

CONTRACT FOR

Provision of Design and Publishing Services for the Standards and Testing Agency

THIS CONTRACT IS DATED Monday 24 September 2018

Parties

- 1) **The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT acting as part of the Crown (“the Department”); and**
- 2) **CDS Ltd whose registered office is at 7 Eastgate, LEEDS, LS2 7LY (“the Contractor”)**

Recitals

The Contractor has agreed to provide services to the Test Development Division of the Standards and Testing Agency (STA) in the form of design and publishing services in relation to the national curriculum tests on the terms and conditions set out in this Contract.

The Department's reference number for this Contract is STA - 0211.

1 Interpretation

1.1 In this Contract the following words shall mean:-

“the Services”

the services to be performed by the Contractor as described in Schedule 1;

"Affiliate" in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"the Contract Manager" [REDACTED]
Department for Education
Standards and Testing Agency
Cheylesmore House
Ground Floor South Building
Quinton Road

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| | Coventry |
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| "Contractor Personnel" | all employees, agents, Contractors and contractors of the Contractor and/or of any Sub-contractor; |
| "the Contractors Contract Manager" | [REDACTED] |
| "Confidential Information" | the Department's Confidential Information and/or the Contractor's Confidential Information; |
| "Contracting Department" | any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department; |
| "Contractor Personnel" | all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor; |
| "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" shall be interpreted accordingly; |
| "Controller", "Processor," "Data Subject", "Personal Data", | take the meaning given in the GDPR |

“Personal Data Breach”, “Data Protection Officer”

“Crown” means Queen Elizabeth II and any successor

"Crown Body" any department, office or agency of the Crown;

“Data Loss Event” any event that results, or may result, in unauthorised access to Personal Data held by the Contractor 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 2018” Data Protection Act 2018

“Data Protection Impact Assessment” an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

“Data Subject Request” a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

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| "Department's Confidential Information" | all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential; |
| "Department's Intellectual Property Rights" | means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Consultancy Services |
| "Environmental Information Regulations" | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations; |
| "FOIA" | the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation; |
| "GDPR" | the General Data Protection Regulation (Regulation (EU) 2016/679) |
| "Her Majesty's Government" | means the duly elected Government for the |

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| | time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government |
| "Information" | has the meaning given under section 84 of the Freedom of Information Act 2000; |
| "Intellectual Property Rights" | means any copyright, rights in designs, database rights, domain names, trade marks, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registerable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988 |
| "Joint Controllers" | Where two or more Controllers jointly determine the purposes and means of processing |
| "Law" | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply; |
| "LED" | Law Enforcement Directive (Directive (EU) 2016/680) |
| "Personal Data" | shall have the same meaning as set out in the |

Data Protection Act 1998;

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| “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. |
| “Property” | means the property, other than real property, issued or made available to the Contractor by the Client in connection with the 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. . |
| “Regulatory Bodies” | those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the Department and " Regulatory |

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| | Body " shall be construed accordingly. |
| "Request for Information" | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations; |
| "SME" | means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions. |
| "Sub-contractor" | the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents; |
| "Sub-processor" | any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract |
| "Working Day" | any day other than a Saturday, Sunday or public holiday in England and Wales. |

- 1.2** References to "Contract" mean this contract (and include the Schedules). References to "Clauses" and "Schedules" mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.
- 1.3** Reference to the singular include the plural and vice versa and references to any gender include both genders and the neuter. References to a person include any individual, firm, unincorporated association or body corporate.

2 Commencement and Continuation

The Contractor shall commence the Services on Monday 24 September 2018 and, subject to Clause 10.1 shall complete the Services on or before 30 March 2019

This Contract shall be deemed to have been effective from Monday 24 September 2018.

