

**This contract is made on 19th day of May 2017**

- 1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and
  - 2 The Challenge Trading Company Ltd of 39 York Road, London, SE1 7NS whose company registration number is 08341886 (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 9; and
  - (d) schedule 10 (Contractor's Solution).

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


**SIGNED by the CONTRACTOR acting by**

**Authorised Signatory** Jon Yates



**In the presence of** Michelle Cummins

**Witness signature**

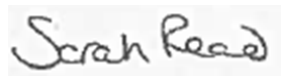


**Occupation** Personal Assistant

**Address** 39 York Road, London.

**Date** 19<sup>th</sup> May 2017

**SIGNED by DFE acting by Sarah Read**



**Position:** Deputy Director

**in the presence of:** Daniel Bridger

**Witness signature Occupation:** Team Leader



**Address:** Sanctuary Buildings, Great Smith Street,  
London SW1P 3BT

**Date:** 23/05/2017

**Table of Contents**  
**Contract Schedules**

Schedule 1	<b>Specification</b>
Schedule 2	<b>Terms and Conditions</b>
Schedule 3	<b>Financials</b>
Schedule 4	<b>KPIs, Service Levels and Service Credits.</b>
Schedule 5	<b>Implementation Plan</b>
Schedule 6	<b>Change Control Procedure</b>
Schedule 7	<b>Key Personnel and Key Sub-Contractors</b>
Schedule 8	<b>Data, Systems Handling and Security</b>
Schedule 9	<b>Commercially Sensitive Information</b>
Schedule 10	<b>Contractor's Solution</b>

## Schedule 1

### SPECIFICATION

#### TECHNICAL EDUCATION WORK PLACEMENTS PILOT PROJECT

##### 1. INTRODUCTION

The Department for Education intends to commission an organisation to bring together employers and post-16 education providers to design effective work placement models, appropriate for different occupational areas and organisation sizes, to be tested with a large sample of students, providers and employers in the 2017/18 academic year. This invitation to tender sets out the requirements for the proposed design phase.

##### 2. BACKGROUND

The [Skills Plan](#) (White Paper), published on 8 July, outlines the Government's vision for technical education. It outlines a streamlined technical education system, based around 15 different routes. 11 of these routes will offer college-based courses, transforming current full time college-based provision into high quality technical options which fit coherently alongside reformed apprenticeships. The routes will group together occupations with related skills, knowledge and behaviour requirements, providing entry into skilled occupations. Every 16-19 year old student following a college-based technical education route will be entitled to a high-quality, substantial work placement. **Successful completion of this work placement will be a requirement for full certification at the end of the study programme.**

It is important to make the distinction between a work placement and work experience. This is **not** work experience which tends to be much shorter in duration and aims to develop *general* employability skills. Instead, the aims of the work placement will be to develop the specific occupational skills the student needs to work in the particular field they want to get into and will be much longer in duration.

The provision of work placements will be an integral part of the new reforms, because they will be critical to ensuring that young people on predominately classroom-based courses can develop the range of knowledge, skills and behaviours required for skilled employment in their field of study. For many thousands of young people, these work placements will enable movement to skilled employment which brings prosperity and security.

These technical reforms represent a major shift in practice for the post-16 sector: whilst work **experience** is offered across the board, work **placements** are not mainstream. Students often only get offered a few weeks of 'work experience' – and often this is not compulsory part of courses. This is not enough to develop the specific practical skills and work place behaviours needed for a particular occupation – only a work placement will achieve this which will typically last between 1 and 3 months (somewhere between 140 and 460 hours). Evidence shows that a large proportion of employers are not satisfied with 'the skills of school/college leavers as a result. Providers will therefore be expected to increase the availability of these longer more substantial work placements for a large proportion of their learners.

Similarly, employers of all sizes and from all industries will be encouraged to engage with the FE sector and provide sufficient numbers of placements to meet this demand. There is very little best practice to point to in this country to what a good substantial work placement looks like, how to go about designing and setting one up and how effective work placement practice can vary across occupations. Without this, it is unlikely that employers and colleges will be supported to make this step change at the scale needed.

##### 3. AIM

This project is split into two distinct phases:-

- Phase 1 (March-July): A design phase in which work placement models will be designed and then integrated into the 2017/18 curriculum.
- Phase 2 (September 2017 – October 2018): The implementation phase in which the work placement models are tested with participating providers and a wide range of employers. We expect this to generate approximately 3,000 work placements for students during the 2017/18 academic year.

**The appointed organisation will be responsible for Phase 1 only.** The contractor will have a coordinating and facilitating role bringing together small groups of employers and post-16 education providers to develop a range of work placement models that are appropriate for each of the 11 technical routes. They will produce a set of guiding principles for post-16 providers and employers to use when these models are tested with a wider range of employers in Phase 2.

Recent evidence will be available to inform the design work, comprised of international and domestic best practice from learning visits and learning from employers and colleges as to what they perceive as challenges / risks to delivering substantial work placements and upscaling provision to cater for all students on a technical route.

The appointed organisation will also be responsible for determining the locations where the work placement models will be tested and support providers prepare for implementation.

We expect that the implementation phase to involve a large number of employers hosting up to 3,000 students on work placements. The young people participating in the implementation phase will be students of the post-16 providers involved in the design phase and will be undertaking either Level 2 or Level 3 course or qualification that is closely related to the technical route principles being tested. We expect students with SEN to be included and any reasonable adjustments fully accommodated.

The preparation for Phase 2 will begin in May 2017 and will be fully supported by Work Placement Liaison Officers. These will be procured separately by the Department, to source and secure work placements in the pilot areas. Grant funding will also be available to boost participating providers' in-house capacity. The appointed organisation will be responsible for administering these funds.

#### 4. OVERALL OBJECTIVES OF THIS PROJECT

- To identify evidence of effective processes for designing, timetabling, setting-up and implementing work placements in different routes and organisation sizes.
- To identify any specific challenges to implementing work placements in different occupations/ routes/ organisation sizes and ways of overcoming these to shape 2019/2020 pathfinder implementation.
- To build a store of employer placement case studies to draw on as good practice examples for each route.
- To showcase to employers and post-16 institutions the benefits of providing longer, substantial work placements.
- Build a network of 'work placement employer / college champions' from the projects who can make a public commitment to offer many more placements and who could help us promote this new approach.

#### 5. TIMESCALES

##### Procurement timetable

Deadline for bids	20 February
Interview dates	22/23 February

Award confirmation	16 March
--------------------	----------

### Project timetable

The project timescales and outputs is set out in the table below. For further detail on the objectives and deliverables, see Section 6 below.

Contractor appointed and contract signed	16 March 2017
Representative sample size agreed	24 March 2017
Representative group of employers and post-16 providers signed up to participate in the design and in principle agreement to testing of the models	16th April 2017
Design work to commence	17 <sup>th</sup> April 2017
Design work completed and Final Output produced	26th June 2017
Contractual agreement secured from sufficient number of providers prepared to implement the work placement models in academic year 2017/18.	7 <sup>th</sup> July 2017
Confirmation from providers that work placement models have been agreed and integrated into curriculum for testing in academic year 17/18	31 July 2017
Production of Final Product completed	31 July 2017

## 6. PROJECT OBJECTIVES AND DELIVERABLES

The appointed organisation will be expected to start in mid-March, and lead the design of a set of work placement models by 16<sup>th</sup> June, at the latest. They will then be expected to secure agreement from the colleges to integrate work placements based on these models into the curriculum from September 2017. The Contractor will be obliged to work with an independent evaluator, secured by the Department.

### Main tasks

#### Planning and recruitment of participants:-

- Determining which post-16 providers and employers to be involved in the design stage
- Determining appropriate sample sizes of employer and provider representatives to be involved in the design stage
- Using employer networks to recruit employer representatives from a range of sectors, occupational areas and from various sized businesses, to participate in the mapping and design of work placement models and who can agree to host the work placements from September 2017
- Recruiting post-16 education providers that have relevant backgrounds in delivering courses for their students, relating to the 11 sectors, to work alongside the employers in the design stage and be prepared to implement these in academic year 2017/18

#### Coordination and project management

- Arranging participants into groups based on technical route/occupational areas.
- Agreeing the Terms of Reference (ToR) and the range of payments to compensate participants for their time, set the schedule and agree the frequency and duration of meetings
- Facilitating discussions with participants, drawing on their expertise in this field to help identify evidence of effective practice for designing, timetabling, setting-up and implementing work placements in different technical routes/occupational groups and organisation sizes
- Utilising participants' experience to identify any specific challenges to implementing work placements in different occupations/organisation sizes and ways of overcoming these to support the implementation phase
- Utilising participants' experience to identify any specific challenges to the practicalities of implementing work placements within different occupations for students with SEN and consider how these can be overcome.

#### **Preparation for Phase 2 –**

- Using evidence to determine which locations the models will be tested in Phase 2 (to include London, Rural, Urban and Suburban areas)
- Working with providers to ensure that work placement models are fully integrated into the 2017/18 curriculum for all participating students
- Working with Work Placement Liaison Officers who will be recruited by the Department by May 2017 to support the implementation phase and provide a brokerage role between the provider and employer and secure sufficient employer commitment to offer placements to students from September 2017 in the specified locations.

#### **Final output**

To produce an agreed set of guiding principles that describes workable case-study models for each of the 11 technical education routes. The models should include practical steps required for effective and high- quality work placement provision. This will be used by the post-16 providers and employers who have participated in the design of the models as well as a wider pool of employers to deliver work placements for students in the 2017-18 academic year.

#### **Final product**

We would expect that each set of guiding principles for the 11 technical routes to be set out clearly and concisely in short user-friendly documents. We will expect to develop and publish work placement guidance from this documentation on the Government's website alongside the full evaluation of the project in autumn 2018.

#### **Use of outputs**

The Department will use this information to:

- Inform sector-specific guidance for employers and post-16 providers, clearly outlining how to design and implement effective work placements.
- Inform Route Panels' decisions about work placement requirements in their particular route (duration, structure and timing).

#### **Other functions:**

The appointed organisation will also be responsible for:-

#### **Management and distribution of funds**

- Provide participating employers and providers payment to reimburse them for their time for the duration of the design phase (April- July 2017) up to a maximum of £200 a day.  
(Please account for this cost as part of your overall bid. This is in addition to your proposed fee to run the design phase.)
- The Department will provide grant funding for the contracted organisation to distribute to participating post-16 providers. This will be to support in-house capacity to establish internal work placement coordinators as early as possible and before the

end of the 2016/17 academic year.

### **Mandatory Pass/Fail Criteria**

As part of this specification there are a number of specific requirements which must be met. These can be found within the evaluation sections of REDIMO. Please note that DfE may, at its absolute discretion, refuse to consider your bid further dependent on the answers given to these requirements. The successful bidder will be expected to demonstrate your capability to meet the following KPIs:

- By 16th April 2017, recruit employer representatives from a range of occupational areas, across London, Rural, Urban and Suburban areas and from various sized businesses to participate in the design of work placement models and who agree in principle to host the work placements from September 2017.
- By 16th April 2017, recruit representative sample of post-16 education providers that offer relevant courses relating to the 11 sectors and across London, Rural, Urban and Suburban areas, to work alongside the employers in the design stage and secure in principle, agreement to deliver work placements as part of the implementation phase.
- By 26th June 2017 bring this evidence together and produce an agreed set of workable work placement models for each of the 11 technical education routes that include practical steps required for effective and high quality work placement provision.
- By 7<sup>th</sup> July 2017 secure contractual agreement from sufficient number of providers prepared to implement the work placement models in academic year 2017/18.
- By 31st July 2017, supported participating providers to effectively integrate work placement models into curriculum in academic 17/18 and secured employer hosts alongside liaison officers.

