



Con_ 15251

**Period Product provision to schools and post-16 education
institutions across England**

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THIS CONTRACT IS MADE ON DAY OF 2022

- (1) The Secretary of State for Education of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DfE**"); and
- (2) Personnel Hygiene Services Ltd registered in England and Wales under number 00770813 whose registered office is Block B, Western Industrial Estate, Caerphilly, CF83 1XH (the "**Supplier**")

Each a "**Party**" and together "**the Parties**"

It is agreed that:

- (A) this contract, together with the attached schedules and annexes, collectively form the "**Contract**"; and
- (B) 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 (Supplier's Solution).

The Contract has been executed on the date stated at the beginning of this page. Signed by person authorised to sign on behalf of The Department for Education:

Signature:	< redacted >
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Name:	<redacted>
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Role:	<redacted>
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Date:	<redacted>
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Signed by person authorised to sign on behalf of Personnel Hygiene Services Ltd:

Signature:	<redacted>
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Name:	<redacted>
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Role:	<redacted>
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Date:	<redacted>
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SCHEDULE 1

The Specification

1. INTRODUCTION AND BACKGROUND

- 1.1 'Period poverty' has received considerable media and parliamentary interest since March 2017, with campaigners focussing on the need to fight stigma around menstruation and to provide free Period Products. Evidence¹ suggests that some girls in the UK are unable to afford Period Products and are therefore missing out on education.
- 1.2 Missing lessons leaves children vulnerable to falling behind, and those with poor attendance tend to achieve less in both primary and secondary school². Poor academic performance is linked to lower wages and higher unemployment in adulthood, and so the attainment gap between disadvantaged children and their peers is thought to transmit poverty from one generation to the next³. For each KS2 and KS4 measure, overall absence has a statistically significant negative link to attainment - i.e., every extra day missed is associated with a lower attainment outcome⁴. Children missing education are also at significant risk of being victims of harm, exploitation or radicalisation later in life⁵.
- 1.3 Findings from the 2018 Omnibus Surveys conducted on behalf of DfE found that:
- 1.3.1 6% of female school pupils and 14% of female college students had been unable to access Period Products at some point in the previous year due to affordability
 - 1.3.2 83% of secondary school leaders made free products available to pupils, with 41% of these doing so because of a reason related to pupils' inability to afford Period Products
 - 1.3.3 78% of secondary school leaders providing products funded these using school budgets, but 26% used charitable donations and 17% said teachers funded products themselves.
- 1.4 Since January 2020, free Period Products have been available in state-funded primary schools, secondary schools, alternative provision and colleges in England, and this is fully funded by the Government.
- 1.4.1 The Department published statistics in January 2022⁶ which showed:
- 13,822 organisations had made at least one order since the scheme began in January 2020. This represents 68% of the organisations that are currently eligible. 94% of secondary schools and 90% of post 16 organisations had made at least one order since the scheme began in January 2020. The equivalent figure for primary schools was lower, at 61%.

2. THE PROVISION OF GOODS AND SERVICES

- 2.1 Service requirements and Key Performance Indicators (KPIs) that apply to the provision of the Goods and Services are set out in this Specification and in Schedule 4 (KPIs, Service Levels and Service Credits) of Document 6 – Terms and Conditions.
- 2.2 The Supplier shall deliver a national service for the regular provision of Period Products to more than 22,000 Organisations within England (including the Isles of Scilly and the Isle of

¹ <https://plan-uk.org/media-centre/1-in-10-girls-have-been-unable-to-afford-sanitary-wear-survey-finds>;
<https://www.opinium.co.uk/calls-provide-free-sanitary-products-schools-across-uk/>;
<https://plan-uk.org/act-for-girls/girls-rights-in-the-uk/break-the-barriers-our-menstrual-manifesto>
<https://www.gov.uk/government/publications/pupils-and-their-parents-or-carers-omnibus-wave-1-survey>
<https://www.gov.uk/government/publications/school-snapshot-survey-summer-2018>

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/739764/Guidance_on_school_at_tendance_Sept_2018.pdf

³ <https://www.nao.org.uk/wp-content/uploads/2015/06/Funding-for-disadvantaged-pupils-summary.pdf>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/509679/The-link-between-absence-and-attainment-at-KS2-and-KS4-2013-to-2014-academic-year.pdf

⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/550416/Children_Missing_Education_-_statutory_guidance.pdf

⁶ <https://www.gov.uk/government/publications/period-products-scheme-management-information>

Wight). The requirement can be divided into the main areas listed in Section 4 – Outline Programme Requirements, below.

3. MANDATORY REQUIREMENTS

3.1 As part of this specification, there are a number of mandatory requirements that the supplier must meet, listed in the table below.

1	<p>The Department shall own the Intellectual Property Rights (IPR) to all resources developed (excluding the Portal) for the delivery of this contract and agree to the timely transfer of all property upon exit from this contract. This shall include (but is not limited to):</p> <ul style="list-style-type: none"> - The branding of the scheme - All promotional and/or guidance documentation
2	All processing of data must be undertaken in compliance with General Data Protection Regulations (GDPR) where applicable.
3	The Supplier must conform to the Cyber Essentials Plus scheme.
4	The Services must be compliant with Government Digital Standards where appropriate.
5	All Period Products must be fit for purpose and conform with the General Product Safety Regulations 2005 .
6	<p>The following range of products must be made available to Organisations as a minimum:</p> <ul style="list-style-type: none"> ○ Sanitary towels – two absorbencies, with one being a high absorbency ○ Applicator tampons – a range of three different absorbencies ○ Non-applicator tampons – a range of three different absorbencies ○ Environmentally-friendly sanitary towels - two different absorbencies, with one being a high absorbency ○ Menstrual cups ○ Reusable period pants – two different sizes
7	The Supplier must be willing to co-operate with the DfE in order to achieve the Financial Transparency Objectives in Schedule 11 of this Contract.

4. OUTLINE PROGRAMME REQUIREMENTS

4.1 The Supplier will be responsible for the end-to-end provision of the Goods and Services to all Organisations across England (including the Isles of Scilly and the Isle of Wight).

4.2 In delivering the above, the Supplier shall do the following (each as further described in this Specification):

Table: List of deliverables

A	Development and implementation of user interface(s) - Provide accessible and secure user interfaces to allow for simple ordering of the Goods by Organisations.
B	Sourcing of Period Products - Provide a range of Goods which allow Organisations to meet the needs of their learners. The minimum type of Goods the Supplier shall provide are further detailed in this Specification.
C	Delivery and logistics - Deliver the Goods to the Organisations in a timely manner and in line with Good Industry Practice.
D	Customer support - Provide quality guidance and proportionate customer support facilities for outward facing elements of the Scheme.
E	Engagement and communication with Organisations - Work with DfE in developing an engagement strategy for the Organisations and then deliver its obligations under that strategy.
F	Service management, quality assurance and governance - Provide the necessary governance to maintain an effective and reliable service and undertake service improvements where required.

5. PROGRAMME TIMESCALES

5.1 The Supplier must set-up the provision of the Scheme during July 2022 and August 2022 and be ready for launch of the Scheme on 1st September 2022.

5.2 The table below shows the indicative project timings, which may be subject to change.

Table 2: Indicative programme timeline

Output	Date
Contract commencement date	1 st July 2022
Set-up period	July-August 2022
Delivery of programme	From September 2022
Initial Contract end date	31 August 2024
Possible contract extension 1	1 September 2024 – 31 August 2025

6. DETAILED PROGRAMME REQUIREMENTS

6.1 The Supplier is required to deliver a high-quality programme by offering the service requirements for each function listed below:

Development and implementation of user interface(s)

- 6.2 The Supplier is required to provide one or more appropriate user interface channels to enable the Organisations to order the Goods. Examples include:
- Online ordering platform
 - Telephone lines
 - Email ordering system
- 6.3 Any phone lines designed to support the Scheme must be free or low cost and accessible during office hours. Office hours are defined as 09:00 – 17:00 GMT on Business Days.
- 6.4 All online ordering platforms provided must comply with - as a minimum - the following key elements of the [Government Digital Standards and Technology Code of Practice](#):
- 4. Make the service simple to use
 - 5. Make sure everyone can use the service
 - 9. Create a secure service which protects users' privacy
 - 14. Operate a reliable service
- 6.5 The service must also meet government Accessibility Standards including meeting Web Content Accessibility Guidelines (WCAG 2.1) as a minimum
- 6.6 The service must be compatible with the latest versions of the following software: JAWS, Zoomtext, Dragon NaturallySpeaking and Dolphin SuperNova, and able to be used without a pointing device such as a mouse.
- 6.7 User interfaces (UI) must be built using responsive components, suitable for viewing on a range of device types (PC, Mac, tablet, smart phone, etc) and must be compatible with all major desktop and mobile browsers (Chrome, Firefox, Safari, Edge, etc).
- 6.8 The Supplier shall deal with all enquiries from Organisations regarding the ordering and delivery of the Goods, including but not limited to: queries about verification, the ordering platform, delivery times and dates, returns, and issues with the Goods. The Supplier shall respond to such enquiries in a timely and professional manner in accordance with Good Industry Practice.
- 6.9 DfE will provide contact details for queries relating to DfE guidance or issues with implementing the Scheme within Organisations. Queries regarding the policy intent of the Scheme will be handled by DfE through existing correspondence routes and the Supplier will promptly refer any such queries to the DfE (and not respond to such queries without DfE's prior written consent).
- 6.10 To reduce the risk of fraud, the Supplier shall ensure verification of the Organisations takes place at the time each Organisation registers for the Scheme and before each Order is placed (this may include, for example, checks against addresses). It will be the responsibility of the Supplier to design and mobilise the verification process, with DfE having final approval of that process prior to launch of the Scheme to the Organisations.
- 6.11 The Supplier will be required to issue a 'terms of use' policy to all registering Organisations as a condition of their participation in the Scheme. The document itself will be developed during the set-up stage and will be subject to DfE's final approval prior to Scheme roll out.
- 6.12 DfE will provide to the Supplier a complete list of Organisations and the necessary data required for verification checks to take place. DfE has the right to introduce new Organisations (and remove others) on a termly basis (i.e. 3 times a year, terms usually begin in January, April and September).
- 6.13 There will be the scope for DfE to introduce a minimum value placed on any order submitted by an Organisation at any time to the Supplier.