3 Contractor's Obligations

- 3.1 The Contractor shall promptly and efficiently complete the Services in accordance with the provisions set out in Schedule 1, and the special conditions set out in Schedule 3. Where there is any conflict between the terms of this Contract and the special conditions set out in Schedule 3, the special conditions shall prevail.
- 3.2 The Contractor shall comply with the accounting and information provisions of Schedule 2.
- 3.3 The Contractor shall comply with all statutory provisions including all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.

4 Departments Obligations

The Department will comply with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Contractor for work completed to the satisfaction of the Department.

5 Changes to the Department's Requirements

- 5.1 The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.
- 5.2 The Contractor shall use its best endeavours to accommodate any changes to the needs and requirements of the Department provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.

6 Management

- 6.1 The Contractor shall promptly comply with all reasonable requests or directions of the Contract Manager in respect of the Services.
- 6.2 The Contractor shall address any enquiries about procedural or contractual matters in writing to the Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.

7 Contractor's Employees and Sub-Contractors

- 7.1 Where the Contractor enters into a contract with a supplier or contractor for the purpose of performing its obligations under the Contract (the “**Sub-contractor**”) it shall ensure prompt payment in accordance with this clause 7.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-contractor shall provide for undisputed sums due to the Sub-contractor to be made within a specified period from the receipt of a valid invoice not exceeding:

7.1.1 10 days, where the Sub-contractor is an SME; or

7.1.2 30 days either, where the sub-contractor is not an SME, or both the Contractor and the Sub-contractor are SMEs,

The Contractor shall comply with such terms and shall provide, at the Department’s request, sufficient evidence to demonstrate compliance.

- 7.2 The Department shall be entitled to withhold payment due under clause 7.1 for so long as the Contractor, in the Department’s reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with clause 7.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment. .
- 7.3 The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.
- 7.4 The Contractor shall give to the Department if so requested a list of all persons who are or may be at any time directly concerned with the performance of this Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.
- 7.5 If the Department notifies the Contractor that it considers that an employee or sub-contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation

or, if so required by the Department, shall remove the said employee or sub-contractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).

- 7.6 The Contractor shall take all reasonable steps to avoid changes of employees or sub-contractors assigned to and accepted to provide the Services under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give at least one month's written notice to the Contract Manager of proposals to change key employees or sub-contractors.
- 7.7 The Contractor shall immediately notify the Department if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.
- 7.8 The Contractor, its employees and sub-contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 7.9 The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department's reasonable security requirements as required from time to time.

8 Intellectual Property Rights

- 8.1 It is acknowledged and agreed between the parties that all existing or future Department's Intellectual Property Rights shall vest in the Crown absolutely.
- 8.2 Any Intellectual Property Rights of the Contractor which are in existence at the date of this Contract and which are comprised in or necessary for or arising from the performance of the Consultancy Services owned by the Contractor ("**Background Intellectual Property**") shall remain in the ownership of the Contractor but in consideration of the fees payable pursuant to this Contract, the Contractor hereby grants to the Department in respect of such Background Intellectual Property an irrevocable, non-exclusive, royalty-free, perpetual licence with rights to grant sub-licences.
- 8.3 The Contractor agrees that at the request and cost of the Department it will and procure that its officers, employees and agents will at all times do all such reasonable acts and execute all such documents as may be reasonably necessary or desirable to ensure that the Department receives the full benefit of all of its rights under this Contract in respect of the Department's Intellectual Property Rights or to assist in the resolution of any question concerning the Intellectual Property

Rights.

- 8.4** The Contractor hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
- 8.5** The Contractor warrants:
- 8.5.1 that the Department's Intellectual Property Rights comprise the original work of and were created by or on behalf of the Contractor;
 - 8.5.2 that the Department's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
 - 8.5.3 That the use of or exercise by the Department of the Department's Intellectual Property Rights and the Background Intellectual Property will not infringe the rights of any third party;
 - 8.5.4 that the Contractor has not granted or assigned any rights of any nature in the Department's Intellectual Property Rights to any third party.
- 8.6** The Contractor shall ensure that any copyright materials produced by or on behalf of the Contractor shall be marked with the following copyright notice " © Crown Copyright 1988.