### **Supplier notice**

Please note that responses need to be made electronically through REDIMO2 by completing evaluation sections and questions. Further guidance on this process can be found by downloading them from REDIMO2 or via [GOV.UK](http://GOV.UK).

## **7. PRICE**

Price is weighted at 30% of the overall score. The pricing schedule will only be evaluated if bidders have scored a minimum of [60%] on all the three technical evaluation questions. Bidders are encouraged to take into consideration the respective weightings, as low costs alone will not guarantee a successful bid.

The budget for this piece of work is between £300,000 to £420,000. Tenders over the amount of £420,000 will not be considered. This will cover the following:

- Project management and professional time;

- Compensation of employers and provider representatives; including:
  - ⊖ Compensating employers involved in the design phase, up to a maximum of £200 a day;
  - ⊖ Compensating individuals from providers involved in the design phase, up to a maximum £200 a day; and
- Administration and management of funding costs; including:
  - The cost of administering employer and provider compensation
  - The cost to administer Department funds to participating providers to boost in-house provider capacity to establish work placements (the amount of these Department funds will be determined by the Department)
- Travel and subsistence (where applicable)

Your tender should provide a detailed breakdown of costs, excluding VAT (including day rates, number of days etc).

Payments will be made by BACS transfer following receipt of a valid invoice.

## 8. VAT

8.1 All costs should be quoted exclusive of VAT but please indicate if the project will attract VAT.

If your proposal includes costs for sub-contractors these costs must be shown inclusive of any VAT element (e.g. sub-contractor's costs to you are £10,000 plus VAT, your proposal should show sub-contractors costs as £12,000 inclusive of VAT).

Where the contract price agreed between the Department and contractor is inclusive of any VAT, further amounts will not be paid by the Department should a vatable supply claim be made at any later stage.

8.2 Where the overall contract price is exclusive of VAT, the Department will pay any VAT incurred at the prevailing rate (currently 20%). If the VAT rate changes the Department will pay any VAT incurred at the new rate.

8.3 It is the responsibility of tenderers to check the VAT position with HMRC before submitting a bid.

## 9. TENDER EVALUATION CRITERIA

Please note that technical requirements are weighted at 70% of the overall score. Scores will be given in whole number only.

### Minimum Standard

**Please note that the Department may at its absolute discretion refuse to consider your bid further if the score achieved less than [60%] in any of the three technical evaluation questions following evaluation.**

The tender proposal for question number 1 to number 3 together should be **no more than ten pages (A4) in length (no more than 8,000 words).**



Tenders will be evaluated on the following criteria:

1. Evidence of expertise and insight in Post-16 and technical education (20%)
  - Demonstrate a clear understanding and interest in the technical reforms and Post-16 Skills Plan
  - Provide evidence of previous projects relevant to post-16 education  
(NB: Evidence of previous experience working with post-16 education providers and employers will be beneficial. The organisation will be expected to source representation from different provider types, including: FE Colleges, 6<sup>th</sup> Form Colleges, Schools and Specialist colleges. They will also be expected to secure involvement from employers and providers across different regions; including London, Rural, Urban and Suburban areas. Finally, large, medium and small enterprises should be involved in the design of work placements in all occupational areas. Placements will be designed in subject areas across all 11 routes which offer college-based provision.)
  
1. Evidence of experience to delivering to tight timescales and quality of outputs (30%)
  - Provide evidence of recent projects with restricted timelines
  - Provide a plan of how you will implement and project management this project, including a breakdown of different tasks and costings.
  - Provide a full risk assessment and describe how you will mitigate these risks
  - Provide information on the staff members to be involved and how professional time will be split
  
2. Evidence of ability to use networks to attract and engage appropriate and representative employers and colleges (20%)
  - Provide a marketing and communications plan of how you will attract and engage representative numbers of employers and colleges to design work placements
  - Demonstrate an understanding of the target audience in the recruitment of employers and post-16 institution representatives
  - Provide evidence of how you will develop an appropriate selection and assessment method and criteria
  
3. Value for money (30%)
  - See above under the 'Price' section 7 referred in this document and Document 4 Pricing Schedule.

Technical requirements will be assessed using the following 0-4 point criteria:

Mark	Description
0	Totally fails to meet the requirement
1	Meets some of the requirement, with limited supporting information
2	Meets some of the requirement, with reasonable explanation
3	Fully meets the requirement, with detailed explanation/evidence in support
4	Exceeds the requirement, with detailed explanation/ evidence in support

## 10 Management Information

The successful tenderer will be asked to provide management information to meet the needs of the Department. The minimum information needs are:

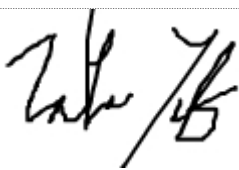
- **Fortnightly checkpoint meetings:** hold fortnightly meetings, either via phone or in person, to discuss progress and updates.
- **‘Emerging Findings’ meetings/reports** - At appropriate points there also will be “emerging findings” update meetings and/or reports.

**11. Security of Data**

Ask the tenderer to submit a security plan that explains how they will ensure that departmental or personal data will be protected.

## Declarations

- 1 The Challenge declares that we accept the Department's standard terms and conditions included at Document 3 as the basis of the contract; and
- 2 agree that the Department may disclose the Contractor's information/documentation (submitted to the Department during this Procurement) more widely within Government for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes".
- 3 declare that we have not communicated to any other party the amount or approximate amount of the tender price other than in confidence and for the express purpose of obtaining insurances or a bond in connection with this tender. The tender price has not been fixed nor adjusted in collusion with any third party, and
- 4 declare that the tender will remain valid until 31 July 2017 and that we are not entitled to claim from the Department any costs or expenses incurred in preparing the tender or subsequent negotiations whether or not the tender is successful.

Signed on behalf of the Tenderer	
Print	Jon Yates
Job Title	Director
Date	19 <sup>th</sup> May 2017

**Schedule 2**  
**Terms and Conditions**

**CONTENTS**

<b>CLAUSE</b>	
1	DEFINITIONS AND INTERPRETATION
2	TERM
3	THE SERVICES
4	CONSORTIA
5	TRANSFER AND SUB-CONTRACTING
6	PERSONNEL
7	TUPE
8	CHARGES
9	TAX AND VAT
10	PREVENTION OF CORRUPTION
11	DISCRIMINATION
12	INTELLECTUAL PROPERTY
13	DATA, SYSTEMS HANDLING AND SECURITY
14	PUBLICITY AND PROMOTION
15	CONFIDENTIALITY
16	FREEDOM OF INFORMATION
17	OFFICIAL SECRETS ACT AND FINANCE ACT
18	LIABILITY
19	WARRANTIES AND REPRESENTATIONS
20	FORCE MAJEURE
21	MONITORING AND REMEDIATION
22	STEP IN RIGHTS
23	TERMINATION
24	RETENDERING AND HANDOVER
25	EXIT MANAGEMENT
26	AUDIT
27	ENTIRE AGREEMENT
28	PARTNERSHIP
29	WAIVER
30	CHANGE CONTROL
31	COUNTERPARTS
32	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
33	CONFLICTS OF INTEREST
34	FURTHER ASSURANCE
35	NOTICES
36	DISPUTE RESOLUTION
37	GOVERNING LAW AND JURISDICTION

## 1. DEFINITIONS AND INTERPRETATION

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

**“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.

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

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

**“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 1:

- (a) which is provided by the Contractor to DFE in confidence for the period set out in schedule 9; and/or
- (b) which constitutes a trade secret.

**“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 DPA. 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.

**“Contractor’s Solution”** means the Contractor’s proposal submitted in response to the DFE’s invitation to tender attached at schedule 10.

**“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 Rights”** means as rights in databases are 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 in either the form set out in schedule 10 or in any other form approved by DFE 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 Personnel in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

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

**“DFE Security Standards”** means the security standards as set out in schedule 8.

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

**“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.

**“DPA”** means the Data Protection Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice published by the Information Commissioner or relevant government department in relation to such legislation.

**“Effective Date”** means 16 March 2017.

**“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.

**“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 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.

**“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 Personnel; 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.

**“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.

**“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.

**“Initial Term”** means the period from the Effective Date to 31 July 2017.

**“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.

**“KPIs”** means the key performance indicators in relation to the Services set out in schedule 4 which the Contractor shall comply with.

**“Key Personnel”** means any of the Personnel identified as such in schedule 7 or otherwise identified as such by DFE pursuant to clause 6.

**“Key Sub-Contractor”** means any Sub-Contractor identified as such in schedule 7 or otherwise identified as such by DFE.

**“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 DFE 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 33 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.

**“Personnel”** means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

**“Prohibited Act”** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the DFE 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 DFE;
- (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.

**“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 DFE.

**“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 Contractor”** means any third party supplier appointed by the DFE to supply any services which are substantially similar to any of the Services in substitution for the Contractor following the expiry, termination or partial termination of the Contract.

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

**“Returning Employees”** means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Term.

**“Services”** means the services described in the Specification.

**“Services Commencement Date”** means 24 March 2017.

**“Service Credits”** means the service credits specified in schedule 4 which shall be payable to the DFE by the Contractor in the event that the Service Levels are not met in respect of Services.

**“Service Level”** means the levels of Service defined in schedule 4.

**“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 Users”** means those receiving the Services.

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

**“Staff”** means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

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

**“Term”** means the period from the Effective Date until the date the Contract ends for whatever reason.

**“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.

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, or extension set out in this clause 2, will terminate at

the end of the Initial Term.

- 2.2 DFE may extend the Initial Term for such further period as the DFE may choose by giving not less than 3 months' written notice to the Contractor prior to the expiry of the Initial Term.

### **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 DFE 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 DFE specified by the DFE 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 personnel;

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 KPIs, Service Levels and Service Credit requirements 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 DFE from time to time within 14 days of the same being brought to the attention of the Contractor by the DFE;

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 Personnel, employees of the DFE, 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 DFE from time to time notified to it and procure that the Personnel also comply.

- 3.4 The DFE 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 DFE Premises shall be at the Contractor's own risk and the DFE 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 DFE.

- 3.6 Any land or DFE Premises made available from time to time to the Contractor by the DFE 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 DFE 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 DFE 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 Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the DFE retains the right at any time to use any DFE 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 DFE 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 DFE.
- 4.4 The Contractor shall promptly inform the DFE 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 DFE.
- 5.2 If the DFE 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 DFE's consent.
- 5.4 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.
- 5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE's prior written consent.
- 5.6 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE's right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the DFE's satisfaction within 21 days of receipt by the Contractor of written notice from the DFE 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 DfE 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 DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

## **6. PERSONNEL**

- 6.1 The DFE may refuse admission to DFE Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the DFE believes is a security risk.
- 6.2 If the DFE require the removal of any Personnel pursuant to clause 8.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.
- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.4 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 DFE's prior written consent.
- 6.5 For each of the Personnel 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 DFE 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 an inappropriate record.
- 6.6 The Contractor acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Personnel and Key Sub-Contractors listed in schedule 7 as at the Effective Date.
- 6.7 Key Personnel shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Personnel shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement 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 Personnel or Key Sub-Contractors.
- 6.10 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.
- 6.11 The DFE shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.

- 6.12 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 either 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 staff of the other Party.

## **7. TUPE**

- 7.1 No later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:

- 7.1.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;
- 7.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;
- 7.1.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;
- 7.1.4 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; and
- 7.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union

(together the “**TUPE Information**”).

- 7.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.
- 7.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.4 The DFE may use TUPE Information for the purposes of any retendering process.
- 7.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement 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:
- 7.5.1 the provision of TUPE Information;
  - 7.5.2 any claim or demand by any Returning 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 Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
  - 7.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;

- 7.5.4 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 Returning 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; and
- 7.5.5 any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 7.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.
- 7.7 This clause 7 applies during the Term and indefinitely thereafter.
- 7.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
  - 7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
  - 7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - 7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
  - 7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## **8. CHARGES**

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE 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 DFE shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.7 being issued by the Contractor.
- 8.3 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.
- 8.4 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 DFE 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.