- 6.14 DfE will set a maximum fund for each organisation, which will be based on the estimated number of menstruating learners in each Organisation. It is the responsibility of the Supplier to ensure that Organisations are made aware of their annual Order Limit in good time prior to the start of the academic year. The Supplier shall also notify the Organisation of their remaining Order Limit at the time of ordering and shall establish and implement processes to ensure that they (and amount of spend remaining) do not exceed it.
- 6.15 The information required to set the maximum Order Limit per Organisation will be provided by DfE to the Supplier. The maximum Order Limit per Organisation will be subject to the prior written approval of DfE prior to being communicated to the Organisation at the commencement of each academic year. The notifications which the Supplier is required to serve to Organisations under this Paragraph shall be made at least within the timescales set out in clause 3 of this Contract.
- 6.16 The complete service must be available to Organisations from 1st September 2022. Where downtime is required, this must take place outside of core hours (Monday – Friday 08.00 to 18.00).
- 6.17 There must be adequate disaster recovery protocols in place that enable the front and back-end services (including live data) to be fully restored, tested and available to users within 48 hours
- 6.18 There must be a documented approach to various forms of testing and related processes and also documented test results and mitigations for the system

Sourcing of Period Products

- 6.19 The Supplier will offer a range of Goods for Organisations to be able to order, including as minimum the following:
- Sanitary towels – two absorbencies, with one being a high absorbency
 - Applicator tampons – three absorbencies
 - Non-applicator tampons – three absorbencies
 - Environmentally friendly sanitary towels - two absorbencies, with one being a high absorbency
 - Menstrual cups
 - Reusable period pants – two sizes
- 6.20 DfE is committed to encouraging the use of environmentally- friendly products⁷ wherever possible. The Supplier shall also provide (where agreed in Schedule 10 (Contractor's Solution)) environmentally friendly Goods such as:
- Environmentally friendly applicator tampons
 - Environmentally friendly non-applicator tampons
- 6.21 The Goods do not have to be branded but do have to be fit for purpose and conform with all applicable Law (including but not limited to):
- 6.21.1 Legislation -
- 6.21.1.1 General Product Safety Regulations 2005
- 6.21.1.2 REGULATION (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

⁷ For example, biodegradable products

- 6.21.1.3 REGULATION (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products
- 6.21.2 National Product Standards
 - 6.21.2.1 BS EN 12704:2016 - Adhesives for paper and board, packaging and disposable sanitary products
- 6.21.3 Voluntary Standards (preferred but not mandatory)
 - 6.21.3.1 UK Code of Practice for Tampon Manufacturers and Distributors (as published by the Absorbent Hygiene Product Manufacturers Association)
- 6.22 Each individual product must be individually wrapped for hygiene reasons.
- 6.23 All tampons must be within at least 2 years of their expiry date when delivered to the Organisation, and the expiry date must be clearly displayed on the outer packaging (not necessarily on each individual tampon wrapper).
- 6.24 All individual products supplied should be accompanied by clear instructions for use and information as to all potential risks arising from their usage, identifying signs and symptoms upon which medical advice should be sought.
- 6.25 DfE expects the Supplier to have a good understanding of the Period Product market for the learners who will receive the Period Products via the Organisations (in terms of product type, size and absorbency) and evidence how the products it provides will meet the needs of this market.
- 6.26 The Supplier must be able to meet fluctuating demand in the Goods and Services. This will include scaling up and down sourcing of the Goods based on ordering trends and ensuring that the full range of Goods are available to all Organisations throughout the term of this Contract.
- 6.27 In addition to the minimum range outlined in 6.14, DfE expects the Supplier to carefully consider the needs of learners when developing the product range. Specifically, the Supplier may wish to offer standard tights and standard pants for Organisations to be able to order, in a range of sizes.

Delivery and Logistics

- 6.28 Organisations shall be able to order Goods at any time throughout the academic year (excluding school holidays), The Supplier may propose an ordering schedule with designated ordering periods per Organisation (or group of) but its implementation is subject to the approval of DfE (which it may withhold at its discretion).
- 6.29 DfE will provide to the Supplier information with regards to Organisations' term times and holidays during the set-up phase of the Scheme.
- 6.30 The Supplier shall ensure that each Organisation may order Goods at least once each academic term⁸. Any ordering schedule must allow Organisations a minimum ordering period of 10 working days.
- 6.31 All Organisations in scope must be able to submit Orders when the Scheme launches in September 2022. From the next term (Spring 2023), a staggered ordering schedule may be introduced but this is subject to the approval of DfE (which it may withhold at its discretion).
- 6.32 During term time, the Supplier shall deliver the Goods to all Organisations in all regions in a timely manner and in line with Good Industry Practice. The Supplier must communicate the planned delivery date with Organisations ahead of time and, subject to the terms of this Contract, notify the Organisation at least 1 Business Day prior to delivery if they are unable to make this date.

⁸ There are typically three academic terms per year, with the academic year generally beginning in September and ending in July

- 6.33 If the Organisation is closed or cannot accept the delivery for any other reason, the Supplier shall store the Goods and must attempt redelivery within a Good Industry Practice timeframe.
- 6.34 The Supplier will not need to make deliveries during Organisations' holiday periods.
- 6.35 All deliveries should be as environmentally friendly as possible. This may include use of eco-friendly vehicles and, subject to the requirements of all applicable Law and standards relating to the supply of the Goods, minimising packaging.
- 6.36 Organisations must be able to return unused products in their original packaging within a standard returns timeframe which shall be at least 28 days (or such longer period as the Supplier may advise). In the event that any Goods are returned, then the Supplier shall promptly apply a refund to the next invoice issued to DfE.
- 6.37 The Supplier shall provide to Organisations details of a returns address for postal returns.
- 6.38 The Supplier shall prepare detailed instructions about how Organisations can order the Goods and receive deliveries (including, but not limited to: the refund process and the complaints process) during the implementation phase of the Scheme, which shall be subject to DfE's approval.

Customer support

- 6.39 The Supplier will provide customer service support in an appropriate format to all Organisations during term time and office hours (as referred to above). The customer service support will cover all stages of the ordering, delivery, returns process including the handling of complaints.
- 6.40 Within 3 Business Days of the end of each month and otherwise upon DfE's request, the Supplier shall provide to DfE data and other information reasonably required detailing the customer support which has been provided to Organisations in the previous month

Engagement and communication with Organisations

- 6.41 Subject to Paragraph 6.39, the Supplier must work with DfE to develop and regularly maintain an engagement strategy for Organisations, which encourages uptake of the Scheme. These communications should be sensitive to and take into account the needs of a diverse range of Organisations and learners.
- 6.42 Subject to Paragraph 6.39, the Supplier agrees to undertake appropriate no cost and creative communications/marketing strategies.
- 6.43 The Supplier will adhere of DfE's Branding and Style Guidelines (including the use of the 'funded by' logo and associated branding) at all times during the provision and marketing of the Scheme.
- 6.44 Any communications and marketing activity planned by the Supplier in relation to the Scheme will be subject to the prior written approval of DfE.

7. Service management, quality assurance and governance

- 7.1 The Supplier must have a clear and appropriate governance structure for the Scheme, which must be supported by clear risk management and contingency plans.
- 7.2 The Supplier must seek feedback from Organisations on the provision of the Scheme and undertake service improvements where reasonably necessary to do so (or whether otherwise required by DfE). Where complaints or queries are received, the Supplier must implement a clear process (as defined in Schedule 10 (Contractor's Solution)) for handling these within a reasonable timeframe and in accordance with Good Industry Practice.

- 7.3 DfE may adjust the product range in line with market changes and/or user feedback. The Supplier must be able to introduce new product lines within a reasonable timescale.

8. Scope of the provision

8.1 The schools and post-16 Organisations within scope are:

- 8.1.1 All state maintained primary and secondary schools with pupils the age of 10 years old and over, including academies and free schools
- 8.1.2 All state maintained middle/ all through schools with pupils the age of 10 years old and over.
- 8.1.3 All general hospital schools, all state-funded special schools, including academies and free schools, and non-maintained special schools with pupils the age of 10 years old and over.
- 8.1.4 All alternative provision organisations, including pupil referral units
- 8.1.5 All Education and Skills Funding Agency (ESFA) funded schools, academies, colleges and independent learning providers, with provision for 16 to 19 year olds (including those with older students where these have an Education Health and Care Plan)⁹.

9. KEY PERFORMANCE INDICATORS, SERVICE LEVELS AND SERVICE CREDITS

9.1 The Supplier will, as part of the contract/performance management process, be required to report regularly in progress towards meeting the key performance indicators (KPIs) in the following table:

KPI	Measurement Period	Performance Measure	Service Period	Monitoring method	Performance Objective/ Service Credit applied
A reliable delivery service	From September 2022 until end of the contract term	95% of all orders successfully delivered to Organisations on the date provided	Calendar Month (except August)	Monthly MI	1% reduction for every 1% below the performance measure, up to a maximum of 10%
A timely and efficient service for Organisations	From September 2022 until end of the contract term	100% of all orders successfully delivered within 5 working days of order placement.	Calendar Month (except August)	Monthly MI	1% reduction for every 1% below the performance measure, up to a maximum of 10%
A reliable ordering system	From September 2022 until end of the contract term	All reported incidents of unscheduled system unavailability rectified within 3 hours. User interfaces must respond to data requests and process events / responses in a time commensurate with modern digital services, such that user experience is not impaired	Calendar Month (except August)	Monthly MI	1% reduction for every day of unavailability longer than 3 hours
A positive user experience	From September 2022 until end of the contract term	95% satisfaction rating from Organisations	Annually (Mar 2023 and Mar 2024)	Monthly MI	1% reduction for every 2% below the performance

⁹ <https://www.gov.uk/guidance/16-to-19-education-funding-allocations>

KPI	Measurement Period	Performance Measure	Service Period	Monitoring method	Performance Objective/ Service Credit applied
					measure, up to a maximum of 20%

10. MANAGEMENT INFORMATION

- 10.1 In addition to providing data on performance against the KPIs, the Supplier shall provide two tiers of user data which the Supplier shall collect and report as key statistics to DfE on a monthly basis, by the 3rd Business Day of the month end.
- 10.2 At an Organisation level, the Supplier will report on:
- Whether there has been an order and if so, how many orders
 - What has been ordered in what quantities, across all the organisation's orders
 - Total value of all the organisation's orders
- 10.3 At a national and regional level, the Supplier will report on:
- Total expenditure to date
 - % Organisations that have reached their upper spend limit
 - % Organisations within 20% of their upper spend limit
- 10.4 DfE will require access to any forecasting completed by the Supplier upon request.
- 10.5 With regards to customer relations, the Supplier will report by the 3rd Business Day of month end:
- The number and type of queries
 - The number and nature of complaints
 - The average response time for both of the above

11. SECURITY OF DATA

11.1 The supplier will need to comply fully with the DfE's Data Security Standards and the governments Cyber Essentials plus Scheme in accordance with both Document 1 – Instructions to Tenderers and Document 6 – Draft Terms and Conditions.

11.2 The system must meet or exceed the expectations set out in:

- The relevant Departmental Special Clauses for Business Services and ICT Contracts, as detailed in the service delivery contract
- ISO 27001:2013 certification
- The Department's GDPR considerations in Schedule 8
- The Department's security assurance model (DSAM) process **OR** the supplier assurance questionnaire

12. COSTS - NO LONGER APPLICABLE

13. CONTRACT MANAGEMENT

- 13.1 The Supplier shall provide to DfE a contract management plan within 1 month of the Effective Date for its approval which the Supplier shall then comply with. If DfE does not approve the contract management plan it shall provide the reasons why and, upon receipt, the Supplier shall update the plan to address DfE's reasons and re-submit an updated draft to DfE for its approval
- 13.2 The Supplier's day-to-day contact with DfE will be with the Senior Executive Officer in the Behaviour, Exclusion and School Food Division. Ultimate responsibility for the Scheme will sit with the Senior Responsible Officer of the same team.

- 13.3 The Supplier shall attend, as a minimum, monthly progress meetings with DfE to discuss progress and any issues. Meetings may be held virtually using Microsoft Teams or in DfE's offices (as agreed between the Parties at the time).
- 13.4 The supplier will be required to adhere to the financial transparency requirements, including the maintenance and retention of Open Book data, as set out in Schedule 11 of Document 6 – Draft Terms and Conditions.

14. SOCIAL VALUES IN GOVERNMENT CONTRACTS

- 14.1 The Civil Society Strategy sets out a commitment for central government to use its buying power to drive social change. The Supplier will throughout the term of this Agreement work to reduce its environmental impact and become more sustainable across the entirety of the Scheme.

SCHEDULE 2

Terms and Conditions

CLAUSE

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:

Action	has the meaning set out in clause 3A.4.
Area	means the geographical area within England in respect of which the Supplier is appointed to provide the Goods and/or 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.
Change Control Procedure	has the meaning set out in clause 30.1.
Charges	means the fees subject to clause 8 payable to the Supplier for the provision of the Goods and/or Services calculated in accordance with schedule 3.
Commercially Sensitive Information	<p>means the information set out in schedule 9 comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none">(a) the Price;(b) details of the Supplier's Intellectual Property Rights; and(c) the Supplier's business and investment plans <p>which the Supplier has indicated to DfE that, if disclosed by DfE, would cause the Supplier significant commercial disadvantage or material financial loss.</p>
Confidential Information	<p>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 GDPR. Confidential Information shall not include information which:</p> <ul style="list-style-type: none">(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 Goods and/or Services but excludes Sub-Contractors.
Consortium Agreement	<p>means, if the Supplier is a Consortium, an agreement:</p> <p>(a) signed by all the Consortium Members as at the Effective Date; and</p> <p>(b) adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence</p> <p>which sets out, amongst other things, how the Consortium Members will work together to deliver the Goods and/or Services</p>
Consortium Member	means a member of a Consortium (if any).
Copyright	means as 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 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 the 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 Supplier.
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 Supplier 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.

