

**DATED**

**2017**

**DEPARTMENT FOR  
EDUCATION**

**(1)**

**RM EDUCATION LTD**

**(2)**

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**AGREEMENT FOR THE COLLECTION AND  
PREPARATION OF DATA FOR THE NATIONAL  
PUPIL DATABASE AND THE ACHIEVEMENT  
AND ATTAINMENT TABLES**

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**THIS AGREEMENT IS DATED                      MARCH 2017**

**Parties**

- (1)     **The Secretary of State for Education and Skills whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (“the Department”); and**
- (2)     **RM Education Ltd (Company Registration 1148594) whose registered office is at 140 Eastern Avenue, Milton Park, Abingdon, Oxon, OX14 4SB (“the Contractor”).**

**BACKGROUND**

The Contractor has agreed to collect and prepare data for the National Pupil Database and the Achievement and Attainment Tables on the terms and conditions set out in this Agreement.

The Department's reference number for this Agreement is RD1000479.

**1.        Definitions and Interpretation**

In this Agreement, the defined terms set out in Schedule 8 shall have the meanings given in that Schedule and the rules of interpretation set out in that Schedule shall apply.

**2.        Commencement and Continuation**

- 2.1     The parties acknowledge that this Agreement originally commenced on 1 January 2006 and that the provision of the Services up to and including 31 March 2017 has been on the terms of this Agreement in force during the respective periods up to and including such date.
- 2.2     With effect from 1 April 2017, Contractor shall commence the Services on the terms of this Agreement, as set out in this Agreement and, subject to earlier termination in accordance with the terms of this Agreement, the Contractor shall complete the Services on or before 31 March 2019.

**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.
- 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.

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- 3.4 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this Agreement 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.
- 3.5 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.
- 3.6 If the Contractor is liable to NICs in respect of consideration received under this Agreement 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.
- 3.7 The Department may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 3.4 to 3.6 or why those clauses do not apply to it.
- 3.8 A request under clause 3.7 may specify the information which the Contractor must provide and the period within which that information must be provided (which period must be reasonable in all the circumstances and, in any event, not more than twenty (20) Business Days).
- 3.9 The Department may terminate this Agreement if:
- 3.9.1 in the case of a request mentioned in clause 3.7 the Contractor:
- 3.9.1.1 fails to provide information in response to the request within a reasonable time; or
- 3.9.1.2 provides information which does not demonstrate either how the Contractor complies with clauses 3.4 to 3.7 or why those clauses do not apply to it;
- 3.9.2 it receives information which demonstrates that, if clauses 3.4 to 3.7 apply, the Contractor is not complying with those clauses,
- PROVIDED THAT, in doing so, the Contractor has committed a material breach of this Agreement and fails to remedy such breach within twenty (20) Business Days of a notice from the Department notifying the Contractor of such breach and requiring it to be remedied.
- 3.10 The Department may supply any information which it receives under clause 3.7 to HMRC.
- 3.11 The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under this Agreement or in relation to any payments made by the Contractor to its officers or employees in connection with this Agreement.

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- 3.12 The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under this Agreement or in relation to any payments made by the Contractor to its officers or employees in connection with this Agreement. The Contractor shall indemnify the Department against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under this Agreement (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the Department in connection with any such assessment or claim.
- 3.13 The Contractor authorises the Department 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 this Agreement whether or not the Department is obliged as a matter of law to comply with such request.
- 3.14 The Contractor shall perform its obligations under this Agreement in accordance with all applicable equality law.
- 3.15 The Contractor shall maintain and implement an equality and diversity policy that meets all relevant legal requirements.
- 3.16 The Contractor indemnifies the Department in full from and against all Employment Liabilities that may arise as a result of any breach by the Contractor of clause 3.15 (above). The Contractor will also provide all reasonable cooperation, assistance and information as the Department may request in connection with any investigation by the Department into any complaint or other grievance received by it from any of the employees, agents or consultants in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any of its personnel.
- 3.17 The Contractor shall comply with the provisions of:
- 3.17.1 the Official Secrets Acts 1911 to 1989; and
- 3.17.2 section 182 of the Finance Act 1989.

#### **4. Department's Obligations**

- 4.1 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.
- 4.2 The Department shall promptly and efficiently meet its obligations set out in Schedule 1 in order for the Contractor to provide the Services.

#### **5. Not Used**

**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 Agreement shall quote the reference number set out in the Background to this Agreement.

**7. Key Personnel**

- 7.1 The Contractor shall notify the Project Manager in writing of any proposed change in or to the Key Personnel in Appendix 1 to Schedule 1.
- 7.2 The parties have agreed to the appointment of the Key Personnel. The Contractor shall, and shall procure that any Sub-contractor shall, obtain the prior written consent of the Department before removing or replacing any member of the Key Personnel during the Term (including when carrying out any exit management responsibilities), and, where reasonably possible, at least three months written notice must be provided by the Contractor of its intention to replace any member of Key Personnel. The Department shall not unreasonably delay or withhold its consent to the appointment of a replacement to any relevant member of Key Personnel by the Contractor or Sub-contractor.
- 7.3 The Department shall be entitled to specify a replacement for the Contract Manager which it shall promptly notify to the Contractor.
- 7.4 The Contractor shall use its reasonable endeavours to ensure that in the case of departing Key Personnel that an alternative individual(s) has the requisite skill and expertise with which to take over from the departing individual.

**8. Contractor's Employees and Sub-Contractors (where used)**

- 8.1 The Contractor shall include in its contracts with suppliers or Sub-contractors engaged for the purposes of the Services a written condition undertaking to make payment for the supply of their goods and/or services within 30 days of receipt of the supplier's or Sub-contractor's invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract).
- 8.2 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.
- 8.3 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 Agreement.
- 8.4 The Contractor shall ensure that it has sufficient resources and personnel to properly and fully meet all of its obligations under this Agreement.

**9. Ownership of Rights in the Software and Deliverables**

- 9.1 Title to and risk in any tangible property embodying all Deliverables and Software supplied as part of the Services shall vest in the Department upon acceptance. Within thirty (30) Business Days of the Effective Date the Contractor will provide the Department with a register of all Assets, Software and Intellectual Property Rights used by the Contractor and any Sub-contractor to provide the Services in accordance with this Contract ("Asset Register"). The Contractor will provide a revised, up-to-date copy of the Asset Register to the Department every six (6) months after the Effective Date of this Agreement and on termination or expiry of this Agreement.
- 9.2 The Contractor and its Sub-Contractors shall:
- 9.2.1 within thirty (30) Business Days of the Effective Date of the Agreement supply the Department with copies of the Project Specific IPRs and the Source Code of the Specially Written Software, including complete notes and/or supporting documentation, build instructions, test instructions, test scripts, test data, operating instructions and other documents necessary for maintaining and supporting the Specially Written Software which would enable the Department to read, use and modify the Source Code and appropriate related guidance about the use of such Source Code ("Software Supporting Materials"), with such Software Supporting Materials having been written in plain English and easy to understand; and
- 9.2.2 supply the Department with updated versions of the Project Specific IPRs, the Source Code of the Specially Written Software and the Software Supporting Materials every six (6) months thereafter, and on termination or expiry of this Agreement.
- 9.3 The Contractor shall inform the Department of all Specially Written Software that constitutes a modification or enhancement to the Software, within 20 Business Days of the provision or achievement of a Deliverable to which the modification or enhancement relates.
- 9.4 Except as expressly set out in this Agreement:
- 9.4.1 the Department shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, in:
- 9.4.1.1 the Software;
- 9.4.1.2 the Contractor Background IPRs;
- 9.4.1.3 the Third Party IPRs;
- 9.4.1.4 the Project Specific IPRs; and/or

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- 9.4.1.5 the Deliverables (excluding Deliverables which incorporate and/or constitute the Department Data where the Department shall own any IPRs which subsist); and
  - 9.4.2 the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Department or its licensors, including in:
    - 9.4.2.1 the Department IPRs; and/or
    - 9.4.2.2 the Department Data.
- 9.5 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 9.4, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever reasonably made).
- 9.6 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 9.7 The Contractor shall ensure that it has written agreement to use any IPRs owned by its Sub-contractors or any other Third Party IPRs that are necessary to the delivery of the Services.

### **Licence of Intellectual Property Rights in the Software and Deliverables**

- 9.8 Subject to Clause 9.10 (below), in consideration of the payments made by the Department pursuant to Schedule 2 of this Agreement, (to the extent that the Deliverables do not embody or incorporate any Department IPRs or Department Background IPRs), the Contractor hereby grants to the Department in respect of the Contractor Background IPRs in the Software and the Deliverables, or shall procure that the owner or authorised licensor of the Third Party IPRs in the Software or the Deliverables grants to the Department, a non-exclusive licence for the duration of this Agreement to use, reproduce, modify, adapt, enhance, transmit (including but not limited to the right to load, execute, store, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the Software and the Deliverables for any purpose relating to the Services (or substantially equivalent services) provided by the Contractor during the Term of this Agreement (including the Termination Assistance Period in the event that this subsists beyond the cessation of the Principal Services to be provided under this Agreement).
- 9.8A In consideration of the payments made by the Department pursuant to Schedule 2 of this Agreement, (to the extent that the same does not embody or incorporate any Department IPRs or Department Background IPRs), the Contractor hereby grants to the Department a perpetual, irrevocable, non-exclusive licence to use, reproduce, modify, adapt, enhance, transmit (including but not limited to the right to load, execute, store, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) the Source Code:



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- 9.8A.1 for any purpose relating to the Services (or substantially equivalent services) provided by the Contractor during the Term of this Agreement (including the Termination Assistance Period in the event that this subsists beyond the cessation of the Principal Services to be provided under this Agreement);
- 9.8A.2 following termination or expiry of this Agreement, for the provision of the Services (or substantially equivalent services) howsoever they may evolve, under the management of the Department), whether delivered by the Department itself or by a third party contractor;
- 9.8A.3 to the extent required by the Department to enable it to re-tender for the provision of the Services (or substantially equivalent services), whether during the Term or after the termination or expiry of the Agreement; and
- 9.8A.4 to enable the Department to take the benefit of the Deliverables after the termination or expiry of the Agreement, in respect of which the licence shall be perpetual and irrevocable.

### *Department's right to sub-license*

- 9.9 Subject to Clause 9.10 (below), the Department shall be entitled to sub-license the rights granted under Clause 9.8A above, to enable a third party to use, reproduce, modify, and enhance the Deliverables on behalf of the Department, provided that such third party shall have entered into a confidentiality undertaking with the Department and provided that such use is within the terms of the licence provided in Clause 9.8A above.
- 9.10 In respect of any of the Deliverables or Software that are owned by a third party other than the Contractor or any appointed Sub-contractor (as defined in Clause 8 above) (with the term "Contractor" for these purposes including any related company of the Contractor (including in particular any such related company/vehicle holding rights in such Software)):
  - 9.10.1 the Contractor shall provide details of such items to the Department within the Asset Register; and
  - 9.10.2 the Contractor shall not be required to procure the grant of a perpetual licence to the Department for the use of the Third Party IPRs, whether for the purposes of clause 9.8 or 9.9 (above) although the Contractor will use reasonable efforts to do so.

### *Department's right to novate and assign licences*

- 9.11 The Department may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clauses 9.8A to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Department.
- 9.12 Any change in the legal status of the Department which means that it ceases to be a

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Central Government Body shall not affect the validity of any licence granted in Clauses 9.8 - 9.10 inclusive (*Licence of Intellectual Property Rights in the Software and the Deliverables*). If the Department ceases to be a Central Government Body, the successor body to the Department shall still be entitled to the benefit of the licence granted in Clauses 9.8 - 9.10.

- 9.13 If a licence granted in Clauses 9.8 - 9.10 inclusive (*Licence of Intellectual Property Rights in the Software and the Deliverables*) is novated under Clause 9.11 (*Department's right to assign and novate licences*) or there is a change of the Department's status pursuant to Clause 9.11, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Department.
- 9.14 For the avoidance of doubt, termination or expiry of the Agreement shall not of itself result in any termination of the licence granted by the Contractor under Clause 9.8A.

### *Licences granted by the Department*

- 9.18 The Department hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use the Department Background IPRs and the Department Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- 9.18.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Contractor); and
- 9.18.2 the Contractor shall not, without the Department's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Department.
- 9.19 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 9.18 and any sub-licence granted by the Contractor in accordance with Clause 9.18 shall (save to the extent required to perform its obligations under the Exit Plan or as otherwise agreed) terminate automatically on the date of such termination or expiry and the Contractor shall:
- 9.19.1 immediately cease all use of the Department Background IPRs and the Department Data (as the case may be);
- 9.19.2 at the discretion of the Department, return or destroy documents and other tangible materials that contain any of the Department Background IPRs and the Department Data, provided that if the Department has not made an election within 6 months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any of the Department Background IPRs and the Department Data (as the case may be); and
- 9.19.3 ensure, so far as reasonably practicable, that any Department Background IPRs and Department Data that are held in electronic, digital or other

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machine-readable form ceases to be readily accessible from any Contractor computer, word processor, voicemail system or any other Contractor device containing such Department Background IPRs and/or Department Data.

### *IPRs Indemnity*

- 9.20 The Contractor shall at all times, during and after the Term, on written demand indemnify the Department and keep the Department and each other Indemnified Person indemnified, against all Losses incurred by or awarded against an Indemnified Person arising from an IPRs Claim, save that this indemnity shall not apply in respect of:
- 9.20.1 any use by the Department or any Indemnified Party of the Intellectual Property Rights in question in combination with any item not supplied or approved by the Contractor;
  - 9.20.2 any modification carried out by the Department or any Indemnified Party to any item supplied by the Contractor;
  - 9.20.3 the negligence or wilful misconduct of the Department or any Indemnified Party, other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Agreement; or
  - 9.20.4 any breach by the Department of any of its obligations under this Agreement.
- 9.21 If an IPRs Claim is made, or the Contractor anticipates that an IPRs Claim might be made, the Contractor may, at its own expense and sole option, either:
- 9.21.1 procure for the Department or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
  - 9.21.2 replace or modify the relevant item with non-infringing substitutes provided that:
    - 9.21.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - 9.21.2.2 the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
    - 9.21.2.3 there is no additional cost to the Department or relevant Indemnified Person (as the case may be); and
    - 9.21.2.4 the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 9.22 If the Contractor elects to procure a licence in accordance with Clause 9.21.1 or to modify or replace an item pursuant to Clause 9.21.2 but this has not avoided or

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resolved the IPRs Claim, then where such IPRs Claim constitutes a material breach of the terms of this Agreement, the Department may terminate this Agreement in accordance with Clause 11.2.

### *Conduct of IPRs Claims*

9.23 If any third party makes a claim, or notifies an intention to make a claim, against the Department or an Indemnified Person which may reasonably be considered likely to give rise to a liability under the indemnity in Clauses 9.20-9.22 inclusive ("**an IPRs Claim**"), the Department shall:

9.23.1 as soon as reasonably practicable, give written notice of the IPRs Claim to the Contractor and provide such details of the IPRs Claim which it has available to it;

9.23.2 not make any admission of liability, agreement or compromise in relation to the IPRs Claim without the prior written consent of the Contractor (such consent not to be unreasonably conditioned, withheld or delayed);

9.23.3 give the Contractor and its professional advisers access at reasonable times (on reasonable prior notice) to its officers, employees, agents, representatives or advisers, and to any relevant documents and records within the power or control of the Department, so as to enable the Contractor and its professional advisers to examine them and to take copies (at the Contractor's expense) for the purpose of assessing the IPRs Claim; and

9.23.4 subject to the Contractor providing security to the Department to the Department's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Contractor may reasonably request to avoid, dispute, compromise or defend the IPRs Claim.

### **10. Warranty and Indemnity**

10.1 The Contractor warrants to the Department that the obligations of the Contractor under this Agreement 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 Agreement.

10.2 The Contractor warrants that any Deliverables supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose.

10.3 Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Agreement then the Department shall be entitled, where appropriate to:

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- 10.3.1 require the Contractor promptly to re-perform or replace the relevant part of the Services without additional charge to the Department; or
  - 10.3.2 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.
- 10.4 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 (1) personal injury to or death of any person whomsoever or (2) loss of or damage to property whether belonging to the Department or otherwise (save that the Contractor's liability for such property damage or loss shall not exceed £10m for any one occurrence or series of connected occurrences) arising out of or in the course of or caused by the provision of the Services.
- 10.5 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.
- 10.6 The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Agreement 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 Agreement. 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.
- 10.7 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
  - 10.7.1 notify the Department in writing of such fact within five (5) Business Days of its occurrence; and
  - 10.7.2 promptly give the Department:
    - 10.7.2.1 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
    - 10.7.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Department may reasonably require.
- 10.8 The Contractor warrants that:
  - 10.8.1 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 this Agreement and that this Agreement is executed by a duly authorised representative of the Contractor;
  - 10.8.2 in entering into this Agreement it has not committed any fraud;

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- 10.8.3 as at the date of this Agreement, all information contained in the description of the Services in Schedule 1 (insofar as provided by the Contractor) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Department prior to execution of this Agreement;
- 10.8.4 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 this Agreement;
- 10.8.5 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 this Agreement;
- 10.8.6 the Intellectual Property Rights which it uses in connection with this Agreement 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 10.8.6 shall not apply to any such materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 10.8.7 the use by the Department of any Intellectual Property Rights assigned or licensed to it by the Contractor under this Agreement will not infringe or conflict with the rights of any third party;
- 10.8.8 in the three (3) years (or actual period of existence if the Contractor has been in existence for less time) prior to the date of this Agreement:
  - 10.8.8.1 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;
  - 10.8.8.2 it has been in material compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - 10.8.8.3 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 this Agreement;
- 10.8.9 it has and will continue to hold all necessary regulatory approvals from any relevant regulatory bodies necessary to perform its obligations under this Agreement; and
- 10.8.10 it has notified the Department in writing of any Occasions of Tax Non-

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Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

### **10A. Limitations and Exclusions of Liability**

- 10A.1 Neither Party excludes or limits its liability (if any) to the other:
- 10A.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;
  - 10A.1.2 for personal injury or death resulting from the its negligence;
  - 10A.1.3 under section 2(3) Consumer Protection Act 1987;
  - 10A.1.4 for its own fraud; or
  - 10A.1.5 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
- 10A.2 The Contractor shall indemnify the Department and keep the Department indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor, including in respect of death or personal injury, loss of or damage to property, or any other loss which is caused directly by any act or omission of the Contractor.
- 10A.3 The Contractor does not exclude or limit its liability (if any) under clauses 10.8.7 (Intellectual Property) and 3.11 (Tax).
- 10A.4 Subject to clauses 10A.1 and 10A.3 and Clause 23 of Schedule 2 (Payment), neither Party shall have any liability to the other under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise:
- 10A.4.1 for any losses of an indirect or consequential nature;
  - 10A.4.2 for any loss of profits, revenue, business or opportunity (whether direct or indirect); and
  - 10A.4.3 to the extent that it is prevented from meeting any obligation under the Agreement as a result of any breach or other default by the other Party.
- 10A.5 Subject to clauses 10A.1 and 10A.3, the maximum liability of either Party to the other under this Agreement, whether in contract, tort (including negligence) or otherwise:
- 10A.5.1 in respect of damage to physical property is limited to £10million in respect of any one incident or series of connected incidents; and
  - 10A.5.2 in respect of any claim not covered by clause 10A.5.1:

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- 10A.5.2.1 in respect of the period up to and including 31 December 2012, not exceed 100% of the charges paid under this Agreement in respect of the period up to and including 31 December 2012; and
  - 10A.5.2.2 in respect of the period from 1 January 2013 to and including 31 December 2014, not exceed 100% of the charges paid under this Agreement in respect of the period from 1 January 2013 up to and including 31 December 2014; and
  - 10A.5.2.3 in respect of the period from 1 January 2015 to and including 31 March 2017, not exceed 100% of the charges paid under this Agreement in respect of the period from 1 January 2015 up to and including 31 March 2017; and
  - 10A.5.2.4 in respect of the period from 1 April 2017, not exceed 100% of the charges paid under this Agreement in respect of the period from 1 April 2017.
- 10A.6 The provisions of clause 10A.4 shall not, subject to Clause 10A.13, prevent the Department from recovering from the Contractor the following losses incurred by the Department to the extent they arise as a result of a default by the Contractor:
- 10A.6.1 any additional operational and/or administrative costs and expenses incurred by the Department, including costs relating to time spent by or on behalf of the Department in dealing with the consequences of the default;
  - 10A.6.2 any wasted expenditure or charges;
  - 10A.6.3 the reasonable additional costs of procuring a Replacement Contractor for the remainder of the Agreement and/or replacement Deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement Deliverables above those which would have been payable under the Agreement; and
  - 10A.6.4 any fine or penalty incurred by the Department and any costs incurred by the Department in defending any proceedings which result in such a fine or penalty.
- 10A.7 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement 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.
- 10A.8 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.
- 10A.9 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances with a level of cover of not less than



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£5,000,000 for any one claim, for professional indemnity insurances with a level of cover of not less than £1,000,000 for any one claim. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.

