

**Between:**

**1 THE SECRETARY OF STATE FOR EDUCATION**

**and**

**2 THE GEOGRAPHICAL ASSOCIATION**

**AGREEMENT**

**relating to**

**The Teaching and Leadership Innovation Fund (TLIF)**

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**THIS AGREEMENT** is made on 29 August 2018

**BETWEEN:**

- (1) THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT ("**DFE**"); and
- (2) THE GEOGRAPHICAL ASSOCIATION, a limited company registered in England and Wales under company number 07139068 whose registered office is at 160 Solly Street, Sheffield, South Yorkshire, S1 4BF (the "**Contractor**")

(each a "**Party**" and together the "**Parties**").

**BACKGROUND**

(A) DFE announced the Teaching and Innovation Leadership Fund in October 2016. DFE wishes to utilise the fund to improve the evidence base concerning what makes for successful teaching and leadership development in the areas of the country with the greatest identified need. This evidence will then be made available so that the marketplace might become more informed and sustainable in future. DfE wants provision to achieve one or more of the following outcomes:

- Improving the quality of teachers and effective teaching in classrooms
- Improving the quality of leaders at all levels
- Improving the career progression of teachers and leaders
- Improving the retention of high-quality teachers and leaders
- Professional and leadership development that meets the needs of schools

- (B) On 31 January 2018 DFE advertised in the Official Journal of the European Union (reference 2018/S 022-046123), inviting prospective suppliers to submit proposals for three lots, including: the second round of the Teaching and Leadership Innovation Fund (Lots 1 and 2), and the new High Potential Middle Leaders Programme (Lot 3).
- (C) The Contractor was awarded a contract under Lot 1 following the Contractor's response to the advertisement and a subsequent competitive tender process.
- (D) The Contractor is a leading provider of subject association for teachers of geography and has experience in programme design and delivery with a mission to further geographical knowledge and understanding through education.

**IT IS AGREED as follows:**

## 1. DEFINITIONS AND INTERPRETATION

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

<b>“Area”</b>	means the geographical area within England in respect of which the Contractor is appointed to provide the Services.
<b>“Associated Company”</b>	means any company which is, in relation to another company, its holding company or its subsidiary or a subsidiary of its holding company. <b>“Holding company”</b> and <b>“Subsidiary”</b> will have the meanings attributed to them in section 736 and 736A of the Companies Act 1985 and section 1159 of the Companies Act 2006.
<b>“Audit Agents”</b>	means: (a) DFE’s internal and external auditors; (b) DFE’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) the European Commission; (f) the European Court of Auditors; (g) any party formally appointed by DFE and/or by the European Commission and/or by the European Court of Auditors to carry out audit or similar review functions; and (h) successors or assigns of any of the above.
<b>“CCN”</b>	means a Change Control Note in the form set out in Schedule 5 (Change Control Procedure).
<b>“Charges”</b>	means the fees payable to the Contractor for the provision of the Services calculated in accordance with clause 8 and Schedule 3 (Financials).
<b>“Commercially Sensitive Information”</b>	means the information set out in Schedule 8 (Contractor’s Commercially Sensitive Information): (a) which is provided by the Contractor to DFE in confidence for the period set out in that schedule; and/or (b) that constitutes a trade secret.
<b>“Confidential”</b>	means any information which has been designated as

<b>Information”</b>	<p>confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the GDPR.</p> <p>Confidential Information shall not include information which:</p> <ul style="list-style-type: none"> <li>(a) was public knowledge at the time of disclosure;</li> <li>(b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</li> <li>(c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</li> <li>(d) is independently developed without access to the Confidential Information.</li> </ul>
<b>“Consortium”</b>	means an association of two (2) or more persons acting together to deliver the Services but excludes Sub-Contractors.
<b>“Consortium Agreement”</b>	<p>means, if the Contractor is a Consortium, an agreement:</p> <ul style="list-style-type: none"> <li>(a) signed by all the Consortium Members as at the Effective Date; and</li> <li>(b) adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence,</li> </ul> <p>which sets out, amongst other things, how the Consortium Members will work together to deliver the Services.</p>
<b>“Consortium Member”</b>	means a member of a Consortium (if any).
<b>“Contract”</b>	means the terms of this agreement between the Parties, and includes all Contract schedules and annexes as well as any CCNs.
<b>“Contractor Equipment”</b>	means the Contractor’s ICT equipment.
<b>“Contractor Premises”</b>	means any premises where the Services are to be supplied as set out in the Specification
<b>“Contractor’s Solution”</b>	means the Contractor’s proposal submitted in response to the DFE’s invitation to tender attached at Schedule 9