Effective Date	means the date of contract signature.
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	<p>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:</p> <ul style="list-style-type: none">(a) the employment and/or 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), <p>and all wages, holiday pay and employment benefit costs due in respect of (a) or (b) above, including claims for protective awards.</p>
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	<p>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:</p> <ul style="list-style-type: none">(a) any industrial action occurring within the Supplier's or any of its Sub-Contractor's organisation, or otherwise involving the Personnel; or(b) the failure by any Sub-Contractor of the Supplier to perform its obligations under any sub-contract.
General Anti-Abuse Rule	<p>means:</p> <ul style="list-style-type: none">(c) the legislation in Part 5 of the Finance Act 2013; and(d) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679).
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.

Goods	means the Period Products.
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 Supplier 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 August 2024.
Intellectual Property Rights	means patents, inventions, trademarks, 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.
Institution	means the schools and post-16 education institutions who may access the Scheme, as more particularly described in the Specification
IP Materials	has the meaning set out in clause 12.1.
KPIs	means the key performance indicators in relation to the provision of Goods and/or Services set out in schedule 4 which the Supplier 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.
Law	means any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply
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 DfE would otherwise derive from <p>(a) a substantial portion of the Contract; or</p>

	(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 <ul style="list-style-type: none"> (a) any tax return of the Supplier 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: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier 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 Supplier 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 Supplier 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.
Order	means an order submitted by an Institution for the supply of Goods.
Performance Measures/Standards	means the standards which the Supplier will be measured against in respect of the delivery of the Goods and/or Services aligned to defined Key Performance Indicators (KPIs).
Period Products	means the products which the Supplier shall provide under this Contract, as more particularly described in the Specification, including all packaging, labelling and instructions contained therein.
Personnel	means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's servants, agents, suppliers and Sub-Suppliers used in the performance of its obligations under the Contract.
Product Recall	has the meaning set out in clause 3C.1.
Portal	means the website or other online booking system which the Supplier makes available to enable DfE and Institutions to order Goods and access other information in relation to the provision of the Goods and/or Services (which shall include all source code and IPR therein) but shall exclude all DfE IP Materials including DfE Trade Marks and content that DfE and/or any Institution may make available or upload to the Portal).
Prohibited Act	means <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by 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 Law concerning fraudulent acts; or
 - (iii) the defrauding, attempting to defraud or conspiring to defraud 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.

Public Safety Notice

has the meaning in clause 3C.1.

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 Supplier 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 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 Goods and/or 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 Supplier is established.

Replacement Supplier

means any third party supplier appointed by DfE to supply any goods and/or services, which are substantially similar to any of the Goods and/or Services in substitution for the Supplier following the expiry, termination or partial termination of the Contract.

Request for Information	means a request for information under the FOIA or the EIR.
Restricted Country	means <ul style="list-style-type: none"> (a) any country outside the United Kingdom; and (b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC
Returning Employees	means those persons agreed by the Parties to be employed by the Supplier (and/or any Sub-Contractor) wholly or mainly in the supply of the Goods and/or Services immediately before the end of the Term.
Scheme	means the scheme established by DfE to provide period products in Institutions in England.
Services	means the services described in the Specification.
Services Commencement Date	means 1 st September 2022.
Service Credits	means the service credits specified in schedule 4 which shall be deducted from the Charges by the Supplier in the event that the Service Levels are not met in respect of the provision of the Goods and/or Services.
Service Level	means the levels of service defined in schedule 4.
Service Period	means the following: <ul style="list-style-type: none"> (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 Goods and/or Services, including the Institutions and any end users (such as pupils at those Institutions).
Specification	means the description of the Goods and/or Services to be supplied under the Contract set out in schedule 1.
Staff	means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier'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.

Supplier Equipment	means the Supplier's ICT equipment.
Supplier's Solution	means the Supplier's proposal submitted in response to DfE's invitation to tender attached at schedule 10.
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 by up to an additional 12 months by giving not less than 3 months' written notice to the Supplier prior to the expiry of the Initial Term.

3. THE GOODS AND SERVICES

- 3.1 The Supplier shall provide the Goods and/or Services in the Area in accordance with the Specification and undertake and be responsible for all obligations of the Supplier in respect of the Goods and/or Services.

- 3.2 DfE may appoint other third parties to provide the Goods and/or Services in the Area (or goods and/or services equivalent to the Goods and/or Services).
- 3.3 The Supplier shall, in performing its obligations under the Contract:
- 3.3.1 conform to, and ensure that the Goods and/or Services conform to, the requirements of the Specification and the Supplier's Solution or as otherwise agreed in writing between the Parties;
 - 3.3.2 carry out, supply and complete the Goods and/or 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 DfE specified by DfE from time to time;
 - 3.3.3 comply with, and ensure that the Goods and/or Services comply with, Good Industry Practice;
 - 3.3.4 ensure that the Goods and/or Services are provided by competent and appropriately trained personnel;
 - 3.3.5 comply with, and ensure that the Goods and/or Services comply with, the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - 3.3.6 ensure that all Goods supplied are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by DfE;
 - 3.3.7 ensure that the Goods are free from defects in design, materials and workmanship and can be used safely and without causing death, injury, loss or damage;
 - 3.3.8 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 4 or as otherwise agreed between the Parties in writing from time to time;
 - 3.3.9 comply with the Implementation Plan;
 - 3.3.10 meet all key dates and/or milestones set out in the Implementation Plan, the Specification or as otherwise agreed between the Parties in writing from time to time;
 - 3.3.11 in so far as is reasonably practicable, comply with any policies and procedures adopted by DfE from time to time within 14 days of the same being brought to the attention of the Supplier by DfE. If the Supplier is not able to comply with its obligations in accordance with this clause it shall notify DfE promptly and take such other steps that DfE reasonably requires;
 - 3.3.12 comply with, and ensure that the Goods and/or Services supplied comply with, all Law and any non-mandatory guidance relating thereto and have in place systems to monitor and ensure compliance with the same;
 - 3.3.13 notify DfE of any changes to Law and non-mandatory guidance referred to in clause 3.3.9 promptly upon becoming aware. The Supplier shall bear all costs associated with any changes required to the provision of the Goods and/or Services as a result of any changes to any Law and non-mandatory guidance which is applicable to this Contract;
 - 3.3.14 comply with, and ensure that the Goods and/or Services supplied 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 DfE, the Service Users and all other persons including members of the public;

- 3.3.15 ensure that all necessary instruction and recommendations relating to the use, storage and shelf-life of the Goods are provided in written form to the Institution (including all written instructions issued with the Goods by any manufacturer). Such instructions and recommendations must comply with all Law and non-mandatory guidance and will be complete and accurate so as to enable the Goods to be stored and used safely and without any deterioration in their nature, substance and quality; and
- 3.3.16 comply with, and ensure that the Goods and/or Services supplied comply with, all safety, security, acceptable use and other policies of DfE from time to time notified to it and procure that the Personnel also comply.
- 3.4 The Supplier shall notify DfE immediately if its receives or becomes aware of any actual or anticipated complaint or concern that the provision of the Scheme has or is likely to have an adverse impact on the health and safety of any Service User and/or such an event is likely to or has resulted in any investigation, enquiry, legal proceedings or similar (together an **Action**). In such an event (or where DfE becomes aware of any actual or anticipated complaint, concern and/or Action):
- 3.4.1 the Supplier shall promptly provide DfE with all necessary information to enable DfE to fully investigate and respond to the complaint, concern and/or Action;
- 3.4.2 the Supplier shall not respond to any complaint, concern and/or Action without the prior written consent of DfE;
- 3.4.3 the Supplier shall take all such steps as reasonably required by DfE from time to time to enable DfE to respond to such complaint, concern and/or Action, including the prompt provision of all necessary personnel, data and information.
- 3.5 DfE may provide data and materials to the Supplier and access to systems for the purposes of providing the Goods and/or Services that the Supplier may use but only to the extent necessary to enable the Supplier to provide the Goods and/or Services.
- 3.6 All equipment and other property brought onto DfE Premises shall be at the Supplier's own risk and DfE shall have no liability for any loss of or damage to any such equipment and property unless the Supplier is able to demonstrate that such loss or damage was caused by the negligence of DfE.
- 3.7 Any land or DfE Premises made available from time to time to the Supplier by DfE in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier 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.
- 3.8 The Contract does not create a tenancy of any nature whatsoever in favour of the Supplier or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, DfE retains the right at any time to use any DfE Premises in any manner.

Provision of Goods

- 3.9 Subject to Clause 3.10, the Supplier shall supply Goods to the Institutions pursuant to an Order. The Supplier will have been deemed to have accepted an Order unless the Supplier notifies the relevant Institution within 2 days of receipt of such Order.
- 3.10 The Supplier acknowledges that each Institution will have a maximum Order Limit per academic year (**Order Limit**). The Supplier shall not fulfil any Order submitted by an Institution in excess of its maximum Order Limit.

- 3.11 The Supplier shall notify each Institution of its Order Limit within 20 days prior to the commencement of the academic year and its remaining Order Limit prior to the placement of every order.
- 3.12 Institutions shall have the right to cancel any Order without charge at any time prior to day of delivery of the relevant Order. In such an event, DfE will not be charged for the Goods that are subject to the cancelled Order.
- 3.13 The Supplier shall deliver the Goods specified in each Order to the delivery location and by the delivery date and time specified by the Supplier provided that such delivery date shall not be later than five (5) Business Days following the date of the Order.
- 3.14 Delivery of an Order shall be complete on completion of unloading the Goods at the delivery location and the Institution signing acknowledgement of receipt.
- 3.15 Any delivery note signed by or on behalf of the Institutions upon delivery of the Goods will not constitute acceptance of the Goods and is simply an acknowledgement of receipt.
- 3.16 Where the Supplier fails to deliver the Goods in accordance with the Order and/or the terms of this Contract, then:
- 3.16.1 the Institution may cancel the Order;
- 3.16.2 DfE may delay payment of the Charges until the delivery of the Goods is complete.
- 3.17 Title in the Goods shall pass to DfE and risk in the Goods shall pass to the Institution on delivery of the Goods to the Institution in accordance with clause 3.13.
- 3.18 If any Goods delivered to an Institution do not comply with the provisions of the Order and/or this Contract, then without limiting any other right or remedy, the Institutions may
- 3.18.1 require the Supplier to replace the rejected Goods at the Supplier's risk and expense within 5 days of being requested to do so (and the terms of this Contract shall apply to any replacement Goods); or
- 3.19 Rejected Goods will be collected by the Supplier at its cost within 5 days of the Institution's notice of rejection. DfE shall not be charged for any Goods which have been rejected by the Institution. In the event that DfE has already paid for the rejected Goods then, save where an equal amount of replacement Goods have been supplied to the Institution, an equivalent amount shall be deducted from the next invoice which is issued to DfE.
- 3.20 The rights and remedies under this Clause 3 are in addition to the rights and remedies available in respect of statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this Contract by the Sale of Goods Act 1979.