9 Warranty and Indemnity

- 9.1** The Contractor warrants to the Department that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
- 9.2** Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Contract then the Department shall be entitled, where appropriate to:

9.2.1 require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or

9.2.2 assess the cost of remedying the failure (“the assessed cost”) and to deduct from any sums due to the Contractor the Assessed Cost for the period that such failure continues.

- 9.3** The Contractor shall be liable for and shall indemnify the Department in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Department or otherwise arising out of or in the course of or caused by the provision of the Services.
- 9.4** The Contractor shall be liable for and shall indemnify the Department against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Contractor
- 9.5** All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.
- 9.6** The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Department, its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

10 Termination

- 10.1** This Contract may be terminated by either party giving to the other party at least 30 days notice in writing.
- 10.2** In the event of any breach of this Contract by either party, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.
- 10.3** In the event of a material breach of this Contract by either party, the other party may terminate this Contract with immediate effect by notice in writing.

10.4 This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:-

10.4.1 the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or the Contractor applies to enter into a voluntary arrangement with its creditors; or

10.4.2 a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof; or

10.4.3 the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed; or

10.4.4 the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986.

10.4.5 there is a change in the legal or beneficial ownership of 50% or more of the Contractor's share capital issued at the date of this Contract or there is a change in the control of the Contractor, unless the Contractor has previously notified the Department in writing. For the purpose of this Sub-Clause 10.4.5 "control" means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power.

10.4.6 the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct

10.4.7 the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;

10.4.8 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to the payment of Social Security contributions;

10.4.9 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to payment of taxes;

10.4.10 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.

10.5 Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

11 **Status of Contractor**

11.1 In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the agent of the Department.

11.2 The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Department.

12 **Confidentiality**

12.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:

12.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

12.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

12.2 Clause 12 shall not apply to the extent that:

12.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 13 (Freedom of Information);

12.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

12.2.3 such information was obtained from a third party without obligation of confidentiality;

12.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract;
or

12.2.5 it is independently developed without access to the other party's Confidential Information.

12.3 The Contractor may only disclose the Department's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

12.4 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.

12.5 The Contractor shall ensure that their employees, servants or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.

12.6 Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:

12.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;

12.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

12.6.3 to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

12.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

12.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or

12.6.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.

- 12.7** The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 12 is made aware of the Department's obligations of confidentiality.
- 12.8** Nothing in this clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.9** The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.10** Subject to Clause 12.9, the Contractor hereby gives its consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 12.11** The Department may consult with the Contractor to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- 12.12** The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.

13 **Freedom of Information**

- 13.1** The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its information disclosure obligations.
- 13.2** The Contractor shall and shall procure that its Sub-contractors shall:
- 13.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- 13.2.2 provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and

13.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

13.3 The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

13.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.

13.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

13.5.1 in certain circumstances without consulting the Contractor; or

13.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 13.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

13.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

14 Access and Information

The Contractor shall provide access at all reasonable times to the Department's internal auditors or other duly authorised staff or agents to inspect such documents as the Department considers necessary in connection with this Contract and where appropriate speak to the Contractors employees.

15 Transfer of Responsibility on Expiry or Termination

- 15.1** The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
- 15.2** Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.
- 15.3** The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.

16 **Tax Indemnity**

- 16.1** Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.2** Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate primary (employee) National Insurance contributions (NICs) and pay them to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.3** The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.
- 16.4** A request under Clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 16.5** The Department may terminate this contract if-
- (a) in the case of a request mentioned in Clause 16.3 above if the Contractor:

- (i) fails to provide information in response to the request within a reasonable time,
- or
- (ii) provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;
- (b) in the case of a request mentioned in Clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or
- (c) it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Contractor is not complying with those Clauses.