	(Contractor's Solution).
<b>"Copyright"</b>	shall have the meaning given to that term in section 1 of Part 1 to the Copyright, Designs and Patents Act 1988.
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and <b>"Crown Body"</b> is an emanation of the foregoing.
<b>"Default"</b>	means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Personnel in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.
<b>"DFE Data"</b>	means: (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the DFE; and/or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the DFE is the Data Controller;
<b>"DFE Offshoring Policy"</b>	means DFE's policy and procedures in relation to hosting or accessing DFE ICT, DfE Data or official information outside of the UK including Landed Resources as advised to the Contractor by DFE from time to time.
<b>"DFE Premises"</b>	means any premises owned by, leased or hired to or otherwise controlled by DFE or which DFE nominates as such by notice in writing to the Contractor.
<b>"DFE Security Standards"</b>	means the security standards as set out in Schedule 7 (Systems Handling and Data Security).
<b>"DFE Trade Marks"</b>	means proprietary trade mark rights of DFE including those notified to the Contractor by DFE from time to time.
<b>"Disclosure and Barring Service"</b>	means the non-departmental public body of the Home Office which assists organisations by identifying candidates who may be unsuitable for certain work,

	especially that involving children or vulnerable adults, and provides wider access to criminal record information through its disclosure service for England and Wales; and any successor organisation that performs substantially the same function.
<b>"Dispute"</b>	means any dispute between the Parties in connection with the Contract.
<b>"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach" and "Data Protection Officer"</b>	shall have the meanings given to those terms by the GDPR.
<b>"DOTAS"</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.
<b>"Data Protection Legislation"</b>	means: (a) the GDPR, the LED and any applicable national implementing laws; (b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (c) all applicable laws about the processing of personal data and privacy.
<b>"Data Protection Impact Assessment"</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>"Data Loss Event"</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
<b>"Data Subject Request"</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data



	Protection Legislation to access their Personal Data.
<b>“Deed of Adherence”</b>	means a deed under which a new Consortium Member shall covenant with the other Consortium Members to adhere to the terms of the Consortium Agreement in any a form approved by DFE in writing.
<b>“Effective Date”</b>	means 3 September 2018.
<b>“EIR”</b>	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to them.
<b>“Employment Liabilities”</b>	<p>means all actions, proceedings, costs (including reasonable legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities connected with or arising from all and any laws including, without limitation, directives, statutes, secondary legislation, orders, codes of practice, contractual obligations and other common law rights whether of the European Union, United Kingdom or any other relevant authority relating to or connected with:</p> <ul style="list-style-type: none"> <li>(a) the employment and dismissal of employees (including their health and safety at work); and</li> <li>(b) the engagement, use and termination of individuals other than employees who provide services (including their health and safety at work),</li> </ul> <p>and all wages, holiday pay and employment benefit costs due in respect of (a) or (b) above, including claims for protective awards.</p>
<b>“External Evaluators”</b>	means any organisation, and their staff, appointed by the DFE to evaluate the TLIF scheme and its funded projects in order to help measure, evaluate and monitor the effectiveness of the fund and its funded projects.
<b>“Financial Distress Event”</b>	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 11 (Financial Distress);
<b>“FOIA”</b>	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or another relevant government department in relation to it.
<b>“Force Majeure”</b>	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or

	<p>chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <p>(a) any industrial action occurring within the Contractor's, or any of its Sub-Contractor's, organisation, or otherwise involving the Personnel; or</p> <p>(b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any Sub-contract.</p>
<b>"GDPR"</b>	means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> ).
<b>"General Anti-Abuse Rule"</b>	<p>means:</p> <p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into the United Kingdom Parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.</p>
<b>"General Change in Law"</b>	means a change in law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to a comparable supply.
<b>"Good Industry Practice"</b>	means the standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
<b>"Guarantee"</b>	means any deed of guarantee in favour of the DFE entered into by the Guarantor on or about the date of this Contract (which is in the form set out in Schedule 10 (Guarantee), or any guarantee acceptable to the DFE that replaces it from time to time
<b>"Halifax Abuse Principle"</b>	means the principle explained in the Court of Justice of the European Union Case C255/02 Halifax and others.
<b>"HMRC"</b>	means Her Majesty's Revenue and Customs.
<b>"ICT"</b>	means information and communications technology.
<b>"Implementation Plan"</b>	means the plan and timetable for the delivery of the Services as set out in Schedule 4 (Implementation Plan) as amended and updated from time to time in accordance with Schedule 5 (Change Control Procedure).
<b>"Initial Term"</b>	means the period from the Effective Date to 31 March

	2020.
<b>“Intellectual Property Rights”</b>	means patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade and/or business names, rights in confidential information and know how, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
<b>“KPIs”</b>	means the key performance indicators in relation to the Services set out in Schedule 2 (KPIs, Service Levels and Performance Management) which the Contractor shall comply with.
<b>“KPI Credits”</b>	means the KPI credits specified in Schedule 2 (KPIs, Service Levels and Performance Management) which shall be payable to the DFE by the Contractor in the event that the KPIs are not met in respect of the Services.
<b>“Key Personnel”</b>	means any of the Personnel identified as such in Schedule 6 (Key Personnel and Key Sub-Contractors).
<b>“Key Sub-Contractor”</b>	means any Sub-Contractor identified as a Key Sub-Contractor in Schedule 6 (Key Personnel and Key Sub-Contractors).
<b>“Landed Resources”</b>	means when the Contractor or its Sub-contractor causes foreign nationals to be brought to the United Kingdom, to provide the Services.
<b>“LED”</b>	means the Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> ).
<b>“Material Breach”</b>	means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which DFE would otherwise derive from: (a) a substantial portion of the Contract; or (b) any of the obligations set out in clauses 6.15, 9, 10, 12, 13, 15, 17 and 33 and in Schedules 7 (Systems, Handling and Security) and 12 (Data Protection).
<b>“NICs”</b>	means National Insurance Contributions
<b>“Occasion of Tax Non-Compliance”</b>	means: (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