- 8.5 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE 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 DFE by reason of such payment.
- 8.6 The DFE 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.
- 8.7 Invoices should be submitted by email to [daniel.bridger@education.gov.uk](mailto:daniel.bridger@education.gov.uk) and sent, within 30 days of the end of the relevant invoicing date, to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool, FY5 3TA. An invoice is a **"Valid Invoice"** if it is legible and includes:
  - 8.7.1 the date of the invoice;
  - 8.7.2 Contractor's full name and address;
  - 8.7.3 Contract reference number;
  - 8.7.4 the charging period;
  - 8.7.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
  - 8.7.6 days and times worked (if applicable);
  - 8.7.7 Service Credits (if applicable); and
  - 8.7.8 VAT if applicable.
- 8.8 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.9 The DFE intends to pay Valid Invoices within 10 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 8.9 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.
- 8.10 The DFE 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.
- 8.11 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 DFE. The final invoice shall be submitted not later than 30 days after the end of the Term.
- 8.12 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service.



- 8.13 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.
- 8.14 If the DFE 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 DFE may withhold the disputed amount pending resolution of the dispute.
- 8.15 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 36.

## **9. TAX and VAT**

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.
- 9.5 A request under clause 9.4 may specify the information which the Contractor must provide and the period within which that information must be provided.
- 9.6 The DFE may terminate this Contract if:
- 9.6.1 in the case of a request mentioned in clause 9.4 the Contractor:
- (i) fails to provide information in response to the request within a reasonable time; or
  - (ii) provides information which does not demonstrate either how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it;
- 9.6.2 it receives information which demonstrates that, if clauses 9.1 to 9.3 apply, the Contractor is not complying with those clauses.
- 9.7 The DFE may supply any information which it receives under clause 9.4 to HMRC.
- 9.8 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.
- 9.9 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 DFE 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 DFE in connection with any such assessment or claim.

9.10 The Contractor authorises the DFE 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 DFE is obliged as a matter of law to comply with such request.

9.11 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

9.11.1 notify the DFE in writing of such fact within 5 Business Days of its occurrence; and

9.11.2 promptly give the DFE:

(i) 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

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the DFE may reasonably require.

## **10. PREVENTION OF CORRUPTION**

10.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Effective Date:

10.1.1 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

10.1.2 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.

10.2 The Contractor shall not:

10.2.1 commit a Prohibited Act; or

10.2.2 do or suffer anything to be done which would cause the DFE 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.

10.3 The Contractor shall:

10.3.1 and 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

10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.2 and make such records available to the DFE on request.

10.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Personnel have:

10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- 10.4.2 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
- 10.4.3 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.
- 10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE's enquiries, co-operate with any investigation, and allow the DFE to audit any books, records and any other relevant documentation.
- 10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the DFE may by notice:
  - 10.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - 10.6.2 immediately terminate the Contract.
- 10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

## 11. DISCRIMINATION

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

## 12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights in materials:
  - 12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the "**DFE IP Materials**") shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown); and
  - 12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with the Contract (the "**Service Specific IP Materials**") shall vest in the DFE (save for Copyright and Database Rights which shall vest in the Crown)

(together the "**IP Materials**").

- 12.2 The Contractor shall not, and shall ensure that Personnel shall not, use or disclose IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.
- 12.3 The Contractor hereby assigns to the DFE or undertakes to procure the assignment to the DFE 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 DFE (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 DFE and necessary to execute and perfect these assignments and to otherwise evidence the DFE's or the Crown's ownership of such rights.
- 12.4 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.
- 12.5 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 DFE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the DFE 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 DFE to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify the DFE 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.
- 12.6 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 DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 14, except to the extent that any such claim arises from:
- 12.6.1 items or materials supplied by the DFE; or
- 12.6.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.
- 12.7 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.
- 12.8 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 DFE, provided always that the Contractor shall:
- 12.8.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
- 12.8.2 take due and proper account of the interests and concerns of the DFE; and
- 12.8.3 not settle or compromise any claim without the DFE's prior written consent (not

to be unreasonably withheld or delayed).

- 12.9 Notwithstanding clause 12.8. the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.
- 12.10 The DFE 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 DFE 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 DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 12.11 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 DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:
- 12.11.1 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 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
- 12.11.2 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 DFE.
- 12.12 If the Contractor is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.
- 12.13 The Contractor grants to the DFE 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 DFE 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.
- 12.14 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
- 12.15 If the Contractor is not able to grant to the DFE 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:
- 12.15.1 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 DFE a licence on the terms set out in clause 12.13; or
- 12.15.2 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 DFE a sub-licence on the terms set out in clause 12.13.
- 12.16 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 DFE IP Materials any act or thing which:

12.16.1 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

12.16.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.

12.17 The Contractor shall comply with the DFE's branding guidelines and shall not use any other branding, including its own, other than as set out in the DFE's branding guidelines or as otherwise agreed with the DFE.

12.18 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE 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:

12.18.1 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 DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or

12.18.2 apply anywhere in the world to register any trade marks identical to or so nearly resembling any DFE Trade Mark as to be likely to deceive or cause confusion.

### **13. DATA, SYSTEMS HANDLING AND SECURITY**

13.1 The Parties shall comply with the provisions of schedule 8.

### **14. PUBLICITY AND PROMOTION**

14.1 Subject to clause 15.2, without prejudice to the DFE'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.

14.2 The Contractor shall use reasonable endeavours to ensure its Personnel comply with clause 14.1

14.3 Without prejudice to the generality of clauses 12.18 and 14.1, the Contractor shall not itself, and shall procure that Consortium Members shall not, use the DFE's name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.

14.4 Subject to clauses 12 and 15 DFE 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. CONFIDENTIALITY**

15.1 Except to the extent set out in this clause 15 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.

15.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract.

- 15.3 The Contractor may only disclose the DFE's Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Personnel are aware of and shall comply with these obligations as to confidentiality.
- 15.4 The Contractor shall not, and shall procure that Personnel do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 15.5 Clause 15.1 shall not apply to the extent that:
- 15.5.1 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;
  - 15.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 15.5.3 such information was obtained from a third party without obligation of confidentiality;
  - 15.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 15.5.5 it is independently developed without access to the other Party's Confidential Information.
- 15.6 Nothing in clause 15 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
- 15.6.1 for the purpose of the examination and certification of the DFE's accounts;
  - 15.6.2 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 DFE has used its resources;
  - 15.6.3 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
  - 15.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 15.8.3 and 15.8.4 the DFE 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.
- 15.7 Nothing in clauses 15.1 to 15.6 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.
- 15.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the DFE's obligations of confidentiality.
- 15.9 If the Contractor does not comply with clauses 15.1 to 15.5 the DFE may terminate the Contract immediately on notice to the Contractor.

## **16. FREEDOM OF INFORMATION**

- 16.1 The Contractor acknowledges that the DFE is subject to the requirements of the FOIA and the EIR.
- 16.2 The Contractor shall transfer to the DFE all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receipt:
- 16.2.1 give the DFE a copy of all Information in its possession or control in the form that the DFE requires within 5 Business Days (or such other period as the DFE may specify) of the DFE's request;
  - 16.2.2 provide all necessary assistance as reasonably requested by the DFE to enable the DFE to comply with its obligations under the FOIA and EIR; and
  - 16.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.
- 16.3 The DFE 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.

## **17. OFFICIAL SECRETS ACTS AND FINANCE ACT**

- 17.1 The Contractor shall comply with the provisions of:
- 17.1.1 the Official Secrets Acts 1911 to 1989; and
  - 17.1.2 section 182 of the Finance Act 1989.

## **18. LIABILITY**

- 18.1 Neither Party excludes or limits its liability (if any) to the other:
- 18.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
  - 18.1.2 for personal injury or death resulting from the its negligence;
  - 18.1.3 under section 2(3) Consumer Protection Act 1987;
  - 18.1.4 for its own fraud; or
  - 18.1.5 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
- 18.2 Subject to clauses 18.1 and 18.3, the Contractor shall indemnify the DFE and keep the DFE 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 Personnel on the Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- 18.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and 9 (Tax).
- 18.4 Subject to clauses 18.1, 18.3 and 18.6, neither Party shall have any liability to the other



under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:

- 18.4.1 for any losses of an indirect or consequential nature;
  - 18.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
  - 18.4.3 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.
- 18.5 Subject to clauses 18.1 and 18.3, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:
- 18.5.1 in respect of damage to property is limited to £5,000,000 (five million pounds) in respect of any one incident or series of connected incidents; and
  - 18.5.2 in respect of any claim not covered by clause 18.5.1, is limited in each calendar year in aggregate to 150% of the sum of the Charges payable in that year.
- 18.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:
- 18.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
  - 18.6.2 any wasted expenditure or charges;
  - 18.6.3 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;
  - 18.6.4 any compensation or interest paid to a third party by the DFE; and
  - 18.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 18.7 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.
- 18.8 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 18.9 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 DFE 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 DFE 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.
- 18.10 The Contractor shall supply to the DFE on demand copies of the insurance policies maintained under clause 18.9.
- 18.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor

of any liabilities under the Contract.

- 18.12 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.

## **19. WARRANTIES AND REPRESENTATIONS**

- 19.1 The Contractor warrants and represents that:

19.1.1 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;

19.1.2 in entering the Contract it has not committed any fraud;

19.1.3 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 DFE prior to execution of the Contract;

19.1.4 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;

19.1.5 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;

19.1.6 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 19.1.6 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

19.1.7 the use by the DFE 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;

19.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:

- (i) 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;
- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) 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;

19.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

19.1.10 it has notified the DFE 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.

## **20. FORCE MAJEURE**

- 20.1 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 20.3 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.
- 20.2 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.
- 20.3 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.

## **21. MONITORING AND REMEDIATION**

- 21.1 The DFE 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.
- 21.2 During such visits, the DFE 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.
- 21.3 If the DFE 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:
- 21.3.1 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 DFE (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and
- 21.3.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the DFE reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the DFE in this regard.
- 21.4 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 DFE 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 DFE may direct.
- 21.5 The DFE may review from time to time the progress of the Contractor against the

Implementation Plan. The Contractor shall cooperate with the DFE in this regard and provide any information and evidence reasonably required by the DFE.

- 21.6 The DFE may instruct the Contractor to take appropriate remedial action where the DFE 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. STEP IN RIGHTS**

- 22.1 Without prejudice to DFE's rights of termination under clause 23 the DFE may exercise one or more of the rights set out in this clause 22 ("**Step In Rights**") if:

22.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;

22.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;

22.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 22 is necessary;

22.1.4 a serious risk exists to the health and safety of persons, property or the environment;

22.1.5 it is necessary to discharge a statutory duty; or

22.1.6 the Contractor becomes insolvent.

- 22.2 If the DFE has a Step In Right it may serve notice on the Supplier (a "**Step-In Notice**") that it will take action under this clause 22 either itself or with the assistance of a third party.

- 22.3 The Step-In Notice shall set out:

22.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the "**Required Action**");

22.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;

22.3.3 the date on which it wishes to commence the Required Action;

22.3.4 the time period which it believes will be necessary for the Required Action;

22.3.5 whether the DFE will require access to the Contractor's premises; and

22.3.6 to the extent practicable, the effect the DFE 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.

- 22.4 Following service of a Step-In Notice, the DFE shall:

22.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

22.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;

22.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not

assuming control; and

22.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.

22.5 For as long as and to the extent that the Required Action continues:

22.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and

22.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.

22.6 If the Contractor demonstrates to the DFE'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 DFE not taken the Required Action, the DFE may adjust the Charges.

22.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a **"Step-Out Notice"**), specifying:

22.7.1 the Required Action it has taken; and

22.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 22.8.