16.6 The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

16.7 The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.

16.8 The Contractor will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.

16.9 The Contractor shall indemnify Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.

16.10 The Contractor authorises the Department to provide the HM Revenue and Customs 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 this Contract whether or not Department is obliged as a matter of law to comply with such request.

17 Data Protection

- 17.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor.
- 17.2** The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 17.3** The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.7** 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 17.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 17.8** The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 17.9** The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 17.10** Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 17.11** Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 17 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 17.12** The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 17.13** The Controller may, at any time on not less than 30 Working 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).
- 17.14** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

18 **Amendment and variation**

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time.

19 **Assignment and Sub-contracting**

The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Contractor without the prior written consent of the Department. Such consent may be given subject to any conditions which the Department considers necessary. The Department may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to

approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Contractor.

20 The Contract (Rights of Third Parties) Act 1999

This Contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the Contract.

21 Waiver

No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

22 Notices

22.1 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, or e-mail, addressed to the recipient at its registered office or its address (or such other address, or e-mail address as may be notified in writing from time to time).

22.2 The notice, demand or communication shall be deemed to have been duly served:

22.2.1 if delivered by hand, when left at the proper address for service;

22.2.2 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;

22.2.3 if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, 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).

23 Dispute resolution

- 23.1** The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.
- 23.2** Any dispute not capable of resolution by the parties in accordance with the terms of Clause 23 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 23.3** No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

24 **Discrimination**

- 24.1** The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 24.2** The Contractor shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

25 **Law and Jurisdiction**

This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

As witness the hands of the parties

Authorised to sign for and on behalf of the Secretary of State for Education

Signature [REDACTED]

Name [REDACTED]

Position REDACTED

Address REDACTED

Date

Authorised to sign for and on behalf of CDS Ltd

Signature REDACTED

Name REDACTED

Position REDACTED

Address REDACTED

Date

Schedule 1:

1. REQUIREMENTS

1.1 Role

The purpose of this contract is to provide design and publishing services for STA in relation to national curriculum tests.

1.2 Department resources

The successful Bidder will be expected to work closely with the STA Test Design Manager and their team.

1.3 Project Deliverables/Outputs and Critical Steps

The Project deliverables/outputs are provided in the table below. All deliverables and outputs are categorised as mandatory and it is essential that you confirm that you can meet them in full. Any dates in bold are fixed dates due to existing commitments. Other dates are suggested and are negotiable by agreement with the STA. Failure to provide confirmation in your proposal documents may result in your proposal being rejected.

The specific date for all deliverables/outputs 1 – 4 must be included within the project plan in the response to the Technical Evaluation.

| No | Deliverables/Outputs | Acceptance Criteria | Due Date |
|----|--|--|---------------------------|
| 1 | <p>Design and typesetting requirement – mathematics trialling booklets: 22 answer booklets. Approx. 24pp (printed pages) in each booklet, requiring collation from instructions provided, using PDF question files.</p> <p>200-220 question files in InDesign – text amendment and styling changes as required to match style guidance. Questions are typically 1/3 to ½ A4 in extent. Around 300 files will be handed over for management, but the project will only amend the number quoted.</p> <p>Question files are set out and designed, requiring modest to light text amendment and file handling. PDFs from these files are used in combination to populate answer booklets.</p> | <p>100% of tasks completed to project plan.</p> <p>100% of instructions completed as instructed by mark-up and supporting documentation.</p> <p>100% of electronic files returned as instructed, and as specified in the</p> | See outline project plan. |