- 10A.10 The Contractor shall supply to the Department on demand proof of the insurance policies maintained under clause 10A.9.
- 10A.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Agreement.
- 10A.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, this Agreement.
- 10A.13 Where either party has any claim against the other party under any provision of this Agreement (including under any indemnity) that party shall use all reasonable endeavours to mitigate its losses to the fullest extent possible.

### **11. Termination**

- 11.1 This Agreement may be terminated by either party giving to the other party at least 12 months' notice in writing, provided that no such termination shall take effect prior to 31 March 2018.
- 11.2 In the event of any breach of this Agreement 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 Agreement with immediate effect by notice in writing.
- 11.3 In the event of a material breach of this Agreement by either party (including in the case of the Contractor, a material breach of its obligation to notify the Department of any Occasion of Non-Tax Compliance), the other party may terminate this Agreement with immediate effect by notice in writing.
- 11.4 This Agreement may be terminated by the Department with immediate effect by notice in writing if at any time:
  - 11.4.1 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;
  - 11.4.2 a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof;
  - 11.4.3 the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed;
  - 11.4.4 the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;

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- 11.4.5 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 Agreement 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 11.4.5 "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;
- 11.4.6 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;
- 11.4.7 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;
- 11.4.8 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to the payment of Social Security contributions;
- 11.4.9 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to payment of taxes;
- 11.4.10 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 Agreement.
- 11.5 Nothing in this Clause 11 shall affect the coming into, or continuance in, force of any provision of this Agreement which is expressly, or by implication, intended to come into force, or continue in force upon termination of this Agreement.
- 11.6 Each party agrees that it shall comply with all of its legal obligations following the termination or expiry of this Agreement.
- 11.7 The Contractor and the Department agree to comply with their respective obligations and may exercise their respective rights pursuant to Schedule 4 (Financial Distress).

## **12. Status of Contractor**

- 12.1 In carrying out its obligations under this Agreement the Contractor agrees that it will be acting as principal and not as the agent of the Department.
- 12.2 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.

## **13. Confidentiality and Freedom of Information**

- 13.1 The Department and the Contractor shall keep secret and not disclose and shall procure that their employees keep secret and not disclose any Confidential

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Information of the other Party obtained by them by reason of this Agreement. For the avoidance of doubt, Confidential Information excludes:

- 13.1.1 information which is in the public domain or is trivial or cannot reasonably be considered to be confidential;
- 13.1.2 information which the Department is required to disclose as a matter of law or in the discharge of its obligations of public accountability and freedom of information; and
- 13.1.3 the content of this Agreement including any changes to this Agreement from time to time, excluding:-
  - 13.1.3.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA which shall be determined by the Department; and
  - 13.1.3.2 any Commercially Sensitive Information (which categories of information in 13.1.3.1 and 13.1.3.2 shall together constitute the "Transparency Information"),

and the Contractor hereby gives its consent for the Department to publish the Transparency Information in its entirety to the general public (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted).

- 13.2 The Contractor undertakes to make no reference in any advertising or other promotional material to this Agreement without the prior written consent of the Department.
- 13.3 The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the EIR.
- 13.4 The Contractor shall transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receipt and:
  - 13.4.1 give the Department a copy of all Information in its possession or control in the form that the Department requires within five (5) Business Days (or such other period as the Department may reasonably specify) of the Department's request for such information;
  - 13.4.2 provide all necessary assistance as reasonably requested by the Department to enable the Department to comply with its obligations under the FOIA and EIR; and
  - 13.4.3 not respond to directly to a Request for Information unless authorised to do so in writing by the Department.
- 13.5 The Contractor acknowledges that the Department may be required under the FOIA and the EIRs to disclose information (including Commercially Sensitive Information)

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without consulting or obtaining consent from the Contractor. The Department shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of States section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in this Agreement) the Department shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **14. Ownership of Data**

- 14.1 Any data collected or provided in connection with this Agreement shall (subject to obligations of the Contractor to third parties) become or remain the property of, or under the control of, the Department except data which relates to educational attainment achieved outside of England. For data relating to educational attainment in UK countries other than England, the Department is the Data Processor. A copy of the processed data for all UK countries shall be delivered to the Department at the times shown in Schedule 1, in accordance with the agreed specifications. The Contractor and its Sub-Contractors shall retain a copy of any data provided to the Contractor under this Agreement together with a copy of all data processed under this Agreement.
- 14.2 On completion or termination of this Agreement all data collected, processed or provided in connection with this Agreement will be returned to the Department.
- 14.3 For the avoidance of doubt, in relation to data which relates to educational attainment achieved outside of England nothing in this Agreement shall authorise or permit the Contractor to request for collection, process and/or use for any purpose, including for the purpose of providing services to any other party, any Non-England Data which may come into its possession incidentally in the course of delivering the Services.

### **15. Data Protection**

- 15.1 In this Clause 15, the terms “personal data”, “data”, “data subject” and “processing” shall have the meanings ascribed to them in the Data Protection Act 1998.
- 15.2 Each party shall comply with any data protection, privacy or similar laws anywhere in the world (“Data Protection Laws”), including but not limited to, the Data Protection Act 1998, that apply in relation to any personal data processed in connection with this Agreement including any derivations, consolidations and analysis of that data (“Protected Data”), and render such assistance and co-operation as is reasonably necessary or reasonably requested by the other party, including, but not limited to, the provision of information regarding the existence, applicability and extent of application of Data Protection Laws in particular jurisdictions to Protected Data and all necessary assistance which the other party may reasonably require in relation to its obligations under Data Protection Laws as they affect any personal data processed in relation to this Agreement.
- 15.3 Without prejudice to the generality of Clause 15.2, in respect of Protected Data

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disclosed to the Contractor in connection with this Agreement (and whether disclosed by the Secretary of State, Data Subjects or otherwise), the Contractor shall ensure that it only processes such Protected Data for purposes notified to it by the Secretary of State and/or the relevant Data Subjects and that it maintains appropriate technical and organisational measures (including but not limited to, appropriate policies communicated to Sub-contractors, management of ongoing compliance and effective security measures) in respect of the Protected Data to prevent unauthorised or unlawful processing of the Protected Data and against accidental loss or destruction of, or damage to, the Protected Data.

- 15.4 Any data collected or provided in connection with this Agreement can only be used for the purposes set out in this Agreement, unless otherwise agreed in writing by the Department (such agreement not to be unreasonably withheld or delayed). In reaching any such agreement, the Department and the Contractor shall be cognisant of:

15.4.1 the Department's terms & conditions governing the provision of data; and

15.4.2 any applicable laws (including without limitation the Education Act 1996 and the Data Protection Act 1998).

The Department hereby confirms that it has already given its agreement to the Contractor using such data for the following purpose:

15.4.3 development by the Contractor of software, services and systems. For the avoidance of doubt, such development shall be only of software, services or systems and the Contractor shall not disclose any Department data or information to any third party outside the Contractor's group of companies and/or as otherwise envisaged by this Agreement.

- 15.5 The Contractor will take all steps, required and communicated in writing to the Contractor by the Secretary of State that the Secretary of State reasonably considers are necessary in order to comply with the Secretary of State's own obligations under Data Protection Laws.

- 15.6 The Contractor, for the purposes of facilitating the Secretary of State's compliance with the Data Protection Laws, shall furnish to the Secretary of State copies of such security, audit and control reports generated by the Contractor's auditors as are directly relevant to such compliance. In the event that either the Secretary of State or the Contractor becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this Agreement relating to Protected Data, such party shall notify the other party thereof.

- 15.7 The Contractor will not, and will not authorise any Sub-contractor to, transfer any personal data processed pursuant to this Agreement outside of the UK and/or European Economic Area save where authorised by the Secretary of State or the individuals concerned.

- 15.8 Subject to the limitation of liability in Clause 10.5, the Contractor shall indemnify the Secretary of State and keep the Secretary of State indemnified against any wrongful

processing of any Protected Data by the Contractor or breach of its obligations or warranties under this Clause 15, other than any such disclosure or breach in pursuance of a specific written instruction by the Secretary of State or in connection with any processing or use by any Sub-Contractor where the Secretary of State has agreed directly with the Sub-Contractor that the Sub-Contractor may process such data.

**16. Loss of Data**

16.1 The Contractor acknowledges that the Department Data is the property of the Department (the Crown) and the Department hereby reserves all Intellectual Property Rights, which may subsist in the Department Data except data which relates to educational attainment achieved outside of England and Wales. The Contractor shall not delete or remove any copyright notices contained within or relating to the Department Data.

16.2 The Contractor and the Department shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Department Data and to prevent any corruption or loss of the Department Data.

16.3 The Contractor shall ensure that a back-up of the Department Data is made every Business Day and that such copy is recorded on media from which the Department Data can be re-loaded in the event of any corruption or loss of the Department Data.

16.4 In the event that the Department Data is corrupted or lost as a result of any default by the Contractor the Department shall have the option, in addition to any other remedies that may be available to it either under this Agreement or otherwise, to elect either of the following remedies:

16.4.1 the Department may require the Contractor at its own expense to restore or procure the restoration of the Department Data using the back-up copy referred to in Clause 16.3; or

16.4.2 the Department may itself restore or procure restoration of the Department Data using the back-up copy referred to in Clause 16.3, and shall be repaid by the Contractor any reasonable expenses so incurred

provided that the Department shall only exercise the option under Clause 16.4.2 where the Contractor is otherwise in material breach of the Contractor's obligations under this Agreement.

**17. Access, Information, Monitoring and Remediation**

17.1 The Department or its authorised representatives may visit (subject to having given the Contractor such notice as is reasonable in all the circumstances) any premises of the Contractor or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under this Agreement and otherwise to monitor and quality assure the provision of the Services.

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- 17.2 The Department shall:
- 17.2.1 be entitled to exercise its rights under clause 17.1 no more than three (3) times in any calendar year, save that there shall be no limit to the number of such visits where the Department has reasonable grounds to suspect any fraud;
  - 17.2.2 conduct any such visits during the Contractor's normal business hours;
  - 17.2.3 conduct any such visits having due regard to the Contractor's normal business operations and do so at such times, and in such manner, as shall minimise the potential adverse effect of any such visit; and
  - 17.2.4 shall at all times observe any reasonable rules or procedures as shall be specified by the Contractor.
- 17.3 During such visits, the Department may inspect and (subject to observing the confidentiality of the same) take copies of such of the records of the Contractor as relate to the performance of its obligations under this Agreement.
- 17.4 If the Department reasonably considers that any provision of this Agreement is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under this Agreement or otherwise:
- 17.4.1 require the Contractor to produce a plan of remedial action in order to remedy, remove or mitigate such risk, which shall be subject to the approval of the Department (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and
  - 17.4.2 monitor the Contractor's provision of the Services until the Department reasonably considers that any such risk has been substantially remedied, removed or mitigated. The Contractor shall cooperate at all times with the Department in this regard.
- 17.5 If the Contractor fails to comply with any provision of this Agreement or fails to supply any of the Services in accordance with the provisions of this Agreement and such failure is capable of remedy, then the Department may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within twenty-one (21) days or such other reasonable period of time as the Department may direct.
- 17.6 The Department may review from time to time the progress of the Contractor against the Implementation Plan. The Contractor shall cooperate with the Department in this regard and provide any information and evidence reasonably required by the Department.
- 17.7 The Department may instruct the Contractor to take remedial action where the Implementation Plan is not being complied with or is at risk of not being complied with. The Contractor shall in such circumstances take all relevant remedial action to

remedy the relevant issues.

**18. Exit Management**

The Parties shall comply with the provisions of Schedule 7 (Exit)

**19. TUPE**

19.1 No later than six (6) months prior to the end of the Term the Contractor shall fully and accurately disclose to the Department, within thirty (30) days of the request, all information that the Department may reasonably request in relation to any Transferring Employees, including the following:

19.1.1 the total number of Transferring Employees;

19.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Transferring Employees;

19.1.3 the terms and conditions of employment/engagement of the Transferring Employees, including their job titles and qualifications;

19.1.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

19.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union,

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

19.2 At intervals determined by the Department (which shall not be more frequent than once every 30 days) the Contractor shall give the Department updated TUPE Information.

19.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy.

19.4 The DFE may use TUPE Information for the purposes of any retendering process provided that, in doing so, it acts all times in accordance with all applicable laws (including any laws relating to data protection).

19.5 If TUPE applies on expiry or termination of this Agreement, the Contractor shall indemnify and keep indemnified, the Department and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:

19.5.1 the provision of any inaccurate or incomplete TUPE Information;



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- 19.5.2 any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Transferring Employee on or before the end of the Term;
  - 19.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Department or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
  - 19.5.4 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 Transferring Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
  - 19.5.5 any claim by any person who is transferred by the Contractor to the Department and/or a Replacement Contractor whose name is not included in the list of Transferring Employees.
- 19.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the Department and provide the Department with up to date TUPE Information.
- 19.7 This clause 19 applies during the Term and indefinitely thereafter.
- 19.8 The Contractor undertakes to the Department that, during the six (6) months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of the Department (such approval not to be unreasonably withheld or delayed):
- 19.8.1 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 Transferring Employee (other than where such amendment or variation has previously been agreed between the Contractor and the Transferring Employee 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);
  - 19.8.2 terminate or give notice to terminate the employment or engagement of any Transferring Employee (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - 19.8.3 transfer away, remove, reduce or vary the involvement of any other Transferring Employee 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

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related to the transfer of the Services); or

19.8.4 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.

19.9 The Department shall, and shall procure that any Replacement Contractor shall, comply with all relevant legal obligations (including those under TUPE) relating to any staff whose employment transfers to the Department or any such Replacement Contractor and the Contractor's liability (if any) under this clause 19 shall be reduced to the extent that it is caused or contributed to as a result of any breach of this clause 19.9.

### **20. Amendment and variation**

20.1 No amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto (which may for the avoidance of doubt be by email as envisaged by the Change Control Procedure). The Contractor shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time.

20.2 Either Party may at any time request in writing a variation to this Agreement in accordance with the change control procedure set out in Schedule 5 (the "**Change Control Procedure**").

### **21. Continuous Improvement**

21.1 The Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 21. As part of this obligation the Contractor shall identify and report to the Department quarterly on the following (acknowledging that there may be overlap between the various categories set out below):

21.1.1 innovations identified in forming this Agreement, including the development and implementation of the Automated Matching Solution, cloud based (Azure) hosting arrangements and improvements to checking exercises;

21.1.2 the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Contractor and the Department which the parties may wish to adopt; and/or

21.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Department which might result in efficiency or productivity gains or in reduction of operational risk; and/or

21.1.4. changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Department.

- 21.2 If the Department wishes to incorporate any improvement identified by the Contractor the Department shall send the Contractor a Change Control Note and the parties shall follow the Change Control Procedure.

**22. Assignment and Sub-contracting**

The benefit and burden of this Agreement 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.

**23. The Contract (Rights of Third Parties) Act 1999**

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

**24. Waiver**

No delay by, or omission by, either Party in exercising any right, power, privilege or remedy under this Agreement 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.

**25. Notices**

- 25.1 Any notices to be given under this Agreement shall be delivered personally or sent by recorded delivery (or equivalent) to the following addresses and marked clearly for the attention of the person referred to below (and any such notice not so clearly marked shall not be deemed to have been validly served):

25.1.1 the Contract Manager (in the case of the Department); and

25.1.2 the Contractor's registered office addressed marked clearly for "The Company Secretary" (in the case of the Contractor).

- 25.2 Any such notice shall be deemed to be served, if delivered personally, on the first Business Day following delivery, or if sent by recorded delivery (or equivalent), two (2) Business Days after posting.

**26. Dispute Resolution**

- 26.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Agreement.
- 26.2 Any dispute not capable of resolution by the parties in accordance with the terms of

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this Clause 26 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

- 26.3 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Agreement 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.

### **27. Recycled Paper**

The Contractor shall ensure that all paper used in the production of reports, documents and other materials arising out of the performance by the Contractor of their duties under this Agreement consists of a minimum of 60% recycled content of which 75% is post-consumer waste.

### **28. Law and Jurisdiction**

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

## **SCHEDULE 1**

### **SERVICES**

#### **Part 1 – Overview**

1. In summary, the Services comprise two key elements:
  - 1.1 The Services required to enable the population by the Department of the “National Pupil Database”. A summary of the NPD and related activities is given in paragraph 2 below.
  - 1.2 The Services required to enable the production by the Department of the “School Performance Tables”. A summary of the School Performance Tables and related activities is given in paragraph 3 below.

The “typical” dates referred to in this summary section are not contractually binding dates but are provided to assist the “lay reader” in understanding the processes and typical timescales for the NPD and School Performance Tables respectively.