22.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 22.7.2, develop for the DFE'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.

22.9 If the DFE 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 DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.

22.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 22, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE under clauses 22.1.2 to 22.1.5 (insofar as the primary cause of the DFE serving the Step In Notice is identified as not being the result of a Contractor's Default).

## **23. TERMINATION**

23.1 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

23.1.1 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;

23.1.2 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);

23.1.3 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;

- 23.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 23.1.5 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;
  - 23.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - 23.1.7 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
  - 23.1.8 any event similar to those listed in clauses 23.1.1 to 23.1.7 occurs under the law of any other jurisdiction.
- 23.2 The DFE may terminate the Contract with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:
- 23.2.1 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;
  - 23.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
  - 23.2.3 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;
  - 23.2.4 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;
  - 23.2.5 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;
  - 23.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
  - 23.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - 23.2.8 any event similar to those listed in clauses 23.2.1 to 23.2.7 occurs under the law of any other jurisdiction.
- 23.3 The Contractor shall notify the DFE 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 DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:
- 23.3.1 being notified that a Change of Control has occurred; or

23.3.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control

but shall not be permitted to terminate where approval was granted prior to the Change of Control.

23.4 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:

23.4.1 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;

23.4.2 it is for any reason dissolved;

23.4.3 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;

23.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;

23.4.5 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

23.4.6 any of the following occurs in relation to any of its partners:

23.4.6.1 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, his creditors;

23.4.6.2 a petition is presented for his bankruptcy;

23.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or

23.4.6.4. any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the law of any other jurisdiction.

23.5 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:

23.5.1 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;

23.5.2 it is for any reason dissolved;

23.5.3 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;

23.5.4 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;

23.5.5 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;

- 23.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets;  
or
- 23.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 23.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 23.5.9 any event similar to those listed in clauses 23.5.1 to 23.5.8 occurs under the law of any other jurisdiction.
- 23.6 References to the Insolvency Act 1986 in clause 23.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 23.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
  - 23.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within 21 Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
  - 23.7.2 the Default is not, in the opinion of the DFE, capable of remedy; or
  - 23.7.3 the Default is a Material Breach.
- 23.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
  - 23.8.1 the Contractor's warranty in clause 19.1.10 is materially untrue;
  - 23.8.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance; or
  - 23.8.3 the Contractor fails to provide details of proposed mitigating factors which, in the DfE's reasonable opinion are acceptable.
- 23.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
  - 23.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
  - 23.9.2 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
  - 23.9.3 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.
- 23.10 If the DFE terminates the Contract under clauses 23.7, 23.8 or 23.9:
  - 23.10.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and



- 23.10.2 the DFE 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 DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 23.
- 23.11 Either Party may terminate the Contract (or any part of it) at any time by giving at least [ONE] months' prior written notice to the other Party.
- 23.12 If the DFE terminates the Contract under clause 23.11 the DFE shall make no further payments to the Contractor except 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 DFE.
- 23.13 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 cannot reasonably continue the DFE may terminate the Contract (or any part of it) by serving [ONE] months' written notice on the Contractor.
- 23.14 If the DFE terminates the Contract under clause 23.13 the DFE 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 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.
- 23.15 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 DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 23.16 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 90 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 DFE exercising its rights under clause 8.6 or to Force Majeure.
- 23.17 Save as otherwise expressly provided in the Contract:
- 23.17.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to 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
- 23.17.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Payment), 9 (Tax and VAT), 10 (Prevention of Fraud), 12 (Intellectual Property Rights), 13 (Data), 15 (Confidentiality), 16 (Freedom of Information), 17 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 180 (Warranties and Representations), 19 (Liability), 23 (Termination) 24 (Retendering and Handover), 25 (Exit Management), 26 (Audit), and 37 (Governing Law and Jurisdiction).

## **24. RETENDERING AND HANDOVER**

- 24.1 Within 30 days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information

reasonably necessary to enable the DFE to issue tender documents for the future provision of replacement services.

- 24.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 24.1 is given only to potential contractors who have qualified to tender for the future provision of the replacement services.
- 24.3 The DFE 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 DFE; and that they shall not use it for any other purpose.
- 24.4 The Contractor shall allow access to the Premises in the presence of DFE's authorised representative, to any person representing any potential contractor whom the DFE has selected to tender for the future provision of the Services.
- 24.5 If access is required to the Contractor's Premises for the purposes of clause 26.4, the DFE shall give the Contractor 7 days' notice of a proposed visit together with the names of all persons who will be visiting.
- 24.6 The Contractor shall co-operate fully with the DFE 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.
- 24.7 Within 10 Business Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, 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 DFE.

## **25. EXIT MANAGEMENT**

- 25.1 If the DFE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the DFE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 25.2 The Contractor will, within 3 months of the Effective Date, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its Replacement Contractor at the end of the Term (an "**Exit Plan**").
- 25.3 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 36.
- 25.4 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 DFE 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 36.
- 25.5 If the Contractor:

25.5.1 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

25.5.2 reasonably incurs additional costs

the Parties shall agree a variation of the Charges.

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

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

25.8 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Business Days from the date that that request was made.

## **26. AUDIT**

26.1 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.

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

26.3 The Contractor shall permit duly authorised representatives of the DFE 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.

26.4 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 DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

## **27. ENTIRE AGREEMENT**

27.1 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.

27.2 Nothing in this clause 27 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

## **28. PARTNERSHIP**

28.1 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).

## **29. WAIVER**

- 29.1 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.

## **30. CHANGE CONTROL**

- 30.1 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.

## **31. COUNTERPARTS**

- 31.1 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.

## **32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 32.1 The provisions of clauses 7.5 and 12.6 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**”).
- 32.2 Subject to clause 32.1, 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.
- 32.3 A Replacement Contractor may not enforce or take steps to enforce the provisions of clauses 7.5 or 12.6 without DFE’s prior written consent.
- 32.4 The Parties may amend the Contract without the consent of any Replacement Contractor.

## **33. CONFLICTS OF INTEREST**

- 33.1 The Contractor shall:
- 33.1.1 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
- 33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, 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 Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 33 as a “**Conflict of Interest**”.
- 33.2 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 DFE.

- 33.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.
- 33.4 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:
- 33.4.1 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 DFE (acting reasonably); and
- 33.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.
- 33.5 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE 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).
- 33.6 Without prejudice to any other right or remedy it may have, the DFE 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 DFE, there is any continuing breach by the Contractor of the provisions of this clause 33.

#### **34. FURTHER ASSURANCE**

- 34.1 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.

#### **35. NOTICES**

- 35.1 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).
- 35.2 The notice, demand or communication shall be deemed to have been duly served:
- 35.2.1 if delivered by hand, when left at the proper address for service;
- 35.2.2 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;
- 35.2.3 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).
- 35.3 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.

#### **36. DISPUTE RESOLUTION**

- 36.1 Any Dispute shall be dealt with in accordance with this clause 36.
- 36.2 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.

- 36.3 If a Dispute cannot be resolved by negotiation as referred to in clause 36.2 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.

### **37. GOVERNING LAW AND JURISDICTION**

- 37.1 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.
- 37.2 The courts of England shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Contract.
- 37.3 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. The DFE shall pay the Contractor the Charges in accordance with the Contract, subject to successful delivery of the Services against the KPIs or Service Levels set out in schedule 4. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise between the Contractor and the DFE, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
2. The DFE may review the detailed costs set out in the Implementation Plan to ensure that the Contract is value for money.
3. Indexation shall not apply to the Charges.
4. The Contractor shall be entitled to invoice the Charges following acceptance by the DFE of satisfactory completion of the Services or, where performance of the Services will continue, either monthly in arrears or on satisfactory completion of milestones as set out in the delivery milestones, outputs or outcomes (as set out in the tables below).

**Table 1**

5. Funds allocated to a particular expenditure heading in Table 1 are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only.

**Table 2**

#### Cost Matrix

Overall						
Section	Cost		Rationale			
Day Rates						
Travel and Subsistence						
Payments to others						
Venue hiring						
Printing						
TOTAL						
Day Rates						
Staff Member	Per Diem	% Staffed	Days in total	Cost	Discount	Final Cost
Director						
Engagement Manager						

Associate						
Associate						
Associate						
Junior Associate						
<b>TOTAL</b>						

### Cost by Phase

Phase	Days	Cost
Phase 1		
Phase 2		
Phase 3		
<b>TOTAL</b>		

*Note: This costing is exclusive of VAT, which this bid will attract.*



## **Schedule 4**

### **KPIs, Service Levels and Service Credits**

- 1 The objectives of the Service Levels are to:
  - 1.1 ensure that the Services are of a consistently high quality and meet the requirements of the DFE;
  - 1.2 provide a mechanism whereby the DFE can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Services; and
  - 1.3 incentivise the Contractor to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

### **SERVICE LEVELS**

- 2 This schedule 4 sets out the KPIs and Service Levels against which the Contractor shall measure its performance.
- 3 The Contractor shall monitor its performance against of each of the Service Levels in and send the DFE a report detailing the Service Levels which were achieved in accordance with the provisions of this schedule 4.
- 4 If, during a Service Period, the Contractor:
  - 4.1 achieves a Service Level no Service Credits will accrue to the Contractor in respect of that Service Level;
  - 4.2 is below a Service Level the appropriate number of Service Points will accrue to the Contractor in respect of that Service Level; or
  - 4.3 fails to meet 4 or more Service Levels in any consecutive 3 months, the DFE may terminate the Contract and/or seek damages in addition to any Service Credits which have already been accrued by the Contractor and are payable by the Contractor to the DFE.

### **SERVICE CREDITS**

- 5 Accrual of Service Credits shall entitle the DFE to a reduction in the Charges. The Contractor shall set-off the value of any Service Credits against the appropriate invoice in accordance with schedule 3. The mechanism for recovery of any Service Credits will be developed and agreed with the Contractor within the first 3 months of the Contract.
- 6 The Contractor confirms that it has modelled the Service Credits and has taken them into account in calculating the Charges. Both Parties agree that the Service Credits are a reasonable method of adjusting the Charges to reflect poor performance

### **Table 2 KPIs**

There are a number of specific requirements which must be met. The Challenge will be expected to meet the following KPIs:

- By 16th April 2017, recruit employer representatives from a range of occupational areas, across London, Rural, Urban and Suburban areas and from various sized businesses to participate in the design of work placement models and who agree in principle to host the work placements from September 2017.
- By 16th April 2017, recruit representative sample of post-16 education providers

that offer relevant courses relating to the 11 sectors and across London, Rural, Urban and Suburban areas, to work alongside the employers in the design stage and secure in principle, agreement to deliver work placements as part of the implementation phase.

- By 26th June 2017 bring this evidence together and produce an agreed set of workable work placement models for each of the 11 technical education routes that include practical steps required for effective and high quality work placement provision.
- By 7<sup>th</sup> July 2017 secure contractual agreement from sufficient number of providers prepared to implement the work placement models in academic year 2017/18.
- By 31st July 2017, supported participating providers to effectively integrate work placement models into curriculum in academic 17/18 and secured employer hosts alongside liaison officers.

**Table 3 Service Levels**

Service Level	Measure	Compliance
Reporting Meetings and	<b>Fortnightly update report:</b> submit a fortnightly update report in advance of the contractor meeting, with alignment to monthly invoices, including any exception events within this report.	100% - DFE monitoring
	Contractor meetings – fortnightly	
	Development and operations meetings – as required	
Administration/Communication	In delivering the Services offer a responsive and supportive service to participants and their facilitators.	
	Respond to 100% of queries and correspondence within 3 Business Days of receipt.	
Finance	Ensure that invoices are submitted to DFE within 10 Business Days of the end of the relevant charging period/completion of the activity. This invoice should link to the fortnightly update report mentioned above, providing details on expenditure.	
Commercial Management	Ensure that Change Control Notes are signed by both Parties <b>prior</b> to any additional work being undertaken (DFE or Contractor to ensure paperwork is issued in a timely fashion when change required).	
Complaints	Ensure that all administrative Personnel are aware of and abide by relevant complaints procedures.	
	Main management contact to report all complaints orally and in writing to DFE within 3 Business Days.	
Records and questionnaires	Ensure that all records are maintained and kept up to date throughout the Term. Records must be updated within 5 Business Days of a request being made or an event taking place (subject to system availability).	
	Support the DFE to ensure appropriate questionnaires are completed throughout the Term.	
Delivery	Supply appropriate equipment to support the delivery of the Services at any face to face events.	100%- Questionnaire records
	Suitability of venue: events take place in venues and facilities which are relevant to the day.	