| No | Deliverables/Outputs | Acceptance Criteria | Due Date |
|----|--|--|--|
| | <p>Approximately 10% will require more substantial revision and potentially illustration/chart amendment.</p> <p>Examples of mathematics test booklets and questions can be found here: https://www.gov.uk/government/publications/key-stage-2-tests-2018-mathematics-test-materials. Note: Administration documents and mark schemes Are not included in this requirement.</p> <p>STA will provide a spread sheet listing each question item with a corresponding identifying number. The items will be provided as individual InDesign files to be saved by the Contractor into the file management system as individual items. In most cases items will be supplied with artwork; however some artwork will require amendments/improvements to be made before the trial papers are constructed. Any further artwork required will either be commissioned by STA or through negotiation with the Contractor.</p> <p>Amendments will be required following feedback from expert reviewers and our own internal proofing stages. Amendments with in most instances be changes to text – illustration elements will be amended by STA and will be provided.</p> <p>The contractor must only complete amendments as requested and ensure no further changes are made; suggestions for further amendment by the contractor must be recorded and escalated to the STA for approval.</p> | <p>functional requirements.</p> <p>100% of materials stored, handled and transferred securely as specified in the functional requirements.</p> | |
| 2 | <p>Proof reading and quality assurance – national curriculum test for English grammar, punctuation and spelling.</p> <p>Technical pre-flight check, proofing and quality assurance review, including cross-read across test booklets, administration guidance and mark schemes.</p> <p>Total pages based on previous materials, total pagination should be equivalent.</p> | <p>100% of checks completed to project plan.</p> <p>100% of checks completed as instructed by materials checklists and supporting documentation.</p> | <p>Project dates have yet to be planned but contractor will be expected to complete proofs over 3 working days</p> |

| No | Deliverables/Outputs | Acceptance Criteria | Due Date |
|----|---|---|--|
| | <p>2019 key stage 2 English grammar, punctuation and spelling Paper 1: questions – 24 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Paper 2: spelling – 4 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Mark schemes – 20 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Administering Paper 1: questions – 4 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Administering Paper 2: spelling – 8 pages</p> <p>2019 key stage 1 English grammar, punctuation and spelling Modified large print Paper 1: spelling – 8 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Administering the enlarged print (EP) version of Paper 1: questions – 2 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Administering the enlarged print (EP) version of Paper 2: spelling – 2 pages</p> <p>2019 key stage 1 English grammar, punctuation and spelling Modified large print Paper 2: questions – 20 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Braille Paper 1: questions – 24 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Braille transcript Paper 1: questions – 5 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Administering Paper 1: questions – 4 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Administering Paper 2: spelling – 8 pages</p> <p>2019 key stage 2 English grammar, punctuation and spelling Administering the modified large print (MLP) version of Paper 1: questions – 2 pages</p> | <p>100% of materials to be reviewed for suitability for large scale print (pre-flight).</p> <p>100% of comments and queries returned as electronic mark-up, and as specified in the functional requirements.</p> <p>100% of materials stored, handled and transferred securely as specified in the functional requirements.</p> | <p>in late late Dec 2018/Early Jan 2019.</p> |

| No | Deliverables/Outputs | Acceptance Criteria | Due Date |
|----|---|---------------------|----------|
| | 2019 key stage 2 English grammar, punctuation and spelling Administering the modified large print (MLP) version of Paper 2: spelling – 2 pages | | |
| | 2019 key stage 2 English grammar, punctuation and spelling Administering the braille version of Paper 1: questions – 4 pages | | |
| | STA will provide review checklists and supporting guidance. The contractor will use the checklists and proofs provided to report any issues identified. Examples of test booklets, mark schemes and guidance can be found here: https://www.gov.uk/government/publications/key-stage-2-tests-2018-english-grammar-punctuation-and-spelling-test-materials | | |

14 Functional Requirements

| Functional Requirements | |
|-------------------------|--|
| Test Security | <p>The Supplier must ensure that a security manager is appointed who shall have ultimate responsibility for all aspects of information governance and security management relating to the Supplier Services.</p> <p>No later than 10 business days after the effective date, the Supplier must produce and adhere to a security plan, based on and compliant with the principles of the HMG Security Policy Framework incorporating detailed security policies, standards and controls. This security plan shall cover all aspects of the Supplier services including physical security, infrastructure, platforms, transportation of sensitive material, applications and services and interfaces.</p> <p>The security plan shall be reviewed and approved by STA and, if necessary, updated to meet STA requirements prior to the commencement of the services.</p> <p>All test materials are confidential. All files and proofs must be handled in a secure and confidential manner. Transmission of information regarding test materials via unsecured networks or email or by regular postal service is prohibited.</p> <p>All staff working on the materials must sign a confidentiality agreement. Staff must work on these materials in a secure work area. They can <u>not</u> work on materials at home.</p> <p>Handover forms to be used for all deliveries. Contractor to email to inform and confirm delivery.</p> <p>Security Compliance</p> <p>Contractor must be 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), where compliance has not yet been achieved an action plan and risk</p> |