#### **2. National Pupil Database - Summary**

- 2.1 The National Pupil Database (“NPD”) is a pupil level database which is held and owned by the Department. A significant element of the Services is to supply the data that populates the NPD. The majority of the activity required for the NPD element of the Services is the matching of the attainment information to pupil level Census. The matching requirements range from the youngest cohorts (e.g. early years, phonics and KS1) to those students in higher education. The data required to deliver this along with the matched outputs are listed in the Deliverables tables in Appendix 9 below.
- 2.2 In addition to the matching referred to above, two datasets require further processing: the PLAMS and the L23@19 outputs. For these datasets, following matching, the data is then processed to produce a number of indicators as defined by the Department. As with the School Performance Tables activities, any changes to the scope of the Services (from the baseline position at the end of the 2016 Cycle) relating to NPD (such as the inclusion of additional fields, or the change of definition of an indicator) will be managed via the Change Control Procedure.

#### **3. School Performance Tables - Summary**

- 3.1 The Department publishes the Performance Tables on an annual Cycle. In order to enable them to do so, the Contractor performs a range of activities, in conjunction with the Department, to produce a set of Data Outputs for the Department to use in its production of the Performance Tables. A typical production Cycle is summarised as follows (with further detail then being set out later in this Schedule).
- 3.2 At the start of the Cycle (typically in early Spring each year), draft Specifications

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are provided to the Contractor. These are refined between the Contractor and the Department before finalisation (with the default being that the Specification is the same as the previous year unless otherwise agreed in accordance with the Change Control Procedure). As part of this refinement a testing process is undertaken to ensure the developed outputs meet the Departments requirements, this is known as the “Dry Run”.

- 3.3 The Contractor then contacts Awarding Organisations to collect enrolment data for each of the different examinations (typically from April onwards each year).
- 3.4 Then, once tests and examinations have been sat, the Contractor collects the relevant data from the Department (Primary) or relevant Awarding Organisations (Secondary and post 16) (typically in July - August each year but with results of vocational exams often being from April each year) and collates it to undertake a “data matching” activity. Census, reference and pupil attainment data provided to the Contractor are matched together to produce a single Data Output for each education phase.
- 3.5 The matched data referred to above is then processed to produce a series of Data Outputs showing a range of socio-economic and performance indicators as defined by the Department’s production rules.
- 3.6 During the production process, certain Unamended Data is made available (via a website provided by the Contractor) to schools. The website allows schools to review such data and request amendments. All amendments are scrutinised and accepted or rejected according to criteria agreed between the Contractor and the Department.
- 3.7 The Unamended Data is also used by the Department to produce provisional statistical releases and performance tables.
- 3.8 Following the above checking, the Contractor processes a new series of outputs which are presented back to the Department, ready for a revised publication on the relevant website operated by the Department in December - January. The publication of the Performance Tables website is outside the scope of the service. This revised version of the data is known as the “Amended Data”.
- 3.9 A period of Errata follows publication of the Amended Data, during which time schools are allowed to request final changes to their data for scrutiny. At the end of this Errata period, the Contractor provides a final output to the Department (the “Final Data”). Assuming there are no issues at this point, the School Performance Tables Cycle is considered complete.

### Part 2 – Detailed Descriptions

The detail of the Services, and the parties’ respective obligations in relation to those Services, is set out within Appendices 1 to 10 of this Schedule 1.

**APPENDIX 1**

**IMPLEMENTATION**

- 1.1 The Contractor shall perform the relevant activities described in the Implementation Plan by the respective dates set out in such plan.
- 1.2 At such time as the Contractor considers that implementation of the Automated Matching Solution is complete, the parties shall observe the provisions of Appendix 2.
- 1.3 The Implementation Plan is as follows:

1.3.1 Phase 1 (this Phase delivers the “Minimum Viable Product” or “MVP”; see also paragraph 1.4 below)

- 1.3.1.1 The respective dates for implementation and testing of the MVP shall be as follows:

Date	Activity
18 Jan 2017	Contractor to write algorithms for the Automated Matching Solution
23 Jan to 27 Jan 2017	Contractor to deploy Automated Matching Solution to Azure
30 Jan 2017	Commence testing of Census data using Automated Matching Solution
13 Feb 2017	Contractor commences testing Automated Matching Solution using one year’s worth of academic and a subset of the vocational data (key stage 4 and key stage 5 performance tables data)
27 Feb 2017 – 24 Mar 2017	Contractor to review results internally and resolve defects
By 27 Mar 2017	Parties to conduct acceptance testing process in Appendix 2 (including provision of Acceptance Test Report as relevant)
By 31 Mar 2017	Target date for completion of acceptance testing of the MVP in accordance with Appendix 2. An Acceptance Testing Report will be sent to the Department at this point for review in accordance with paragraph 3 of Appendix 2.

- 1.3.1.2 The purpose of the MVP is to demonstrate that a viable matching solution has been delivered, this being within the context of the wider solution, which, apart from the Automated Matching Solution and implementation of cloud hosting arrangements, is otherwise unchanged from the solution that provided the Services under this Agreement prior to 2017. The

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acceptance testing of the MVP is to evidence that the MVP can do the following:

- Data sets for matching can be loaded into the system without corruption
- Automated matching is performed in accordance with set algorithms/rules
- Results of matching can be reviewed
- Actions can be assigned where required with the ability to correct any anomalies found
- Matched output data is created
- Metrics for the overall matching process are created
- Matching history can be updated

For the avoidance of doubt matching outputs will be created at this point but the processing required for the extracts and confirmation that output files are compatible with onward processing will not be done until Phase 2. In the event that Phase 2 testing demonstrates that the extracts are not compatible with onward processing then, subject as follows, the Contractor will be responsible for any further development required to resolve the issues or for any contingency solution which has to be employed to deliver the Services.

The acceptance testing of the MVP will be conducted using spring Census, and academic data as well as a subset of the vocational Results Data from AOs, all being based on the 2016 data (i.e. such 2016 matched data prior to the relevant subsequent processing and corrections that took place in the 2016 Cycle). The precise tests to be conducted will include specific scenarios where historic matching has presented particular issues (e.g. twins). The purpose is to ensure that the outputs generated by the MVP are to at least the same standard as those that were actually delivered in 2016 by the previous solution.

### 1.3.2 Phase 2

1.3.2.1 In the event that Phase 1 passes acceptance testing in accordance with Appendix 2, the respective dates for implementation of the remainder of the Automated Matching Solution shall be as follows:

12 May 2017	Complete development of Automated Matching Solution in relation to KS2 data sets
12 May 2017	Parties to conduct acceptance testing process in Appendix 2 (including provision of Acceptance Test Report as relevant) in relation to KS2 data



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	set
26 May 2017	Complete development of the Academic and Vocational Extracts
26 May 2017	Parties to conduct acceptance testing process in Appendix 2 (including provision of Acceptance Test Report as relevant) in relation to the Academic and Vocational Extracts
16 June 2017	Complete development of Automated Matching Solution in relation to KS1 and Phonics data sets
16 June 2017	Parties to conduct acceptance testing process in Appendix 2 (including provision of Acceptance Test Report as relevant) in relation to KS1 and phonics data sets
14 July 2017	Complete development of the Automated Matching Solution in relation to the ILR data set
14 July 2017	Parties to conduct acceptance testing process in Appendix 2 (including provision of Acceptance Test Report as relevant) in relation to the ILR data
18 Aug 2017	Complete development of the Automated Matching Solution in relation to the NCCIS and HESA data sets
18 Aug 2017	Parties to conduct acceptance testing process in Appendix 2 (including provision of Acceptance Test Report as relevant) in relation to NCCIS and HESA data sets

1.3.2.2 The principles outlined in paragraph 1.3.1.2 (in relation to the MVP) shall apply in respect of the testing of each subsequent element of the Automated Matching Solution as per the above table.

**APPENDIX 2****ACCEPTANCE OF AUTOMATED MATCHING SOLUTION**

1. As soon as the Contractor considers that the Automated Matching Solution is ready for deployment and use, the Contractor shall inform the Department accordingly and the parties shall observe the provisions of this Appendix 2.
2. The tests (the “**Acceptance Tests**”) to be conducted by the Contractor shall be as referred to in paragraph 1.3.1.2 of Appendix 1 (in relation to the MVP and the equivalent tests in relation to subsequent phases of development of the Automated Matching Solution shall be as referred to in paragraph 1.3.2 of Appendix 1).
3. After conducting the Acceptance Tests, the Contractor shall produce and submit to the Department a report (the “**Acceptance Test Report**”) to record whether each of the tests has passed or failed (in accordance with paragraph 4 below) and any errors or issues detected during such testing. Any such errors shall be categorised in accordance with the following (together with a reasonable commentary to explain the relevant occurrences / issues in such detail as to enable the Department to understand them):

<b>Category</b>	<b>Priority</b>	<b>Meaning</b>	<b>Examples</b>
1	Critical	A severe error which prevents any testing or usage of the Automated Matching Solution	The test cannot be conducted at all or there is a loss of critical functionality.
2	High	A major error, which would prevent the overall use of the Automated Matching Solution.	The function is seen as operationally critical and, while the operation has run, the errors produced are so major that it is clear that there is an underlying issue with the system, in circumstances where there is no appropriate workaround to mitigate the system errors or by modifying other processes to accommodate the loss of functionality.
3	Medium	A significant error but an appropriate workaround can be provided or a resolution is in progress and deliverable within a reasonable timeframe.	<p>The function under test has successfully passed the majority of its functional requirements. However, significant errors remain that need to be corrected but the Contractor is able to propose an appropriate workaround or a resolution is in progress and deliverable within a reasonable timescale.</p> <p>A workaround may include minor modifications to business processes but will not be acceptable if it results in a material adverse impact on the outputs required of the service.</p>

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	Low 1	Minor error that does not seriously impact functionality and core operations can continue.	The error is considered to have a minor impact on the overall operation of the system and/or a workaround is available that does not adversely affect the day-to-day business of the Department in any material way.
	Low 2	Cosmetic error or documentation problem with little or no impact on testing or usage.	These are errors that whilst recognised are considered to have little impact on the overall operation of the system and as such are considered to be low priority for correction.

4. On completion of the Acceptance Tests, if:

- 4.1 no Category 1 (Critical Errors) or Category 2 (High Errors) have been identified and remain to be corrected; and
- 4.2 the Contractor's proposed plan for the resolution of any Category 3 (Medium Errors) is reasonable in all the circumstances and has been agreed by the Department (such agreement not to be unreasonably withheld or delayed),

the Contractor shall be deemed to have passed the Acceptance Tests.

5. For the avoidance of doubt, passing the Acceptance Tests shall not be construed as a waiver of the rights of the Department under this Agreement in relation to any subsequent issues (if any) that may arise in relation to the Automated Matching Solution or otherwise under this Agreement.

### **APPENDIX 3**

#### **DETAIL RELATING TO DATA COLLECTION ACTIVITIES**

##### **Data Collection**

**Objective:** *The Contractor will collect and quality assure all required Source Data, from a range of sources including:*

- (i) academic and vocational data sent by Awarding Organisations; and*
- (ii) key stage 2 test results/teaching assessments, Census and other Source Data from the Department.*

- a. The Contractor will define and manage a process for the collection of all required Source Data from Awarding Organisations and the Department, or its agents.

The Contractor will ensure the Programme Plan for the Cycle includes dates for all data collections, and communicates these dates to all relevant parties to ensure timely collections. Processes, plans and systems will allow for data updates to be supplied iteratively by Data Suppliers e.g. following review outcomes or the receipt of late results.

- b. The Contractor will put in place all systems and mechanisms required for the secure collection and transfer of all source and derived data, including the mechanism for secure file transfer between them and external partners (see B.1). The Contractor will ensure all systems and mechanisms are efficient, secure and minimise risks of data inaccuracies. The Contractor shall ensure that all appropriate elements of the security requirements at Appendix 5 will apply to data collection.
- c. The Source Data sets to be collected are in the same format as in previous cycles. Any changes required to the format of the Source Data will be managed by the change control process.
- d. The Contractor will support the development of the existing specification for each Awarding Organisation Data collection to support the collection of all of the Data required to deliver the Services. The revised specification will be reviewed by the Department to ensure that it is sufficiently detailed to ensure collection of all data required to support the required outputs. During this review, data fields may be added or removed to support the requirements of the Department or Awarding Organisations.

The Contractor must communicate the specification for each data collection with each Awarding Organisation, and the Department, in sufficient time for them to ensure they themselves collect all necessary data and have systems and process in place to supply all relevant data fields in the required format to the Contractor.

The specification will outline in detail:

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- The required variables/data fields (to be set out in detail in the inputs/outputs document);
- Submission dates;
- File format requirements;
- Methodology for calculating each variable;
- Version control; and
- Instructions for uploading the data.

The Contractor will also communicate the process for the collection of data to all Data Suppliers before the start of each Cycle, resolving any queries they may have and ensuring the necessity for the timely supply of all data is clearly communicated and understood.

- e. The Contractor will manage the process of collecting all Source Data in accordance with the agreed process and plan. The Contractor will proactively contact and manage the Data Suppliers (primarily Awarding Organisations) to ensure maximum coverage of Results Data in each supplied Data feed.

The Contractor must make the Department aware of any delays or other issues in receiving data from Data Suppliers that may have a measurable impact on the Contractor's ability to perform. The Department will engage directly with Data Suppliers to help resolve any issues raised, once the Contractor has undertaken all reasonable efforts to resolve the situation with the Data supplier. The Department will expect the Contractor to take all reasonable actions available to ensure that delays have a minimal impact on delivery.

- f. The Contractor will be responsible for undertaking quality checks including validation of all data files, checking data is in the correct format and providing support to Awarding Organisations, and other Data Suppliers, on requirements, queries and testing submissions. The format and frequency of quality checks shall be as per Appendix 4 (or as otherwise agreed).
- g. The Contractor will provide Management Information, in the format and frequency set out in Schedule 3 (and as otherwise agreed), confirming progress towards collection of all required Source Data, a summary of the quality checks undertaken and any remaining known issues.

### **Data Matching**

**Objective:** *The Contractor will match all Source Data e.g. by pupil record, in order to form an accurate pupil level database for data checking and data production.*

- h. The Contractor and the Department will review the matching process ahead of each Cycle with the aim of improving the accuracy of the Data Outputs. This will include matching for any automated and manual matching.

The Contractor will ensure the Programme Plan for the Cycle includes dates

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for all Data Matching, and ensures dependencies on Data Collection are well managed.

- i. The Contractor will put in place all systems and mechanisms required for the matching of Data, including the development and implementation of an Automated Matching Solution proposed by the Contractor. The Contractor will ensure all systems and mechanisms are efficient, secure and have been tested in accordance with Appendix 2. The Contractor will ensure that both the system and its Data Outputs are fully tested prior to operational implementation, to reduce the risk and impact of matching errors arising in the live data production. The Contractor will put in place a code freeze during operational periods although, in the event of any system critical updates being made to systems for Matching during the Cycle, a regression test, the format, details, and timing of which, will be agreed in advance with the Department, will be completed to ensure Data Outputs are not adversely affected.
- j. The Contractor will quality assure all Source Data before the outset of the matching process (regardless of source), then process and match the datasets, using the specification as agreed with the Department e.g. matching Census and Results Data to ensure records relate to the correct pupil/student.
- k. The Contractor will be responsible for quality assurance of the database outputted from the matching process including validating the varied data sets for acceptable field values and consistency against the Source Data.
- l. The Contractor will provide Management Information, in the format and frequency set out in Schedule 3 (and as otherwise agreed) according to the specification agreed with the Department, confirming the level of matching completed and outstanding and progress towards matching of all required Source Data, and the quality of the files received. The MI report will confirm the volume of remaining exceptions e.g. the number of remaining unmatched records, and incomplete fields.

### Data Processing

**Objective:** *The Contractor will produce a set of 'Unamended' Data files, and then taking account of the outcome of the checking exercise and any later data collections, will prepare a series of 'Amended' Data files all to be delivered to specified agreed timescales and quality criteria. Reference data will be provided to the Contractor by the Department to support delivery of the production services e.g. QRD, SCDB.*

- m. The Department will provide data specifications for each Performance Data output file for each Cycle. The Contractor will review and provide comment on the specifications before finalisation to ensure clarity in the requirements by both parties.
- n. The Contractor will ensure the Programme Plan for the Cycle includes dates for the agreement of the specifications and production rules, the testing of the outputs, and then the dates for the production of each of the final data files.

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Once agreed in the Programme Plan, dates will not be changed without the consent of the Department and any changes to the Delivery Plan will be agreed by exception. For the avoidance of doubt, the Department will ensure that it meets its delivery obligations including as specified in this Agreement and/or any plan agreed or determined in accordance with its terms. Should these dates change the Department will review and agree with the Contractor revised dates. The Department will also ensure that the data and any supporting documentation such as the detailing of specifications shall be of the standard required to ensure the Contractor can deliver.

- o. The Contractor will be responsible for managing the archive of the Qualifications Reference Data (QRD). Each time the archived data is matched with a new extract supplied by the Department, the Contractor will supply back to the Department a full version of the database following validation.

The Contractor will also utilise the matched QRD database in creating Performance Data Outputs in accordance with the agreed data specifications; applying calculations, discount codes/performance points and inclusion criteria to create indicators at exam and pupil level, aggregated up to Institution, local authority and national level.

The Contractor will deliver to the department an annual UK-wide all-age database of vocational qualification achievements (the 'Vocational Qualifications Database') covering candidate-level information on awards, matched to other specified information about the features of the qualifications, e.g. level, subject, characteristics of candidates, and the location of the assessment centre. This is to be produced by matching, as specified (a) data collected from Awarding Organisations on achievements in vocational qualifications and (b) information on qualifications, sourced from the Department's Qualifications Reference Database.

- p. The Contractor will be responsible for delivering a testing phase for Performance Tables data (UAT or 'dry-run' activity), using dummy data supplied by the Department (typically previous year's data) for each key stage, to provide assurance that data production processes / systems have been set up such that the outputs confirm to the agreed specifications, especially when developments have taken place. For the NPD, a similar set of activities is performed but only for the KS2, KS4, 16-18 and level 2 / 3 at 19 data sets.

The Department will be involved in the quality assurance of those Data Outputs – in addition to that of the Contractor - but the Contractor will take responsibility for the quality of the files produced and their concurrence with the specifications. The Department will respond to any requests from the Contractor by the dates set out in the Programme Plan.

After testing the Contractor will provide the Department with a report setting out all issues raised, why they occurred, what the impact was, and what is being done to rectify them, including how the Contractor will learn from the testing phase to help improve systems and maintain a quality service

- q. The Contractor will produce a set of data files according to deliverables and specifications for each key stage to include, but not limited to:
- Pupil Allocations (16-18 cohort only)
  - Pupil Indicators
  - Pupil Prior
  - Exam
  - Publication
  - Raw files
  - LA csv

#### **Data Provision**

**Objective:** *The Contractor will produce data to enable reporting of achievement by the Departments' performance tables, broken down by relevant educational stages i.e. key stage 2, key stage 4 and 16-18 (key stage 5). In addition, the Contractor will match and process differing datasets as specified by the Department to produce the National Pupil Database (with any changes from the specifications relating to the previous year being agreed under the Change Control Procedure).*

- r. The Contractor will provide the Department with Unamended Data output files, which have been fully quality assured, to ensure they conform with agreed specifications, before they are passed to the Department. Specifications having been agreed between the Contractor and the Department in accordance with the dates in the agreed Delivery Plan.