Service Level	Measure	Compliance
	Training shall take place in rooms which are suitable for the size of groups and set up in the style appropriate to the event	100%-Event questionnaire s
Workshop Events	ICT should be adequate and meet the minimum specification of the course.	
	Refreshments must be provided and where overnight accommodation is required the facilities must comply with the venue specification.	
Evaluation	Contribute to the evaluation of the effects of its delivery by collaborating with the external evaluators, sharing learning and encouraging participating education providers to facilitate access to learners and employers, with an opt out option for those who do not wish to be contacted.	

## Schedule 5

### Implementation Plan

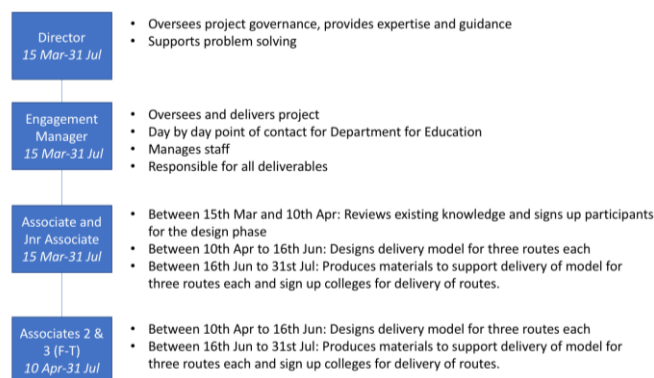
1. The Contractor shall provide the Services in accordance with the Implementation Plan set out below.
2. The Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
3. The Contractor shall be responsible 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 DFE.
4. The Contractor shall monitor its performance against the Implementation Plan and report to the DFE monthly (or more frequently if so required by the DFE) on its performance.

### **Provide a plan of how you will implement and project manage this project including a breakdown of different tasks and costings**

The Challenge's Implementation Plan starts from here:

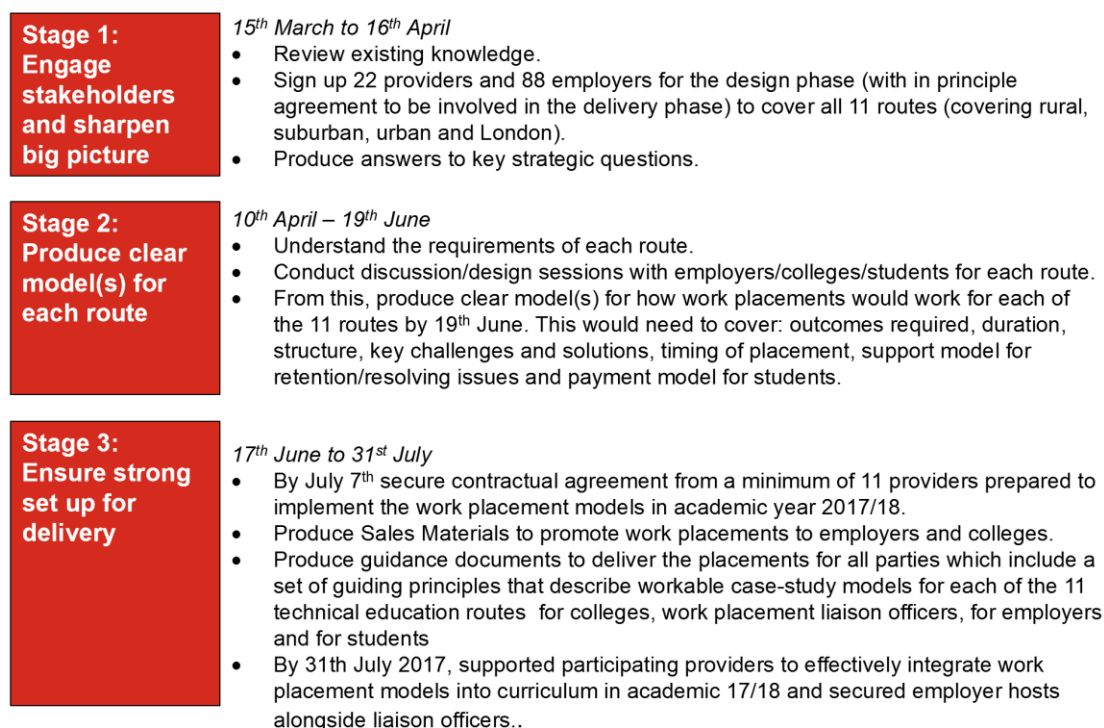
We have designed a clear implementation and project management plan for this project. This includes a clear division of responsibilities, a clear workplan including a breakdown of different tasks and costings and strong governance and oversight as detailed in what follows:

- (1) **Clear division of responsibilities:** Our plan will be executed by this operational structure with a clear division of responsibilities as detailed in the below chart.



- (2) **A clear workplan including a breakdown of different tasks and costings:** In advance of starting this project, we have produced a clear timeline which breaks the work clearly into three stages as detailed below and details cost by stage. We will report internally weekly against milestones and report regularly to the Department against progress.

## Project Workplan



- (3) **Strong governance and access to knowledge:** The delivery team will be overseen by a governance board within The Challenge which will include access to The Challenge's operational experience, design work and leadership. This will include our design team for NCS, HeadStart and Step Forward, our CEO and Trustees including [REDACTED], the ex-CEO for the [REDACTED].

## **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 DFE 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 DFE 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 DFE. 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 DFE 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 36.
- 6 If the Contractor wishes to introduce a change to the Contract it may request a Variation by serving the Change Control Note on DFE.
- 7 The DFE shall evaluate the Contractor's proposed Variation in good faith, taking into account all relevant issues.
- 8 The DFE shall confirm in writing within 21 days of receiving the Change Control Note if it accepts or rejects the Variation.
- 9 The DFE may at its absolute discretion reject any request for a Variation proposed by the Contractor.

### Change Control Note

:

<b>Contract Number</b>		<b>DFE Contract / Programme Manager</b>
<b>Contractor</b>		<b>Original Contract Value (£)</b>
<b>Contract Start Date</b>		<b>Contract Expiry Date</b>

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

<b>Impact on original contract</b>  (if applicable)	
<b>Supporting Information</b>  (please attach all supporting documentation for this Change Control)	
<b>Terms and Conditions</b>	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.
<b>Variation Agreed</b>  <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <b>For the Contractor:</b>   Signature.....    Full Name.....    Title.....    Date..... </div> <div style="width: 45%;"> <b>For the DFE:</b>   Signature.....    Full Name.....    Title.....    Date..... </div> </div>	

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:			
<b>Commercial Contact</b>		<b>Reference Number</b>	
<b>Date received</b>		<b>EC Reference</b>	

## Schedule 7

### Key Personnel and Key Sub Contractors

#### Key Personnel

The individuals listed in the table below are Key Personnel:

<b><i>Role</i></b>	<b><i>Staff Member</i></b>	<b><i>Relevant Experience</i></b>	<b><i>Time allocated</i></b>
<b>Director: Oversight of project</b>			25%
<b>Partner: Management of project</b>			100%
<b>Associate: Lead on number of routes</b>			100%
<b>Associate: Lead on number of routes</b>			100%
<b>Associate: Lead on number of routes</b>			100%
<b>Junior Associate: Support across team lead on one route</b>			100%
<b>Advisor: Advise on Employer Engagement</b>			Advisory
<b>Advisory: Advise on Education Provider Engagement</b>			Advisory
<b>Advisory: Advise on work placement design</b>			Advisory
<b>Advisory: Support governance of project</b>			Advisory



## Schedule 8

### Data, Systems Handling and Security

#### Definitions

<b>"BPSS"</b>	means the Government's Baseline Personnel Security Standard for Government employees available at:  <a href="http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200551/HMG_Baseline_Personnel_Security_Standard_V3_2_Apr-2013.pdf">www.gov.uk/government/uploads/system/uploads/attachment_data/file/200551/HMG_Baseline_Personnel_Security_Standard_V3_2_Apr-2013.pdf</a>
<b>"CESG"</b>	is the United Kingdom government's national technical authority for information assurance, details of which can be found at:  <a href="http://www.cesg.gov.uk/Pages/homepage.aspx">http://www.cesg.gov.uk/Pages/homepage.aspx</a>
<b>"CESG IAP"</b> <b>"CESG Information Assurance Policy Portfolio"</b>	means the CESG Information Assurance policy Portfolio containing HMG policy and guidance on the application of 'security assurance' for HMG systems.
<b>"CTAS"</b> <b>"CESG Tailored Assurance"</b>	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.
<b>"CPA"</b> <b>"CESG Product Assurance"</b>	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.
<b>"CCSC"</b> <b>"CESG Certified Cyber Security Consultancy"</b>	is CESG's approach to assessing the services provided by consultancies and confirming that they meet CESG'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.
<b>"CCP"</b> <b>"CESG Certified Professional"</b>	is a CESG 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.
<b>"CC"</b> <b>"Common Criteria"</b>	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.

**"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;

**"Cyber Essentials"**  
**"Cyber Essentials Plus"**

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.

**"DFE Assets"**

include but are not limited to DFE premises, IT systems and information with a classification up to confidential;

**"DFE Data"**

a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:

(i) which are supplied to the Contractor by or on behalf of the DFE; or

(ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or

(b) which are any Personal Data for which the DFE is the Data Controller;

**"Data Processor", "Personal Data",  
"Sensitive Personal Data", "Data  
Subject", "Process", "Processing" and  
"Data Controller"**

shall have the meanings given in the DPA;

**"Departmental Security Standards"**

means the DFE's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.

**"Digital Marketplace / GCloud"**

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.

**"EEA"**

the European Economic Area;

**"FIPS 140-2"**

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

<p><b>“Good Industry Practice”</b> <b>“Industry Good Practice”</b></p>	<p>facto security standard used for the accreditation of cryptographic modules.</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><b>“Good Industry Standard”</b> <b>“Industry Good Standard”</b></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><b>“GSC”</b> <b>“GSCP”</b></p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p><b>“SPF”</b> <b>“HMG Security Policy Framework”</b></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.</p>
<p><b>IS5</b></p>	<p>this is HMG Information Assurance Standard No. 5 - Secure Sanitisation issued by CESG</p>
<p><b>“IT Security Health Check”</b> <b>“Penetration Testing”</b></p>	<p>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.</p>
<p><b>“Need-to-Know”</b></p>	<p>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.</p>
<p><b>“OFFICIAL”</b> <b>“OFFICIAL-SENSITIVE”</b></p>	<p>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.</p>

**“Security and Information Risk Advisor”**  
**“CCP SIRA”**  
**“SIRA”**

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.

**“IT Security Health Check”**

the Security and Information Risk Advisor (SIRA) is a role defined under the CESG CESG Certified Professional Scheme

means an assessment to identify vulnerabilities in IT systems and networks which may compromise the confidentiality, integrity or availability of information held on that IT system;

**“Malicious Software”**

any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**“Security Plan”**

the Contractor’s security plan.