	<ul style="list-style-type: none"> <li>(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;</li> <li>ii) the failure of a tax 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</li> </ul> <p>(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 Effective Date or to a civil penalty for fraud or evasion.</p>
<b>“Open Book Data”</b>	<p>means complete and accurate financial and non-financial information which is sufficient to enable DFE to verify the Charges already paid or payable and the Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>(a) the Contractor’s costs broken down against each service category and/or deliverable under the Contract, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; and</li> <li>(b) operating expenditure relating to the supply of the Services including an analysis showing: <ul style="list-style-type: none"> <li>(i) the unit costs and quantity consumables and bought-in services;</li> <li>(ii) manpower resources broken down into the number and grade/role of all Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;</li> <li>(iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor’s profit margin;</li> <li>(iv) reimbursable expenses (such as reasonable out of pocket travel and subsistence expenses properly and necessarily incurred in the supply of the Services);</li> <li>(v) overheads;</li> <li>(vi) all interest, expenses and any other third</li> </ul> </li> </ul>

	<p>party financing costs incurred in relation to the supply of the Services;</p> <p>(vii) the Contractor's profit margin achieved over the Term and on an annual basis;</p> <p>(viii) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor;</p> <p>(ix) an explanation of the type and value of risk and contingencies associated with the supply of the Services, including the amount of money attributed to each risk and/or contingency.</p>
<b>"Offshoring"</b>	<p>means and of the following:</p> <p>(a) hosting systems, services or official information outside the UK;</p> <p>(b) allowing Personnel based outside the UK to have access to systems, services or official information; or</p> <p>(c) bringing Landed Resources to the UK to provide services including, but not limited to, applications development and support, testing and other similar activities.</p>
<b>"Option"</b>	<p>means the DFE's right to request additional services from the Contractor in accordance with the conditions set out at clause 30 (Change Control).</p>
<b>"Performance Manager"</b>	<p>means the Contractor's named Performance Manager.</p>
<b>"Personnel"</b>	<p>means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.</p>
<b>"Prohibited Act"</b>	<p>means:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the DFE a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p>

	<p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;</p> <p>(c) an offence:</p> <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;</li> <li>(ii) under legislation or common law concerning fraudulent acts; or</li> <li>(iii) the defrauding, attempting to defraud or conspiring to defraud the DFE;</li> </ul> <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.</p>
<b>“Protective Measures”</b>	means appropriate technical and organisational measures, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
<b>“Quality Standards”</b>	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.
<b>“Regulated Activity”</b>	means: <ul style="list-style-type: none"> <li>(a) In relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; and</li> <li>(b) In relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.</li> </ul>
<b>“Regulations”</b>	means The Public Contracts Regulations 2015 (SI 2015/102).
<b>“Regulatory Body”</b>	means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate,

	investigate, or influence the matters dealt with in the Contract or any other affairs of the DfE.
<b>“Relevant Conviction”</b>	means a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services.
<b>“Relevant Requirements”</b>	means all applicable laws relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
<b>“Relevant Tax Authority”</b>	means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.
<b>“Replacement Contractor”</b>	means any third party supplier appointed by the DFE to supply any services which are substantially similar to any of the Services in substitution for the Contractor following the expiry, termination or partial termination of the Contract.
<b>“Request for Information”</b>	means a request for information under the FOIA or the EIR.
<b>“Services”</b>	means the services described in Schedule 1 (Specification).
<b>“Service Credits”</b>	means the service credits specified in Schedule 2 (KPIs, Service Levels and Performance Management) which shall be payable to the DFE by the Contractor in the event that the Service Levels are not met in respect of Services.
<b>“Service Levels”</b>	means the levels of service specified in Schedule 2 (KPIs, Service Levels and Performance Management).
<b>“Service Period”</b>	<p>means the following:</p> <ul style="list-style-type: none"> <li>(a) the first Service Period of the Contract shall begin on the Effective Date and shall expire at the end of the calendar month in which the Effective Date falls; and</li> <li>(b) after the first Service Period of the Contract, a Service Period shall be a calendar month during the Contract save that the final Service Period of the Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract.</li> </ul>
<b>“Service Users”</b>	means those receiving the Services.

<b>“Specification”</b>	means the description of the Services to be supplied under the Contract set out in Schedule 1 (Specification).
<b>“Specific Change in Law”</b>	means a change in law that relates specifically to the business of the DFE and which would not affect a comparable supply;
<b>“Sub-Contract”</b>	means a contract between the Contractor and a Sub-Contractor.
<b>“Sub-Contractor”</b>	means a third party directly or indirectly contracted by the Contractor (irrespective of whether such person is an Associated Company) whose services are used by the Contractor (either directly or indirectly) in connection with the provision of the Services.
<b>“Sub-processor”</b>	means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.
<b>“Term”</b>	means the period from the Effective Date until the date on which the Contract ends for whatever reason.
<b>“Third Party Software”</b>	means software which is proprietary to any third party (other than an affiliate of the Contractor) which is or will be used by the Contractor for the purposes of providing the Services.
<b>“Transparency Obligations”</b>	Means the legislative requirements and transparency policy commitments pertaining to the publication of procurement and contract information, as amended from time to time.
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
<b>“Variation”</b>	means any variation (other than the exercise of the Option) to the Contract requiring a CCN to be completed in accordance with Schedule 5 (Change Control Procedure).
<b>“VAT”</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
<b>“Working Day”</b>	means any day (other than a Saturday, Sunday, or public holiday) when banks in the United Kingdom are open for business.