Product Recall

- 3.21 Where either Party reasonably believes that the Goods may be defective in such a way that a prudent vendor would either implement a general recall of such Goods (a **Product Recall**) or provide customers with special advice (**Public Safety Notice**), that Party will promptly inform the other of the relevant circumstances. Upon receiving such information, the Supplier will investigate the alleged defect thoroughly (including if required by DfE, appointing independent experts) at its own cost and provide DfE with all findings of such investigation(s) as soon as possible and otherwise upon request.
- 3.22 If either Party believes that a Product Recall or Public Safety Notice is necessary then the Supplier shall, at its cost, take such steps as are necessary to implement the Product Recall or issue a Public Safety Notice.

4. CONSORTIA

- 4.1 If the Supplier is a Consortium it shall comply with the terms of this clause 4.
- 4.2 The Supplier 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 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 DfE.
- 4.4 The Supplier shall promptly inform 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 Supplier 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 DfE.
- 5.2 If DfE consents to a Transfer the Supplier will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 The Supplier may award Sub-Contracts with a value per annum not exceeding £10,000 without DfE’s consent.
- 5.4 Where DfE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of DfE, be sent by the Supplier to DfE as soon as reasonably practicable.
- 5.5 The Supplier shall:
 - 5.5.1 subject to clause 5.7, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with this Contract above a minimum threshold of £25,000 that arise during the Term;
 - 5.5.2 within 30 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
 - 5.5.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - 5.5.4 provide reports on the information at clause 5.5.3 to DfE in the format and frequency as reasonably specified by DfE; and
 - 5.5.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 5.6 Each advert referred to at clause 5.5.1 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 5.7 The obligations at clause 5.5.1 shall only apply in respect of Sub-Contract opportunities arising after the contract award date.
- 5.8 Notwithstanding clause 5.5, DfE may by giving its prior written approval agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

- 5.9 The Supplier shall not terminate or materially amend the terms of any Sub-Contract without DfE's prior written consent.
- 5.10 DfE may require the Supplier to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to DfE's right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to DfE's satisfaction within 21 days of receipt by the Supplier of written notice from DfE requiring the Sub-Contract to be terminated.
- 5.11 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Sub-contract shall include:
- 5.12 provisions which will enable the Supplier to discharge its obligations under this Agreement;
- 5.13 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- 5.14 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
- 5.15 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 5.16 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
- 5.17 data protection requirements set out in Schedule 8 (Authority Data and Security Requirements and Protection of Personal Data);
- 5.18 FOIA requirements set out in Clause 12 (Transparency and Freedom of Information);
- 5.19 the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
- 5.20 the conduct of Audits set out in Clause 25 (Audit);
- 5.21 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 23 (Termination) and 8 (Charges) of this Agreement;
- 5.22 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 5.23 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 22 (Step-in Rights);
- 5.24 The Supplier shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.25 If DfE believes there are:
- 5.25.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Supplier shall replace or not appoint the Sub-Contractor; or
- 5.25.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, DfE may require the Supplier to replace or not appoint the Sub-Contractor and the Supplier shall comply with such requirement.

- 5.26 In addition to any other management information requirements set out in this Contract, the Supplier agrees and acknowledges that it shall, on request and at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to DfE (in such format as DfE may reasonably require) including:
- 5.26.1 the total contract revenue received directly on this contract;
 - 5.26.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
 - 5.26.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 5.27 The Supplier agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of DfE.

6. PERSONNEL

- 6.1 DfE may refuse admission to DfE Premises and/or direct the Supplier to end the involvement in the Goods and/or Services of any Personnel whom DfE believes is a security risk.
- 6.2 If DfE require the removal of any Personnel pursuant to clause 6.1, any Employment Liabilities and any other costs connected with that removal shall be at the Supplier's cost.
- 6.3 The Supplier 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 Supplier 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 Goods and/or Services without DfE's prior written consent.
- 6.5 For each of the Personnel who, in providing the Goods and/or Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom DfE owes a special duty of care the Supplier 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 Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Goods and/or Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
- 6.6 The Supplier acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Goods and/or 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 Goods and/or Services without 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 Goods and/or Services.
- 6.9 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 Supplier to minimise any adverse effect on the provision of the Goods and/or Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
- 6.10 The supplier shall use all reasonable endeavours to minimise the number of changes in Supplier Personnel through the term.

- 6.11 DfE may require the Supplier to remove any Key Personnel who DfE considers in any respect unsatisfactory.
- 6.12 DfE shall not be liable for the cost of replacing any Key Personnel and the Supplier shall indemnify DfE against all Employment Liabilities that may arise in this respect.
- 6.13 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 Goods and/or 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 Supplier shall fully and accurately disclose to DfE, within 30 days of the request, all information that 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;
 - 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; and
 - 7.1.6 without prejudice to the provisions of clause 24 below, details of the nature and extent of Staff engagement and involvement in the delivery of the Services, to include (but without limitation):
 - (i) duties and activities undertaken;
 - (ii) proportion of working time spent on those duties and activities;
 - (iii) how Staff are organised when carrying out those duties and activities; and
 - (iv) whether and to what extent any other unconnected duties or activities are undertaken.
- (together the “**TUPE Information**”).
- 7.2 At intervals determined by DfE (which shall not be more frequent than once every 30 days) the Supplier shall give DfE updated TUPE Information.
- 7.3 Each time the Supplier supplies TUPE Information to DfE it shall warrant its completeness and accuracy and DfE may assign the benefit of this warranty to any Replacement Supplier.
- 7.4 DfE may use TUPE Information, and any update thereof, for the purposes and in the course of any retendering process.

- 7.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Supplier shall indemnify and keep indemnified DfE, the Crown and any Replacement Supplier 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, or any failure to provide or keep properly updated, 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 Supplier 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 Supplier 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 DfE or a Replacement Supplier 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 Supplier 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 Supplier to DfE and/or a Replacement Supplier whose name is not included in the list of Returning Employees.
- 7.6 If the Supplier becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify DfE and provide DfE with up to date TUPE Information.
- 7.7 This clause 7 applies during the Term and indefinitely thereafter.
- 7.8 The Supplier undertakes to DfE that, during the 12 Months prior to the end of the Term the Supplier 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 Supplier 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 DfE for the performance by the Supplier of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Supplier in the performance of its obligations.

- 8.2 In consideration for the provision of the Goods and/or Services DfE shall pay the Charges in accordance with schedule 3 subject to the receipt of correct invoices pursuant to clause 8.7 together with evidence of receipt of the Goods at the Institutions being issued by the Supplier.
- 8.3 Except where otherwise expressly stated in schedule 3 the Supplier shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term. The Charges applying during the Initial Term shall also apply for any extensions under clause 2.2.
- 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 Supplier incurs in providing the Goods and/or Services, and performing all other obligations of the Supplier, under the Contract (unless expressly stated otherwise in the Contract). The Supplier should notify DfE of any direct VAT charges for the delivery of the Contract. The Supplier 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 DfE shall be without prejudice to any rights DfE may have by reason of any Goods and/or Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Supplier of the Contract shall not be deemed to be accepted or waived by DfE by reason of such payment.
- 8.6 DfE may deduct from or offset against any monies due or becoming due to the Supplier under the Contract (including the Charges) any monies due from the Supplier under the Contract provided always that DfE shall act reasonably and in good faith when determining any monies due from the Supplier.
- 8.7 Invoices shall be sent, within 30 days of the end of the relevant invoicing date, to Department for Education PO Box 407 SSCL Phoenix House, Celtic Springs Bus. Park Newport NP10 8FZ. An invoice is a “**Valid Invoice**” if it is legible, has been submitted within the relevant time period to the correct address and includes:
- 8.7.1 the date of the invoice;
 - 8.7.2 Supplier’s full name and address;
 - 8.7.3 Supplier's bank details;
 - 8.7.4 Contract reference number and purchase order number;
 - 8.7.5 the charging period;
 - 8.7.6 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
 - 8.7.7 days and times worked (if applicable);
 - 8.7.8 Service Credits (if applicable); and
 - 8.7.9 VAT if applicable.
- 8.8 DfE shall not pay an invoice which is not a Valid Invoice.
- 8.9 DfE intends to pay Valid Invoices within 5 days of receipt. Valid Invoices not paid within 30 days of receipt 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 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 Supplier 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 Supplier shall promptly draw-up a final invoice which shall cover all Goods and/or Services provided up to the end of the Term which have not already been invoiced to DfE. The final invoice shall be submitted not later than 30 days after the end of the Term.
- 8.12 DfE shall not be obliged to pay the final invoice until the Supplier has carried out all of the Services and delivered all Goods which have been ordered.
- 8.13 The Supplier 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 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 Supplier of the reasons for disputing the invoice. 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 Supplier 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 Goods and/or Services are liable for VAT the Supplier shall comply with HMRC rules and regulations. The Supplier will be liable for paying to HMRC any identified VAT including those which may fall due.
- 9.3 If the Supplier 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 DfE may ask the Supplier to provide information which demonstrates how the Supplier 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 Supplier must provide and the period within which that information must be provided.
- 9.6 DfE may terminate this Contract if:
- 9.6.1 in the case of a request mentioned in clause 9.4 the Supplier:
- (a) fails to provide information in response to the request within a reasonable time; or
 - (b) provides information which does not demonstrate either how the Supplier 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 Supplier is not complying with those clauses.
- 9.7 DfE may supply any information which it receives under clause 9.4 to HMRC.
- 9.8 The Supplier 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 Supplier to its officers or employees in connection with the Contract.

- 9.9 The Supplier 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 Supplier under the Contract or in relation to any payments made by the Supplier to its officers or employees in connection with the Contract. The Supplier 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 Supplier 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 Supplier authorises 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 Supplier shall:
- 9.11.1 notify DfE in writing of such fact within 5 Business Days of its occurrence; and
 - 9.11.2 promptly give DfE:
 - (a) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as DfE may reasonably require.

10. PREVENTION OF CORRUPTION

- 10.1 The Supplier 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 Supplier shall not:
- 10.2.1 commit a Prohibited Act; or
 - 10.2.2 do or suffer anything to be done which would cause 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 Supplier 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 10.3.1 and make such records available to DfE on request.
- 10.4 The Supplier shall immediately notify 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 Supplier notifies DfE pursuant to clause 10.4, the Supplier shall respond promptly to DfE's enquiries, co-operate with any investigation, and allow DfE to audit any books, records and any other relevant documentation.
- 10.6 If the Supplier is in Default under clauses 10.1 and/or 10.2, DfE may by notice:
- 10.6.1 require the Supplier 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 DfE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who DfE believes has committed the Prohibited Act and the action that DfE has taken (including, where relevant, the date on which the Contract shall terminate).

11. DISCRIMINATION

- 11.1 The Supplier shall perform its obligations under the Contract in accordance with all applicable equality Law.
- 11.2 The Supplier shall comply with DfE's equality and diversity policy as given to the Supplier from time to time and any other requirements and instructions which DfE reasonably imposes in connection with any equality obligations imposed on DfE at any time under equality Law.
- 11.3 The Supplier indemnifies DfE in full from and against all Employment Liabilities that may arise as a result of any claims brought against 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 Supplier will also provide all reasonable cooperation, assistance and information as DfE may request in connection with any investigation by DfE into any complaint or other grievance received by it from any of 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 Supplier or any Personnel.

12. INTELLECTUAL PROPERTY

- 12.1 Subject to clause 12.9, all Intellectual Property Rights in materials:
 - 12.1.1 furnished to or made available to the Supplier by or on behalf of DfE (**DfE IP Materials**) shall remain the property of DfE (save for Copyright and Database Rights which shall remain the property of the Crown); and
 - 12.1.2 prepared by or for the Supplier on behalf of DfE in connection with the Contract excluding the IP owned by third parties in relation to the Products and associated materials (the **Service Specific IP Materials**) shall vest in DfE (save for Copyright and Database Rights which shall vest in the Crown),

(together the **IP Materials**).
- 12.2 The Supplier shall not, and shall ensure that Personnel shall not, use or disclose IP Materials without DfE's approval save to the extent necessary for the performance by the Supplier of its obligations under the Contract.