The Department will then undertake its own quality assurance and testing of data and will respond within specified timescales, agreed within the Programme Plan.

The Contractor will then correct the data, taking into account the Department's feedback, by the required date.

The Unamended files and schedule for their receipt, quality assurance, feedback and finalisation will be agreed at the outset of the Cycle between the Department and the Contractor in the Programme Plan.

- s. Following the checking exercise, the Contractor will produce and provide fully quality assured Amended Data output files to the Department for the Departments own quality assurance (in accordance with the agreed Programme Plan); these files will accommodate all data updates from the checking exercise and Awarding Organisations Data provision (following reviews and including late results).

The Contractor will then correct the data, taking into account the Department's feedback, by the required date.

The number and timing of the Amended Data files will be agreed between the Department and Contractor at the outset of the Cycle, any changes being



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agreed through the Change Management Process.

- t. Following the final Checking exercise (Errata), the Contractor will update the Performance Data output files and provide final fully quality assured outputs to the Department, for each key stage for final sign off.
- u. In addition to the Data files for the Performance Tables, the Contractor will match and process differing datasets as specified by the Department to produce the National Pupil Database (NPD) (with any changes from the specifications relating to the previous year being agreed under the Change Control Procedure).

Modifications to the specifications may include, but not be limited to, expansion of the existing Performance Data files to include further pupil group breakdowns (to populate RAISEonline replacement), the production of destinations and Level 3 value added Data Outputs.

### **Data Checking**

**Objective:** *The Contractor will develop a website, secured via the DSAM process, which gives all users, including but not limited to Institutions and local authorities, the ability to view, check and propose amendments to their own and their pupils' data.*

- v. The Contractor will work with the Department to define a process and plan for data checking. the process/ plan shall take account of the any initiatives outlined in the Contractor's Solution to maximise the accuracy of data available at each stage of the performance tables process, whilst seeking to find efficiencies in the end-to-end process in order to minimise the time in the Cycle where checking is required. This will be with the aim of reducing the workload burden on Institutions and facilitating earlier production of the Performance Tables Data Outputs.

The Contractor will provide a secure website that allows Institutions, Local Authorities, and other authorised users with the ability to view, check and propose amendments, additions or removals to their own and their pupils' data during specified windows as agreed in the relevant Programme Plan.

- w. The Contractor will provide communications to all Users of the checking website informing them of all checking processes (including Errata), and providing them with information on how to access the website securely, and providing guidance on what type amendments will be accepted at each stage in the process. All such communications having been cleared by the Department.

The Contractor will publish, in an accessible place; guidance to Institutions (provided by the Department) and provide a mechanism for the department to provide secure evidence to support requests for amendments made in the checking exercise.

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The Contractor will also upload guidance documents, provided by the Department, onto the checking website.

- x. The Contractor will provide a Helpdesk service to support Institutions in the checking exercise process e.g. including dealing with access/log ins queries for users, providing general advice on the data and performance measures – the coverage, how they are calculated, and providing guidance on the evidence required to support requested amendments to data. The Contractor may escalate any unresolved Helpdesk queries after taking every reasonable endeavour to resolve.

The Helpdesk provision will be delivered using the resource profile, and is based upon the assumed volumes referred to in, Appendix 11.

- y. The Contractor will be responsible for dealing with and agreeing amendments to pupil and exam data from Institutions, according to the procedures set out in the Discrepancy Specification, agreed with the Department.
- z. When cases do not fall within the agreed Discrepancy Specification, they should be escalated to the Department for advice, in accordance with the timelines agreed by the Department.

The Contractor will review the Discrepancy Specification after each exercise, to see if they can be reviewed to reduce the need for escalated cases.

- aa. The Contractor will provide a secure escalation process for scrutiny cases for consideration by the Department, according to the details and timescales set out in the Discrepancy Specification. A record of scrutiny cases escalated, and the Department's response, should be kept by the Contractor; for Management Information purposes.
- bb. The Contractor will ensure all amendments agreed as a result of the Checking Exercise, are applied in a timely manner to the Performance Tables Data, and that quality assurance checks are applied to ensure these changes are made accurately.

The Contractor will provide Management Information to evidence this, in a format and frequency agreed with the Department, details of which are set out elsewhere in this Agreement. The Department reserves the right to request additional information on individual amendments.

- cc. Following the sign off of the Amended Data files, on a publication date agreed with the Department, the Contractor will share published measures (based on the final Amended Data files) via a secure website, to allow Institutions to view and request final changes to the data for a defined period, following publication (known as Errata).

The Contractor will be responsible for scrutinising and agreeing the requests based on the criteria set by the Department, to an agreed deadline confirmed in the plan for the Cycle. The Contractor will provide a secure

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escalation process for scrutiny cases for consideration by the Department. The Department will respond to the Contractor within an agreed timescale.

The Department will be responsible for communications on Errata with Institutions, both to gather information and to advise them of the outcome of their request. The Contractor will comply with any reasonable requests for information from the Department to support the resolution of cases.

- dd. Throughout the Agreement, the Contractor must provide relevant and accurate information relating to the Services to enable effective communication to Institutions and Local Authorities.
- ee. The Department shall (save as set out below) be responsible for setting all communications plans in connection with the service and the Contractor will provide mechanisms for, and assist with the dissemination of such communications (e.g. for bulk emails) under the direction of the Department. The Contractor may also provide draft plans for consideration by the Department, if requested.
- ff. As part of Set-Up, the Contractor must provide a distinct communications plan for Awarding Organisations (AOs) to be agreed with the Department.
- gg. This communications plan must include a high level programme of planned communications with AOs. Once any communications plan has been agreed, the Contractor shall not require further consent from the Department for individual communications that are conducted within the parameters set out or referred to in that plan. Similarly, the operation of the Helpdesk shall not require the Department's prior consent unless that Helpdesk was conducting a pro-active campaign of outbound calls for a specific purpose.
- hh. This must include, but not be limited to each of the following during the Cycle:
  - Key messages;
  - Timing and format of communication; and
  - Channels to be used.
- ii. All proposed planned bulk communications must be agreed in advance with the Department (including provision of proofs/drafts and any associated data to the Department, ahead of publication dates). Sufficient time must be included in all communications plans, for the approval of communications by the Department.
- jj. The Contractor must provide a Helpdesk service that provides support for Institutions and Local Authorities as described elsewhere. Calls received relating to areas of work outside of the Service delivered by the Contractor will be given information to allow them to contact other Helpdesks, or the Department, as appropriate. The Department will provide the Contractor with details on where to route queries that do not fall within the remit of the Contractor.

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- kk. The Contractor must provide expertise to resolve any escalated query that cannot be answered by the Helpdesk function and must provide and manage a process for call logging, handling and resolution, so a full audit trail is captured. This audit trail must be made available to the Department when requested.

**APPENDIX 4****QUALITY ASSURANCE & MANAGEMENT INFORMATION**

1. The processes that the Contractor shall observe to ensure that the key Deliverables are correct shall include:
  - 1.1 Provision of MI stats relating to data collection, data matching, data checking and production of the Performance Tables Deliverables, in addition to those required for the KPIs set out in Schedule 3, will be supplied in the format agreed in the Management Information plan for each Cycle, and as otherwise agreed.
  - 1.2 Provision of MI stats relating to Data Matching reports will be supplied in tandem for all of the matched outputs required for the NPD
  - 1.3 All key Data Output Deliverables provided by the Contractor the department shall be delivered with a “Quality Assurance Report” confirming that the Deliverables are as expected or, if there are any issues, a summary of such issues and the attempts made to resolve them by the Contractor. That Report shall also include the following information, as appropriate in the context (in each case based on the quality of the data received by the Contractor and being to the reasonable knowledge and belief of the Contractor):

Validity	The Data Output matches the details in the specification, for example where appropriate in relation to the following: <ul style="list-style-type: none"> <li>- Calculation</li> <li>- SQL type</li> <li>- Data type</li> <li>- Length</li> <li>- Format including file structure</li> <li>- Allowed values (e.g. NULLs)</li> <li>- Does not contain duplicates</li> </ul>
Completeness	The Data Output contains the right number of rows/columns with no missing data items
Accuracy	The Data Output is in line with the specification and contains no major anomalies that undermine the appropriateness of the output for its intended use – any known minor anomalies will be described with additional narrative supplied to an appropriate level of detail.
Highlighting issues	Any concerns or anomalies in the data which are not in-line with the specification, but are not major anomalies should be highlighted as ‘known issues’ with additional narrative supplied to an appropriate level of detail
Changes applied	Where the output is subject to changes as agreed via the change control process the change controls applied to the output should be listed
Corrective Action	Any corrective action that may be required as a result of any issues with the above

**APPENDIX 5**

**SECURITY AND BUSINESS CONTINUITY & DISASTER RECOVERY**

**Security**

1. The Contractor will ensure the secure transfer system is user friendly and efficient; providing a service that allows the timely upload and download of files, so not as to add delay to delivery of the Service. The Contractor will provide guidance to new users on the use of the system, including responsibility for the issue and management of secure log on and management of access permissions.
2. The Contractor shall ensure that all appropriate elements of the Security requirements<sup>1</sup> will apply to transfer and hosting.
3. Some data will be classified as Official-Sensitive. The data must be held and transferred securely using a combination of software and hardware controls, which meet the ISO270011 standards and the government Security Policy Framework<sup>2</sup>.
4. Not Used.
5. The Contractor will ensure that their systems follow the principles of master data management.
6. The Contractor shall ensure that any data that is presented for transfer, between the Contractor and the Department, is in a format agreed by the Department and must ensure that all data feeds are technically compliant with the Common Basic Data Set<sup>3</sup> (CBDS).
7. By following the Technology Code of Practice, Service Standards & Service Design Manual, the Contractor will ensure any ICT solution developed and used to deliver the end to end service will meet user needs – including providing evidence of working towards meeting web accessibility standards and has been tested to work on browsers outlined in the Digital Service Standard<sup>4</sup>. This assurance must be reviewed annually.
8. The Contractor must ensure that its solution supports web accessibility and that they have achieved a minimum of AA, and are working towards compliance with AAA, of the W3C Web Content Accessibility Standards<sup>5</sup>, and/or the Technology Code of Practice – whichever has the highest standard. The Contractor must seek independent accreditation of those parts of its solution that relate to external websites and provide evidence in terms of a certificate or statement of compliance to the Department.
9. The checking exercise website design shall take account of the Departmental style and brand guidelines and information architecture, in addition to the overarching GDS/CO

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<sup>1</sup> <http://www.iso.org/iso/home/standards/management-standards/iso27001.htm>

<sup>2</sup> <https://www.gov.uk/government/publications/security-policy-framework>

<sup>3</sup> <https://www.gov.uk/government/publications/common-basic-data-set-cbds-database>

<sup>4</sup> <https://www.gov.uk/service-manual/technology/designing-for-different-browsers-and-devices#browsers-to-test-in>

<sup>5</sup> <https://www.w3.org/WAI/intro/wcag.php>

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Technology Code of Practice, Service Standards and Service Design Manual. The Contractor will make reasonable efforts to align with these guidelines with its primary focus being on ensuring the checking exercise website is clear and accessible to users. The Contractor must ensure that the website design is agreed with the Department prior to implementation.

10. The Contractor must ensure that the solution utilised in the delivery of the Service is scalable and adaptable to increases and decreases in the number of concurrent users and usage. Capacity Requirements should be estimated based on 2016 actual volumetric information, allowing for some upwards variance (within reasonable limits), this will give an indication of the maximum potential number of concurrent users and will be subject to review with the Department for each year.
11. The Contractor's solution must be capable of supporting at least this number of users. The Contractor will provide evidence of the scalability of the solution by the provision of load testing data and will agree the scope of the load tests for any element of the Solution, in advance of testing.
12. Software developed by the Contractor in provision of the Services (but other than Software used by the Contractor for internal purposes) must comply with the requirements of the Government Digital Service's guidance on working with open standards<sup>6</sup> and must be portable at the Effective Date of the expiry or termination of the Agreement.
13. The Contractor must ensure that any development to the solution is carried out in accordance with agreed change management procedures as set out in the Change Management Plan, and is documented to industry accepted standards, as agreed with the Department.
14. Any electronic transfer of data between the Contractor and the Department, across public space or cyberspace, including third party provider networks, must be protected via good commercial encryption free of known vulnerabilities.
15. The encryption used must be certified to a minimum of FIPS 140-2 standard, or a similar technique approved by the Department, prior to being used for the transfer of any Department Data.
16. The Contractor must ensure that the solution (insofar as it relates to the checking website) enables all electronic transactions to be audited including information such as but not limited to:
  - User ID
  - Time
  - Date
  - IP Address
  - Details of Transaction

The Contractor must make such audit data available on request to the Department in a

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<sup>6</sup> <https://www.gov.uk/service-manual/technology/working-with-open-standards>

human-readable format.

17. The Contractor must enforce user access control by user, group and/or role, including the ability to add and/or remove users. The initial group of users will be agreed with the Department along with a process for adding or removing users and user access levels.
18. The Contractor must ensure the solution can control access to the system for a list of users
19. Government policy on education and the availability of data will continue to evolve; the technology used to process, store and access information will continue to develop.
20. It is essential that the solution can accommodate changes to user profiles (i.e. are scalable) and can be changed swiftly, securely, efficiently and cost effectively when required to cope with changed requirements (i.e. are flexible).
21. The Contractor must provide details of the flexibility and scalability of their proposed solution. The evidence must include, but not be limited to, an explanation of how the solution would be adapted in response to changes such as:
  - Additional data feeds
  - Additional data items and entities and;
  - Changes in data formats and models.

### **Business Continuity and Disaster Recovery**

22. The Contractor must ensure that all activities comply with arrangements as set out in the Security Document Set following the Department Security Assurance Model (DSAM) as set out in section A.1.5.
23. The Contractor must conform to all relevant sections of the Data Protection Act 1998<sup>7</sup> and, once in force, the General Data Protection Regulation (GDPR)<sup>8</sup> which will supersede it, and it is also essential that DPA compliance (GDPR from 2018) is cascaded to Sub-contractors if they might have access to Personal Data.
24. The Contractor must nominate a Security Manager who must have ultimate responsibility for all aspects of information governance and security management relating to the Contractor and any Sub-contractors' delivery of the Service, including:
  - The specification and implementation of appropriate security policies and standards, specific to the Service being delivered, that comply with the latest version of the Cabinet Office Security Policy Framework<sup>9</sup> (SPF) and supporting National Cyber Security Centre guidance<sup>10</sup>, and the principles of ISO/IEC 27001;
  - Ensuring consideration is given to the Cloud Security Principles<sup>11</sup> against which

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<sup>7</sup> <http://www.legislation.gov.uk/ukpga/1998/29/contents>

<sup>8</sup> <https://ico.org.uk/for-organisations/data-protection-reform/overview-of-the-gdpr/>

<sup>9</sup> <https://www.gov.uk/government/collections/government-security>

<sup>10</sup> <https://www.ncsc.gov.uk/guidance>

<sup>11</sup> <https://www.ncsc.gov.uk/guidance/cloud-security-collection>



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- the DSAM is assessed;
- Monitoring compliance with the security policies defined above in the delivery of the service;
  - Notifying the Department of any security breaches;
  - Providing the Department with regular Management Information reports, in relation (but not limited) to details of security related incident reports;
  - Reviewing and updating the risk log with security related risks;
  - Monitoring the security performance of any appointed Subcontractor(s) and ensuring their service delivery complies with the outcomes specified in the latest version of the Cabinet Office SPF;
  - Ensuring consideration is given to the relevant CESG Good Practice Guides<sup>12</sup> (GPG) where relevant to the delivery of the Service; and
  - Undertaking investigations relating to security incidents in accordance with Industry Practice as described in ITIL v3 and / or in accordance with ISO 22301<sup>13</sup>.
25. The Contractor must work with the Department to identify any materials or Department Data that are classified as OFFICIAL or OFFICIAL-SENSITIVE<sup>14</sup>, or are classed as Pupil Level Data, which the Contractor and any Subcontractors may have access e.g. Child Records and the content of secure Test Papers. The Contractor must maintain a log of all such materials, which is available to the Department, on request.
26. Access by Contractor staff to Department Data shall be confined to those individuals who have a “need-to-know” and the appropriate level of security clearance, as required by the Department for those individuals whose access is essential for the purpose of their duties. All employees with direct or indirect access to Department Data must be subject to pre-employment checks equivalent to or higher than the Baseline Personnel Security Standard (BPSS)<sup>15</sup> and the Department will work with the Contractor to support the BPSS process.
27. Sub-contractors who might access Department Data, apart from those who will only be able to access Anonymised Data, will also need to be cleared to at least BPSS level.
28. The Contractor must make all personnel aware of the Contractor’s security policies and standards (including ensuring that they understand that the Contractor’s security policies and procedures are derived from the latest version of the Cabinet Office Security Policy Framework) during their induction, or at the commencement of their employment by the Contractor. Contractor personnel must then sign a declaration that they have understood and will comply with the security policies. The Contractor must ensure that these declarations are retained, and can be inspected by the Department on demand.
29. The Contractor must undertake a business-driven risk assessment process, in line with the government Supplier Assurance Framework<sup>16</sup> to determine the likelihood and impact of potential vulnerabilities, threats and adverse events. The Contractor must

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<sup>12</sup> <https://www.ncsc.gov.uk/guidance>

<sup>13</sup> [http://www.iso.org/iso/catalogue\\_detail?csnumber=50038](http://www.iso.org/iso/catalogue_detail?csnumber=50038)

<sup>14</sup> <https://www.gov.uk/government/publications/government-security-classifications>

<sup>15</sup> <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>

<sup>16</sup> <https://www.gov.uk/government/publications/government-supplier-assurance-framework>

actively manage all identified security risks and regularly review and update the associated risk log. The Contractor must complete the relevant documentation for the Departmental Security Unit (DSU) to review. The Department will ensure that the relevant sections of the DSAM (see Section A.1.5) are completed.