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



- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;
- 1.2.2 the expression “**person**” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “**include**”, “**includes**”, “**including**” and “**included**” will be construed without limitation unless inconsistent with the context;
- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;
- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
- 1.2.7 the cover sheet, schedules, appendices and annexes form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules; and
- 1.2.8 if there is a conflict between the provisions of the clauses of the Contract and the provisions of the schedules, the following order of precedence shall apply:
  - (a) The clauses;
  - (b) Schedule 1 - Specification;
  - (c) Schedule 2 – KPIs, Service Levels and Performance Management;
  - (d) Schedule 3 – Financials;
  - (e) Schedule 4 – Implementation Plan;
  - (f) All the other Schedules and their annexes apart from, Schedule 9 (Contractor's Solution); and
  - (g) Schedule 9 - Contractor's Solution.

## 2. TERM

2.1 The Contract shall commence on the Effective Date and, and shall expire at the end of the Initial Term unless the Contract is otherwise:

2.1.1 terminated in accordance with the provisions of this Contract or otherwise lawfully terminated; or

2.1.2 extended under clause 2.2.

2.2 DFE may in its absolute discretion extend the term of the Contract from the expiry of the Initial Term up to a maximum of 24 months (**“the Extended Period”**) to provide for continued service by giving not less than six (6) months’ written notice to the Contractor prior to the expiry of the Initial Term. This decision to extend will be subject to satisfactory contractor performance, government/Ministerial support and funding.

## 3. THE SERVICES

3.1 In consideration for the provision of the Services by the Contractor the DFE shall of the Contractor supplying the Services, the Contractor shall pay the Charges in accordance with Schedule 3 (Financials) subject to the receipt of Valid Invoices pursuant to clause 8.7 being issued by the Contractor.

3.2 The DFE may appoint other contractors to provide services that are similar to the Services in the Area.

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

3.3.1 conform to the requirements of the Specification and the Contractor’s Solution, and any additional requirements that are agreed in writing between the Parties;

3.3.2 the Contractor shall work with the DFE to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Contractor’s management and delivery of it;

3.3.3 carry out and complete the Services in a proper and professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;

3.3.4 comply with Good Industry Practice;

- 3.3.5 ensure that the Services are provided by competent and appropriately trained Personnel;
  - 3.3.6 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation bodies;
  - 3.3.7 comply with the KPIs, Service Levels, Service Credit and Performance Management requirements set out in Schedule 2 (KPIs, Service Levels and Performance Management);
  - 3.3.8 comply with Schedule 4 (Implementation Plan);
  - 3.3.9 in so far as it is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within ten (10) Working Days of the same being brought to the attention of the Contractor by the DFE;
  - 3.3.10 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
  - 3.3.11 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE, the Service Users and all other persons including members of the public; and
  - 3.3.12 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Personnel comply with these policies; and
  - 3.3.13 ensure that timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services according to Schedule 4 (Implementation Plan) and within the time, or on the date, agreed.
- 3.4 The DFE may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.

#### **4. CONSORTIA**

- 4.1 If the Contractor is a Consortium it shall comply with the terms of this clause.
- 4.2 The Contractor shall only appoint additional or replacement Consortium Members to assist it in carrying out its obligations under the Contract subject to the requirements in clause 4.3.

- 4.3 No new person or entity shall become a Consortium Member until:
- 4.3.1 the DFE has given its prior written consent to the new Consortium Member;
  - 4.3.2 the new Consortium Member has signed a Deed of Adherence; and
  - 4.3.3 a copy of the Deed of Adherence has been given to the DFE.
- 4.4 The Contractor shall promptly notify the DFE if any Consortium Member breaches the terms of the Consortium Agreement, and shall supply details of the breach and any action/s it intends to take to remedy the situation.

## **5. TRANSFER AND SUB-CONTRACTING**

- 5.1 Save as set out in this clause 5, the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a “**Transfer**”) without the prior written consent of the DFE.
- 5.2 If the DFE consents to a Transfer, the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 The Contractor may award Sub-Contracts with a value per annum not exceeding ten thousand GBP (£10,000) without the DFE’s consent.
- 5.4 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.
- 5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE’s prior written consent.
- 5.6 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE’s right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the DFE’s satisfaction within twenty-one (21) days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.8 If the DfE believes there are:
- 5.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or

5.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such a requirement.

## **6. PERSONNEL AND SAFEGUARDING**

- 6.1 The DFE may refuse admission to DFE Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the DFE believes is a security risk.
- 6.2 If the DFE require the removal of any Personnel pursuant to clause 6.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.
- 6.3 The Contractor shall use its best endeavours to ensure continuity of Personnel.
- 6.4 The Contractor acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Personnel and Key Sub-Contractors listed in Schedule 6 (Key Personnel and Key Sub-Contractors) as at the Effective Date.
- 6.5 Key Personnel shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.6 Any replacements to Key Personnel shall be subject to DFE's consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.7 The DFE shall not unreasonably withhold consent under clauses 6.5 or 6.6. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
- 6.8 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.
- 6.9 The DFE shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify and keep indemnified the DFE against all Employment Liabilities that may arise in this respect.
- 6.10 Except in respect of any transfer of Personnel under TUPE, for the Term and for 12 months after the Term neither Party shall (except with

the prior written consent of the other) solicit the services of any Personnel of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at Personnel of the other Party.

