluntary deductions from pay; and
 - (f) bank/building society account details for payroll purposes.

2 TUPE EXIT PROVISIONS

- 2.1 The Authority and the Contractor acknowledge that, subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services or the relevant part of the Services being undertaken by a Replacement Contractor or a Replacement Sub-Contractor. Such change in the identity of the provider of such services may constitute a Relevant Transfer to which TUPE or the Acquired Rights Directive will apply. The Authority and the Contractor further agree that, as a result of the operation of TUPE, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through the operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor or the relevant Replacement Sub-Contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with all its

obligations in respect of the Transferring Contractor Employees arising under TUPE in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor or the Sub-Contractor (as appropriate); and (ii) the Replacement Contractor or Replacement Sub-Contractor (as appropriate).

2.3 Subject to Paragraph 2.4, the Contractor shall indemnify the Authority and any relevant Replacement Contractor and Replacement Sub-Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:

- (a) any act or omission of the Contractor or any Sub-Contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Contractor or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Contractor Employees; or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or any other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising on or before the Service Transfer Date; and
 - (ii) in relation to any employee who is not identified in the Contractor's Final Staff List, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his or her employment from the Contractor to the Authority or Replacement Contractor or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) any failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-Contractor other than a Transferring Contractor Employee identified in the Contractor's Final Staff List for whom it is alleged the Authority or the Replacement Contractor or any Replacement Sub-Contractor may be liable by virtue of this Contract or TUPE or the Acquired Rights Directive; and

- (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Authority or Replacement Contractor or Replacement Sub-Contractor (as the case may be) to comply with regulation 13(4) of TUPE.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the relevant liabilities arise or are attributable to any act or omission of the Replacement Contractor or any Replacement Sub-Contractor, whether occurring or having its origin before, on or after the Service Transfer Date, including any such liabilities:
- (a) arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his or her working conditions proposed by the Replacement Contractor or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
 - (b) arising from any failure by the Replacement Contractor or any Replacement Sub-Contractor to comply with their obligations under TUPE.
- 2.5 If any person who is not identified in the Contractor's Final Staff List claims, or it is determined in relation to any person who is not identified in the Contractor's Final Staff List that his or her contract of employment or engagement has been transferred from the Contractor or any Sub-Contractor to the Replacement Contractor or any Replacement Sub-Contractor pursuant to TUPE or the Acquired Rights Directive, then:
- (a) the Authority shall procure that the Replacement Contractor shall, or the relevant Replacement Sub-Contractor shall, within 5 Business Days of becoming aware of that fact, give notice in writing to the Contractor; and
 - (b) the Contractor may offer (or may procure that a Sub-Contractor may offer) employment to such person within 15 Business Days of the notification by the Replacement Contractor or the relevant Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter, provided always that such steps are in compliance with all applicable law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or any Sub-Contractor, the Authority shall procure that the Replacement Contractor shall, or procure that the relevant Replacement Sub-Contractor shall, immediately release or procure the release of the person from his or her employment or alleged employment.
- 2.7 If after the 15 Business Day period specified in Paragraph 2.5(b) has elapsed:
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved
- the Authority shall advise the Replacement Contractor or Replacement Sub-Contractor, as appropriate, that it may within 5 Business Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Contractor or the relevant Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable law, the Contractor shall indemnify the Replacement Contractor or the Replacement Sub-Contractor against all liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7, provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- (a) shall not apply to:
 - (i) any claim for:

- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Contractor or Replacement Sub-Contractor; or
- (ii) any claim that the termination of employment was unfair because the Replacement Contractor or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Contractor or Replacement Sub-Contractor to the Contractor within 6 months of the Service Transfer Date .
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Contractor or any Sub-Contractor nor dismissed by the Replacement Contractor or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee.
- 2.11 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Contractor's Final Staff List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Contractor or any relevant Sub-Contractor; and
 - (b) the Replacement Contractor or the relevant Replacement Sub-Contractor.
- 2.12 The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Contractor and Replacement Sub-Contractor in writing such information as is necessary to enable the Authority, the Replacement Contractor and any Replacement Sub-Contractor to carry out their respective duties under regulation 13 of TUPE. The Authority shall procure that the Replacement Contractor and any relevant Replacement Sub-Contractor shall promptly provide to the Contractor and each Sub-Contractor in writing such information as is necessary to enable the Contractor and each Sub-Contractor to carry out their respective duties under regulation 13 of TUPE.
- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-Contractor engaged by that Replacement Contractor or in the same sub-contracting chain as that Replacement Sub-Contractor against any liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Contractor or any such Replacement Sub-Contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Staff List or any appropriate employee representative (as defined in TUPE) of any such Transferring Contractor Employee;
 - (b) the breach or non-observance by the Replacement Contractor or any Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Staff List ; or
 - (ii) any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Staff List which the Replacement Contractor or any Replacement Sub-Contractor is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees identified in the Contractor's Final Staff List arising from or connected with any failure by the Replacement Contractor or any Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - (d) any proposal by the Replacement Contractor or any such Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Staff List on or after their transfer to the Replacement Contractor or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date or to change the terms and conditions of employment or working conditions of any person identified in the Contractor's Final Staff List who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated by the Replacement Contractor or any Replacement Sub-Contractor to, or action undertaken by the Replacement Contractor or any Replacement Sub-Contractor in respect of, any Transferring Contractor Employee identified in the Contractor's Final Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
 - (f) any proceeding, claim or demand by HMRC or any other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Contractor Employee identified in the Contractor's Final Staff List, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Contractor Employee identified in the Contractor's Final Staff List, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his or her employment from the Contractor or Sub-Contractor to the Replacement Contractor or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising after the Service Transfer Date;
 - (g) a failure of the Replacement Contractor or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees identified in the Contractor's Final Staff List in respect of the period after the Service Transfer Date; and
 - (h) any claim made by or in respect of a Transferring Contractor Employee identified in the Contractor's Final Staff List or any appropriate employee representative (as defined in TUPE) of any such Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-Contractor in relation to obligations under regulation 13 of TUPE.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the relevant liabilities arise or are attributable to an act or omission of the Contractor or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any such liabilities arising from the failure by the Contractor or any Sub-Contractor (as applicable) to comply with its obligations under TUPE.

SCHEDULE 11
FINANCIAL DISTRESS

1 FINANCIAL STANDING

1.1 If during the Term the Contractor does not meet any of the Guarantee Criteria the Contractor shall procure that:

- (a) an Affiliate of the Contractor which at the relevant time and thereafter meets all the Guarantee Criteria shall become a Guarantor and shall provide a Guarantee in the form set out in Schedule 12 (Guarantee); or
- (b) in the event that a Group Company is not able to meet the Guarantee Criteria the Contractor shall provide suitable alternative security in the form of:
 - (i) an ABI Model Form of Guarantee Bond or equivalent bond from [] to the Authority to a value of £2,000,000 (Two Million Pounds); or
 - (ii) an alternative guarantee, the provision of funds or reserves by a third party under guarantee, cash, deposit or escrow account as the Authority may approve (such approval not to be unreasonably withheld or delayed).

1.2 The Contractor shall:

- (a) regularly monitor compliance with the Guarantee Criteria ; and
- (b) promptly notify the Authority in writing following the occurrence of a Financial Distress Event or Key Sub-Contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-Contractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Business Days of the date on which the Contractor first becomes aware of the Financial Distress Event, the Key Sub-Contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-Contractor Financial Distress Event).