30. The Contractor shall work towards achieving, and then maintaining, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). Once completed, the ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls). The Contractor will be required to provide evidence of 'Cyber Essentials' or 'Cyber Essentials Plus' certification.
31. The Contractor, following the government's offshoring policy<sup>17</sup>, must ensure that no materials or data related to the Services shall be stored or processed outside of the United Kingdom at any time, unless the Office of the Government's Senior Information Risk Owner has given its explicit consent to such storage or processing. Where such an event occurs the Contractor must provide the Department with full details of any actual storage outside of the UK or any future intention to host Department Data outside the UK or to perform any form of ICT management or support function from outside the UK. The Contractor will not go ahead with any such proposal without the prior written agreement from the Department.
32. The Contractor must ensure that all desktop computers used by Contractor Personnel delivering the Service are password-protected and that the use of removable media devices is controlled or disabled, in compliance with Contractor's security policy and the latest version of the Cabinet Office Security Policy Framework.
33. Storage of 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 the following conditions:
  - 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 Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department; and
  - All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Department Data to deliver and support the service, shall be under the control and configuration management of the contractor or Sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the

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<sup>17</sup> <https://ogsirooffshoring.zendesk.com/hc/en-us/articles/203107991-HMG-s-Offshoring-Policy>

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Department.

34. The Contractor must ensure that all data relating to the Service held on the Contractor's network is secured. Data files and secure materials relating to the Service must be stored on network drives, not on local storage, and network drives must be located in a secure server room, with only approved systems administrators having access to the server room.
35. The Contractor will co-operate with the Department at all times to allow access to Contractor systems to allow assurance to take place that all plans, policies and procedures are being complied with by the Contractor.
36. The Contractor must ensure that all Department Data relating to the Service is backed up in a manner and against a schedule to be agreed with the Department during Set-Up and defined in Business Rules.
37. The Contractor must ensure that backups are kept that provide the ability to reinstate the data (within the time periods specified elsewhere in this Agreement) in the event of a variety of data loss scenarios.
38. The Contractor must ensure that an appropriate media rotation procedure is followed, in line with ISO/IEC 27001 and Government security policies.

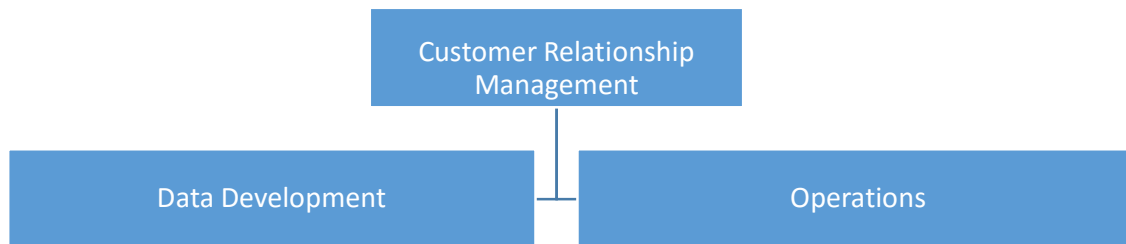
**APPENDIX 6**

**KEY ROLES AND KEY PERSONNEL**

**1. Roles and Responsibilities**

There are three core Contractor teams who will work with the Department during the term of this Agreement:

1. Customer Relationship Management (CRM)
2. Data Development
3. Operations



**Customer Relationship Management**

The CRM Team are responsible for both the commercial and contractual relationship between the Contractor and the Department as well as the delivery of the service in accordance with this Agreement.

## **Data Development**

The Data Development team is responsible for the design, development and testing of any software. The team works closely with the Data Analyst team in Operations.

## **Operations**

The Operations Team collect, match and process the data used for the Performance Tables and National Pupils Database and manage work streams to ensure all deliverables are to time, quality and cost. This team also provides the helpdesk and deploys, maintains and monitors websites in accordance with this Agreement. The Operations team are also responsible for the installation, administration and maintenance of the SQL server.

## **Key Personnel**

The following are designated Key Personnel for the purposes of this Agreement:

- Senior Customer Relationship Manager (SCRM)
  - Working with teams within the Contractor organisation, the SCRM will focus on planning and ensuring the delivery of this Agreement and will be the primary point of contact for the Department.
  - The SCRM will be able to demonstrate the capability to manage effectively within a highly complex, operational environment, demonstrating good judgement, delegation and planning skills whilst also being customer focussed.
  - The SCRM will manage the Change Control Procedure within the Contractor.
- Data Analyst (DA) Lead
  - The DA Lead will manage a team to ensure the best use of resource across this Agreement and will own operational execution and overall quality. They will work with Project and Development teams to ensure the successful delivery of the Contractor's obligations under this Agreement.
  - A DA Lead will be appointed to manage each work stream (it being acknowledged that a single DA Lead may be appointed across multiple work streams):
    - Key Stages – KS2, KS4, 16-18
    - DCAM – Data collection and activity
    - QRD
  - Each DA Lead will have basic data domain knowledge in education e.g. different types of establishments, subjects, types of qualification, i.e. data dimensions (age, gender, level of qualifications) and an understanding of the meaning of basic descriptive statistics including; average, mean, median, percentiles. Each DA Lead will also have effective interpersonal and communication skills.

## **APPENDIX 7**

### **STANDARDS**

#### **Standards**

##### **1. GENERAL**

- 1.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Contractor's provision, or the Department's receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 1.2 Where a new or emergent standard is to be developed or introduced by the Department, the Contractor shall be responsible for ensuring that the potential impact on the Contractor's provision, or the Department's receipt, of the Services is explained to the Department (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 1.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Contractor. Any such alteration to any Standard(s) shall require the prior written agreement of the Department and shall be implemented within an agreed timescale.

##### **2. TECHNOLOGY AND DIGITAL SERVICES PRACTICE**

The Contractor shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government's Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-ofpractice.html>.

##### **3. TECHNOLOGY ARCHITECTURE STANDARDS**

In complying with its obligations under Clause 9.2.1 of this Agreement, the Contractor shall produce the relevant documentation in accordance with Good Industry Practice. If documentation exists that complies with TOGAF 9.1 or its equivalent, then this shall be deemed acceptable.

##### **4. ACCESSIBLE DIGITAL STANDARDS**

The Contractor shall comply with or be working towards (or with equivalents to) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA.

##### **5. SERVICE MANAGEMENT SOFTWARE & STANDARDS**

- 5.1 The Contractor shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

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- (a) ITIL v3 2011;
- (b) ISO/IEC 20000-1 2011 "ITSM Specification for Service Management";
- (c) ISO/IEC 20000-2 2012 "ITSM Code of Practice for Service Management";
- (d) ISO 10007 "Quality management systems – Guidelines for configuration management"; and
- (e) ISO 22301:2012 Societal security — Business continuity management systems — Requirements; ISO 22313 Societal security — Business continuity management systems — Guidance; ISO/IEC 27031:2011 Information security – Security techniques – Guidelines for information and communication technology readiness for business continuity, in the provision of Business Continuity and Disaster Recovery Plans.

5.2 For the purposes of management of the Services and delivery performance the Contractor shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

## **6. ENVIRONMENTAL STANDARDS**

The Contractor shall follow a sound environmental management policy, comply with all applicable environmental laws and ensure that its Annual Report includes such environmental reporting as it is required to report.

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**APPENDIX 8**

**NOT USED**



**APPENDIX 9****DELIVERABLES****Tables**

1. The service delivery components are separated into a number of work-streams, which are detailed in the tables below. Each chart illustrates the key Deliverable and dates. They also highlight where the Deliverable is received 'from' and where it goes 'to'. It is assumed that the Deliverables (Data and/or websites), will remain substantially the same as baselined at the end of 2016 unless specifically stated otherwise. Any changes to the core contract deliverables will be managed through change control.
2. The dates in the following tables are indicative (month only). The precise days for each task will be agreed in Programme Plans and Delivery Plans for each Cycle. In the absence of agreement, the default shall be that the relevant activities are to be performed by the equivalent date in the 2016 cycle.

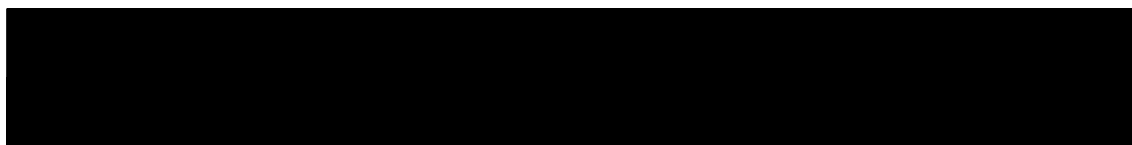
<b>KS2 - Task Name</b>	<b>Date</b>	<b>From</b>	<b>To</b>
KS2 Checking Guide V0.1: EDD-Policy circulate	April	DfE	DfE
Data feed 1 (DF1) : EDD send to RM	May	DfE	RM
Data feed 2 (DF2) : EDD to RM	June	DfE	RM
DfE supply school/LA letter	June	DfE	RM
Data feed 3 (DF3) : EDD to RM	June	DfE	RM
Feed 4 (DF4) : DfE to RM	July	DfE	RM
Data feed 4a (DF4)	July	DfE	RM
Headteacher name file for checking website	August	DfE	RM
DfE Confirm Progress Thresholds to RM	August	DfE	RM
Datafeed 5 (DF5) : EDD to RM	Sept	DfE	RM
Change file 1 DF4/5 to RM	Sept	DfE	RM

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Change file 2 DF5/6 to RM	Sept	DfE	RM
Amended_1 Pupil, Results, Publication and Raw Files to DfE	Oct	DfE	RM
Deadline for final scrutiny decisions and schools submitting evidence	Oct	DfE	
Change file 3 DF6+: DfE to RM	Oct	DfE	RM
EDD-Policy provide RM with Early Access letters (schools and LAs)	Nov	DfE	RM
DfE supply documents for Checked Data Website	Dec	DfE	RM
DfE provide the overseas listing for LA mailout	Dec	DfE	RM
Checked Data Letter arrives to Schools	Dec		
Datafeed 7 (DF7): EDD receives	Jan	DfE	RM
Change file final to RM	Feb	DfE	RM

QRD - Task Name	Date	From	To
DfE circulate May QRD	May	DfE	RM
DfE circulate July QRD Qualifications approved up to 1st July in the relevant academic year to include discounting data, including Syllabus, Vocational Qualification Database data, & SQA data	Aug	DfE	RM
DfE deliver October QRD to RM	Oct	DfE	RM

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SCDB - Task Name	Date	From	To
DfE send SCDB1 to RM	Mar	DfE	RM
DfE send SCDB2 to RM	May	DfE	RM
SCDB2 sent to RM	May	DfE	RM
DfE send SCDB3 to RM	June	DfE	RM
DfE send SCDB4 to RM	July	DfE	RM
DfE send SCDB5 to RM	Aug	DfE	RM
DfE send SCDB6 to RM	Sept	DfE	RM
DfE send SCDB7 to RM	Oct	DfE	RM
RM respond to DfE	Oct	DfE	RM
DfE send SCDB8 to RM	Nov	DfE	RM
RM respond to DfE	Nov	DfE	RM

KS4/16-18 - Task Name	Date	From	To
Baseline specifications	Feb/Mar	DfE	RM
Completed specifications (excluding pilots)	April	DfE	RM
Spring Delivery of School Census	March	DfE	RM
Spring Delivery of AP Census	April	DfE	RM
Feed from DFE to RM (Lon) of IDACI data for June checking exercise	May	DfE	RM
Signed off Summary data and Level 3 VA Pupil level files for Shadow measures delivered to RM	May	DfE	RM
Provide signed off Final 16-18 Shadow measures mailout list to RM	May	DfE	RM
Provide 16-18 Shadow measures Data Sharing Exercise Email text to RM for Mailout	May	DfE	RM
Sign off Live 16-18 Shadow Measures website	May	DfE	RM
DfE Deliver Dry Run Data	June	DfE	RM

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Discrepancy spec reviewed and signed off (KS2/KS4)	June	DfE	RM
Countries of origin list to RM - Review from Discrepancy spec	June	DfE	RM
Mobility report feedback and update decisions from Policy to RM-LON	June	DfE	RM
SIGN OFF DfE sign off June Website for live	June	DfE	RM
Provide KS4 testbed from previous year's model to RM	June	DfE	RM
DfE to return Test Bed	June	DfE	RM
Signed off Destinations School Summary data and School files delivered to RM	July	DfE	RM
Provided Data Sharing Exercise Email text to RM for Mailout	July	DfE	RM
DfE send to RM KS2 priors files	July	DfE	RM
Summer Delivery of School Census	July	DfE	RM
Provide 16-18 testbed from previous year's model to RM	July	DfE	RM
DfE provide RM (Lon) with FE institution contact details	July	DfE	RM
KS4 DfE feedback to RM (Lon) on revised listings and Dry Run Amended Data	July	DfE	RM

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September Checking Exercise Ends (officially )	Oct	DfE	RM
DfE provide Level 3 VA Summary data, Student files, School/college list for email, email text and Ready Reckoner to RM	Oct	DfE	RM
Final late results from AOs	Oct	AOs	RM
DfE complete cohort scrutiny decisions and provide to RM	Nov	DfE	RM
DfE sign off 2017 AO letter and AO specs	Nov	DfE	DfE
DfE complete KS4 results scrutiny decisions and provide to RM	Nov	DfE	RM
Report (based on 2 <sup>nd</sup> amended) to			
DfE complete 16-18 results scrutiny decisions and provide to RM	Nov	DfE	RM

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KS4 Mobility report - DfE decisions provided to RM	Dec	DfE	RM
files t	Dec - Jan		
Early access letters (school/college + LA) DfE provide letters for mailout to RM (Lon)	Jan	DfE	RM
DfE provide amended Level 3 VA reports to RM, Summary Report data, guidance documents and FAQs	Jan	DfE	RM
DfE provide amended Ready Reckoner to RM and guide to ready reckoner	Jan	DfE	RM
DfE provide updated documents for Checked Data website	Jan	DfE	RM
			Schools
DfE provides 16-18 PLAMS and funding learner data	Jan	DfE	RM

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Final Errata decisions to RM	Mar	DfE	RM
Errata process Ends	Mar	DfE	RM

<b>NPD - Task Name</b>	<b>Date</b>	<b>From</b>	<b>To</b>
<b>Alternative Provision Census</b>			
Provide provisional Alternative Provision Census - NPD to RM	Mar	NPD	RM
Provide Final Alternative Provision Census data - NPD to RM	April	NPD	RM
<b>NCCIS</b>			
NCCIS: NPD Provide full NCCIS data to RM	Dec	NPD	RM
<b>HESA</b>			
HESA data - NPD to RM	Jan	NPD	RM
<b>Phonics V1</b>			
Phonics : NPD to RM	Aug	NPD	RM
<b>EYFSP (Early Years Foundation Stage Profile)</b>			
Provide EYFSP data - NPD to RM	Sept	NPD	RM
<b>CLA</b>			
CLA input file format data (Specs) - NPD to RM	July	NPD	RM
CLA output file format data (Specs) - NPD to RM	July	NPD	RM
2012 to 2017 CLA NPD Input - NPD to RM	Sept	NPD	RM
Provide NSPL table to be used in Dry Run	Sept	NPD	RM
2017			
<b>Children in Need data</b>			
Provide Children in Need data - NPD to RM	Sep	NPD	RM
<b>Phonics V2</b>			
Phonics V2: NPD to RM	Oct	NPD	RM
<b>KS1</b>			



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All KS1 specs updated with NPD changes	July	NPD	RM
Provide KS1 Version 1 - NPD to RM	Aug	NPD	RM
KS1 V2 : NPD to RM	Nov	NPD	RM
<b>L2/3@19 - Dry Run</b>			
Main Institution lookups for 2016 provided to NPD and RM	Mon 03/10/17	DfE	RM
Provide NSPL table to be used in Dry Run	Dec	NPD	RM
<b>L2/3</b>			
L2/3@19 Indicator Specifications baselined for live run	Dec	NPD	RM
L23 output to NPD			
<b>Geodemographic</b>			
Geodemographic data - NPD to RM	Mar	NPD	RM
<b>ILR</b>			
<b>ILR SN10</b>			
ILR SN10 : NPD to RM	June	NPD	RM
ILR SN13: NPD to RM	Oct	NPD	RM
ILR SN04 - NPD to RM	Jan	NPD	RM
<b>ILR SN14</b>	Nov		
ILR SN14 - NPD to RM	Nov	NPD	RM
<b>Census</b>			
<b>Spring Census (Inc. PRU)</b>			
Provide Provisional Spring Census - NPD to RM	Feb	NPD	RM

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Provide Final Spring Census final Data - NPD to RM	Mar	NPD	RM
<b>Early Years Census</b>			
Provide Early Years Census data - NPD to RM	May	NPD	RM
<b>Summer Census</b>			
Provide Summer Census - NPD to RM	July	NPD	RM
<b>Autumn Census</b>			
Provide provisional Autumn Census data NPD to RM	Nov	NPD	RM
Provide Autumn Census - NPD to RM	Nov	NPD	RM
Jan			
<b>KS2</b>			
NPD KS2 specification changes signed off for dry run	May	NPD	RM
Live Unamended deliverables pupil and exam files to NPD	July	RM	NPD
Amended deliverables pupil and exam files to NPD	Nov	RM	NPD
Final deliverables pupil and exam files to NPD	Feb	RM	NPD
<b>KS4/16-18</b>			
All 2016 NPD KS4 Specs baselined	May	NPD	NPD
All 2016 NPD 16-18 Specs baselined	May	NPD	NPD
All 2017 KS4/16-18 specs updated with NPD and EDD-Policy changes for Dry Run	Aug	NPD	NPD

**APPENDIX 10**

**SERVICE MANAGEMENT**

1. The Contractor must produce a draft Programme Plan prior to each Cycle of delivery by the following respective dates: for the 2017 Cycle, by the Effective Date and, for the 2018 Cycle, by 1 February 2018. This plan shall then be discussed, with the aim of it being finalised and agreed between the parties in the period up to 1 April each year.
2. The Contractor must report progress of delivery against the Programme Plan to the Department as part of the agreed reporting requirements.
3. The Department's approach to Service Management is currently aligned with ITIL version 3. The Contractor must ensure that its approach to Service Management is aligned to ITIL version 3.
4. The Contractor must, within thirty (30) Business Days of the Effective Date, document its approach to incident and problem management, which aligns with ITIL version 3. The Contractor will be responsible for the resolution of all incidents and problems with the solution that are raised either directly by Institutions, Local Authorities, Awarding Organisations or by the Department.
5. The Contractor must categorise each incident and problem and provide the Department with the category and proposed time for resolution. The criteria for categorisation of incidents and problems will be agreed between the Contractor and the Department during Set-Up.
6. The Contractor will provide the Department with a monthly record of all incidents raised and problems Identified and whether they have been resolved or not.
7. The Contractor must document its approach to Availability Management which shall, within three (3) months of the Effective Date, align with ITIL version 3.
8. The Contractor will ensure that any external-facing live system is available: (a) during the relevant periods specified within the KPIs, for the minimum times described in those KPIs and (b) during any other period where it is agreed that such site shall be available, for a minimum of 95% of the required times during such periods.
9. The Contractor will agree with the Department the periods when each system is to be available to end users.
10. Any test environment made available for user acceptance testing User access must be available for a minimum of 95% of the time during testing.
11. As part of Set-Up the Contractor must define its approach to capacity management and develop a Capacity Plan to demonstrate how the Contractor will manage identified patterns of Business Activity and the potential for growth of users and data over the Term of the Agreement.
12. The Contractor must define its approach to service reporting which must, within three

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(3) months of the Effective Date, align with ITIL version 3.