- 6.11 The Contractor shall further use all best endeavours to ensure that its Personnel are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Contractor shall promptly take all reasonable steps to ensure compliance with this clause.
- 6.12 The Contractor and its Sub-Contractors shall have obtained the requisite vetting and clearance of all their Personnel so that the DFE may be assured that the DFE's guidelines for child safeguarding are achieved.
- 6.13 The Contractor shall put in place safeguards to protect children and vulnerable adults from a risk of significant harm which could arise from the performance of the Services. The Contractor will agree these safeguards with the DFE before commencing work on the Contract.
- 6.14 The Contractor shall carry out checks with the Disclosure and Barring Service on all Personnel involved in a Regulated Activity. The Contractor must have a Disclosure and Barring Service check done every three (3) years for any Personnel. The Disclosure and Barring Service check must be completed before any of the Contractor's Personnel work with children or vulnerable adults in Regulated Activity. The Contractor shall immediately notify the DFE of any information that it reasonably requests to enable it to be satisfied that the Contractor's obligations of have been met.
- 6.15 The Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction, is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to children or vulnerable adults.

## **7. TUPE (Not Relevant)**

## **8. CHARGES**

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.

- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the Schedule 3 (Financials) subject to the receipt of Valid Invoices pursuant to clause 8.7 being issued by the Contractor.
- 8.3 Except where otherwise expressly stated in Schedule 3 (Financials), the Contractor shall not be entitled to increase the Charges or any rates identified in that schedule throughout the Term.
- 8.4 The Charges are exclusive of VAT and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 8.5 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 8.6 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges), any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.7 Invoices shall be submitted to [SSCL.POINVOICEPAYMENTS@sscl.gse.gov.uk](mailto:SSCL.POINVOICEPAYMENTS@sscl.gse.gov.uk) within twenty-five (25) days of the end of the relevant invoicing date, specified in Schedule 3 (Charges). An invoice is a “**Valid Invoice**” if it is legible and includes:
- 8.7.1 the date of the invoice;
  - 8.7.2 Contractor’s full name and address;
  - 8.7.3 Contract reference number;
  - 8.7.4 the charging period;
  - 8.7.5 a detailed breakdown of the appropriate Charges including deliverables, milestones, KPIs or Service Levels achieved (if applicable);
  - 8.7.6 days and times worked (if applicable);
  - 8.7.7 Service Credits (if applicable); and

- 8.7.8 VAT if applicable.
- 8.8 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.9 The DFE intends to pay Valid Invoices within ten (10) days of receipt. Valid Invoices not paid within thirty (30) days are subject to interest at the rate of two per cent (2%) above the base rate from time to time of Barclays Bank. This clause (8.9) is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.10 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within ten (10) Working Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.11 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE. The final invoice shall be submitted not later than thirty (30) days after the end of the Term.
- 8.12 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Services.
- 8.13 The Contractor shall ensure that a term is included in its Sub-Contracts which requires the Contractor to pay any undisputed sums to Sub-Contractors within thirty (30) days from the date the Contractor receives the Sub-Contractor's invoice.
- 8.14 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within ten (10) Working Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending resolution of the dispute.
- 8.15 The Parties shall use all best endeavours to resolve any dispute over invoices within ten (10) Working Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

## **9. TAX AND FINANCIAL DISTRESS**

- 9.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.



- 9.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.
- 9.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 9.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.
- 9.5 A request under clause 9.4 may specify the information that the Contractor must provide and the period within which that information must be provided.
- 9.6 The DFE may terminate this Contract if:
- 9.6.1 in the case of a request mentioned in clause 9.4 the Contractor:
- (i) fails to provide information in response to the request within a reasonable time; or
  - (ii) provides information which does not demonstrate either how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it;
- 9.6.2 it receives information which demonstrates that, if clauses 9.1 to 9.3 apply, the Contractor is not complying with those clauses.
- 9.7 The DFE may supply any information which it receives under clause 9.4 to HMRC.
- 9.8 The Contractor bears sole responsibility for the payment of tax and NICs due from it in relation to any payments or arrangements made under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.
- 9.9 The Contractor will account to any Relevant Tax Authority for any applicable income tax, NICs, VAT and all other taxes, liabilities, charges, fees and duties relating to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.
- 9.10 The Contractor shall indemnify the DFE on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the DFE at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause 9.10 shall be paid in cleared funds by the Contractor

to the DFE not less than five (5) Working Days before the date upon which the tax or other liability is payable by the DFE.

9.11 The Contractor authorises the DFE to provide HMRC and all other departments or agencies of the government with any information which they may request as to fees and/or expenses paid or due to be paid under the Contract whether or not DFE is obliged as a matter of law to comply with such request.