1. The DFE is the Data Controller and the Contractor is the Data Processor.
2. Both Parties may handle Personal Data and shall comply with their legal obligations under the DPA.
3. The Contractor shall notify the DFE as soon as it becomes aware of any actual or potential data incident or breach of its obligations under the DPA in relation to any Personal Data processed as a consequence of undertaking the Contract.
4. If the Contractor is processing Personal Data as a Data Processor for the DFE as a consequence of undertaking the Contract the Contractor shall:
  - 4.1 Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Services or as is required by law or any Regulatory Body;
  - 4.2 Process the Personal Data only in accordance with instructions from the DFE (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the DFE to the Contractor during the Term);
  - 4.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 4.4 take reasonable steps to ensure the reliability of any Personnel who have access to the Personal Data;
  - 4.5 obtain the DFE’s prior written consent before transferring Personal Data to any Sub-Contractors or Associated Companies for the provision of the Services;

- 4.6 ensure that all Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this paragraph 4;
  - 4.7 ensure that no Personnel publish or disclose any Personal Data to any third party unless directed in writing to do so by the DFE;
  - 4.8 notify the DFE within 2 Business Days if it receives:
    - 4.8.1 a request from a Data Subject to have access to that person's Personal Data; or
    - 4.8.2 a complaint or request relating to the DFE's obligations under the DPA;
  - 4.9 provide the DFE with full cooperation and assistance in relation to any complaint or request made, including by:
    - 4.9.1 providing the DFE with full details of the complaint or request;
    - 4.9.2 complying with a data access request within the relevant timescales set out in the DPA and in accordance with the DFE's instructions;
    - 4.9.3 providing the DFE with any Personal Data it holds in relation to a Data Subject (within the timescales required by the DFE); and
    - 4.9.4 providing the DFE with any information requested by the DFE;
  - 4.10 permit the DFE or any duly authorised representative of the DFE (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the DFE to enable the DFE to verify and/or procure that the Contractor is in full compliance with its data protection obligations under the Contract;
  - 4.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the DFE); and
  - 4.12 subject to paragraph 5, not Process or otherwise transfer any Personal Data outside the EEA.
5. If, after the Effective Date, the Contractor (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the EEA the Contractor shall:
- 5.1 submit a request for a Variation to the DFE which shall be dealt with in accordance with the Change Control Procedure;
  - 5.2 set out in its request for a Variation:
    - 5.2.1 the Personal Data which will be Processed and/or transferred outside the EEA;
    - 5.2.2 the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the EEA;
    - 5.2.3 any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the EEA; and
    - 5.2.4 how the Contractor will adequately protect (in accordance with the

DPA and in particular so as to ensure the DFE's compliance with the DPA) Personal Data to be Processed and/or transferred outside the EEA.

6. If evaluating the request for a Variation pursuant to paragraph 5:
  - 6.1 the Parties shall consider current policies and guidance of the DFE, Government and the Information Commissioner's Office and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the EEA and/or overseas generally; and
  - 6.2 the Contractor shall comply with any instructions which the DFE may notify in writing.
7. Insofar as the Contractor processes Personal Data for its own administrative purposes, whilst undertaking the Contract the Contractor shall comply at all times with the DPA and shall not perform its obligations under the Contract in such a way as to cause the DFE to breach any of its obligations under the DPA.
8. The Contractor shall:
  - 8.1 employ appropriate organisational, operational and technological processes and procedures to keep DFE Data safe from unauthorised use or access, loss, destruction, theft or disclosure which comply with ISO/IEC 27001 as appropriate to the Services;
  - 8.2 not delete or remove any proprietary notices contained within or relating to DFE Data;
  - 8.3 preserve the integrity of DFE Data and prevent the corruption or loss of DFE Data;
  - 8.4 ensure that any files containing DFE Data are stored on the Contractor's secure servers and/or secured Contractor Equipment;
  - 8.5 ensure that DFE Data relating to the Contract is segregated from other data on its IT systems so that DFE Data can be securely deleted if required;
  - 8.6 not keep DFE Data on any Contractor Equipment unless it is protected by being fully encrypted and password protected and its use is necessary for the provision of the Services;
  - 8.7 ensure that any hard copy is destroyed by cross-cut shredding and secure recycling of the resulting paper waste;
  - 8.8 perform secure back-ups of all DFE Data and ensure that up-to-date back-ups are stored off-site. The Contractor shall ensure that such back-ups are available to the DFE at all times upon request;
  - 8.9 not store or host DFE Data outside the United Kingdom or perform any ICT management or support without the DFE's prior written consent;
  - 8.10 ensure that any DFE Data sent to any third party is:
    - 8.10.1 sent by CD or DVD;
    - 8.10.2 fully encrypted and password protected, with the password for files sent separately from the data;
    - 8.10.3 carried by a secure courier or registered postal service (special delivery) and not by e-mail or on USB pens.

9. If DFE Data is held and/or processed by the Contractor, the Contractor shall supply DFE Data to the DFE as requested and in the format specified by the DFE.
10. If DFE Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the DFE may:
  - 10.1 require the Contractor at the Contractor's expense to restore or procure the restoration of DFEs Data as soon as practicable; and/or
  - 10.2 itself restore or procure the restoration of DFE Data and may invoice the Contractor for any reasonable expenses incurred in doing so.
11. If at any time the Contractor suspects or has reason to believe that DFE Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, the Contractor shall notify the DFE immediately and inform the DFE of the remedial action the Contractor proposes to take.
12. The Contractor shall comply, and shall procure that Personnel comply, with DFE's Security Standards as set out in the annexe to this schedule 8 and the Security Plan.
13. The Contractor shall ensure that the Security Plan fully complies with the DFE Security Standards.
14. The DFE shall notify the Contractor of any changes to the DFE Security Standards.
15. If the Contractor believes that a change to the DFE Security Standards will have a material and unavoidable effect on its costs it may submit a request for a Variation in accordance with the Change Control Procedure. Any request must include evidence of the cause of any increased costs and the steps it has taken to mitigate those costs.
16. Until a Variation is agreed pursuant to paragraph 15 the Contractor shall continue to perform the Services in accordance with its existing obligations.
17. The Contractor shall use the latest versions of anti-virus definitions available to check for and delete Malicious Software from the Contractor's ICT.
18. Notwithstanding paragraph 17, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption DFE Data, assist each other to mitigate any losses and to restore the Services to their maximum operating efficiency.
19. Any cost arising out of the actions of the Parties taken in compliance with paragraph 18 shall be borne:
  - 19.1 by the Contractor if the Malicious Software originates from the Contractor's software, any software owned by a third party or DFE Data whilst under the control of the Contractor; and
  - 19.2 by the DFE if the Malicious Software originates from the DFE's software or DFE Data whilst under the control of the DFE.

## ANNEXE to Schedule 8

### DFE SECURITY STANDARDS

#### 12. Departmental Security Standards for Business Services and ICT Contracts

<p>"BPSS"</p> <p>"Baseline Personnel Security Standard"</p>	<p>a level of security clearance described as pre-employment checks in the National Vetting Policy.</p>
<p>"CESG"</p>	<p>is the UK government's National Technical Authority for Information Assurance. The website <a href="http://www.cesg.gov.uk/Pages/homepage.aspx">http://www.cesg.gov.uk/Pages/homepage.aspx</a> is</p>
<p>"CESG IAP"</p> <p>"CESG Information Assurance Policy Portfolio"</p>	<p>means the CESG Information Assurance policy Portfolio containing HMG policy and guidance on the application of 'security assurance' for HMG systems.</p>
<p>"CTAS"</p> <p>"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.</p>
<p>"CPA"</p> <p>"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.</p>
<p>"CCSC"</p> <p>"CESG Certified Cyber Security Consultancy"</p>	<p>is CESG's approach to assessing the services provided by consultancies and confirming that they meet CESG'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.</p>
<p>"CCP"</p> <p>"CESG Certified Professional"</p>	<p>is a CESG 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.</p>
<p>"CC"</p> <p>"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>"Cyber Essentials"</p> <p>"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>"Data"</p> <p>"Data Controller"</p> <p>"Data Processor"</p> <p>"Personal Data"</p> <p>"Sensitive Personal Data"</p> <p>"Data Subject", "Process" and "Processing"</p>	<p>shall have the meanings given to those terms by the Data Protection Act 1998</p>
<p>"Department's Data"</p> <p>"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 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>"DfE"</p> <p>"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"</p> <p>"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”</p> <p>“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”</p> <p>“GSCP”</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p>“HMG”</p>	<p>means Her Majesty’s Government</p>
<p>“SPF”</p> <p>“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.</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 of enabling technologies used to deliver the end-to-end solution</p>
<p>IS5</p>	<p>this is HMG Information Assurance Standard No. 5 - Secure Sanitisation issued by CESG</p>
<p>“ISO/IEC 27001” “ISO 27001”</p>	<p>is the International Standard for Information Security Management Systems Requirements</p>
<p>“ISO/IEC 27002” “ISO 27002”</p>	<p>is the International Standard describing the Code of Practice for Information Security Controls.</p>
<p>“ISO 22301”</p>	<p>is the International Standard describing for Business Continuity</p>
<p>“IT Security Health Check”</p> <p>“Penetration Testing”</p>	<p>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.</p>
<p>“Need-to-Know”</p>	<p>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.</p>

“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.
“Security and Information Risk Advisor” “CCP SIRA” “SIRA”	the Security and Information Risk Advisor (SIRA) is a role defined under the CESG CESG Certified Professional Scheme

- 12.1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- *(Guidance: Providers on the HMG Digital Marketplace / GCloud or Public Service Network (PSN) that have demonstrated compliance, as part of their scheme application, to the relevant scheme’s security framework, such as the HMG Cloud Security Principles for the HMG Digital Marketplace / GCloud, may on presentation of suitable evidence of compliance be excused from compliance to similar clauses within the DfE Security Clauses detailed in this section (Section 12).)*
- 12.2. 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 September 2014, 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.
- *(Guidance: The Department’s expectation is that the certification scope will be relevant to the services supplied to, or on behalf of, the Department. However, where a contractor or (sub) contractor is able to evidence a valid exception or certification to an equivalent recognised scheme or standard, such as ISO 27001, then certification under the Cyber Essentials scheme could be waived and this clause may be removed. Changes to the Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14 25 September 2014 will be tracked by the DSU)*
  - *(Guidance: The terms OFFICIAL and OFFICIAL-SENSITIVE are taken from the Government Security Classification Policy (GSCP). The Department’s expectations are that all contractors shall handle the Department’s information in a manner compliant with the GSCP – see 12.4 below. Details of the GSCP can be found on the GOV.UK website at: <https://www.gov.uk/government/publications/government-security-classifications>.)*
- 12.3 The Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).