- 12.3 Subject to clause 12.9, the Supplier hereby assigns to DfE or undertakes to procure the assignment to 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 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 Supplier shall execute all documents and do all other acts requested by DfE and necessary to execute and perfect these assignments and to otherwise evidence DfE's or the Crown's ownership of such rights.
- 12.4 The Supplier 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 Supplier 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 DfE a non-exclusive licence or, if itself a licensee of those rights, shall grant to DfE rights to use materials produced and supplied by the third party owner for the purposes of promoting the scheme that is the subject of this Contract. Such rights shall be granted by the third party owner for such period of time that the third party owner supplies the products or materials to the Supplier to assist in the fulfilment of this Contract under the terms of this Contract. The Supplier shall also ensure that the third party owner of products or materials supplied to the Supplier for the purpose of fulfilment of services under this contract can be named and identified as a supplier of Period Products supplied for the purposes of this Contract on any portal, website or other method of publicising details of the Contract. The DfE acknowledges that no other right or interest in any Intellectual Property Rights of any third party owner shall be licensed to either the Supplier or the DfE without the specific written consent of the third party owner. ~~"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 DfE to sub-licence, transfer, novate or assign to a Replacement Supplier.~~ The Supplier shall notify 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 Supplier shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Supplier shall indemnify and keep indemnified DfE and any Replacement Supplier from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which DfE may suffer or incur as a result of or in connection with any breach of this clause 12, except to the extent that any such claim arises from:
- 12.6.1 items or materials supplied by DfE; or
- 12.6.2 the use of data supplied by DfE which is not required to be verified by the Supplier under any provision of the Contract.
- 12.7 DfE shall notify the Supplier in writing of any claim or demand brought against DfE for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Supplier.
- 12.8 The Supplier 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 Supplier to DfE, provided always that the Supplier shall:
- 12.8.1 consult 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 DfE; and

- 12.8.3 not settle or compromise any claim without DfE's prior written consent (not to be unreasonably withheld or delayed).
- 12.9 Notwithstanding clause 12.8. DfE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If DfE takes action the Supplier shall at the request of DfE afford to the Supplier all reasonable assistance to DfE for the purpose of contesting such claim.
- 12.10 DfE shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against DfE or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under the Contract subject to the Supplier indemnifying 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 Supplier is likely to be made, the Supplier shall notify DfE and, at its own expense and subject to the consent of 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 DfE.
- 12.12 If the Supplier is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Supplier's notification DfE may terminate the Contract with immediate effect by notice in writing.
- 12.13 The Supplier grants to DfE and, if requested by DfE, to a Replacement Supplier, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights the Supplier owned or developed prior to the Effective Date or otherwise not in connection with the Contract ("Supplier IP"), and which DfE (or a Replacement Supplier) reasonably requires to use in order to exercise its rights and take the benefit of the Contract including the provision of the Goods and/or Services provided and the use and further development of the IP Materials, without infringing the Supplier IP. To avoid any doubt DfE and the Replacement Supplier (if applicable) shall only be entitled to use the minimum Supplier IP reasonably required to permit the foregoing.
- 12.14 DfE shall comply with the reasonable instructions of the Supplier in respect of the way in which it uses the Supplier IP.
- 12.15 If the Supplier is not able to grant a licence in accordance with the terms of clause 12.13 to use any Supplier IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Supplier IP, the Supplier 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 DfE a licence on the terms set out in clause 12.13; or
- 12.15.2 if the Supplier is itself a licensee of those rights and is able to do so under the terms of its licence, grant to DfE a sub-licence on the terms set out in clause 12.13.
- 12.16 The Supplier 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 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 DfE to any of DfE IP Materials.
- 12.17 The Supplier shall comply with DfE's branding guidelines and shall not use any other branding, including its own, other than as set out in DfE's branding guidelines or as otherwise agreed with DfE.
- 12.18 When using DfE Trade Marks the Supplier shall observe all reasonable directions given by 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 Supplier 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.
- 12.19 The Parties acknowledge that, in the performance of its obligations under this Contract, the Supplier may develop or make available a Portal to enable Institutions to Order the Goods and/or access other information in relation to the provision of the Goods and/or Services. DfE agrees that such Portal will constitute Supplier IP notwithstanding that it may have been developed for the purposes of this Contract provided that the Supplier shall not use any of the DfE IP Materials or the Service Specific IP Materials on such Portal without the prior written consent of DfE. Any domain name used on such Portal shall form part of the Service Specific IP Materials.

13. DATA, SYSTEMS HANDLING AND SECURITY

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

14. PUBLICITY AND PROMOTION

- 14.1 Without prejudice to DfE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, the Supplier shall not make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of DfE.
- 14.2 The Supplier shall ensure its Personnel comply with clause 14.1.
- 14.3 Without prejudice to the generality of clauses 12.18 and 14.1, the Supplier shall not itself, and shall procure that Consortium Members shall not, use DfE's name, brand or DfE Trade Marks or the Personal Data of DfE to sell, promote, market or publicise the Supplier'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 provision of the Goods and/or Services or comprised in any work relating to the Goods and/or Services.
- 14.5 The domain name to be used in conjunction with the Portal shall be subject to DfE's prior written consent.

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 and exercise of each Party's rights and obligations under the Contract.

- 15.2 The Supplier hereby gives its consent for DfE to publish the whole Contract including from time to time agreed changes to the Contract subject to redaction of any Commercially Sensitive Information to the extent permitted by the FOIA and the Regulations.
- 15.3 The Supplier may only disclose DfE's Confidential Information to Personnel who are directly involved in the provision of the Goods and/or 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 Supplier shall not, and shall procure that Personnel do not, use any of 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 DfE disclosing any Confidential Information obtained from the Supplier:
 - 15.6.1 for the purpose of the examination and certification of 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 DfE has used its resources;
 - 15.6.3 to any other crown body and the Supplier 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;
 - 15.6.4 to the extent DfE determines (acting reasonably) disclosure is necessary in the course of carrying out its public functions;
 - 15.6.5 to Parliament and Parliamentary Committees or, if required, by any Parliamentary reporting requirement; and/or
 - 15.6.6 to any consultant, contractor or other person engaged by DfE provided that in disclosing information under clauses 15.6.3 and 15.6.6 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 DfE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom DfE's Confidential Information is disclosed pursuant to clause 15.6 is made aware of DfE's obligations of confidentiality.
- 15.9 If the Supplier does not comply with clauses 15.1 to 15.5 DfE may terminate the Contract immediately on notice to the Supplier.

16. FREEDOM OF INFORMATION

- 16.1 The Supplier acknowledges that DfE is subject to the requirements of the FOIA and the EIR.
- 16.2 The Supplier shall transfer to 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 DfE a copy of all Information in its possession or control in the form that DfE requires within 5 Business Days (or such other period as DfE may specify) of DfE's request;
 - 16.2.2 provide all necessary assistance as reasonably requested by DfE to enable 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 DfE.
- 16.3 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 Supplier 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 its negligence;
 - 18.1.3 under section 2(3) Consumer Protection Act 1987;
 - 18.1.4 any breach of clause 15 or Schedule 8;
 - 18.1.5 for its own fraud; or
 - 18.1.6 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 18.4, the Supplier shall indemnify DfE and keep 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, or use of the Goods and/or Services or the performance or non-performance by the Supplier 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 Supplier, or any other loss which is caused directly by any act or omission of the Supplier.

- 18.3 The Supplier does not exclude or limit its liability (if any), under clause 18.5 or otherwise, pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and 9 (Tax) or in respect of any product liability claim for death or personal injury arising from the use of the Goods and/or Services by DfE or any third party as anticipated by the Contract.
- 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, 18.3 and 18.4, the maximum liability of either Party to the other under the Contract including pursuant to any indemnity, whether in contract, tort (including negligence) or otherwise:
- 18.5.1 in respect of damage to property is limited to £5,000,000 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 the greater of £5,000,000 or 150% of the sum of the Charges due and payable in that year.
- 18.6 Subject to clause 32, DfE and/or an Institution may recover from the Supplier the following losses incurred by DfE and/or an Institution to the extent they arise as a result of a Default by the Supplier:
- 18.6.1 any additional operational and/or administrative costs and expenses incurred by DfE and/or an Institution, including costs relating to time spent by or on behalf of DfE and/or an Institution 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 Supplier for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Supplier 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 DfE and/or an Institution; and
- 18.6.5 any fine or penalty incurred by DfE and/or an Institution and any costs incurred by DfE and/or an Institution 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 Supplier whilst on DfE's premises shall be there at the risk of the Supplier and DfE shall accept no liability for any loss or damage howsoever occurring to it.

- 18.9 The Supplier 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 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 DfE deems to be appropriate but not less than £10,000,000 for any one claim and insurance to cover the liability of the Supplier 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 Supplier shall supply to 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 Supplier of any liabilities under the Contract.
- 18.12 It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability it has under, or in connection with, the Contract.

19. WARRANTIES AND REPRESENTATIONS

- 19.1 The Supplier 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 Supplier;
- 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 Supplier's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to 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 Supplier under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 19.1.7 the use by DfE of any Intellectual Property Rights assigned or licensed to it by the Supplier 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 Supplier has been in existence for less time) prior to the Effective Date:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax Laws and regulations in the jurisdiction in which it is established; and

- (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 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 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 DfE or its authorised representatives may visit on reasonable notice to the Supplier any premises of the Supplier, any Consortium Member or any other premises at which the Goods and/or Services (or any part of them) are being stored, manufactured, assembled or are to be performed to ascertain that the Supplier is conforming in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Goods and/or Services.
- 21.2 During such visits, DfE may inspect and take copies of such of the records of the Supplier and any Consortium Member as relate to the performance of their obligations under the Contract.
- 21.3 If DfE reasonably considers that any provision of the Contract is at risk of not being complied with and/or the Supplier fails to meet any of the Performance Standards in any two consecutive months, 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 Supplier to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of DfE (not to be unreasonably withheld) and which, once approved, the Supplier shall implement; and
 - 21.3.2 monitor, supervise, direct and/or guide the Supplier's provision of the Goods and/or Services until DfE reasonably considers that any such risk has been remedied or removed. The Supplier shall cooperate at all times with DfE in this regard.
- 21.4 If the Supplier fails to comply with any provision of the Contract or fails to supply any of the Goods and/or Services in accordance with the provisions of the Contract and such failure is capable of remedy, then DfE may instruct the Supplier to remedy the failure and the Supplier 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 DfE may direct.

- 21.5 Without prejudice to any other right or remedy DfE may have under this Contract or otherwise, in the event that:
- 21.5.1 the Supplier fails to achieve any of the Performance Standards in the month following the month in which the remediation plan is approved under clause 21.3.1; and/or
 - 21.5.2 the Supplier fails to meet any of the Performance Standards in any three consecutive months,
- DfE may terminate this Contract on 10 Business Days' notice to the Supplier and without paying any compensation to the Supplier.
- 21.6 DfE may review from time to time the progress of the Supplier against the Implementation Plan. The Supplier shall cooperate with DfE in this regard and provide any information and evidence reasonably required by DfE.
- 21.7 DfE may instruct the Supplier to take appropriate remedial action where DfE reasonably considers that the Implementation Plan is not being complied with or is at risk of not being complied with and the Supplier shall take such remedial action.