13. The Contractor must provide service management reports to the Department in advance and in-line with its existing Service Management requirements, which currently utilise a quarterly service, report cycle so as to align with the timings of quarterly Strategic Board meetings. Additionally, the service reports must be made available to the Department on request.
14. The service reports must include, but not be limited to, a management summary and detailed breakdown including:
  - Availability / non availability;
  - Incidents and problems raised, resolved and outstanding;
  - Impact assessments;
  - Minor enhancements;
  - Risks and issues and mitigations in progress;
  - Performance against service levels;
  - Forward plans;
  - Service metrics; and
  - Service call response times and any target breaches.
15. The Contractor must provide a Helpdesk to support the users of the external-facing systems deployed in the delivery of the Services.
16. The Contractor must offer support for its systems taking ITIL version 3 best practice into account (which includes both telephone and online support at a minimum).
17. The Contractor must define its approach to Change and Release Management which must align with ITIL version 3. The Contractor must ensure that any change to a system has minimal impact on Data Outputs and Service Availability. The Contractor's change and release management process documentation should include (at a minimum):
  - Details of change windows;
  - Details of pre-planned outages; and
  - Release schedules.
18. The Contractor must outline its approach towards risk and issue management in delivering the Services and apply such approach in delivering the Services.
19. The Contractor must operate active management of risks and issues throughout the delivery of the Service. The Contractor must escalate risks and issues to the Department where appropriate.

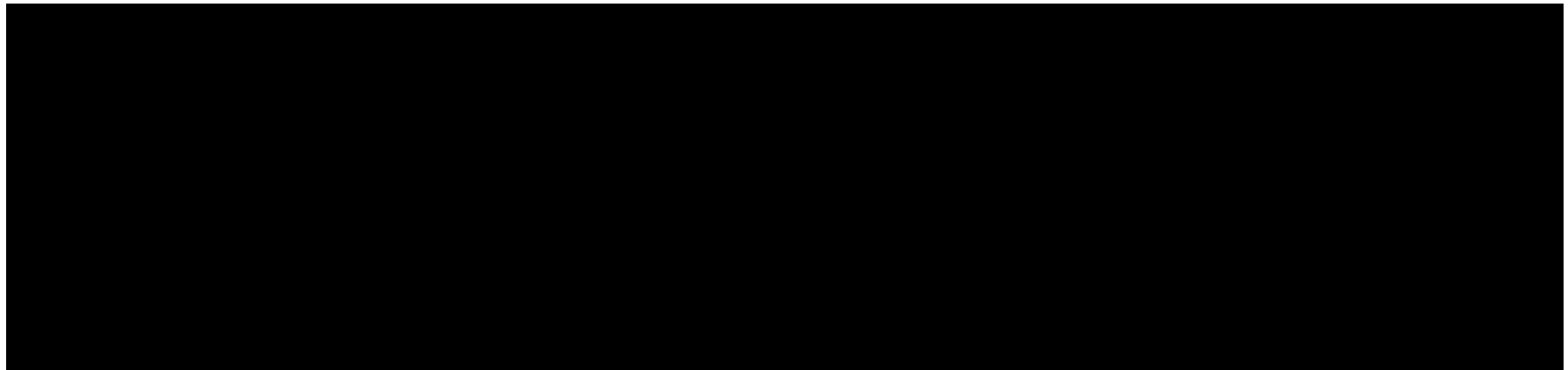
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**APPENDIX 11**

**HELPDESK RESOURCE & CAPACITY PLAN**

The table below illustrates the number of individuals employed full time per month available to man the Contractor's Helpdesk for each month of the annual cycle, along with an indicative expectation of the number of calls, emails and scrutiny requests the Helpdesk has the capacity to handle, based on the planned level of resource.

MI on the Helpdesk activities will be supplied as agreed in the MI plan or elsewhere.



Where either party (acting reasonably) considers that the above resource profile is inappropriate for any reason (e.g. excessive resource given demands or inadequate resource given the service requirements), that party shall be entitled to request a change under the Change Control Procedure.

**SCHEDULE 2**

**PAYMENTS**

1. The following provisions (other than paragraph 2) shall apply in relation to the payments to be made by the Department in respect of the period from 1 April 2017 to the expiry or termination of this Agreement.
2. For the avoidance of doubt, in respect of payments made or to be made by the Department in respect of any period prior to 1 April 2017, these shall be governed by earlier versions of this Agreement.
3. Except where otherwise expressly stated in this Agreement the only payments to be paid by the Department for the performance by the Contractor of its obligations under this Agreement shall be as set out in this Schedule 2, which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
4. In consideration for the provision of the Services the Department shall pay the relevant amounts referred to in this Schedule 2 subject to the receipt of correct invoices pursuant to this Schedule 2 being issued by the Contractor.
5. Except where otherwise expressly stated in this Schedule 2 the Contractor shall not be entitled to increase the amounts payable or any rates identified in this Schedule 2 throughout the Term.
6. The amounts referred to in this Schedule 2 are exclusive of Value Added Tax (“VAT”) and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under this Agreement (unless expressly stated otherwise in this Agreement). The Contractor should notify the Department of any direct VAT charges for the delivery of this Agreement. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of any amounts payable that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
7. Payment of the amounts referred to in this Schedule 2 by the Department shall be without prejudice to any rights the Department may have by reason of any Services, or any part thereof, failing to comply with any provision of this Agreement and any breach by the Contractor of this Agreement shall not be deemed to be accepted or waived by the Department by reason of such payment.
8. The Department may deduct from or offset against any monies due or becoming due to the Contractor under this Agreement (including the amounts referred to in this Schedule 2) any monies due from the Contractor under this Agreement or otherwise under any other agreement or account whatsoever.
9. Invoices shall be submitted to [ian.dormer@education.gov.uk](mailto:ian.dormer@education.gov.uk) and [rebekah.edgar@education.gov.uk](mailto:rebekah.edgar@education.gov.uk) for approval. A response will be provided within three (3) Business Days and then a copy should be sent in hard copy within 30 days

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of the end of the relevant invoicing date, to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool, FY5 3TA. The Department shall notify the Contractor of any change in the above contact details, including any relevant new email address(es) immediately it is aware of any change in the availability or roles of the persons named. In the absence of a response within the three (3) Business Days referred to, the Contractor shall be entitled to send the hard copy invoice referred to above (as if such approval had been given). An invoice is a **“Valid Invoice”** if it is legible and includes:

- 9.1 the date of the invoice;
  - 9.2 Contractor's full name and address;
  - 9.3 Contract reference and Purchase order numbers;
  - 9.4 the charging period;
  - 9.5 a detailed breakdown of the appropriate Charges including Deliverables or milestones achieved (if applicable);
  - 9.6 days and times worked (if applicable);
  - 9.7 Service Credits (if applicable); and
  - 9.8 VAT (if applicable).
10. The Department shall not pay an invoice which is not a Valid Invoice.
  11. The Department shall pay Valid Invoices within thirty (30) days of receipt. Valid Invoices not paid within thirty (30) days are subject to interest at the rate of two percent (2%) above the base rate from time to time of Barclays Bank. This paragraph 11 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
  12. The Department shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within ten (10) Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction. Any invoices not so returned with the said ten (10) Business Days shall be deemed to be a Valid Invoice.
  13. At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the Department. The final invoice shall be submitted not later than thirty (30) days after the end of the Term.
  14. The Department shall not be obliged to pay the final invoice until the Contractor has carried out all of the Services.
  15. The Contractor shall ensure that a term is included in all Sub-Contracts which

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requires payment to be made of all sums due to Sub-Contractors within thirty (30) days from the receipt of a valid invoice.

16. If the Department disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within ten (10) Business Days notify the Contractor of the reasons for disputing the invoice. The Department may withhold the disputed amount pending resolution of the dispute. Where the Department disputes any part of any invoice, it shall pay the undisputed element within the original thirty (30) day time period for payment.
17. The Parties shall use all reasonable endeavours to resolve any dispute over invoices within ten (10) Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 26 of this Agreement.
18. The Contractor shall issue invoices to the Department at the dates and in accordance with the following table, subject to adjustment in accordance with the terms of this Agreement.

Month	Amount (exc. VAT)
April 2017	
May 2017	
June 2017	
July 2017	
August 2017	
September 2017	
October 2017	
November 2017	
December 2017	
January 2018	
February 2018	
March 2018	
April 2018*	
May 2018*	
June 2018*	
July 2018*	
August 2018*	
September 2018*	
October 2018*	
November 2018*	
December 2018*	
January 2019*	
February 2019*	
March 2019*	

Notes:

- (a) For the second year of this extension (i.e. the period from April 2018 – March



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2019), the monthly charged shall be increased by the latest increase in inflation. The increase shall reflect the latest published change in RPIx prior to April 2018 (e.g. the increase in RPIx between January 2017 and January 2018).

- (b) The reason for the payments in August each year being higher than other months is because this reflects the £[REDACTED] worth of changes that have been "prepaid" by the Department (as reflected in Schedule 5).

19. Day rates used to calculate any additional new work (i.e., determined as a result of the Change Control Procedure or as referred to in Schedule 7) shall be as follows:

Role	£ 2017 (excl VAT)	£ 2018 (excl VAT)	£ 2019 (excl VAT)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

20. Following the end of each month, the Contractor shall calculate the amounts payable in accordance with the terms of the Agreement. Such amounts shall include:

20.1 those amounts due in respect of the delivery of the Services; and

20.2 any amounts due in respect of any items performed pursuant to the Change Control Procedure in Schedule 5.

21. The Contractor will 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. For the avoidance of doubt, this paragraph 21 shall not apply to the payments referred to in the table set out in paragraph 18 above.

22. If this Agreement is terminated by the Department due to the Contractor's insolvency or default at any time before completion of the Service under Clauses 11.2, 11.3 or 11.4 of this Agreement, the Department will only be liable to reimburse (1) eligible payments made by, or due to, the Contractor before the date of termination and (2)

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the losses incurred by the Contractor in respect of the Contractor's assets related directly to the performance of the Service.

23. If this Agreement is terminated by the Department other than under paragraph 22 of this Schedule 2 (including termination on notice under Clause 11.1 of this Agreement), the Contractor shall promptly draw-up a final invoice, which will cover the following:
- any amounts payable relating to Services provided by the Contractor in respect of the period prior to such termination, including any amounts payable to any Sub-contractors as a direct result of early termination, provided always that the Department shall not be required to reimburse the Contractor for liquidated damages payable by the Contractor to its Sub-contractors (as a result of early termination) of which the Department was not aware before the date on which the Department served notice to terminate this Agreement;
  - losses incurred by the Contractor in respect of the Contractor's assets related directly to the performance of the Service; and
  - Contractor's loss of profits based on the average profitability of this Agreement up to the point of termination.

The final invoice shall be submitted not later than 30 days after the date of early termination of this Agreement.

**SCHEDULE 3****KPIs**

1. The KPIs that shall be applicable to this Agreement are as set out in the table below. The Contractor shall prepare and submit to the Department the reports stated.

<u>No.</u>	<u>Summary</u>	<u>Detail</u>	<u>Target</u>	<u>Reporting</u>
1.	Data Collection	<p>Contractor to have contacted (e.g. by email) all AOs from the agreed list of AOs requesting that the AO sends Results Data to the Contractor in respect of each of the qualifications to be published in the Performance Tables.</p> <p>The date by which contact must be attempted must be by no later than Results Day for each of the relevant qualifications (i.e., KS4 and 16-18 cohorts respectively).</p> <p>If the relevant Results Data is not received from any AO by the deadline specified by the Contractor, the Contractor shall, within five (5) Business Days, contact the relevant AO again to re-request that the relevant Results Data is provided.</p>	100%	This KPI shall be reported within thirty (30) Business Days of the last Results Day.

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2.	Data Collection – Platform Availability	<p>The Contractor's online platform that enables AOs to provide the data requested is available 24/7.</p> <p>The term "available" means that the platform is functioning substantially as expected such that AOs are able to upload the relevant data (assuming the AOs are using the correct format) but excludes any issues with the Internet itself and/or connectivity.</p>	99.8% <sup>1</sup>	<p>This KPI shall be measured during key collection periods (i.e. data entry and collection periods, currently (a) 21 April – 31 May and (b) 1 August – 31 October each year.</p> <p>The report of such performance shall be provided by the Contractor by no later than 30 June and 30 November each year, respectively.</p> <p>If during the above period the platform becomes unexpectedly unavailable for any period of thirty (30) minutes or more, the Contractor shall inform the Department and keep the Department regularly apprised as to resolution of the incident (including reasonable details as to the nature of the incident and steps being taken to resolve it).</p>
3.	Data Matching	The Contractor to have provided a report confirming that it has completed the matching activities required to deliver the KS2, KS4 and 16-18 Performance Tables by the respective agreed date for having completed those matching activities.	100% <sup>2</sup>	Each report (i.e. one for each of KS2, KS4 and 16-18 respectively) to be provided within one month of the agreed date by which those matching activities are to be completed.

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4.	Data Production and Provision	The Contractor to have provided to the Department the full Performance Tables data sets by the respective agreed dates for each of KS2, KS4 and 16-18, in each case for the Unamended, Amended and Final Deliverables (i.e. there are 9 total sets of dates / Deliverables), accompanied by the relevant Quality Assurance report as described in Appendix 4	100%	Contractor to provide a report at the end of each examinations Cycle (i.e. usually April each year, following examinations results announcements typically the previous August) confirming delivery of each of the relevant data sets by the respective dates.
5.	Data Quality	The published (typically, known as third) amended Performance Tables Data Outputs for KS2, KS4 and 16-18 and Unamended for KS4, shall be produced with no critical or major defects. This is defined as nothing that is of significant enough impact that should cause a delay in the publication of the data by the Department. For the avoidance of doubt this specifically excludes any errors or changes identified as a result of an error in the specification or code, which is identified after the agreed specification baseline and code freeze period as defined in the Programme Plan; and does not include previously identified issues that have been agreed for resolution subsequent to publication. Defects need to have arisen within the current Cycle and cannot be deemed 'historical', i.e. present in the data for more than a 12 month period.	100%	<p>Contractor to provide a report at the end of each examinations Cycle (i.e. usually April each year, following examinations results announcements typically the previous August) confirming delivery of each of the relevant data sets by the respective dates.</p> <p>This shall be in addition to the reports to be provided elsewhere in this Agreement (including under Appendix 4 of Schedule 1).</p>

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6.	Data Checking – Platform Availability	<p>The Contractor's online platform that enables schools and colleges to check the following:</p> <ul style="list-style-type: none"> <li>(i) pupil level data in June;</li> <li>(ii) the Unamended data sets; and</li> <li>(iii) the Amended data sets,</li> </ul> <p>is available 24/7. The term "available" means that the platform is functioning substantially as expected such that schools and colleges are able to check the relevant data sets but excludes any issues with the Internet itself and/or connectivity.</p>	99.8% <sup>1</sup>	<p>This KPI shall be measured from the first day of school checking for each of (i) – (iii) until the respective dates when the platform is closed for each of those activities.</p> <p>A report will be provided at the end of each of those respective periods.</p> <p>If during the above period the platform becomes unexpectedly unavailable for any period of thirty (30) minutes or more, the Contractor shall inform the Department and keep the Department regularly apprised as to resolution of the incident (including reasonable details as to the nature of the incident and steps being taken to resolve it).</p>
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- <sup>1</sup> the Department acknowledges that technical support to resolve issues relating to these elements of the Services is provided during Business Hours only assumes volumes similar to previous years
2. The Contractor must produce an outline plan of the provision of Management Information (MI) to the Department which will be agreed prior to delivery of each Cycle commencing.
3. The Contractor must provide MI reports in a format and frequency consistent with the specification and plan agreed with the Department, and which are consistent with relevant reporting and governance arrangements, as agreed with the Department.
4. The MI reports must clearly demonstrate progress of Deliverables against pre-defined forecasts, milestones or Service Level Agreements (SLAs) as appropriate.
5. The Department may also request MI more frequently should any aspect of delivery by the Contractor not be on schedule or be underperforming against agreed Service

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Levels.

6. Not Used.
7. If at any time, the Contractor (acting reasonably and in good faith) considers that it would be in the overall interests of the Services to reduce or withdraw the availability of its system or the Services (in whole or part), the Contractor shall be entitled to make such a proposal (the "Downtime Proposal") to the Department. Where:
  - 7.1 the Downtime Proposal has been made in connection with routine planned maintenance (a "**Routine Downtime Proposal**"), the provisions of paragraphs 8 and 9 (below) shall apply; and
  - 7.2 the Downtime Proposal has been made in an Emergency Downtime Event (an "Emergency Downtime Proposal"), the provisions of paragraph 11 (below) shall apply.
8. In making any Downtime Proposal, the Contractor shall:
  - 8.1 always seek to mitigate the overall impact on the Department and any affected users;
  - 8.2 only do so where it has legitimate grounds for considering that the proposed measures would be to the overall benefit of the Department and the Services as a whole; and
  - 8.3 in the case of an Emergency Downtime Proposal, inform the Department as soon as reasonably practicable in all the circumstances.
9. Any Routine Downtime Proposals submitted by the Contractor shall be submitted no less than two (2) Business Days in advance of the proposed period of unavailability and shall set out:
  - 9.1 whether it is proposed that all of the relevant systems and/or services are unavailable or only part thereof (and, if so, which parts);
  - 9.2 the proposed period of unavailability;
  - 9.3 its rationale for making the proposal; and
  - 9.4 the likely impact on the Department and/or users as a result.
10. The Department shall, within two (2) Business Days of receipt, consider any Routine Downtime Proposal submitted by the Contractor and confirm whether or not it agrees to the Routine Downtime Proposal (such agreement not to be unreasonably withheld or delayed). If the Department agrees to the Routine Downtime Proposal, the Contractor shall be entitled to implement it in accordance with its terms (with the agreed period and scope of unavailability being "Agreed Downtime").
11. It is acknowledged that, at any time, circumstances may occur which render it desirable

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to withdraw availability of the Contractor's systems and the Services at short notice (an "Emergency Downtime Event"). In making any Emergency Downtime Proposal, the Contractor shall always act in accordance with the provisions of paragraph 8 (above) and shall not seek to claim an Emergency Downtime Event otherwise than in good faith. Provided that the Contractor acts in accordance with the provisions of this paragraph 11, the period and scope of the proposed unavailability of the relevant systems and/or Services shall be deemed to be "Agreed Downtime ". In the event parties do not agree the classification of an Emergency Downtime Event, either party may refer the matter to the Dispute Resolution Procedure for resolution.

12. To the extent that the Contractor's performance under this Agreement (including under the KPIs referred to above) is affected by any Agreed Downtime, the Contractor shall be deemed to have performed the relevant obligations and/or met the relevant Service Levels.