- *(Guidance: The Department's expectation is that suppliers claiming certification to ISO/IEC 27001 shall provide the Department with copies of their Scope of Certification, Statement of Applicability and a valid ISO/IEC 27001 Certificate issued by an authorised certification body. Where the provider is an SME that has a valid Cyber Essentials certification then certification under the ISO/IEC 27001 scheme could be waived and this clause may be removed.)*
- 12.3. 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).
- *(Guidance: The Department's expectations are that all contractors shall handle the Department's information in a manner compliant with the GSCP. Details of the GSCP can be found on the GOV.UK website at: <https://www.gov.uk/government/publications/government-security-classifications>.)*
- 12.4. Departmental Data being handled in the course of providing the ICT solution or service must be segregated from other data on the Contractor's or sub-contractor's own IT equipment to both protect the Departmental Data and enable it 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 12.14.
- *(Guidance: Advice on HMG secure sanitisation policy and approved methods are described in HMG IS5.)*
- 12.5. The Contractor shall have in place and maintain physical security and entry control mechanisms (e.g. door access) to premises and sensitive areas and separate logical access controls (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- *(Guidance: Where the contractor's and sub-contractor services are wholly carried out within Departmental premises and all access to buildings or ICT systems is managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*
- 12.6. The Contractor shall have in place and shall maintain procedural, personnel, 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.
- *(Guidance: Where the contractor's and sub-contractor services are wholly carried out using Departmental ICT resources or locations managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*
- 12.7. Any electronic transfer methods across public space or cyberspace, including third party provider networks must be protected via encryption which has been certified to a minimum of FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- *(Guidance: The terms "public space" and "cyberspace" are used to describe the internet and any commercially provided third party network used to transmit Departmental information. Even where the contractor's and sub-contractor services are wholly carried out using Departmental ICT resources managed directly by the Department as part of the service, if there is still the possibility of emails being sent to external addresses, this clause should be included.)*

- 12.8. 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 12.10 and 12.11 below.
- 12.9. 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 a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- *(Guidance: Where the use of removable media as described at Clause 12.9 above is either prohibited or not required in order to deliver the service this clause shall be revised as follows: - ‘The use of removable media in any form is not permitted’.)*
- 12.10. 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 a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- *(Guidance: Where there is no suitable FIPS140-2 encryption product available to provide the necessary full-disk encryption, the Department shall agree a suitable alternative product that meets ‘industry good practice’ in this area with the contractor or sub-contractor. Where the contractor’s and sub-contractor services are wholly carried out using Departmental ICT resources managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*
- 12.11. 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 waste paper organisation.
- *(Guidance: The term ‘lock and key’ is defined as: “securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user’s sole control and to which they hold the keys”.)*
- 12.12. 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 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.
- *(Guidance: The term ‘under cover’ means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when travelling outside of official premises or buildings).*
- 12.13. 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 in accordance with the current HMG policy (HMG IS5) using a CESG 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.
- *(Guidance: Where no departmental information or data shall be held by the Contractor or sub-contractor, in either physical or logical form this clause may be removed.)*

- *(Guidance: Where there is no acceptable secure sanitisation method available for a piece of equipment, or it is not possible to sanitise the equipment due to an irrecoverable technical defect, the storage media involved shall be destroyed using an approved method described in HMG IS5.)*
- 12.14. Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a “need-to-know” and the appropriate level of security clearance, as required by the Department for those individuals whose access is essential for the purpose of their duties. All employees with direct or indirect access to Departmental Data must be subject to pre-employment checks equivalent to or higher than the Baseline Personnel Security Standard (BPSS)
- *(Guidance: Further details of the requirements for BPSS clearance are available on the website at: <https://www.gov.uk/government/publications/security-policy-framework>)*
- 12.15. All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 12.16. The Contractor shall, as a minimum, have in place robust and ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures 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 be, or could lead to, a disruption, loss, emergency or crisis. When a certificate is not available it shall be necessary to verify the ongoing effectiveness of the ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures, to the extent that the Contractor must have tested/exercised these plans within the last 12 months and produced a written report of the test/exercise, outcome and feedback, including required actions.
- *(Guidance: The creation of robust business continuity and disaster recovery plans are aligned with industry good practice and it is the Department’s expectation that all vendors providing services or infrastructure to the Department will have plans that are aligned to the ISO 22301 standard in place. Further information on the requirements of ISO 22301 may be found in the standard.)*
- 12.17. Any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, or any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- *(Guidance: The Department’s expectation is that non-compliances, or any suspected or actual breach of the confidentiality, integrity or availability of the Department’s Data shall be reported as incidents and investigated by the vendor with outcomes being notified to the Department.)*
- 12.18. The Contractor shall ensure that any IT systems and hosting environments that are used to hold Departmental Data being handled, stored or processed in the course of providing this service shall be subject to an independent IT Health Check (ITHC) using a CESG 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.
- *(Guidance: Further information on IT Health Checks and the CESG CHECK Scheme which enables penetration testing by CESG approved companies can be found on the CESG website at: <https://www.cesg.gov.uk/scheme/penetration-testing>.)***Error! Link reference not valid.**

- 12.19. The Contractor or sub-contractors providing the service will provide the Department with full details of any actual storage outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management or support 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.
- *(Guidance: The offshoring of HMG information outside of the UK is subject to approval by the Departmental SIRO and, in some cases, also by the Office of the Government Senior Information Risk Owner (OGSIRO). Further information on this process can be found at: <https://ogsirooffshoring.zendesk.com/hc/en-us/articles/203107991-HMG-s-Offshoring-Policy>)*
- 12.20. 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.
- 12.21. 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.

**Schedule 9**  
**Commercially Sensitive Information**

The Challenge did not propose anything Commercially sensitive as part of their bid.



## Schedule 10

### The Contractor's Solution

#### 10.01: Evidence of expertise and insight in Post-16 and technical education

##### **a. Demonstrate a clear understanding and interest in the technical reforms and Post-16 Skills Plan**

We have a clear understanding and interest in the technical reforms and Post-16 Skills Plan which we evidence in four ways.

Firstly, we fully support and understand the need behind the reforms, in particular:

- the low level of productivity in the UK where we are projected to be 28<sup>th</sup> in the OECD by 2020
- the growing demand for higher level technical skills
- the complex number of qualifications which are hard for young people and parents to navigate
- the lack of connection to employment needs which leads to young people being trained in areas where demand is low and to the wrong standard.

Secondly, we fully support and understand the resulting principles behind the reforms as detailed in the Skills Plan:

- that employers should play a leading role especially in setting the standards
- that technical education should be challenging and aspirational designed with a clear end standard in mind
- that technical education should ensure that many more people meet the standard required by employers by being attractive and stretching
- that work placements should play a key role in ensuring the colleges do not provide courses that the local economy does not need
- that young people not ready to start a technical course instead attend a transition course
- that the employment-based and colleges-based routes have similar outcomes that employers can understand.

Thirdly, we have evidenced our interest and understanding by engaging in policy discussions around the plan's implementation through discussions organised by Gatsby, the Department, individual ministers and Number 10.

Fourthly, we have evidenced our interest, understanding and commitment to the post-16 age group and technical education by designing programmes that meet some of the needs identified. Our apprenticeship programme (Step Forward) seeks to ensure that young people ending their technical or academic education at 18 can transfer into high quality apprenticeships. Our employability programme (HeadStart) gives employers a leading role in setting the standard. Our largest programme (NCS) ensures that young people get the experiences and skills that employers are looking for.

##### **b. Provide evidence of previous projects relevant to post-16 education**

The Challenge has very significant experience delivering projects that are relevant to post-16 education. Below we provide evidence of three particular projects working with 16-18s, post-16 education providers and employers. We believe that they evidence two particular strengths of our bid. Firstly, our experience in being involved in both design and delivery work. This gives us the ability to understand the nature of a design project like this one which requires good relations with multiple stakeholders, evidence based insights, clear synthesis and rapid pace. It also gives us the deep operational understanding of how operations, implementation and change works in practice which ensures that the end product we design for you is deliverable. Secondly, we have particular experience working in connecting education providers and employers. This experience is across a range of post 16 education providers, different sized employers, different industries and in different regions.

### ***Evidence 1: HeadStart (post 16 employability, work experience and placements)***

*Design work:* Triggered by our experience of working with employers and 16-18s, we worked with the Greater London Assembly to conduct a series of workshops and focus groups with employers, students and education providers. This enabled us to design a new model for connecting post-16 education providers, their students and the world of work. This programme - HeadStart - enabled students to access a short period of quality controlled work experience, attend training on employability skills and then access a guaranteed interview for a part-time job or work placement. Success rates at these interviews were much higher than employers' normal experience.

*Delivery:* We have successfully piloted, delivered and scaled the HeadStart programme at a growth rate of over 100% per annum so that it is serving c.3000 young people per year, involving work experience with over 500 partners and providing paid employment with a number of larger employers including Starbucks, Bloomberg and Berkeley Homes.

*Working with Employers and Providers:* In delivering the programme we have sourced young people from across over 500 different education providers and worked with 500 small employers and a number of large – often multi-national - companies. We have delivered this across London, other urban centres and suburban.

*Impact:* HeadStart has grown substantially (as noted above), it has been independently evaluated by the Department for Education and found to increase confidence, skills and understanding of employment. HeadStart graduates are found to be three times more likely to be successful at interview than standard applicants.

### ***Evidence 2: Step Forward (post 16 apprenticeship provision)***

*Design work:* In order to ensure a high quality apprenticeship offer for 18 year old school and college leavers, and in conversation with Number 10 and BIS, we conducted a series of workshops and focus groups with employers, 16-18s and education providers. As a result we designed Step Forward - a new high aspiration but widely accessible apprenticeship programme delivering a number of different pathways into the world of work.

*Delivery:* We have successfully piloted, delivered and scaled the Step Forward programme at a growth rate of over 100% per annum becoming a registered training provider. We now deliver the programme across a number of different standards including within Digital, Childcare and Education, Business and Administration, Legal, Finance and Accounting and Catering and Hospitality. This has given us a deep understanding of technical education through apprenticeships and of SFA funded training.

*Working with employers and providers:* Step Forward works with over 100 post 16 education providers including FE colleges, 6<sup>th</sup> Form Colleges, Schools and Specialist Colleges. We deliver the programme in London. We work with employers of all sizes including sole traders and multinational companies for example Bloomberg and Fremantle Media.

*Impact:* Step Forward has achieved completion rates approximately 15% above the national average and is rated Outstanding against Ofsted criteria; surveys have shown it to be 14 times more attractive than the standard apprenticeship offer for young people and employers provide high satisfaction scores.

### ***Evidence 3: National Citizen Service***

*Design work:* From 2008, we worked to design a new 'coming of age' programme for young people aged 16-17 to enable them to build citizenship and employability skills. We conducted focus groups with students, post 16 education providers and employers across the UK and designed the National Citizen Service which was adopted by the government in 2010 as a government funded initiative for all 16-17 year olds.

*Delivery:* We have piloted, delivered and scaled the National Citizen Service and are now the largest provider of this programme working with approximately 45,000 young people a year.

*Working with employers and providers:* In delivering the programme, we work with over

1500 post-16 education providers to help students to access the programme including FE Colleges, 6<sup>th</sup> Form Colleges, Schools and Specialist colleges. We operate across 7 out of 19 regions of England covering urban, rural and suburban areas. We involve employers of all sizes from sole traders, SMEs and multinationals across a wide range of industries.

We would be delighted to discuss these examples at interview.

#### **10.02 Evidence of ability to use networks to attract and engage appropriate and representative employers and colleges**

**a. Provide a marketing and communications plan of how you will attract and engage a representative number of employers and colleges to design work placements. AND**

**b. Demonstrate an understanding of the target audience in the recruitment of employers and post-16 institution representatives.**

We have designed a clear marketing and communications plan for both employers and colleges which is based on a good understanding of both target audiences' felt needs. We have broken this plan down into four sections for each market: (a) a clear understanding of the target audience's felt needs (to demonstrate an understanding of the target audience), (b) a clear offer that appeals to this felt need, (c) a clear ask that is easy to respond to, (d) a clear route to market. We have also laid out first the evidence of our proven ability here.