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

9.12.1 notify the DFE in writing of such fact within five (5) Working Days of its occurrence; and

9.12.2 promptly give the DFE:

(i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and

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

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

## **10. PREVENTION OF CORRUPTION**

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

10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or

10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

10.2 The Contractor shall not:

10.2.1 commit a Prohibited Act; or

- 10.2.2 do or suffer anything to be done which would cause the DFE or any of its employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 10.3 The Contractor shall:
- 10.3.1 and procure that its Sub-Contractors shall, establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- 10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.1 and make such records available to the DFE on request.
- 10.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Personnel have:
- 10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
- 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE's enquiries, co-operate with any investigation, and allow the DFE to audit any books, records and any other relevant documentation.
- 10.6 If the Contractor is in breach of any of its obligations under clauses 10.1 and/or 10.2, the DFE may by notice:
- 10.6.1 require the Contractor to remove from performance of the Contract any Personnel whose acts or omissions have caused the breach;
- 10.6.2 terminate the Contract with immediate effect and without liability by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by DfE resulting from the termination;

10.6.3 recover in full from the Contractor any other loss sustained by DfE in consequence of any breach of this clause whether or not the Contract has been terminated; and/or

10.6.4 recover in full from the Contractor the amount of value of any gift, consideration or commission.

10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

## **11. DISCRIMINATION**

11.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise).

11.2 The Contractor shall comply with DFE's equality and diversity policy as given to the Contractor from time to time and any other requirements and instructions which the DFE reasonably imposes in connection with any equality obligations imposed on the DFE at any time under equality law.

11.3 The Contractor shall take all necessary steps and inform the DFE of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

11.4 The Contractor shall indemnify and keep indemnified the DFE from and against all Employment Liabilities that may arise as a result of any claims brought against the DFE by any of its employees, agents, consultants and contractors ("**DFE Personnel**") and/or any of the Personnel where such claim arises from any act or omission of the Contractor or Personnel in respect of anti-discrimination legislation. The Contractor will also provide all reasonable cooperation, assistance and information as the DFE may request in connection with any investigation by the DFE into any complaint or other grievance received by it from any of the DFE Personnel or Personnel in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any Personnel.

## **12. INTELLECTUAL PROPERTY**

12.1 All Intellectual Property Rights in materials:

12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the “**DFE IP Materials**”) shall remain the property of the DFE; and

12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with the Contract (the “**Service Specific IP Materials**”) shall remain the property of the Contractor

(together the “**IP Materials**”).

12.2 The Contractor shall not, and shall ensure that the Personnel shall not, use or disclose DFE IP Materials without the DFE’s approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.

12.3 In consideration of the payment of the Charges the Contractor hereby grants, or shall procure that the owner of the Service Specific IP Materials grants, to the DFE, a non-exclusive, royalty free licence to use, reproduce, modify, adapt and enhance the Service Specific IP Materials. Such licence shall be perpetual and irrevocable, with a right to sub-licence, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Contractor or to any other third party supplying goods and/or services to the DFE.

12.4 The DFE shall be entitled to engage a third party to use, reproduce, modify and enhance the Service Specific IP Materials on behalf of the DFE.

12.5 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Contract or the performance of the Contract.

12.6 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the DFE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the DFE an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the DFE to sub-licence, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Contractor or to any other third party supplying goods and/or services to the DFE (the “**Indemnified Persons**”). The Contractor shall notify the DFE of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service Specific IP Materials.

12.7 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the

Contractor shall indemnify and keep indemnified the Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 12, except to the extent that any such claim arises from:

12.7.1 items or materials supplied by the DFE; or

12.7.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.

12.8 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.

12.9 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the DFE, provided always that the Contractor:

12.9.1 shall consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;

12.9.2 shall take due and proper account of the interests and concerns of the DFE; and

12.9.3 shall not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).

12.10 Notwithstanding clause 12.9 the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action, the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.

12.11 The DFE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

12.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:

- 12.12.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
- 12.12.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.
- 12.13 If the Contractor is unable to comply with clauses 12.12.1 and 12.12.2 within twenty (20) Working Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.
- 12.14 The Contractor grants to the DFE a royalty-free and non-exclusive licence to use any Intellectual Property Rights the Contractor owned or developed prior to the Effective Date or otherwise not in connection with the Contract ("**Contractor IP**") and which the DFE reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided and the use and further development of the IP Materials. Such licence shall be perpetual and irrevocable, with a right to sub-licence, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Contractor or to any other third party supplying goods and/or services to the DFE.
- 12.15 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
- 12.16 If the Contractor is not able to grant to the DFE a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:
- 12.16.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Contract grants to the DFE a licence on the terms set out in clause 12.14; or
- 12.16.2 if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the DFE a sub-licence on the terms set out in clause 12.14.
- 12.17 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the DFE IP Materials any act or thing which:

12.17.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or

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

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

12.19 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:

12.19.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or

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

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

13.1 The Parties shall comply with the provisions of Schedule 7 (Systems, Handling and Data Security) and Schedule 12 (Data Protection).

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

14.1 Subject to clause 15.2, and without prejudice to DFE's Transparency Obligations, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

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

14.3 Without prejudice to the generality of clauses 12.19 and 14.1, the Contractor shall not, and shall procure that its Sub-Contractors or any Consortium Members shall not, use the DFE's name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market



or publicise the Contractor's other programmes, courses, services or other activities.

- 14.4 Subject to clauses 12 and 15 the DFE may disclose, copy and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Services or comprised in any work relating to the Services.