2 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

2.1 In the event of:

- (a) the Contractor not meeting the Guarantee Criteria or providing a Guarantor that meets the Guarantee Criteria, or providing alternative security as set out in paragraph 2.1(b);
- (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Contractor, or the Guarantor or any Key Sub-Contractor;
- (c) the Contractor, the Guarantor or any Key Sub-Contractor committing a material breach of covenant to its lenders;
- (d) a Key Sub-Contractor notifying the Authority that the Contractor has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (e) any of the following:
 - (i) commencement of any litigation against the Contractor, the Guarantor or any Key Sub-Contractor with respect to financial indebtedness greater than £5,000,000 million (Five Million Pounds) or obligations under a service contract with a total contract value greater than £5,000,000 million (Five Million Pounds) and which is reasonably likely to be adversely determined;
 - (ii) non-payment by the Contractor, the Guarantor or any Key Sub-Contractor of any material financial indebtedness;
 - (iii) any material financial indebtedness of the Contractor, the Guarantor or any Key Sub-Contractor becoming due as a result of an event of default; or
 - (iv) the cancellation or suspension of any material financial indebtedness in respect of the Contractor, the Guarantor or any Key Sub-Contractor,in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Contractor), the Contractor shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 3.2 to 3.3 of this Schedule.

2.2 The Contractor shall (and shall procure that the Guarantor and/or any relevant Key Sub-Contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Contractor in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
- (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
 - (i) submit to the Authority a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Contractor in writing); and
 - (ii) provide such financial information relating to the Contractor or the Guarantor as the Authority may reasonably require.

2.3 The Contractor shall:

- (a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
- (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.3(a), submit an updated Financial Distress Service Continuity Plan to the Authority; and
- (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

2.4 Where the Contractor reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Contractor shall be relieved of its obligations under Paragraph 3.3.

3 TERMINATION RIGHTS

The Authority shall be entitled to terminate this Agreement under clause 25.8.4 (Termination) if:

- (a) the Contractor fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(b);
- (b) the Contractor fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 2.3(c).

SCHEDULE 12
GURANTEE

[Insert the name of the Guarantor]

- and -

[Insert the name of the Beneficiary]

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 2020

BETWEEN:

- (1) **[Insert the name of the Guarantor]** [a company incorporated in England and Wales with number [] whose registered office is at **[insert details of the Guarantor's registered office here]**] [a company incorporated under the laws of **[insert country]**, registered in **[insert country]** with number **[insert number]** at **[insert place of registration]**, whose principal office is at **[insert office details]** (“**Guarantor**”); in favour of
- (2) **[Insert the name of the public sector Party to the Guaranteed Agreement]** whose principal office is at [] (“**Beneficiary**”)

WHEREAS:

- [(A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Contractor, to guarantee all of the Contractor's obligations under the Guaranteed Agreement.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1 Definitions and Interpretation

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
 - (a) “**Contractor Termination Event**” means grounds under the Guaranteed Agreement that relate to the Contractor that give the Authority the right to terminate the Guaranteed Agreement.
 - (b) “**Financial Distress Event**” means an event of Financial Distress under the Guaranteed Agreement;
 - (c) “**Guaranteed Agreement**” means the **[insert details of main contract]** made between the Beneficiary and the Contractor on **[insert date]**; and
 - (d) “**Guaranteed Obligations**” means all obligations and liabilities of the Contractor to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Contractor to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and indemnity

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Contractor duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Contractor to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Contractor to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - (a) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - (b) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Contractor to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Contractor under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Obligation to enter into a new contract

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Contractor, or if the Guaranteed Agreement is disclaimed by a liquidator of the Contractor or the obligations of the Contractor are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been

original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and Notices

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

(a) [Address of the Guarantor in England and Wales]

(b) [Facsimile Number]

(c) For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

(a) if delivered by hand, at the time of delivery; or

(b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post; or

(c) if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Business Day, and in any other case at 10.00 a.m. on the next Business Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5 Beneficiary's protections

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Contractor and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

(a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Contractor of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

(b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Contractor, the Beneficiary, the Guarantor or any other person;

(c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

- (d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Contractor of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Contractor or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Contractor or any third party, or to take any action whatsoever against the Contractor or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Guarantor intent

Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7 Rights of subrogation

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Contractor and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1 of subrogation and indemnity;
- 7.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Contractor's obligations; and
- 7.3 to prove in the liquidation or insolvency of the Contractor,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Contractor (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with

its Affiliates) and agrees not to do take any further security until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8 Deferral of rights

- 8.1 Until all amounts which may be or become payable by the Contractor under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- (a) claim any contribution from any other guarantor of the Contractor's obligations under the Guaranteed Agreement; or
 - (b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.
- 8.2 Until all amounts which may be or become payable by the Contractor under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Financial Distress Event or Contractor Termination Event:
- (a) exercise any rights it may have to be indemnified by the Contractor;
 - (b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Contractor; or
 - (c) claim any set-off or counterclaim against the Contractor.
- 8.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9 Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10 Payments and set-off

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11 Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12 Assignment

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13 Severance

If any provision of this Deed of Guarantee 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 Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14 Third party rights

A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15 Governing Law

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 ***[Provision dealing with the appointment of English process agent by a non English incorporated Guarantor]*** [The Guarantor hereby irrevocably designates, appoints and empowers [the Contractor] ***[a suitable alternative to be agreed if the Contractor's registered office is not in England or Wales]*** either at its registered office or on facsimile

number ***[insert fax no.]*** from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by _____)

[Insert name of the Guarantor] acting by ***[Insert/print names]***

Director

Director/Secretary

SCHEDULE 13
FINANCIAL REPORTS AND AUDIT RIGHTS

FINANCIAL REPORTS AND AUDIT RIGHTS

PART A

Financial Transparency Objectives and Open Book Data

1 FINANCIAL TRANSPARENCY OBJECTIVES

1.1 The Contractor shall co-operate with the Authority in order to achieve the following objectives:

Understanding the Charges

- (a) for the Authority to understand any payment sought from it by the Contractor including an analysis of the Costs, and time spent by Contractor Contractor Staff in providing the Services;
- (b) for the Authority to be able to understand the impact of any proposed Change on the Charges;

Agreeing the impact of Change

- (c) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Contractor's Charges;
- (d) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (e) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (f) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices.

2 OPEN BOOK DATA

2.1 The Contractor shall keep or cause to be kept full and proper books of account in relation to the provision of the Services and the entries made therein shall be kept up-to-date at all times and shall include all such matters and things which are usually entered in books of account in the United Kingdom kept by persons or companies engaged in concerns of a similar nature in accordance with best accountancy practices.

2.2 Such books of account, invoices, charge out rates, time sheets, or other time recording documents kept by the Contractor in connection with the provision of the Services and all vouchers, receipts, invoices, orders, contractual documentation and other documentation relating to the Services to which the Contractor is a party ("**Open Book Data**") shall be open to inspection by the Authority or any persons appointed to act on the Authority's behalf at any reasonable time having made prior appointment with the Contractor. The Authority shall be entitled to ask for a copy of the Open Book Data or any part thereof which (subject to the prior payment of the Contractor reasonable copying and administrative charges) the Contractor shall provide within 10 Business Days of the Authority's written request.

2.3 If the Authority reasonably considers the Open Book Data does not accurately represent and detail sums relating to this Agreement, and the Services then the Contractor shall provide the Authority with documentary evidence relating to such sums and contractual obligations.

2.4 During the Term, and for a period of 7 years following the end of the Term, the Contractor shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority and/or the auditor(whether internal or external) of the Authority access to the Open Book Data.

PART B

Audit Rights

1 AUDIT RIGHTS

- 1.1 The Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of the Authority or any Audit Agents and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to this Contract, and to provide, or to procure the provision of, any oral or written explanation relating to the same.
- 1.2 The Contractor shall instruct its external auditor to provide reasonable co-operation with the Audit Agents for the purposes of verifying financial information.
- 1.3 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Contractor that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

SCHEDULE 14
CONTRACTOR'S SOLUTION