##### **(1) Colleges:**

- (a) *Evidence of proven ability:* We designed and delivered three very successful communications and marketing plans with education providers based on understanding of audience. Firstly, we designed the communication and marketing plan for National Citizen Service with which we successfully engaged over 1500 education providers across the UK creating the fastest growing youth programme in Europe. Secondly, we designed the communication and marketing plan for HeadStart which we used to successfully engage young people from more than 100 education providers expanding the programme by over 100% per annum. Thirdly we designed the communication and marketing plan for Step Forward engaging over 100 education providers and growing the programme by over 100% per annum.
- (b) *Clear understanding of the target audience's needs:* Colleges have four key felt needs that are relevant to our marketing and communications plan. Firstly, they feel that they are very busy and stretched and are therefore not looking for new projects unless they require low time commitment. Secondly, they feel a need to be 'in the loop' about changes in funding and policy at a time of change and reform. Thirdly, they feel a need to engage with opportunities that may bring additional finance in future as they feel financially under stress. Fourthly, individual staff members are keen to identify ways to access further development and training that they can evidence for future opportunities.
- (c) *Clear offer that appeals to this felt need:* Our offer will be designed to appeal to these four felt needs. Firstly, it will be designed to minimise the amount of time required from the college. We will look to minimise the amount of travel time and time required to engage with the process and look to organise events on days and times that fit with the college. Secondly, we will underline that the project will enable them to be on the inside of a piece of work that is looking to design how future policy will operate thus meeting their need to be 'in the loop'. Thirdly, we will explain that during the delivery period, there will be some funds available to support the college in working with the work placement liaison officers and that being involved will make them more ready for future changes that may affect funding. Finally, we will look to identify specific staff members who are looking for development opportunities to be involved in design work and engage with employers directly.
- (d) *A clear ask that is easy to respond to:* We will lay out on one page a flyer which makes clear the opportunity for the college, we will ensure that the ask is very specific about the number of workshops from the outset and will propose dates to make it easy to respond to.
- (e) *A clear route to market:* We will access colleges through three main routes. Firstly, we will speak to the colleges that we already work with through the delivery of our

existing programmes. Secondly, we will identify a number of colleges to contact through our network of advisers who are rated highly and likely to be good partners to engage with. Thirdly, we will work with umbrella bodies to identify and contact colleges.

## **(2) Employers**

- (a) *Evidence of proven ability:* We have designed three successful communication and marketing plans for employers. Firstly, we designed the communication and marketing plan to engage employers with the National Citizen Service which resulted in over 1000 employers engaging with the programme. Secondly, we designed the communication and marketing plan to engage employers with employability programme HeadStart which successfully built deep partnership with large multinational firms enabling the programme to scale by over 100% per annum. Thirdly, we designed the communication and marketing plan to engage employers with apprenticeship programme Step Forward which engaged over 500 employers placing apprentices in very varied companies across industries ranging from sole traders, SMEs and multinationals.
- (b) *Clear understanding of the target audience's needs:* Employers will vary in their relevant felt needs. Firstly, they will vary by size. Larger employers will have HR departments who will have a felt need to be involved in new policy development and to be at the cutting edge of ways to address challenges regarding recruitment and retention especially post the EU referendum. Very large employers will have public affairs and/or CSR departments who have a felt need to be involved in significant public affairs or CSR discussions. Smaller employers will not have these departments and many will have a felt need not to spend time on things they see as distractions. However, many will feel strongly about the desire to ensure that smaller firms are involved if the requirement does not take a lot of their time and can be financially recompensed. Secondly, they will vary by industry/route. Routes where recruitment and retention is challenge will have a felt need to be involved in solving this problem. Routes that work with the public sector will have a felt need to understand evolving government policy. Routes which use work placements already will have a felt need to understand how their existing approach might be affected.
- (c) *Clear offer that appeals to this felt need:* Our offer will be designed to appeal to these felt needs. For larger companies, we will look to identify individuals in the HR department and communicate the opportunity to be at the cutting edge of HR thinking around closing the gap between education and employment. For the largest companies with CSR or Public Affairs departments, we will communicate the opportunity to be involved in co-designing policy. For smaller companies, we will look to promote the available day rate to individuals who get involved and look to be very flexible about the way they engage and the time required. For industries with distinct recruitment and retention challenges, we will highlight the value of this work in helping to solve their problem. For industries with existing work placements we will look to highlight the opportunity this policy provides to them.
- (d) *A clear ask that is easy to respond to:* We will lay out on one page a flyer which makes plain the opportunity, we will ensure that the ask is very specific about the number of workshops or interviews from the outset and will identify some dates to make it easy to respond to. We will be flexible about doing on-site or over the phone interviews with employers rather than workshops if necessary.
- (e) *A clear route to market:* We will achieve this through three main approaches. Firstly, we will access a large number of employers through our existing networks which includes a wide spread of different sizes of employers across industries. Secondly, we will work with a number of umbrella bodies who we have connections with including the CBI, CIPD and FSB. Thirdly, we will use Facebook advertising to find individuals who have worked in particular industries and would be interested in being involved for payment.

## **c. Provide evidence of how you will develop an appropriate selection and assessment method and criteria**

We will use a robust method to assess and select employers and education providers. As detailed below, for both groups we will look for organisations that all meet the individual criteria and as a group meet the collective criteria.

**Colleges:** We will apply the below method when identifying colleges to target and when confirming colleges before we have the full group.

<b>Individual Criteria</b>	<b>Collective Criteria</b>
Committed to delivery phase across 2-3 routes	Geographical spread: London, Urban, Suburban, Rural
Deliver curricula relevant to 2-3 routes	Diversity of students to include academic success and ethnic diversity
Availability of individual members of staff who can attend workshops and discussions	Coverage of courses that can align with all 11 routes
Support for design work from Principal	
Large enough to provide 2-300 students to take part in delivery pilot	
[We recommend including providers who vary in quality in order to pilot how the project will work at scale.]	

**Employers:** We will apply this method in identifying employers to target and in confirming colleges before we have the full group.

<b>Individual Criteria</b>	<b>Collective Criteria</b>
[We do not recommend excluding individual employers at this stage as it is valuable to get a genuine mix of different employers. The process must be more selective when selecting which employers provide a work placement.]	Geographical spread: London, Urban, Suburban, Rural
	Variety of sizes: Multi-national, large, medium-sized, small, sole traders
	Coverage of industry and type of work that can align with all 11 routes
	Spread of seniority/role: line manager, CSR/HR/Public Affairs, COO, CEO, middle manager.
	Mix of whether have had apprentices/work experiences/placements before or not

## 11.01 Evidence of experience of delivering to tight timescales and quality of outputs

### a. Provide evidence of recent projects with restricted timelines

We have significant experience delivering projects with restricted timelines in order to fit with the academic cycle. Three specific examples are:

- **Piloting the National Citizen Service:** In Jan 2009 we committed to funders to deliver a new 4 week intense programme for 16-17s starting in line with the end of

school year on 1<sup>st</sup> July 2009. This gave us just 6 months to conduct design work with a large number of stakeholders across education and employment, design the programme structure, design the detailed curriculum, hire staff, source partners, sign up young people and launch on time.

*Result:* The programme (now called National Citizen Service) successfully launched on time to the day with all roles and partnerships in place. We received higher customer satisfaction scores than Apple and the funders expanded the programme year on year. It is now the fastest growing youth programme in Europe.

- **Piloting HeadStart:** In Jan 2013, we committed to funders to run a new high quality work experience programme (called HeadStart) across half of London from 20<sup>th</sup> July 2013. This gave us 6.5 months to design the programme, build a website, identify sources for accessing students and sign them up, recruit employers and mitigate risks.

*Result:* The programme successfully launched on time, exceeding targets for young people taking part and those completing and gaining very high satisfaction scores. Employers funding the programme paid to expand the programme across all of London and into Birmingham and Manchester over the next two years.

- **Piloting Step Forward apprenticeship delivery:** In July 2014, we committed to run a new apprenticeship programme (Step Forward), aimed at school and college leavers, with promotion starting in the education system Sept 2015 and the first apprenticeships starting Sept 2016. This gave us 3 months to design the sales strategy and 15 months to become a fully prepared, funded and regulated apprenticeship provider.

*Result:* We launched sales as scheduled to the day, working with over 100 education providers. We launched delivery of the programme as scheduled to the day, working with almost 50 employers. Completion rates exceeded the national average by 15%, training was rated as Outstanding and employer demand grew to enable a 300% growth in the programme size year on year.

**NB: The full project implementation plan can be found Schedule 5.**

#### c. Provide a full risk assessment and describe how you will mitigate these risks

Please find below a full risk assessment and how we will mitigate these risks:

<b>Risk</b>	<b>Mitigation plan</b>
<b>Failure to engage sufficient employers and mix of employers</b>  <b>Result: Insufficient employers are engaged by 9<sup>th</sup> April to start engaging with workshops and discussions</b>	<ul style="list-style-type: none"> <li>- Make strong use of The Challenge's existing networks with c1000 employers across all employer types</li> <li>- Make strong use of The Challenge's existing networks with employer umbrella groups including the CBI, CIPD, FSB etc.</li> <li>- Plan for significant team resource to be used in this period to directly contact employers</li> <li>- Track type of employer engaged by size and route</li> </ul>
<b>Failure to engage sufficient post-16 providers across range of locations</b>  <b>Result: Insufficient providers engaged by 9<sup>th</sup> April to start engaging with workshops and discussions</b>	<ul style="list-style-type: none"> <li>- Make strong use of The Challenge's existing networks with colleges and other education providers</li> <li>- Make strong use of The Challenge's existing networks with umbrella groups including the AOC and AELP</li> <li>- Plan for significant resourcing to be used in this period to directly contact providers</li> <li>- Target variety of geographical areas from day 1 using The Challenge's existing geographical spread across the UK as an asset</li> </ul>

<p><b>Failure to bring sufficiently consistent approach to overall model resulting in confusion to employers</b></p> <p><i>Result:</i> During scale up in delivery, models for each route vary so much that it proves expensive for DfE to oversee/fund and for employers to understand.</p>	<ul style="list-style-type: none"> <li>- Identify key strategic questions that should be consistent across routes (eg can a student find their own placement, can students be paid/unpaid)</li> <li>- Seek to provide hypotheses for these during stage 1 (see workplan) and review during stages 2 and 3</li> </ul>
<p><b>Failure to personalise approach to each route</b></p> <p><i>Result:</i> Approach does not work for each route and fails to take account of significant market differences</p>	<ul style="list-style-type: none"> <li>- Split work into 11 separate streams during stage 2 (see workplan) with Associates taking the lead on 3 streams each</li> <li>- Prioritise identifying most relevant employers, most expert providers and key advisers for each route during stage 1 (see workplan)</li> </ul>
<p><b>Failure to design flexible enough pilots to ensure successful model is produced through pilots</b></p> <p><i>Result:</i> If work placements is a strong idea but cannot scale exactly as described in the spec (e.g., 1-3 months long is too short but longer would be viable), we do not identify this during the delivery phase.</p>	<ul style="list-style-type: none"> <li>- Look to design some variation into some pilots to test options slightly broader than the initial scope of the spec e.g., preparatory work experience for students to build soft skills, slightly longer work placements etc.</li> </ul>
<p><b>Disconnect between organisation leading on this design work and the delivery organisation managing the liaison officers</b></p> <p><i>Result:</i> Poor delivery of design.</p>	<ul style="list-style-type: none"> <li>- Provide opportunity to Department for Education of having same organisation leading on design or pilots and delivery of pilots by bidding for both</li> <li>- Look to have regular meetings between us and chosen delivery organisation once appointed</li> </ul>
<p><b>Lack of progress on design in time available means that delivery organisation struggles to be ready for the start of academic year</b></p> <p><i>Result:</i> Delivery of pilots not set up in time.</p>	<ul style="list-style-type: none"> <li>- Clear workplan in place before tender submitted to ensure that deadlines can be hit</li> <li>- Workplan broken down into weekly targets with weekly and monthly reviews</li> <li>- Use robust project management methods put in place at The Challenge to ensure previous designs have been delivered in time for HeadStart, NCS and Step Forward</li> </ul>
<p><b>Model designed works at small scale but not larger scale</b></p> <p><i>Result:</i> Pilots do not truly test the model.</p>	<ul style="list-style-type: none"> <li>- Identify in advance key challenges that will apply at scale e.g., need to work with SMEs</li> <li>- Ensure pilots designed to test some of the challenges that will come at larger scale including high rate of penetration of employers</li> </ul>

**d. Provide information on the staff members to be involved and how professional time will be split.**

***NB: See Schedule 7 for key personnel and an indication of how time will be split.***