## **15. CONFIDENTIALITY**

- 15.1 Except to the extent set out in this clause 15 or if disclosure or publication is expressly permitted elsewhere in the Contract, each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- 15.2 The Contractor hereby gives its consent for the DFE to publish the Contract including from time to time agreed changes to the Contract.
- 15.3 The Contractor may only disclose the DFE's Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Personnel are aware of and shall comply with these obligations as to confidentiality.
- 15.4 The Contractor shall not, and shall procure that Personnel do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 15.5 Clause 15.1 shall not apply to the extent that:
- 15.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
  - 15.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 15.5.3 such information was obtained from a third party without obligation of confidentiality;
  - 15.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 15.5.5 such information is independently developed without access to the other Party's Confidential Information.

15.6 Nothing in clause 15 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:

15.6.1 for the purpose of the examination and certification of the DFE's accounts;

15.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;

15.6.3 to any other Crown Body, and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or

15.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 15.6.3 and 15.6.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

15.7 Nothing in clauses 15.1 to 15.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

15.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the DFE's obligations of confidentiality.

15.9 If the Contractor does not comply with clauses 15.1 to 15.5 the DFE may terminate the Contract immediately on written notice to the Contractor.

## **16. FREEDOM OF INFORMATION**

16.1 The Contractor acknowledges that the DFE is subject to the requirements of the FOIA and the EIR.

16.2 The Contractor shall transfer to the DFE all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:

16.2.1 give the DFE a copy of all information in its possession or control in the form that the DFE requires within five (5) Working

Days (or such other period as the DFE may specify) of the DFE's request;

16.2.2 provide all necessary assistance as reasonably requested by the DFE to enable the DFE to comply with its obligations under the FOIA and EIR; and

16.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.

16.3 The DFE shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Contractor's Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

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

17.1 The Contractor shall comply with the provisions of:

17.1.1 the Official Secrets Acts 1911 to 1989; and

17.1.2 section 182 of the Finance Act 1989.

## **18. LIABILITY**

18.1 Neither Party excludes or limits its liability (if any) to the other:

18.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;

18.1.2 for personal injury or death resulting from the its negligence;

18.1.3 under section 2(3) Consumer Protection Act 1987;

18.1.4 for its own fraud; or

18.1.5 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.

18.2 Subject to clauses 18.1 and 18.3, the Contractor shall indemnify the DFE and keep the DFE indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Personnel on the DFE or Contractor Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any

other loss which is caused directly by any act or omission of the Contractor.

18.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and clause 9 (Tax and Financial Distress).

18.4 Subject to clauses 18.1, 18.3 and 18.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:

18.4.1 for any losses of an indirect or consequential nature;

18.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or

18.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.

18.5 Subject to clauses 18.1 and 18.3, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:

18.5.1 in respect of damage to property is limited to two million GBP (£2 million) in respect of any one incident or series of connected incidents; and

18.5.2 in respect of any claim not covered by clause 18.5.1, is limited in each calendar year in aggregate to 150% of the sum of the Charges payable in that year.

18.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:

18.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the Default;

18.6.2 any wasted expenditure or charges;

18.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;

18.6.4 any compensation or interest paid to a third party by the DFE; and

- 18.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 18.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.8 All equipment and other property brought onto DFE Premises shall be at the Contractor's own risk and the DFE shall have no liability for any loss of or damage to any such equipment and property howsoever occurring.
- 18.9 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the appropriate sum and range of cover but not less than five million GBP (£5,000,000) for any one claim, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than two million GBP (£2,000,000) for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.
- 18.10 The Contractor shall supply to the DFE on demand copies of the insurance policies maintained under clause 18.9.
- 18.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 18.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

## **19. WARRANTIES AND REPRESENTATIONS**

- 19.1 The Contractor warrants and represents that:
- 19.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 19.1.2 in entering the Contract it has not committed any fraud;
- 19.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;

- 19.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;
- 19.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 19.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 19.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 19.1.8 in the three (3) years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 19.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- 19.1.10 it has notified the DFE in writing of any Occasion of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

## **20. FORCE MAJEURE**

- 20.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 20.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 20.2 If either Party is prevented from performance of its obligations for a continuous period in excess of three (3) months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 20.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use best endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

## **21. MONITORING AND REMEDIATION**

- 21.1 The DFE's authorised representatives and its External Evaluators may visit, on provision of reasonable notice to the Contractor, any Contractor Premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is complying in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Services.
- 21.2 During such visits, the DFE's authorised representatives and its External Evaluators, may inspect and take copies of such of the records of the Contractor and any Consortium Member as relate to the performance of their obligations under the Contract.
- 21.3 If the DFE reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the DFE may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- 21.4 If the Contractor has been notified of a failure in accordance with clause 21.3 the DFE may:

- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the DFE and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the DFE within the specified timescale; and/or
  - (b) withhold or reduce payments to the Contractor in such amount as the DFE deems appropriate in each particular case until such failure has been remedied to the satisfaction of the DFE.
- 21.5 If the Contractor has been notified of a failure in accordance with clause 21.3, it shall:
  - (a) use all reasonable endeavours to immediately minimise the impact of such failure to the DFE and to prevent such failure from recurring; and
  - (b) immediately give the DFE such information as the DFE may request regarding what measures are being taken to comply with the obligations in this clause 21.5 and the progress of those measures until resolved to the satisfaction of the DFE.
- 21.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause 21.5 within the time specified by the DFE, the DFE may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.
- 21.7 The DFE will review from time to time the progress of the Contractor against the Implementation Plan. The Contractor shall cooperate with the DFE in this regard and promptly and in any event within five (5) Working Days provide any information and evidence reasonably required by the DFE.
- 21.8 The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that the Implementation Plan at Schedule 4 (Implementation Plan) is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