| | |
|-----------------------------------|--|
| | <p>register must be agreed to address any issues identified within acceptable timeframes.</p> <p>The Requirements Specification or Security Policy details the minimum standards of security required by STA for the delivery of the required Services under the Contract or any Order. STA will use all reasonable endeavours to work with the Contractor to ensure that where necessary, policies and processes are developed to assist the Contractor in meeting STA's requirements prior to provision of the Services.</p> <p>In the event that STA, in its sole discretion, considers that the required Security Policies or processes have not been implemented by the Contractor prior to delivery of the Services, STA reserves the right to cancel any Order and/or terminate the Contract with immediate effect.</p> |
| <p>Subject Information</p> | <p>STA to provide a spreadsheet listing each item, question, task or text with a corresponding identifying number.</p> <p>Mathematics – The items will be provided as individual InDesign files to be saved by the Contractor into the file management system as individual items. In most cases, items will be supplied with artwork; however, some artwork will require amendments/improvements to be made before the trial papers are constructed. Any further artwork required will be commissioned either by STA or through negotiation with the Contractor.</p> |
| <p>File Management</p> | <p>STA will provide the file structure and all the items will be saved into the file structure. Within this file structure, the Contractor must establish a secure file management system to log assets (artwork, photographs etc.), to track version history of all amendments and monitor any access to the system.</p> <p>File management to record:</p> <ul style="list-style-type: none"> • unique identifying number for item, task, reading stimulus papers • Version history/control of both items and papers (including the date of any change and who made the change). |

| | |
|--|--|
| | <p>Transfer of materials will be by Egress file transfer software (https://www.egress.com/), or by a secure supplier solution as agreed by STA and the Contractor. The encryption method used by STA is PGP (http://buy.symantec.com/estore/clp/productdetails/pk/drive-encryption). STA will supply all electronic material to the Contractor in an encrypted form using a self-extracting encrypted file (produced on a Windows desktop). All electronic material provided back to STA must be encrypted to CESH standards (minimum of 256 AES) in a form that is fully compatible with and capable of extraction by a Windows desktop.</p> <p>Once the items for the test papers have been identified by STA and papers constructed, any further changes/amends are required to be made to both the individual items and to test papers in which the item appears. Items appearing in more than test paper must be identical.</p> |
| <p>Working with Test Development Researchers (TDRs)</p> | <p>Provision of mark ups – STA and Contractor to agree a method of marking up to ensure all amendments are clear. STA to advise protocol for amendments.</p> <p>Contractor to proof materials against the marked up copy to ensure accuracy of the changes made.</p> <p>Contractor to contact TDRs if mark ups are unclear in order to clarify instructions. At the start-up meeting STA and Contractor to agree process for transmission of queries during the development process for items and test papers. NO test content can be discussed within the body of an e-mail. Where test material needs to be discussed, queries can be uploaded to the Portal and a link sent to the appropriate TDR. Materials uploaded to the STA portal do not need to be password protected.</p> <p>STA and Contractor to agree point of contact (named person) within both organisations (each subject) for the management of the process and for queries.</p> |
| <p>Design Specification</p> | <p>Design Software</p> <p>Question items to be completed in Adobe InDesign. Image assets should</p> |

be created using Adobe Illustrator or Photoshop. STA uses Adobe Creative Cloud for all design work.

Materials to be handed over as two colour files. The materials must be maintained as two colour documents.