22. STEP IN RIGHTS

- 22.1 Without prejudice to DfE's rights of termination under clause 23 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 Supplier which cannot be remedied by the Supplier within 5 Business Days of notification of the Default which materially prevents or materially delays provision of the Goods and/or Services or any part of the Goods and/or Services;
 - 22.1.2 an event of Force Majeure occurs which materially prevents or materially delays the provision of the Goods and/or Services or any part of the Goods and/or Services;
 - 22.1.3 a Regulatory Body has advised DfE that exercise by 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 Supplier becomes insolvent.
- 22.2 If 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 DfE wishes to take and in particular the parts of the provision of the Goods and/or Services that it wishes to control (the "**Required Action**");
 - 22.3.2 the event triggering the Step In Rights and whether DfE believes that the Required Action is due to the Supplier'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 DfE will require access to the Supplier's premises; and

- 22.3.6 to the extent practicable, the effect DfE anticipates the Required Action will have on the Supplier's obligations to provide the Goods and/or Services during the period that the Required Action is being taken.
- 22.4 Following service of a Step-In Notice, 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 Supplier;
 - 22.4.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide those Goods and/or Services of which DfE is not assuming control; and
 - 22.4.4 act reasonably in mitigating the cost that the Supplier 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 Supplier shall not be obliged to provide the Goods and/or Services to the extent that they are the subject of the Required Action; and
 - 22.5.2 DfE shall pay the Supplier the Charges after subtracting any applicable Service Credits and DfE's costs of taking the Required Action.
- 22.6 If the Supplier demonstrates to DfE's reasonable satisfaction that the Required Action has resulted in the degradation of any part of the provision of the Goods and/or Services not subject to the Required Action beyond that which would have been the case had DfE not taken the Required Action, DfE may adjust the Charges.
- 22.7 Before ceasing to exercise its Step In Rights DfE shall deliver a written notice to the Supplier (a **Step-Out Notice**), specifying:
- 22.7.1 the Required Action it has taken; and
 - 22.7.2 the date on which DfE plans to end the Required Action subject to DfE being satisfied with the Supplier's ability to resume the provision of the Goods and/or Services and the Supplier's plan developed in accordance with clause 22.8.
- 22.8 The Supplier 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 DfE's approval a draft plan relating to the resumption by the Supplier of the provision of the Goods and/or Services, including any action the Supplier proposes to take to ensure that the affected provision of the Goods and/or Services satisfy the requirements of the Contract.
- 22.9 If DfE does not approve the draft plan, it shall inform the Supplier of its reasons for not approving it and the Supplier shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to DfE for approval. DfE shall not withhold or delay its approval of the draft plan unreasonably.
- 22.10 The Supplier shall bear its own costs in connection with any Step-In under this clause 22, provided that DfE shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any Step-In action taken by DfE under clauses 22.1.2 to 22.1.5 (insofar as the primary cause of DfE serving the Step In Notice is identified as not being the result of a Supplier's Default).

23. TERMINATION

- 23.1 DfE may terminate the Contract with immediate effect and without paying compensation to the Supplier where the Supplier is a company and in respect of the Supplier:
- 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 DfE may terminate the Contract with immediate effect by notice and without paying compensation to the Supplier where the Supplier 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 Supplier's creditors;
 - 23.2.2 a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy;
 - 23.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier'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 Supplier 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 Supplier'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 Supplier shall notify 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 Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). DfE may terminate the Contract with immediate effect by notice and without compensation to the Supplier 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 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 DfE may terminate the Contract with immediate effect and without paying compensation to the Supplier where the Supplier 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:
- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (b) a petition is presented for his bankruptcy;
 - (c) a receiver, or similar officer is appointed over the whole or any part of his assets; or
 - (d) any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the Law of any other jurisdiction.
- 23.5 DfE may terminate the Contract with immediate effect and without paying compensation to the Supplier where the Supplier 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 DfE may terminate the Contract with immediate effect and without paying compensation to the Supplier if the Supplier commits a Default and:
- 23.7.1 the Supplier has not remedied the Default to the satisfaction of DfE within 21 Business Days or such other period as may be specified by 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 DfE, capable of remedy; or
 - 23.7.3 the Default is a Material Breach.
- 23.8 DfE may terminate the Contract with immediate effect and without paying compensation to the Supplier if:
- 23.8.1 the Supplier's warranty in clause 19.1.10 is materially untrue;
 - 23.8.2 the Supplier commits a material breach of its obligation to notify DfE of any Occasion of Non-Tax Compliance;
 - 23.8.3 the Supplier fails to provide details of proposed mitigating factors which, in DfE's reasonable opinion are acceptable; or
 - 23.8.4 the Supplier has not, in providing the Goods and/or Services, complied with its legal obligations in respect of environmental, social or labour law.
- 23.9 DfE may terminate the Contract with immediate effect and without paying compensation to the Supplier 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 Supplier 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 Supplier 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 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 Goods and/or Services, DfE may recover from the Supplier the cost reasonably incurred of making those other arrangements; and
 - 23.10.2 DfE shall make no further payments to the Supplier (for Goods and/or Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by DfE), until DfE has established the final cost of making the other arrangements envisaged under this clause 23.
- 23.11 DfE may terminate the Contract (or any part of it) at any time by giving at least 3 months' prior written notice to the Supplier.
- 23.12 If DfE terminates the Contract under clause 23.11 DfE shall make no further payments to the Supplier except for Goods and/or Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by DfE.
- 23.13 If any funding from governmental or other sources for the provision of the Goods and/or Services, or for a programme or a project to which the provision of the Goods and/or Services relates is withdrawn, reallocated or no longer available in such a way that the Contract cannot reasonably continue DfE may terminate the Contract (or any part of it) by serving [3] months' written notice on the Supplier.
- 23.14 If DfE terminates the Contract under clause 23.13 DfE shall pay to the Supplier for Goods and/or Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Supplier as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Supplier 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 Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse DfE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 23.16 If DfE fails to pay the Supplier undisputed sums of money when due the Supplier shall give notice to DfE of its failure to pay. If DfE fails to pay such undisputed sums within 90 Business Days of the date of such notice, the Supplier 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 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 DfE or the Supplier under clauses 8 (Charges), 9 (Tax and VAT), 10 (Prevention of Corruption), 12 (Intellectual Property Rights), 13 (Data, Systems Handling and Security), 15 (Confidentiality), 16 (Freedom of Information), 17 (Official Secrets Acts and Finance Act), 18 (Liability), 19 (Warranties and Representations), 19 (Liability), 23 (Termination) 24 (Retendering and Handover), 25 (Exit Management), 26 (Audit), and 37 (Governing Law and Jurisdiction).
- 23.18 Unless otherwise directed by DfE, the Supplier shall complete all Orders submitted by Institutions prior to the effective date of termination or expiry of this Contract.

24. RETENDERING AND HANDOVER

- 24.1 Within 30 days of being requested by DfE, the Supplier shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable DfE to issue tender documents for the future provision of replacement goods and/or services.
- 24.2 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 goods and/or services.
- 24.3 DfE shall require that all potential suppliers 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 DfE; and that they shall not use it for any other purpose.
- 24.4 The Supplier shall allow supervised access to the Premises in the presence of DfE's authorised representative, to any person representing any potential contractor whom DfE has selected to tender for the future provision of the Goods and/or Services.
- 24.5 If access is required to the Supplier's Premises for the purposes of clause 26.4, DfE shall give the Supplier 7 days' notice of a proposed visit together with the names of all persons who will be visiting.
- 24.6 The Supplier shall co-operate fully with 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 DfE, the Supplier shall transfer to DfE, or any person designated by DfE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Goods and/or 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 DfE.

25. EXIT MANAGEMENT

- 25.1 If DfE requires a continuation of all or any of the provision of the Goods and/or Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Supplier shall co-operate fully with DfE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Goods and/or Services without disruption to routine operational requirements.
- 25.2 The Supplier will, within 3 months of the Effective Date, deliver to DfE, a plan which sets out the Supplier's proposals for achieving an orderly transition of provision of the Goods and/or Services from the Supplier to DfE and/or its Replacement Supplier 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 Supplier will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the provision of the Goods and/or Services. Following such update the Supplier will submit the revised Exit Plan to 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 provision of the Goods and/or 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 Supplier:
- 25.5.1 does not have to use resources in addition to those normally used to deliver the Goods and/or Services prior to termination or expiry, there shall be no change to the Charges; or
 - 25.5.2 reasonably incurs additional costs any variation to the Charges shall be subject to the Change Control Procedure.
- 25.6 If DfE requests, the Supplier shall deliver to DfE details of all licences for software used in the provision of the Goods and/or Services including the software licence agreements.
- 25.7 Within one month of receiving the software licence information described above, DfE shall notify of the licences appropriate for transfer and which it wishes to be transferred having full regard to the interests of the Supplier, and where the Supplier agrees transfer is appropriate (agreement not to be unreasonably withheld or delayed), the Supplier shall provide for the approval of DfE a plan for licence transfer.
- 25.8 The Supplier shall co-operate fully with DfE in order to enable an efficient and detailed knowledge transfer from the Supplier to DfE at the end of the Term and shall provide DfE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by DfE. The Supplier shall comply with DfE's request for information no later than 15 Business Days from the date that that request was made.

26. AUDIT

- 26.1 The Supplier 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 Goods and/or Services supplied under it and all Charges.
- 26.2 The Supplier agrees to make available to DfE, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the provision of the Goods and/or Services
- 26.3 The Supplier shall permit duly authorised representatives of DfE and/or the National Audit Office to examine the Supplier'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 Supplier (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 DfE and for carrying out examinations into the economy, efficiency and effectiveness with which DfE has used its resources. The Supplier 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 Parties agree that DfE has entered into this Contract for the benefit of itself and the Institutions. Accordingly, DfE, on its own behalf and as agent for each of the Institutions shall:
- 32.1.1 have conduct of all claims and disputes that may arise between the Institutions and the Supplier;
 - 32.1.2 have the right to enforce the provisions of this Contract; and
 - 32.1.3 recover all loss suffered by any of the Institutions as if such loss was suffered or incurred by DfE.
- 32.2 If and to the extent that DfE is not able to recover a loss incurred by an Institution under the provisions of clause 32 in any instances where the claim is not, by operation of law or decision of a court, deemed to be enforceable by DfE itself, that Institution shall be entitled to enforce the terms of the Contract against the Supplier in its own right in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**") even though the relevant clause may be silent as to which person is intended to have the benefit of the relevant obligation, refer only to DfE or not specifically identify the Institution provided that such claim shall be subject to the limits on liability set out in clause 18.
- 32.3 The provisions of clauses 7.5 and 12.6 confer benefits on a Replacement Supplier and are intended to be enforceable by a Replacement Supplier by virtue of the **CRTPA**.
- 32.4 Subject to clause 32.2 and 32.3, 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.
- 32.5 A Replacement Supplier may not enforce or take steps to enforce the provisions of clauses 7.5 or 12.6 without DfE's prior written consent.
- 32.6 The Parties may amend the Contract without the consent of any Replacement Supplier and/or Institution.

33. CONFLICTS OF INTEREST

- 33.1 The Supplier 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 Supplier

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 Supplier nor any of the Personnel is placed in a position where, in the reasonable opinion of DfE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or any of the Personnel and the duties owed to 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 Supplier 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 33 the Supplier shall forthwith provide full particulars to DfE.
- 33.3 In performing its obligations under the Contract the Supplier 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 Supplier 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 DfE (acting reasonably); and
 - 33.4.2 give DfE a comprehensive and detailed written statement of the action it had taken.
- 33.5 If DfE is not satisfied with the Supplier's actions, the Supplier shall, on request by 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, 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 DfE, there is any continuing breach by the Supplier 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.
- 36.4 DfE shall be entitled to require the Supplier to resolve any dispute it may have with an Institution in accordance with the dispute resolution procedure set out in this clause 36.