## **SCHEDULE 4**

### **Financial Distress**

#### **1. CURRENT CREDIT RATING**

The Contractor warrants and represents to the Department for the benefit of the Department that as at the date of signature of this Agreement the Credit Rating Level issued for the Contractor by the Rating Agency is as set out in the definition of Credit Rating Level. The Contractor shall provide a credit report on itself within twenty (20) Business Days of any request by the Department provided that the Department makes no more than two (2) requests in any year.

#### **2. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**

3.1 Any of the following events shall constitute a "Financial Distress Event":

- (a) the credit rating of the Contractor dropping below the Credit Rating Threshold;
- (b) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Contractor;
- (c) the Contractor committing a material breach of covenant to its lenders;
- (d) a Key Sub-contractor notifying the Department that the Contractor has not paid any material sums properly due under a specified invoice which is not subject to a genuine dispute; or
- (e) any of the following:
  - (i) commencement of any litigation (other than where such litigation is vexatious or spurious in nature) against the Contractor in relation to which the sum claimed is greater than £5m; or
  - (ii) the cancellation or suspension of any financial indebtedness in respect of the Contractor which the Department (acting reasonably and in good faith having taken the Contractor's representations into account) believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement.

3.2 If a Financial Distress Event occurs, the Contractor shall have the obligations and the Department shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.

3.2A In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(d), the Department shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Contractor not less than ten (10) Business Days

to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Department's reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Contractor shall:

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

3.4 The Department shall not withhold or delay its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Department does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Contractor in writing of its reasons and the Contractor shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Department within ten (10) Business Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Department or referred to the dispute resolution procedure under Paragraph 3.5.

3.5 If the Department considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Contractor's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the dispute resolution procedure set out in clause 26 of the Agreement.

3.6 Following approval of the Financial Distress Service Continuity Plan by the Department, the Contractor shall:

- (a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
- (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Department for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
- (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7 Where the Contractor reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Department accordingly and request agreement from the Department to be relieved of its obligations under paragraph 3.6. The Department shall not unreasonably withhold or delay its agreement to such relief.

### **3. TERMINATION RIGHTS**

The Department shall be entitled to terminate this Agreement if:

- (a) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or
- (b) the Contractor fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6(c), provided that the Department shall only be entitled to terminate under this Paragraph (b) where it has previously notified the Contractor of such non-compliance, clearly stating the way in which the Contractor has not complied and giving the Contractor not less than ten (10) Business Days to rectify such non-compliance.

## **SCHEDULE 5**

### **CHANGE CONTROL PROCEDURE**

1. The Parties acknowledge that minor changes to this Agreement may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Contract Manager and the Contractor's Contract Manager.
2. The Contractor shall use reasonable endeavours to incorporate minor changes requested by the Department within the current fees referred to in Schedule 2 and shall not serve a Contractor Notice of Change unless the change involves a demonstrable increase to its costs or requires a change to the terms of this Agreement.
3. It is acknowledged that the Department has "prepaid" [REDACTED] pounds ( ) worth of changes per annum and this is reflected in the payments to be made in August each year. The Department shall be entitled to use those prepayments against any changes within each year as it determines.
4. Either Party may request a variation to this Agreement provided that such variation does not amount to a material change.
5. The Department may request a variation by completing the Change Control Note and giving the Contractor sufficient information to assess the extent of the variation and consider whether any change to the fees referred to in Schedule 2 are required in order to implement the variation within a reasonable time limit specified by the Department. If the Contractor accepts the variation it shall confirm it in writing within twenty-one (21) days of receiving the Change Control Note.
6. If the Contractor is unable to accept the variation or where the Parties are unable to agree a change to the fees payable, the Contractor shall continue to fulfil its obligations under this Agreement without variation. If the Parties cannot agree to the variation, either party shall be entitled to escalate the matter in accordance with clause 26 of this Agreement.
7. If the Contractor wishes to introduce a change to this Agreement it may request a variation by serving the Change Control Note on the Department.
8. The Department shall evaluate the Contractor's proposed variation in good faith, taking into account all relevant issues.
9. The Department shall confirm in writing within twenty-one (21) days of receiving the Change Control Note if it accepts or rejects the variation.
10. The Department may in its absolute discretion reject any request for a variation proposed by the Contractor, unless it is a variation proposed by the Contractor in order to enable it to comply with applicable law.
11. The parties have appended below an agreed form "Change Control Note Template" that may be used to capture any changes agreed in accordance with the above

provisions.

## CHANGE CONTROL NOTE TEMPLATE

### Change Control Note

<b>Change Control Number</b>	
<b>Variation Requested</b>	
<b>Originator of Variation</b> (tick as appropriate)	DFE <input type="checkbox"/> Contractor <input type="checkbox"/>
<b>Date</b>	
<b>Reason for Variation</b>	
<b>Summary of Variation</b> (e.g. specification, finances, contract period)	
<b>Date of Variation commencement</b>	
<b>Date of Variation expiry</b> (if applicable)	
<b>Total Value of Variation £</b> (if applicable, stating if VAT applies and if it is included)  <b>Breakdown of costs of variation (e.g. development, testing) £</b>	
<b>Payment Profile (if applicable)</b> (e.g. milestone payments and/or whether payments are due in future years)	
<b>Revised daily rate (if applicable)</b>	

<b>Impact on original agreement (if applicable)</b>											
<b>Supporting Information (please attach all supporting documentation for this Change Control)</b>											
<b>Terms and Conditions</b>	Save as herein amended all other terms and conditions of the original agreement shall remain in full force and effect.										
<b>Variation Agreed</b>  <table> <tr> <td><b>For the Contractor:</b></td> <td><b>For the DFE:</b></td> </tr> <tr> <td>Signature.....</td> <td>Signature.....</td> </tr> <tr> <td>Full Name.....</td> <td>Full Name.....</td> </tr> <tr> <td>Title.....</td> <td>Title.....</td> </tr> <tr> <td>Date.....</td> <td>Date.....</td> </tr> </table>		<b>For the Contractor:</b>	<b>For the DFE:</b>	Signature.....	Signature.....	Full Name.....	Full Name.....	Title.....	Title.....	Date.....	Date.....
<b>For the Contractor:</b>	<b>For the DFE:</b>										
Signature.....	Signature.....										
Full Name.....	Full Name.....										
Title.....	Title.....										
Date.....	Date.....										

Please note that no works/services described in this form should be undertaken and no invoices will be paid until this CCN has been agreed by both parties (e.g. by confirmation email).

<b>To be entered by the Department's Commercial department:</b>			
<b>Commercial Contact</b>		<b>Reference Number</b>	
<b>Date received</b>		<b>EC Reference</b>	

## **SCHEDULE 6**

### **GOVERNANCE**

1. The Contractor must have a productive working relationship with the Department and other key stakeholders, including:
  - effectively communicating and sharing information in a manner that supports the smooth running of the Services;
  - the provision of evidence based assurance to the Department that the Services are being delivered accurately, on time and securely;
  - showing flexibility in responding to changes in policy as determined by Government priorities, advising on operational risks and impacts as appropriate;
  - driving necessary and improved service improvements and efficiency savings;
  - continually improving Institutions, Local Authorities' and Awarding Organisations' experience of the processes in the Services; and
  - protecting and enhancing the Government's reputation matters as much as that of the Contractor in the delivery of the service, ensuring that risks are properly identified, reviewed and proactively managed with planned mitigations in place.
  
2. The Contractor must fully participate in the overall Service governance structure as agreed with the Department, including:
  - regular telephone "keeping-in-touch" (KITs) between the Contractor and the Department at a management level, to discuss operational progress and resolve any issues arising. These should be as often as required but maybe daily during key stages of the Cycle;
  - regular work stream meetings between individual Departmental teams (primary, secondary, post 16) and the Contractor's counterparts. These should be as often as required but will typically be weekly, at quieter times moving to fortnightly as a minimum;
  - NPDPT Programme board meetings (monthly). The Contractor will report to the board, producing a status report (including updates on milestone activities, risks and issues, performance against KPIs and supporting MI) in advance of the meetings. On a quarterly basis, or more frequently at the request of the Department, these meetings will be face-to-face. The Department will provide the board with a secretariat function;
  - the Contractor will organise quarterly strategic board meeting which will be attended by key persons from the Contractor and the Department. Performance against KPIs, Continuous Improvement and the working relationship will be discussed at this meeting;
  - the Contractor will produce a brief evaluation report at the end of each Cycle to aid forward planning and continuous improvement; and
  - lessons learnt from previous activities and actions identified as a result.
  
3. The Contractor must comply with any other reasonable requests for information from the Department, including, but not limited to Freedom of Information requests, requests for information to support Parliamentary Questions, and information required for Official Correspondence. The Contractor shall, in responding to any such request, act in good faith and provide a response with as much relevant information as it can reasonably



provide in the relevant timescale.

## **SCHEDULE 7**

### **EXIT MANAGEMENT**

#### **1. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT**

1.1 During the Term of this Agreement, the Contractor shall:

- (a) create and maintain the Asset Register;
- (b) create and maintain a configuration database detailing the infrastructure and operating procedures through which the Contractor provides the Services;
- (c) agree the format of the Asset Register with the Department as part of the process of agreeing the Exit Plan; and
- (d) update the Asset Register at least twice per year to ensure it is up to date.

1.2 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. The Contractor's Exit Manager shall be responsible for ensuring that the Contractor and its employees, agents and Sub-contractors comply with this Schedule. The Contractor shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

#### **2. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

2.1 On such notice as is reasonable in all the circumstances, at any point during the term of this Agreement, the Contractor shall provide to the Department and/or its potential Replacement Contractors (subject to the potential Replacement Contractors entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Department of any invitation to tender and/or to facilitate any potential Replacement Contractors undertaking due diligence:

- (a) a copy of the latest Asset Register;
- (b) a summary of the Department Data in the Contractor's possession or control (i.e. a description of the data Deliverables held in archive or in current live systems);
- (c) to the extent permitted by applicable Law, all information relating to Transferring Employees required to be provided by the Contractor under this Agreement;
- (d) an information pack listing and describing the Services for use by the Department in the procurement of the replacement Services. This pack shall include:

- i) A high level description about what procedures and processes are used to ensure the Services can be delivered;
- ii) An explanation of the interfaces with AOs and Schools/LAs for this service in relation to data collection/checking and service reporting;
- iii) An explanation about what storage is used for the different data sets and what mapping onto other data sets takes place to support matching and data production processes;
- iv) Information that explains what the data matching approach is, with an explanation of the different stages and explaining what different issues/anomalies have to be dealt with;
- v) Details of what communication and engagement with AOs and Schools/LAs is required and who is involved at the various stages;
- vi) Accurate volumetrics associated with the different stages of service delivery in the most recently completed cycle; and

(e) such other material and information as the Department shall reasonably require,

(together, the “**Exit Information**”).

2.2 The Contractor may charge the Department for its reasonable additional costs to the extent the Department requests the Exit Information more than once in any six (6) month period.

2.3 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer to provide services similar to, or in substitution for, the Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Contractor (if the Contractor is invited to participate).

2.4 The Contractor shall notify the Department within ten (10) Business Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Department regarding such proposed material changes.

### **3. EXIT PLAN**

3.1 The Contractor shall, within three (3) months after the Effective Date, deliver to the Department an Exit Plan which:

- (a) sets out the Contractor’s proposed methodology for achieving an orderly transition of the Services from the Contractor to the Department and/or its Replacement Contractor on the expiry or termination of this Agreement; and
- (b) complies with the requirements set out in Paragraph 3.2.

3.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If

the Parties are unable to agree the contents of the Exit Plan within twenty (20) Business Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Contractor may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Contractor of all reasonable assistance as the Department shall require to enable the Department or its Sub-contractors to provide the Services;
- (c) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (d) the management structure to be employed during the Termination Assistance Period;
- (e) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (f) how the Services will transfer to the Replacement Contractor and/or the Department, including details of the processes, documentation and data transfer that would be relevant;
- (g) the scope of the Termination Services that may be required for the benefit of the Department (including such of the services set out in Annex 1 as are applicable);
- (h) a timetable and critical issues for providing the Termination Services;
- (i) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges updated at each review of the Exit Plan to reflect known changes;
- (j) how the Termination Services would be provided (if required) during the Termination Assistance Period; and
- (k) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or the Department with the aim of ensuring that there is minimal disruption to or degradation of the Services during the Termination Assistance Period.

3.4 The Parties acknowledge that the migration of the Services from the Contractor to the Department and/or its Replacement Contractor may be phased, such that certain of the Services are handed over before others.

- 3.5 The Contractor shall review and (if appropriate) update the Exit Plan in the second year of this Agreement on a basis consistent with the principles set out in this Schedule to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. The Exit Plan previously agreed in 2016 shall act as a basis to which updating activity shall add information as agreed between parties to this Agreement. Following such update the Contractor shall submit the revised Exit Plan to the Department for review. Within twenty (20) Business Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Business Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### Finalisation of the Exit Plan

- 3.6 Within twenty (20) Business Days after service of a Termination Notice by either Party or six (6) months prior to the expiry of this Agreement, the Contractor will submit for the Department's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 3.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Business Days following its delivery to the Department then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Contractor shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

## 4. TERMINATION SERVICES

### Notification of Requirements for Termination Services

- 4.1 The Department shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Contractor (a "**Termination Assistance Notice**") at least four (4) months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
  - (b) the nature of the Termination Services required; and
  - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than the earlier of (i) six (6) months after the date that the Contractor ceases to provide the Services and (ii) the date from which the Contractor cannot reasonably provide such services (e.g. if it no longer has all the relevant staff who had previously provided the Services).

- 4.2 The Department shall (insofar as it is reasonably possible for the Contractor to do the same taking into account the possibility that the relevant Staff may have left the Contractor's employment and/or transferred to the Department and/or relevant Replacement Contractor) have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Contractor ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Contractor to such effect no later than twenty (20) Business Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Department shall have the right to terminate its requirement for Termination Services by serving not less than twenty (20) Business Days' written notice upon the Contractor to such effect.

### **Termination Assistance Period**

- 4.3 Throughout the Termination Assistance Period, or such shorter period as the Department may require, the Contractor shall:
- (a) continue to provide the Services (as applicable) and, if required by the Department pursuant to paragraph 4.1, provide the Termination Services;
  - (b) in addition to providing the Services and the Termination Services, provide to the Department any reasonable assistance requested by the Department to facilitate the orderly transfer of responsibility for and conduct of the Services to the Department and/or its Replacement Contractor; and
  - (c) at the Department's request, and on reasonable notice, deliver the latest Asset Register to the Department.
- 4.4 Without prejudice to the Contractor's obligations under paragraph 4.3(c), if it is not possible for the Contractor to reallocate resources to provide such assistance as is referred to in paragraph 4.3(b) without additional costs to the Department, any additional costs incurred by the Contractor in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure. Until such time as the additional costs have been agreed, the Contractor shall be under no obligation to provide the relevant assistance.
- 4.5 If the Contractor demonstrates to the Department's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Contractor's ability to meet its obligations under this Agreement, the relevant terms of this Agreement shall be amended to take account of such adverse effect.

### **Termination Obligations**

- 4.6 The Contractor shall comply with all of its obligations contained in the Exit Plan (subject to the payment of any relevant fees).

- 4.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Contractor shall:
- (a) cease to use the Department Data;
  - (b) provide the Department and/or the Replacement Contractor with a complete and uncorrupted version of the Department Data in electronic form;
  - (c) erase from any computers, storage devices and storage media that are to be retained by the Contractor after the end of the Termination Assistance Period all Department Data and promptly certify to the Department that it has completed such deletion (save where the Contractor is otherwise authorised or required to retain any such data);
  - (d) return to the Department such of the following as is in the Contractor's possession or control:
    - (i) all materials created by the Contractor under this Agreement in which the IPRs are owned by the Department;
    - (ii) any items that have been on-charged to the Department, such as consumables;
  - (e) vacate any Department premises;
  - (f) provide access during normal working hours to the Department and/or the Replacement Contractor for up to six (6) months after expiry or termination to:
    - (i) such non-confidential information relating to the Services as remains in the possession or control of the Contractor; and
    - (ii) such members of the Contractor's personnel as have been involved in the design, development and provision of the Services and who are still employed by the Contractor, provided that the Department and/or the Replacement Contractor shall pay the reasonable costs of the Contractor actually incurred in responding to requests for access under this paragraph 5.7(f)(ii).
- 4.8 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes or such other purposes as may have been agreed or which are otherwise required.

- 4.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Department to the Contractor in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

## **5. ASSETS, SUB-CONTRACTS AND SOFTWARE**

- 5.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Contractor shall not, without the Department's prior written consent (not to be unreasonably withheld or delayed):
- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
  - (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
  - (c) terminate, enter into or vary any licence for software in connection with the Services.

## **6. CONTRACTOR PERSONNEL**

- 6.1 The Department and Contractor agree and acknowledge that in the event of the Contractor ceasing to provide the Services or part of them for any reason, Clause 19 of this Agreement (*TUPE*) shall apply.
- 6.2 The Contractor shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Department and/or the Replacement Contractor.
- 6.3 During the Termination Assistance Period, the Contractor shall give the Department and/or the Replacement Contractor reasonable access to the Contractor's personnel to present the case for transferring their employment to the Department and/or the Replacement Contractor.
- 6.4 The Contractor shall not for a period of six (6) months from the date of transfer reemploy or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Department and/or the Replacement Contractor, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

## **7. CHARGES**

- 7.1 During the Termination Assistance Period (or for such shorter period as the Department may require the Contractor to provide the Termination Services), the Department shall pay any relevant charges to the Contractor in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such



Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

- 7.2 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 7.3 Except as otherwise expressly specified in this Agreement, the Contractor shall not make any charges for the services provided by the Contractor pursuant to, and the Department shall not be obliged to pay for costs incurred by the Contractor in relation to its compliance with, this Schedule including the preparation of the Exit Plan and any activities mutually agreed between the Parties to carry on free of charge after the expiry of the Termination Assistance Period.