Packaged artwork files must be provided in Adobe InDesign format. The packaged folder must include all editable artwork files in native file format (Illustrator.ai, Photoshop.psd), and must include all fonts.

Fonts

STA uses the Adobe font folio 11 OpenType library using typefaces defined by the NCA and STA guidance. Documents produced for STA should be created using this font library.

OpenType fonts must be used as follows:

Helvetica Neue: 45 Light, 46 Light Italic, 55 Roman, 56 Italic, 75 Bold, 76 Bold Italic, 85 Heavy, 95 Black

Times New Roman: Regular, Italic, Bold, Bold Italic

IDAutomation HC39M (True type): Used for barcode on NCA test materials

Glyphs: Zapf Dingbats.

Other fonts may be provided in the materials supplied to the Contractor. STA will work with the Contractor to identify a similar font or discuss whether the original font should be purchased, if required. Any purchase of this type must be discussed with STA and agreed in advance through a change control process.

Secure file compression

If files need to be transferred using a means other than the Portal, use the following compression and encryption guidance.

Compressing files: All files must be compressed, then encrypted (see File Management) prior to handover to STA. All electronic material provided back to STA must be encrypted to CESG standards (minimum of 256 AES) in a form that is fully compatible with and capable of extraction by a

| | |
|---|--|
| | Windows desktop. |
| Proofs | <p>The item number and date of last amendment needs to be produced on the item. Unless otherwise stipulated, all PDF proofs are required as edge-to-edge prints with no bleed marks.</p> <p>Contractor should outline and agree the process for securely handing over proof copies in a manner that meets STA's security requirements.</p> |
| Proof Reading, Review and Scrutiny of Final Products | <p>All proof copies must be numbered and labelled appropriately with the date of submission using the process advised by STA. Upon receipt by STA, proofing will be carried out by the relevant Test Development Researcher (TDR) and STA Communications team.</p> <p>STA question files include a date stamp and filename stamp that will update as files are handled; an example of this can be provided.</p> <p>Final copies will be quality assured by the Test Development Researcher (TDR) and STA Communications team in order to sign off the final deliverables.</p> |
| Finished Products, Handover, Delivery Mode | <p>Electronic Handover</p> <p>At the end of the project, the Contractor must handover all PDF's, native file versions and artwork. Contractor should outline the process of securely handing over files in a manner that meets STA's security requirements.</p> <p>Transfer of materials will be by Egress or contractor secure collaboration portal.</p> <p>Secure Archiving</p> <p>Following successful handover, all remaining materials (electronic materials including hard drives and back up media and hard copy materials) must be destroyed in line with CESG guidance after a period of 6 months when instructed by STA.</p> <p>PDF Handover</p> <p>Contractor makes final amends to the items for each subject, and supplies STA with Electronic PDFs of the items for each subject.</p> |

| Performance Requirements | | | |
|--------------------------|--|--|--|
| 1 | All deliverable requirements met by agreed dates in the project plan in section 5.1 | 100% deliverables completed on time | As outlined as per section 5.1 |
| 2 | Progress Reports, including risk and issues logs | 100% - submitted to Project Team members (STA & Contractor) at least 24 hours prior to organised checkpoint meetings | Weekly in advance of checkpoint meetings |
| 3 | All deliverable materials developed in specified design software, using fonts and typefaces specified. | 100% of deliverables must remain in specified design software, and no fonts or typefaces can be replaced. | As outlined as per section 5.2 |
| 4 | Full Attendance at checkpoint Meetings | 100% – Weekly checkpoint meeting – checkpoint reports need to be provided no less than 24 hours in advance of each meeting. Checkpoint meetings can usually occur by conference call. To allow for any meetings that need to occur face to face, please cost for one meeting in Coventry | Weekly |
| 5 | All products, including native artwork, handed over to STA | Test materials provided to STA on time and 100% accurate and in the format required. | As outlined as per sections 5.1 and 5.2 |

Security

The Supplier must ensure that a security manager is appointed who shall have ultimate responsibility for all aspects of information governance and security management relating to the Supplier Services.