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

Part 1 – The charges

1. DfE shall pay the Supplier the Charges in accordance with the Contract, subject to successful delivery of the Goods and/or Services in accordance with the terms of this Contract (including the KPIs or Service Levels set out in schedule 4). The Charges are inclusive of all expenses incurred by the Supplier in relation to its provision of the Goods and/or Services and unless agreed otherwise between the Supplier and DfE, the Supplier shall not be entitled to claim any expenses in addition to the Charges.
2. The Supplier shall maintain full accounts and adhere to the Financial audit provisions in Schedule 11.
3. The Supplier shall be entitled to invoice for the Charges detailed in Table 2 (below) in relation to the Set Up period and, subject to satisfactory commencement of operational service and as otherwise provided for in this contract, for the Charges detailed in Table 5 (below) for Operational Services.
4. The Supplier shall also be entitled to invoice for Charges relating to the value of products ordered by and confirmed as delivered into Institutions each month using the Charges detailed in Tables 7 and 8 (below).
5. VAT will be charged at the prevalent rate only on applicable products.
6. Tables 1, 2, 4 and 5 (also below) contain the component pricing information provided by the Supplier as part of their bid submission.
7. For the purpose of this Schedule 3 reference to a “financial year” contained within the Tables means the 1ST April to 31st March and reference to a “academic year” contained within the Tables means the 1st September to 31st August..
8. All Charges are to be invoiced monthly in arrears.
9. Funds allocated to particular expenditure headings in the tables are available for that expenditure heading only.

Part 2 – Making changes to the charges

1. The Charges will be fixed for the first two (2) years following the Contract Commencement Date (the date of expiry of such period is a "Review Date"). After this Charges can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "Review Date").
2. The Supplier shall give DfE at least three (3) months' notice in writing prior to a review date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next review date.
3. Any notice requesting an increase shall include:
 - 3.1 a list of the Charges to be reviewed;
 - 3.2 for each of the Charges under review, written evidence of the justification for the requested increase including:
 - (a) a breakdown of the profit and cost components that comprise the relevant part of the Charges;
 - (b) details of the movement in the different identified cost components of the relevant Charge;

- (c) reasons for the movement in the different identified cost components of the relevant Charge;
 - (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
 - (e) evidence that the Supplier's profit component of the relevant Charge is no greater than that applying to Charges using the same pricing mechanism as at the Contract Commencement Date.
- 3.3 The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.
- 3.4 Where the Buyer approves an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as the Buyer may determine at its sole discretion and Table TBC shall be updated accordingly.
- 4. The charges can also be varied (and Tables 1 and 2 will be updated accordingly) due to:
 - 4.1 a request from the Supplier, which it can make at any time, to decrease the Charges; and
 - 4.2 indexation, where Tables TBC state that a particular Charge or any component is "subject to Indexation" in which event Part 3 below shall apply.

Part 3 - Indexation

- 1. Where any charges in the tables below are stated to be "subject to indexation" they shall be adjusted in line with changes in the consumer price index ("CPI"). All other costs, expenses, fees and charges shall not be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the supplier.
 - 1.1 Charges shall not be indexed during the first year following the Contract Commencement Date.
 - 1.2 Where Annex 1 states a Charge is subject to Indexation then it will be indexed on the date which is one year after the Commencement Date to reflect the percentage change in the CPI since the Commencement Date. They shall be indexed on each following yearly anniversary to reflect the percentage change in the CPI since the previous change.
 - 1.3 Where the CPI Index:
 - 1.3.1 used to carry out an indexation calculation is updated (for example due to it being provisional) then the indexation calculation shall also be updated unless the Buyer and the Supplier agree otherwise;
 - 1.3.2 is no longer published, the Buyer and the Supplier shall agree a fair and reasonable replacement that will have substantially the same effect.

TABLE 1 – PRODUCT COSTS

Unit costs decrease with increased volumes per academic year. All prices quoted should be exclusive of VAT. Where VAT is charged, this will be at the prevailing rate.

These costs are subject to indexation for year 2 only, please see schedule 3.

<redacted>

*cost of each product purchased within Band 1 during each financial year

**cost of each product purchased within Band 2 during each financial year

***cost of each product purchased above Band 2 during each financial year

TABLE 2 – DELIVERY COSTS

All costs are inclusive of transport and packaging costs but exclusive of VAT. Where VAT is charged, this will be at the prevailing rate.

The costs are subject to indexation for year 2 only, please see Schedule 3.

<redacted>

TABLE 3 – STAFFING SUMMARY (FIXED)

<redacted>

TABLE 4 – FIXED STAFF COSTS

<redacted>

TABLE 5 – FIXED NON-STAFF COSTS

<redacted>

SCHEDULE 4

KPIs, Service Levels and Service Credits

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

KEY PERFORMANCE INDICATORS (KPIs) AND SERVICE LEVELS (SLs)

2. This schedule 4 sets out the KPIs and Service Levels against which the Supplier shall measure its performance.
3. The Supplier shall monitor its performance against of each of the KPIs and Service Levels and send DfE a report detailing the KPIs and Service Levels which were and were not achieved in accordance with the provisions of this schedule 4.

PERFORMANCE STANDARDS/MEASURES

4. The Supplier must meet the Performance Measure for each identified KPI as set out in table 1 below during each Service Period (defined in Schedule 2 and within table 1).
5. If during a Service Period the Supplier achieves a KPI and/or Service Level, no Service Credit will accrue to the Supplier in respect of that KPI and/or Service Level.
6. The Supplier confirms that it has taken Performance Measures and Service Credits into account in calculating the Charges. Both Parties agree that the Performance Measures and Service Credits are a reasonable method of adjusting the Charges to reflect poor Supplier performance.
7. The Supplier shall meet and comply with all Service Levels as set out within table 2 below.

CONSEQUENCES OF FAILURE TO MEET KPIS

8. A failure to meet at least the required performance level will be considered a "Service Failure" in respect of the KPIs set out in Table 1 below.
9. If the Supplier's performance level is a Service Failure in one or more of the KPIs listed in Table 1 in any given Service Period, DfE will be entitled at its sole discretion, to reduce the total amount of charges payable to the Supplier ("**Service Credit**") for that Service Period in line with their respective Service Credit percentage using the following formula:

Adjusted amount of charges payable = Total amount of charges payable * ((100 – Percentage failure) / 100)

10. The maximum cumulative reduction on any Service Period as a result of one or more service failures is 20% ("Service Credit Cap").
11. A failure to meet the required performance level for the other KPIs and Service Levels will not be considered a Service Failure in the context of paragraph 7 but DfE expects the Supplier to meet the required performance levels and will consider repeated failures as breaches of this Contract.
12. Without prejudice to its other rights and remedies, if there are one or more Service Failures in 3 (three) consecutive Service Periods, DfE will be entitled, in its sole discretion, to terminate this Contract on 10 days written notice to the Supplier.

Table 1 KPIs

KPI	Measurement Period	Performance Measure	Service Period	Monitoring method	Performance Objective/ Service Credit applied
A reliable delivery service	From September 2022 until end of the contract term	95% of all orders successfully delivered to Organisations on the date provided	Calendar Month (except August)	Monthly MI	1% reduction for every 1% below the performance measure, up to a maximum of 10%
A timely and efficient service for Organisations	From September 2022 until end of the contract term	100% of all orders successfully delivered within 5 working days of order placement.	Calendar Month (except August)	Monthly MI	1% reduction for every 1% below the performance measure, up to a maximum of 10%
A reliable ordering system	From September 2022 until end of the contract term	All reported incidents of unscheduled system unavailability rectified within 3 hours. User interfaces must respond to data requests and process events / responses in a time commensurate with modern digital services, such that user experience is not impaired	Calendar Month (except August)	Monthly MI	1% reduction for every day of unavailability longer than 3 hours
A positive user experience	From September 2022 until end of the contract term	95% satisfaction rating from Organisations	Annually (March 23 and March 24)	Monthly MI	1% reduction for every 2% below the performance measure, up to a maximum of 20%

Table 2 Service Levels

Service Level	Measure	Compliance
Reporting and Meetings	Monthly reporting: submit a monthly programme report by the third Business Day of the month, including any exception events within this report.	100% - DfE monitoring
	Supplier meetings – monthly	
Administration/Communication	In delivering the Goods and/or 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	

Service Level	Measure	Compliance
Commercial Management	Ensure that Change Control Notes are signed by both Parties prior to any additional work being undertaken (DfE or Supplier 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.	

SCHEDULE 5

The Implementation Plan

1. The Supplier shall provide to DfE a detailed Implementation Plan within ten (10) Business Days of the Effective Date.
2. The Implementation Plan shall be sufficiently detailed as is necessary to manage the provision of the Goods and/or Services and any proposed changes are subject to the Change Control Procedure.
3. The Supplier shall be responsible for implementing and managing the provision of the Goods and/or Services and for taking all such steps as may be necessary so as to ensure that from the Service Commencement Date the Supplier is able to provide the Goods and/or Services:
 - 3.1 in accordance with the provisions of the Contract; and
 - 3.2 in a manner that maintains the continuity of the provision of the Goods and/or Services to DfE.
4. The Supplier shall monitor its performance against the Implementation Plan and report to DfE monthly (or more frequently if so required by DfE) on its performance.

SCHEDULE 6

Change Control Procedure

1. The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Parties' respective contract managers.
2. The Supplier shall use reasonable endeavours to incorporate minor changes requested by DfE within the current Charges and shall not serve a Change Control Note 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. DfE may request a Variation by completing the Change Control Note and giving the Supplier 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 DfE. If the Supplier accepts the Variation it shall confirm it in writing within 21 days of receiving the Change Control Note.
5. If the Supplier is unable to accept the Variation or where the Parties are unable to agree a change to the Charges, DfE may allow the Supplier 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 Supplier wishes to introduce a change to the Contract it may request a Variation by serving the Change Control Note on DfE giving DfE sufficient information to assess the extent of the Variation.
7. DfE shall evaluate the Supplier's proposed Variation in good faith, taking into account all relevant issues.
8. DfE shall confirm in writing within 21 days of receiving the Change Control Note if it accepts or rejects the Variation.
9. DfE may at its absolute discretion reject any request for a Variation proposed by the Supplier.

Change Control Note

Contract Number		DfE Contract / Programme Manager
Supplier		Original Contract Value (£)
Contract Start Date		Contract Expiry Date

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

Supporting Information (please attach all supporting documentation for this Change Control)	
Terms and Conditions	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.
Variation Agreed <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>For the Supplier:</p> <p>Signature_____</p> <p>Full Name_____</p> <p>Title_____</p> <p>Date_____</p> </div> <div style="width: 45%;"> <p>For DfE:</p> <p>Signature_____</p> <p>Full Name_____</p> <p>Title_____</p> <p>Date_____</p> </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:			
Commercial Contact		Reference Number	
Date received		EC Reference	

SCHEDULE 7

Key Personnel and Key Sub Contractors

Key Personnel

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement
<redacted>	DfE Lead	From Effective Date

Key Sub-Contractors

The Supplier may sub-contract its obligations under the Contract in full adherence to Clause 5 to the Sub-Contractors listed in the table below.

Key Sub-Contractor Name and Address (if not the same as the registered office)	Registered Office and Company Number	Related Product/Service Description	Sub-contract Price expressed as a percentage of total projected Charges over Term	Role in delivery of the Services
ROYAL MAIL GROUP LIMITED (trading as Parcelforce Worldwide)	100 Victoria Embankment, London EC4Y 0HQ 04138203	Parcel Carrier		Third Party Logistics

SCHEDULE 8

Data, Systems handling and Security

1. Definitions

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

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

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

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

- (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - i. are aware of and comply with the Processor's duties under this clause;
 - ii. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (c) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (d) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6 of this Schedule, the Processor shall notify the Controller immediately if it:

- 1.5.1 receives a Data Subject Request (or purported Data Subject Request);
- 1.5.2 receives a request to rectify, block or erase any Personal Data;
- 1.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- 1.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 1.5.6 becomes aware of a Data Loss Event.

1.6 The Processor's obligation to notify under clause 1.5 of this Schedule shall include the provision of further information to the Controller in phases, as details become available.