## ANNEX 1: SCOPE OF THE TERMINATION SERVICES

- i. The Termination Services to be provided by the Contractor shall include such of the following services as the Department may specify (provided that this does not require the Contractor to (a) do anything that may be illegal or in breach of its other obligations (e.g. to staff) or (b) provide to any Replacement Contractor any Commercially Sensitive Information):
  - (a) ceasing all non-critical Software changes (except where agreed in writing with the Department);
  - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Department and/or the Replacement Contractor after the end of the Termination Assistance Period;
  - (d) providing details of work volumes and staffing requirements over the twelve (12) month period immediately prior to the commencement of the Termination Services;
  - (e) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
  - (f) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services;
  - (g) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
  - (h) reviewing all systems and services used in connection with the Services and providing details of these to the Department and/or the Replacement Contractor;
  - (i) analysing and providing information about capacity and performance requirements;
  - (j) generating a copy of the algorithms / production rules used to produce the Deliverables;
  - (k) delivering copies of the production databases to the Department's and/or the Replacement Contractor's staff (on appropriate media) as reasonably requested by the Department;

- (l) providing information to assist with parallel operations;
  - (m) providing relevant historical performance data;
  - (n) answering all reasonable questions from the Department and/or the Replacement Contractor regarding the Services;
  - (o) agreeing with the Department and/or the Replacement Contractor a plan for the migration of the Department Data to the Department and/or the Replacement Contractor;
  - (p) providing access to the Department and/or the Replacement Contractor during the Termination Assistance Period and for a period not exceeding six (6) months afterwards for the purpose of the smooth transfer of the Services to the Department and/or the Replacement Contractor:
    - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Contractor or its Sub-contractors (and the Contractor agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
    - (ii) following reasonable notice and during the Contractor's normal business hours, to members of the Contractor's personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Contractor or its Sub-contractors; and
  - (q) knowledge transfer services, including:
    - (i) transferring all training material and providing appropriate training to those Department and/or Replacement Contractor staff responsible for internal training in connection with the provision of the Services;
    - (ii) providing for transfer to the Department and/or the Replacement Contractor of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents, copies of up-to-date procedures and operations manuals; and information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period; and
    - (iii) providing the Department and/or the Replacement Contractor with access to such members of the Contractor's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Contractor or its Sub-contractors.
- ii. A For the avoidance of doubt the following services shall be treated as part of the Principal Services:

- (i) delivering to the Department the existing systems support profiles, monitoring or system logs, issue tracking/resolution documentation and status reports all relating to the twelve (12) month period immediately prior to the commencement of the Termination Services;
  - (ii) providing the Department with any issues logs which have not previously been provided to the Department. Any Department need for underlying detailed documentation below the log level shall not be unreasonably withheld and shall form part of the Termination Services and be chargeable.
- iii. To facilitate the transfer of knowledge from the Contractor to the Department and/or its Replacement Contractor, the Contractor shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Department and/or the Replacement Contractor.
- iv. During the Termination Assistance Period the Contractor shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Contractor and/or the Department access, during business hours and upon reasonable prior written notice, to any of the Contractor's sites for the purpose of effecting a prompt knowledge transfer provided that:
  - (a) any such agent or personnel (including employees, consultants and suppliers) having access to any sites pursuant to this paragraph 5 shall:
    - (i) sign a confidentiality undertaking in favour of the Contractor (in such form as the Contractor shall reasonably require); and
    - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Contractor relevant to any such site; and
  - (b) the Department and/or the Replacement Contractor shall pay the reasonable, proven and proper costs of the Contractor incurred in facilitating such access.

## **SCHEDULE 8**

### **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words shall mean:

"Amended Data"	data produced by the Contractor through processing of the Unamended data following data checking;
"Assets"	all assets and rights used by the Contractor (including those of a Third Party Owner) to provide the Services in accordance with the Agreement;
"Asset Register"	has the meaning given in Clause 9.1;
"Automated Matching Solution"	a technical solution designed to automate the identification, de-duplication and matching of data records pertaining to pupils across multiple data sources. Furthermore, the solution will prepare the data and make it available in a format appropriate for use by other systems including RM's 'Portland' processing system and NPD. The solution developed under this Agreement will provide efficiency gains over the previous generation of matching tooling and will be rolled out as set-out in the Implementation Plan;
"Availability Management"	the process of ensuring that plans are in place to ensure that IT services are available at all times. This involves monitoring and analysing services and their components, analysing past failures, and planning ahead to avoid future ones;
"Awarding Organisation"	a legally constituted body or consortium operating with the purpose of assessing learners and awarding achievements, such as qualifications, certificates or licences, which the Department and the Contractor have agreed shall be a source of data for the Services;
"BPSS", "Baseline Personnel Security Standard"	a level of security clearance described as pre-employment checks in the National Vetting Policy;
"Business Continuity"	the capability of an organisation to continue delivery of products or services at acceptable predefined levels following a disruptive incident;
"Business Days"	any day on which the banks in London are open for the transacting of normal banking business and excluding weekends and bank holidays observed in England and Wales and the Contractor's Christmas shutdown period (being the period between Christmas Day and New Year's

	Day);
"Business Hours"	means the period between 9 and 5.30pm, Monday to Friday but excluding any bank holidays observed in England and Wales and also the Contractor's Christmas shutdown period (being the days between Christmas Day and New Years Day inclusive);
"Capacity Plan"	a document outlining the production capacity needed by the Contractor to meet changing demands for its services;
"Census"	data provided by the department following the School Census data collection;
"CESG"	the UK government's National Technical Authority for Information Assurance. The website is <a href="http://www.cesg.gov.uk/Pages/homepage.aspx">http://www.cesg.gov.uk/Pages/homepage.aspx</a> ;
"Commercially Sensitive Information"	means: <ul style="list-style-type: none"> <li>(a) the Contractor's day rates as referred to in Schedule 2; and</li> <li>(b) any technical details relating to the systems used by the Contractor to deliver the Services;</li> </ul>
"Confidential Information"	<ul style="list-style-type: none"> <li>(a) Information, excluding the Transparency Information as defined in Clause 13, including all Personal Data, which (however it is conveyed) is provided by the disclosing Party pursuant to or in anticipation of this Agreement that relates to the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the disclosing Party;</li> <li>(b) other Information provided by the disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the receiving Party's attention or into the receiving Party's possession in connection with this Agreement;</li> <li>(c) discussions, negotiations, and correspondence between the disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the receiving Party or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and</li> <li>(d) Information derived from any of the above, but not</li> </ul>

	<p>including any Information which:</p> <ul style="list-style-type: none"> <li>(i) was in the possession of the receiving Party without obligation of confidentiality prior to its disclosure by the disclosing Party;</li> <li>(ii) the receiving Party obtained on a non-confidential basis from a third party who is not, to the receiving Party's knowledge or belief, bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;</li> <li>(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;</li> <li>(iv) was independently developed without access to the Confidential Information;</li> </ul>
"Contract Manager"	Rebekah Edgar (or any replacement person appointed by the Contractor from time to time in accordance with the terms of this Agreement);
"Contractor's Contract Manager"	Tanya Robinson (or any replacement person appointed by the Contractor from time to time in accordance with the terms of this Agreement);
"Contractor Background IPRs"	means Intellectual Property Rights owned by the Contractor or a Third Party (other than the Department) and used by the Contractor in the performance of its obligations under this Agreement, for example those subsisting in the Contractor Software, the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's know-how or generic business methodologies;
"Contractor Software"	software which is proprietary to the Contractor (or an affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services, including any COTS Software and Non-COTS Software of the Contractor used in the provision of the Services;
"COTS Software"	commercial off-the-shelf software that: (a) the Contractor or as applicable, a Third Party Owner makes generally available commercially (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Contractor or Third Party Owner save as to price; and (b) has a significant customer base with respect to the date of first release and the relevant market (non-trivial Customer base);

"Credit Rating Level"	a "Failure Score" of 99 as specified by the Rating Agency;
"Credit Rating Threshold"	a "Failure Score" from the Rating Agency of less than 50;
"Crown"	means Queen Elizabeth II and any successor;
"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;
"Cycle"	the end to end processes undertaken by the Contractor for each of the stages of the Services for any particular Performance Tables publication;
"Data Controller"	shall have the meaning given in the Data Protection Act 1998;
"Data Outputs"	the Data Deliverables provided by the Contractor to the department for the purpose of producing the Performance Tables and NPD;
"Data Processor"	shall have the meaning given in the Data Protection Act 1998;
"Data Subject"	shall have the meaning given in the Data Protection Act 1998;
"Data Suppliers"	Awarding Organisations, the Department, or its agents;
"Data"	shall have the meaning given in the Data Protection Act 1998;
"Deliverable(s)"	the deliverables to be provided by the Contractor, as listed in Schedule 1, Appendix 9;
"Delivery Plan"	the document setting out the detailed delivery of the Programme Plan, as agreed between the parties in accordance with the relevant terms of this Agreement;
"Department"	the Department for Education;
"Department Background IPRs"	means: <ul style="list-style-type: none"> <li>(a) IPRs owned by the Department before the Effective Date, including IPRs contained in any of the Department's know-how, documentation, processes and procedures;</li> <li>(b) IPRs created by the Department independently of</li> </ul>



	this Agreement; and/or
	(c) Crown Copyright which is not available to the Contractor otherwise than under this Agreement;
	but excluding IPRs owned by the Department subsisting in any software owned by the Department;
"Department Data"	all and any data or information owned or retained in order to meet the Department's 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: (i) supplied to the Contractor by or on behalf of the Department; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Personal Data for which the Department is the Data Controller;
"Departmental Security Standards"	the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver;
"DfE"	means the Department;
"Discrepancy Specification"	a document that outlines the set of rules used by the Contractor and DfE to accept or reject amendment requests during the School Checking exercises;
"DSAM", "Department Security Assurance Model"	the method that the Department uses to achieve confidence that security controls are effective and that systems and services can protect the information they carry;
"DSU", "Departmental Security Unit"	the Departmental unit responsible for ensuring that appropriate security arrangements are in place to help Department employees and others with authorised access to DfE systems carry out the department's business to comply with HMG Standards;
"Effective Date"	1 April 2017;
"EIR"	the Environmental Information Regulations 2004;
"Emergency Exit"	any termination of this Agreement where the period of notice given to terminate is less than six (6) months;
"Errata"	the short period after publication of the data in the performance tables when schools and colleges can request for amendments to be made to their attainment

	data;
"Exit Information"	has the meaning given in paragraph 2.1 of Schedule 7;
"Exit Plan"	a detailed plan setting out the scope and duration of exit management assistance that the Contractor will provide, including any services that will be excluded and any obligations of the Department; any fee or the basis of calculation of the fee payable for the exit assistance; any assets and third party contracts that will be required by the Department and that may transfer from the Contractor and/or be purchased by the Department (and how to price those assets); an obligation on the Contractor to provide information relating to the Services (knowledge transfer); and an obligation on the parties to review and update the exit plan annually throughout the Term of the Agreement;
"Exit Manager"	the person appointed by each party to manage the parties' respective obligations under Schedule 7;
"Financial Distress Event"	the occurrence of one or more of the events in Schedule 4, paragraph 2.1;
"Financial Distress Service Continuity Plan"	a plan setting out how the Contractor (together with Sub-contractors, where appropriate) will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that the Contractor suffers a Financial Distress Event;
"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;
"FOIA"	the Freedom of Information Act 2000;
"Good Industry Practice"	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"	the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classification">https://www.gov.uk/government/publications/government-security-classification</a> ;
"Helpdesk"	the helpdesk to be provided by the Contractor in accordance with the terms of this Agreement;

"Her Majesty's Government"	means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government;
"HESA"	data collected by the Higher Education Statistics Agency, largely relating to students at publicly funded higher education institutions (HEIs) in the UK, but also including Alternative Providers of higher education. Used in the Performance Tables as input to Destinations measures.
"HMG Security Policy Framework"	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;
"HMG"	means Her Majesty's Government;
"ICT"	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;
"ILR"	(Individualised Learner Record): returns submitted by institutions who are funded by the Education Funding Agency (EFA). Includes detailed information on individual learners and their learning aims.
"Implementation"	the process of carrying out the plans developed to provide the Services required under the Agreement;
"Implementation Plan"	the plan referred to in Clause 17 and set out in Appendix 1, to Schedule 1;
"Indemnified Person"	the Department, the Crown and each and every person to whom the Department (or any direct or indirect sub-licensee of the Department), sub-licenses, assigns or novates any IPRs in accordance with its rights under Clause 9 or otherwise in accordance with this Agreement;
"Intellectual Property Rights" ("IPRs")	copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, trademarks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information;
"ISO 22301"	the International Standard describing for Business

	Continuity;
"ISO/IEC 27001", "ISO 27001"	the International Standard for Information Security Management Systems Requirements;
"ISO/IEC 27002", "ISO 27002"	the International Standard describing the Code of Practice for Information Security Controls;
"Issue"	an issue is a problem related to a service, task or project that is about to occur or is currently occurring but is under the control of the project or business. An issue must be resolved as soon as possible, otherwise it will have detrimental effects on the business;
"IT Security Health Check"	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;
"Key Personnel"	means those personnel named in Appendix 1 to Schedule 1 and referred to in Clause 7.1 as being key to the operation of the services described in this Agreement; and such other personnel who may be added from time to time in accordance with Clause 7;
"L23 @19"	A consolidation of several data collections for 14-19 year olds, providing (1) a chronological record and (2) a snapshot record of their educational achievements and status;
"NCCIS"	The National Client Caseload Management Information System (NCCIS) provides local authorities (LAs) with the information they need to support young people to engage in education and training, identify those who are not participating and to plan services that meet young people's needs. In order to calculate outcome participation measures, it is necessary to create a matched dataset which includes NCCIS data linked to other pupil transaction datasets available in the NPD;
"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;
"Non-COTS Software"	Software of the Contractor or a Third Party Owner that is not COTS Software;
"Occasion of Tax Non-Compliance"	(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012

which is found on or after 1 April 2013 to be incorrect  
as a result of:

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

"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;

"Ordinary Exit"

any (i) expiry of this Agreement or (ii) any termination of this Agreement where the period of notice given by the Party serving notice to terminate is greater than or equal to six (6) months;

"PLAMS"

(Post-16 Learning Aims): A consolidated record of learning aims versus achievement for 16-18 year olds. Combines learning aims from school census and ILR data with attainment confirmed by Awarding Organisations and schools/colleges;

"Performance Data"

the amended performance data that is published in the school and college performance tables on the CSCP website;

"Personal Data"	shall have the meaning given in the Data Protection Act 1998;
"Principal Services"	the principal services to be provided by the Contractor pursuant to this Agreement and included in the monthly charges set out in Schedule 2 but excluding any Termination Services which may be required by the Department pursuant to Clause 4.1. of Schedule 7;
"Problem"	a condition from a number of incidents that are related or have common issues;
"Processing"	shall have the meaning given in the Data Protection Act 1998;
"Programme Plan"	a high-level plan prepared by the Contractor and which includes such information as required by the relevant terms of this Agreement, such plan to be prepared in accordance with Good Industry Practice;
"Project Specific IPRs"	<p>means:</p> <ul style="list-style-type: none"> <li>(a) Intellectual Property Rights in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or</li> <li>(b) Intellectual Property Rights arising as a result of the performance of the Contractor's obligations under this Agreement;</li> </ul> <p>but shall not include the Contractor Background IPRs or the Specially Written Software;</p>
"Pupil Level Data"	data that could be used to identify individual pupils and has not been anonymised;
"Rating Agency"	Dunn & Bradstreet (or an equivalent agency);
"Raw Files (Institution/LA/National)"	the pre-publication amended file sent to DfE for final QA/checking before it is submitted for publication;
"Results Data"	data relating to individual pupils test and qualification results;
"Results Day"	the dates in August of each year when A level and GCSE exam results are released;

"Replacement Contractor"	means any contractor who the Department engages following the expiry or termination of this Agreement and which contractor provides services the same as or substantially similar to those to be provided by the Contractor under this Agreement;
"Request for Information"	a request for information submitted in accordance with the FOIA or EIR;
"RM"	means the Contractor;
"School"	any school, college or other educational establishment that uses any of the Awarding Organisations to assess students' performance;
"Security Document Set"	the output of documents produced by the DSAM process which has been agreed by the Department and the Contractor;
"Services"	means the services to be provided by the Contractor in accordance with the terms of this Agreement including in particular as described in Schedule 1 (including its Appendices);
"Service Levels"	the KPIs referred to in Schedule 3;
"Set-Up"	the period between the Effective Date and the date falling thirty (30) Business Days after the Effective Date;
"Software"	Specially Written Software, Contractor Software and Third Party Software;
"Software Supporting Materials"	has the meaning given in Clause 9.2.1;
"Source Code"	any technical artefacts produced by the Contractor that are required to fulfil the Services, including scripts and code files produced in SQL, HTML, JavaScript, C#, and any other languages that may be used now or during the term of this Agreement and which are used to process and output performance indicators, collect and match data from Awarding Organisations and present data to schools as part of the checking exercises;
"Source Data"	data that the Department or Awarding Organisations provides to the Contractor; of which Results Data is a subset;
"Specially Written Software"	any Contractor Software or Third Party Software (including database software, linking instructions, test scripts, compilation instructions and test instructions)

		created by the Contractor (or by a Sub-contractor or other third party on behalf of the Contractor) specifically for the purposes of this Agreement, including any modifications or enhancements to Contractor Software or Third Party Software created specifically for the purposes of this Agreement;
"SPF"		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;
"Standards Hub"		the Government's open and transparent standards adoption process as documented at <a href="http://standards.data.gov.uk/">http://standards.data.gov.uk/</a> ;
"Sub-contractor(s)"		any sub-contractor(s) appointed by the Contractor for the purpose for delivering the Services under this Agreement;
"Term"		means the term of this Agreement, which is currently expected to expire on 31 March 2019;
"Termination Period"	Assistance	the period during which the Contractor is to provide any assistance to the Department under the terms of Schedule 7;
"Termination Services"		the services to be provided by the Contractor in accordance with the terms of Schedule 7;
"the Agreement"		this Agreement as signed by the Department and the Contractor;
"Third Party IPRs"		Intellectual Property Rights of a Third Party Owner including but not limited to those subsisting in the Software;
"Third Party Owner"		has the meaning given to it within the definition of "Third Party Software"
"Third Party Software"		software which is proprietary to any third party owner ("Third Party Owner") (other than an affiliate of the Contractor) which in any case is, will be or is proposed to be used by the Contractor for the purposes of providing the Services, including any COTS Software and Non-COTS Software of the Third Party Owner used in the provision of the Services;
"Transferring Employees"		means any employee of the Contractor or any Sub-



contractor whose employment the Contractor (acting reasonably and in good faith) believes is likely to transfer to the Department or a Replacement Contractor pursuant to TUPE on expiry or termination of this Agreement;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any related laws;

"Unamended Data" data produced by the Contractor through processing of the Source Data, prior to data checking; and

“Vocational Qualifications Database” a database of all vocational awards received for the current year.

- 1.2 References to “Agreement” mean this Agreement (and include the Schedules). References to “Clauses” and “Schedules” mean clauses of and schedules to this Agreement. The provisions of the Schedules shall be binding on the parties as if set out in full in this Agreement.
- 1.2 Reference to the singular include the plural and vice versa and references to any gender include both genders. References to a person include any individual, firm, unincorporated association or body corporate.
- 1.3 Where any provision of this Agreement requires the agreement or consent (or similar) of the Department, such agreement or consent (or similar) shall not be unreasonably withheld or delayed.
- 1.4 Where any provision of this Agreement refers to any item being “as specified by the Department” (or similar), the default position shall be that the relevant item shall be the same as for the previous year, with any changes being subject to the provisions of the Change Control Procedure.