No later than 10 business days after the effective date, the Supplier must produce and adhere to a security plan, based on and compliant with the principles of the [HMG Security Policy Framework](#) incorporating detailed security policies, standards and controls. This security plan shall cover all aspects of the Supplier services including physical security, infrastructure, platforms, transportation of sensitive material, applications and services and interfaces.

The security plan shall be reviewed and approved by STA and, if necessary, updated to meet STA requirements prior to the commencement of the services.

The Supplier and any sub-contractor must meet the following security requirements:

Security Compliance

S1. The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).

S2. Departmental Data being handled in the course of providing an ICT solution or service must be segregated from all other data on the Contractor's or sub-contractor's own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data.

S3. The Contractor shall have in place and maintain physical security, in line with those outlined in

ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas.

S4. The Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.

S5. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.

S6. 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.

S7. 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.

S8. 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.

S9. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.

S10. Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a “need-to-know” in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor staff must complete this process before access to Departmental Data is permitted.

In the event that STA, in its sole discretion, considers that the required Security policies or processes have not been implemented by the Supplier and any sub-contractor prior to delivery of the Services, STA reserves the right to cancel any Order and/or terminate the Contract with immediate effect.

End of schedule 1

Schedule 2

1 Payment Table

Work Package 1: Design and typesetting requirement – mathematics trialling materials

| Milestone Payment | Requirement/Critical Steps | Payment Timescale | Amount £ (Excl. VAT) |
|-------------------|----------------------------|--|-------------------------|
| 1 | Final Handover | We ask that 50% is invoiced in December 2018 and the remainder on completion | REDACTED |
| Total £ | | | REDACTED |

Work Package 2: Proof reading and quality assurance – English grammar, punctuation and spelling national curriculum tests

| Milestone Payment | Requirement/Critical Steps | Payment Timescale | Amount £ (Excl. VAT) |
|-------------------|----------------------------|-------------------|-------------------------|
| 1 | Final Handover | On Completion | REDACTED |
| Total £ | | | REDACTED |

Total Price

| Work Package | £ Price |
|--------------|-----------------|
| 1 | REDACTED |
| 2 | REDACTED |
| Total | REDACTED |

Test development is VAT exempt.

- 2** Funds allocated to a particular expenditure heading in the table at paragraph 1 ("the Table") are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Table may not be altered except with the prior written consent of the Department.
- 3** The Contractor shall maintain full and accurate accounts for the Service against the expenditure headings in the Table. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract. Input and output VAT shall be included as separate items in such accounts.
- 4** The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the Department's resources in the performance of this Contract.
- 5** Invoices shall be prepared by the Contractor on the invoice dates specified in the Table in arrears and shall be detailed against the expenditure headings set out in the Table. The Contractor or its nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Contractor on the Service in

accordance with the Contract and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.

- 6** Invoices shall be sent, within 30 days of the end of the relevant payment milestone to Department for Education PO Box 407 SSCL Phoenix House, Celtic Springs Bus. Park Newport NP10 8FZ, quoting the Contract reference number. The Department undertakes to pay correctly submitted invoices within 5 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. Any correctly submitted invoices that are not paid within 30 days will be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that: is delivered in timing in accordance with the contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, supplier name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address. If any problems arise, contact the Department's Contract Manager. The Department aims to reply to complaints within 10 working days. The Department shall not be responsible for any delay in payment caused by incomplete or illegible invoices.
- 7** The Contractor shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Contractor, would reasonably have been required for that purpose.
- 8** If this Contract is terminated by the Department due to the Contractor's insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.
- 9** On completion of the Service or on termination of this Contract, the Contractor shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.
- 10** The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedule 1.
- 11** It shall be the responsibility of the Contractor to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final

invoice by the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.
End of Schedule 2