1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 of this Schedule (and insofar as

possible within the timescales reasonably required by the Controller) including by promptly providing:

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

APPENDIX 1 TO SCHEDULE 8

DfE Security Standards

BPSS Baseline Personnel Security Standard	a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at: https://www.gov.uk/government/publications/government-baseline-personnel-security-standard
CCSC Certified Cyber Security Consultancy	is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website: https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy
CCP Certified Professional	is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website: https://www.ncsc.gov.uk/scheme/certified-professional
CC Common Criteria	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.
CPA Commercial Product Assurance [formerly called "CESG Product Assurance"]	is an 'information assurance scheme' which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website: https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa
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. There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: https://www.iasme.co.uk/apply-for-self-assessment/
Department's Data Department's Information	is any data or information owned or retained in order to meet departmental business objectives and tasks, including: (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>(i) supplied to the Supplier by or on behalf of the Department; or</p> <p>(ii) which the Supplier 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>
DfE Department	means the Department for Education
Departmental Security Standards	means the Department's security policy or any standards, procedures, process or specification for security that the Supplier 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.
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 facto security standard used for the accreditation of cryptographic modules.
Good Industry Practice Industry Good Practice	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.
Good Industry Standard Industry Good Standard	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.
GSC GSCP	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications
HMG	means Her Majesty's Government
ICT	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

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

	to ensure HMG can function effectively, efficiently and securely. https://www.gov.uk/government/publications/security-policy-framework
Tailored Assurance [formerly called CTAS, or, CESG Tailored Assurance]	is an 'information assurance scheme' which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks. https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology

- 1.1 The Supplier shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2 Where the Supplier will provide ICT products or services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 1.3 The Supplier shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4 The Supplier 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 Supplier has an existing Protective Marking Scheme then the Supplier may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 1.5 Departmental Data being handled in the course of providing an ICT solution or service must be segregated from all other data on the Supplier's or sub-contractor's own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Supplier and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with clause 1.14 of this Schedule.
- 1.6 The Supplier shall have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas
- 1.7 The Supplier shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- 1.8 The Supplier 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.

- 1.9 Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 1.10 Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 1.11 and 1.12 below.
- 1.11 Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.12 All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.13 Whilst in the Supplier's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.14 When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.15 At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Supplier's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Supplier or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.16 Access by Supplier or sub-contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Supplier or sub-contractor staff must complete this process before access to Departmental Data is permitted.
- 1.17 All Supplier or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.18 The Supplier shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures.

This should include evidence that the Supplier has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.

- 1.19 Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.20 The Supplier shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.21 The Supplier or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Supplier or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 1.22 The Department reserves the right to audit the Supplier 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 Supplier's, and any sub-contractors, compliance with the clauses contained in this Section.
- 1.23 The Supplier shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.
- 1.24 The Supplier and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. Supplier and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing DfE Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Supplier's and sub-contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA)

APPENDIX 2 TO SCHEDULE 8

Processing, Personal Data and Data Subjects

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

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

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor in accordance with clause 1 of this Schedule 8.
Subject matter of the processing	Identifying information of the employees at each of the Customer's network of 'organisations' aka schools and institutions providing 16 – 19 education to which the Supplier shall be delivering products and services
Duration of the processing	The duration of the processing is the duration of the Agreement.
Nature and purposes of the processing	The nature of the processing is the collection, storage, retrieval, use and up to date maintenance during the lifetime of the Agreement and anonymisation and encryption following expiry of the Agreement.
Type of Personal Data	School contact name, title, telephone number, business address and email address. Organisation spend cap.
Categories of Data Subject	Organisation employees
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The data shall be anonymised, encrypted and put beyond use following expiry of the Agreement so that the data subjects are no longer identifiable.

SCHEDULE 9

Commercially Sensitive Information

1. Any information provided to the DfE by the supplier, which if disclosed to a third party is likely to prejudice the supplier's commercial interests, specifically:
 - i) All prices in the Tables within Schedule 3;
 - ii) Supplier and third party owned IP;
 - iii) Supplier operations and logistics processes; and
 - iv) Supplier IT systems, business plans.

SCHEDULE 10

The Supplier's Solution

<redacted>

SCHEDULE 11

Special Clauses

Financial Reports and Audit Rights

Definitions

In this Schedule, the following definitions shall apply:

Annual Contract Report	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
Audit Agents	<ul style="list-style-type: none">(a) DfE's internal and external auditors;(b) DfE's statutory or regulatory auditors;(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;(d) HM Treasury or the Cabinet Office;(e) any party formally appointed by DfE to carry out audit or similar review functions; and(f) successors or assigns of any of the above;
Contract Amendment Report	the contract amendment report to be provided by the Supplier to DfE pursuant to Paragraph 1 of Part B;
Final Reconciliation Report	the final reconciliation report to be provided by the Supplier to DfE pursuant to Paragraph 1 of Part B;
Financial Model	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by DfE in accordance with Paragraph 2 of Part B;
Financial Reports	the Contract Inception Report and the reports listed in the table in Paragraph 1 of Part B;
Financial Representative	a reasonably skilled and experienced member of the Supplier's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
Financial Transparency Objectives	has the meaning given in Paragraph 1 of Part A;
Material Change	<p>a Change which:</p> <ul style="list-style-type: none">(a) materially changes the profile of the Charges; or(b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:<ul style="list-style-type: none">(i) 5% or more; or(ii) £1m or more;
Open Book Data	complete and accurate financial and non-financial information which is sufficient to enable DfE to verify the Charges already paid or

payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
 - (iv) Reimbursable Expenses;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period.

PART A: Financial Transparency Objectives and Open Book Data

1. FINANCIAL TRANSPARENCY OBJECTIVES

1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with DfE in order to achieve, the following objectives:

1.1.1 Understanding the Charges

- (a) for DfE to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;

- (b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

1.1.2 Agreeing the impact of Change

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

1.1.3 Continuous improvement

- (a) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (b) to enable DfE to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "Financial Transparency Objectives").

2. OPEN BOOK DATA

2.1 The Supplier acknowledges the importance to DfE of the Financial Transparency Objectives and DfE's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

2.2.1 maintain and retain the Open Book Data; and

2.2.2 disclose and allow DfE and/or the Audit Agents access to the Open Book Data.

PART B: Financial Reports

1. PROVISION OF THE FINANCIAL REPORTS

- 1.1 The Supplier shall provide the Contract Inception Report on or before the Effective Date; and during the Term the following financial reports to DfE, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Authority
Quarterly Contract Report	Within 1 month of the end of each Quarter
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

- 1.2 The Supplier shall provide to DfE the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by DfE to the Supplier on or before the Effective Date for the purposes of this Contract. DfE shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

- 1.3 A copy of each Financial Report shall be held by both DfE and the Supplier. If there is a Dispute regarding a Financial Report, DfE's copy of the relevant Financial Report shall be authoritative. Each Financial Report shall:

- 1.3.1 be completed by the Supplier using reasonable skill and care;
- 1.3.2 incorporate and use the same defined terms as are used in this Contract;
- 1.3.3 quote all monetary values in pounds sterling;
- 1.3.4 quote all Costs as exclusive of any VAT; and quote all Costs and Charges based on current prices.
- 1.3.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by DfE in advance of issue of the relevant Financial Report), acting with express authority, as:
 - (a) being accurate and not misleading;
 - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
 - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
 - (d) compliant with the requirements of Paragraph 1.3.6.
- 1.3.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
 - (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
 - (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
 - (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.3.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.
- 1.3.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
 - (b) the forecast Charges for the remainder of the Term,
 - (c) the Supplier shall, as soon as practicable, notify DfE in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.3.8 shall not have the effect of amending any provisions of this Contract.

2. FINANCIAL MODEL

- 2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:
- 2.1.1 the Parties shall meet to discuss its contents within 10 Business Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
 - 2.1.2 the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of DfE; and
 - 2.1.3 DfE shall either within 10 Business Days of the meeting referred to in Paragraph 2.1.1 notify the Supplier that:
 - (a) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply DfE with such supporting evidence as is required to address DfE's concerns within 10 Business Days of such notification and DfE shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
 - (b) DfE has approved the relevant Financial Report.
 - 2.1.4 Following approval by DfE of the relevant Financial Report in accordance with Paragraph 2.1.3, that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Contract, a version of which shall be held by both DfE and the Supplier. If there is a Dispute

regarding a Financial Report, DfE's copy of the relevant Financial Report shall be authoritative.

- 2.1.5 If the Parties are unable to reach agreement on any Financial Report within 30 Business Days of its receipt by DfE, the matter shall be referred for determination in accordance with Clause 36 of Schedule 1 (*Dispute Resolution Procedure*).

2.2 Discussion of Quarterly Contract Reports and FINAL RECONCILIATION REPORT

- 2.2.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Business Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

- 2.2.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Business Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

2.3 Key Sub-contractors

- 2.3.1 The Supplier shall, if requested by DfE, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

- 2.3.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by DfE, provide DfE or procure that DfE is provided with:
- (c) full copies of audit reports for the Key Sub-contractors. DfE shall be entitled to rely on such audit reports; and
 - (i) further explanation of, and supporting information in relation to, any audit reports provided.

PART C: Audit Rights

3. AUDIT RIGHTS

- 3.1 DfE, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Contract, including for the following purposes:
- 3.1.1 to verify the integrity and content of any Financial Report;
 - 3.1.2 to verify the accuracy of the Charges and any other amounts payable by DfE under this Contract (and proposed or actual variations to such Charges and payments);
 - 3.1.3 to verify the Costs (including the amounts paid to all Subcontractors and any third party suppliers);
 - 3.1.4 to verify the Certificate of Costs and/or the Open Book Data;
 - 3.1.5 to verify the Supplier's and each Key Sub-contractor's compliance with this Contract and applicable Law;
 - 3.1.6 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances DfE shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - 3.1.7 to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - 3.1.8 to obtain such information as is necessary to fulfil DfE's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - 3.1.9 to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - 3.1.10 to carry out DfE's internal and statutory audits and to prepare, examine and/or certify DfE's annual and interim reports and accounts;
 - 3.1.11 to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which DfE has used its resources;
 - 3.1.12 to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
 - 3.1.13 to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - 3.1.14 to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - 3.1.15 to review the accuracy and completeness of the Registers;
 - 3.1.16 to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - 3.1.17 to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);

- 3.1.18 to review the Supplier's compliance with the Standards;
 - 3.1.19 to inspect DfE Assets, including DfE's IPRs, equipment and facilities, for the purposes of ensuring that DfE Assets are secure and that any register of assets is up to date; and/or
 - 3.1.20 to review the integrity, confidentiality and security of DfE Data.
- 3.2 Except where an audit is imposed on DfE by a regulatory body or where DfE has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, DfE may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 3.3 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.
4. CONDUCT OF AUDITS
- 4.1 DfE shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that DfE deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 4.2 Subject to DfE's obligations of confidentiality, the Supplier shall promptly provide DfE and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- 4.2.1 all information requested by DfE within the permitted scope of the audit;
 - 4.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 4.2.3 access to the Supplier System; and
 - 4.2.4 access to Supplier Personnel.
- 4.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 4.4 DfE shall use all reasonable endeavours to (but is not obliged to) provide at least 15 Business Days' notice of its intention to conduct an audit.
- 4.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse DfE for all DfE's reasonable costs incurred in connection with the audit.
5. USE OF SUPPLIER'S INTERNAL AUDIT TEAM
- 5.1 As an alternative to DfE's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, DfE may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 5.2 Following the receipt of a request from DfE under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that DfE has unfettered access to:

- 5.2.1 the resultant audit reports; and
- 5.2.2 all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

6. RESPONSE TO AUDITS

6.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:

- 6.1.1 the Supplier has committed a Default, DfE may (without prejudice to any rights and remedies DfE may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- 6.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;
- 6.1.3 DfE has overpaid any Charges, the Supplier shall pay to DfE:
 - (a) the amount overpaid;
 - (b) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by DfE up to the date of repayment by the Supplier; and
 - (c) the reasonable costs incurred by DfE in undertaking the audit,
 - (d) DfE may exercise its right to deduct such amount from the Charges if it prefers; and
- 6.1.4 DfE has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by DfE.