## 22. STEP IN RIGHTS

- 22.1 Without prejudice to DFE's rights of termination under clause 23 (Termination) the DFE may exercise one or more of the rights set out in this clause 22 ("**Step In Rights**") if:
  - 22.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;



- 22.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
  - 22.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 22 is necessary;
  - 22.1.4 a serious risk exists to the health and safety of persons, property or the environment;
  - 22.1.5 it is necessary to discharge a statutory duty; or
  - 22.1.6 the Contractor becomes insolvent.
- 22.2 If the DFE has a Step In Right it may serve notice on the Contractor (a **“Step-In Notice”**) that it will take action under this clause either itself or with the assistance of a third party.
- 22.3 The Step-In Notice shall set out:
- 22.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);
  - 22.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;
  - 22.3.3 the date on which it wishes to commence the Required Action;
  - 22.3.4 the time period which it believes will be necessary for the Required Action;
  - 22.3.5 whether the DFE will require access to the Contractor Premises; and
  - 22.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.
- 22.4 Following service of a Step-In Notice, the DFE shall:
- 22.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
  - 22.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;

- 22.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and
- 22.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 22.5 For as long as and to the extent that the Required Action continues:
  - 22.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
  - 22.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.
- 22.6 If the Contractor demonstrates to the DFE's reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.
- 22.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:
  - 22.7.1 the Required Action it has taken; and
  - 22.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 22.8.
- 22.8 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the date specified in clause 22.7.2, develop for the DFE's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- 22.9 If the DFE does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.
- 22.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 22, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE under clauses 22.1.2 to 22.1.5 (insofar as the primary cause of the DFE serving the Step-In Notice is identified as not being the result of a Contractor's Default).

## **23. TERMINATION**

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

23.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

23.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

23.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

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

23.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

23.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

23.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

23.1.8 any event similar to those listed in clauses 23.1.1 to 23.1.7 occurs under the law of any other jurisdiction.

23.2 The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

23.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;

23.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy;

- 23.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
  - 23.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
  - 23.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days;
  - 23.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
  - 23.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - 23.2.8 any event similar to those listed in clauses 23.2.1 to 23.2.7 occurs under the law of any other jurisdiction.
- 23.3 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within six (6) months of:
- 23.3.1 being notified that a Change of Control has occurred; or
  - 23.3.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control
- but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 23.4 The DFE may terminate the Contract with immediate effect and without compensation to the Contractor where the Contractor is a partnership and:
- 23.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 23.4.2 it is for any reason dissolved;

- 23.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
- 23.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;
- 23.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- 23.4.6 any of the following occurs in relation to any of its partners:
  - 23.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
  - 23.4.6.2 a petition is presented for his bankruptcy;
  - 23.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or
  - 23.4.6.4 any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the law of any other jurisdiction.
- 23.5 The DFE may terminate the Contract with immediate effect and without compensation to the Contractor where the Contractor is a limited liability partnership and:
  - 23.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 23.5.2 it is for any reason dissolved;
  - 23.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
  - 23.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
  - 23.5.5 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made

for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;

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

23.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

23.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

23.5.9 any event similar to those listed in clauses 23.5.1 to 23.5.8 occurs under the law of any other jurisdiction.

23.6 References to the Insolvency Act 1986 in clause 23.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

23.7 The DFE may terminate with immediate effect if the Contractor commits a Default and:

23.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within twenty-one (21) Working Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied

23.7.2 the Default is not, in the opinion of the DFE, capable of remedy;  
or

23.7.3 the Default is a Material Breach.

23.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:

23.8.1 the Contractor's warranty in clause 19.1.10 is materially untrue;

23.8.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance;

23.8.3 the Contractor fails to provide details of proposed mitigating factors which, in the DfE's reasonable opinion are acceptable; or

23.8.4 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

23.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:

- 23.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- 23.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
- 23.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.
- 23.10 If the DFE terminates the Contract under clause 23.7, 23.8 or 23.9:
- 23.10.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
- 23.10.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause.
- 23.11 Either Party may terminate the Contract (or any part of it) at any time by giving at least three (3) months' prior written notice to the other Party.
- 23.12 If the DFE terminates the Contract under clause 23.11 the DFE shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE.
- 23.13 If any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Contract cannot reasonably continue the DFE may terminate this Contract (or any part of it) by serving three (3) months' written notice on the Contractor.
- 23.14 If the DFE terminates the Contract under clause 23.13 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any

possible redundancy costs), provided that the Contractor shall use all best endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavailability of such costs.

23.15 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

23.16 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within ninety (90) Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clauses 8.6 or 20 (Force Majeure).

23.17 Save as otherwise expressly provided in the Contract:

23.17.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

23.17.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Charges), 9 (Tax and Financial Distress), 10 (Prevention of Corruption), 12 (Intellectual Property), 13 (Systems, Handling and Security), 15 (Confidentiality), 16 (Freedom of Information), 17 (Official Secrets Act and Finance Act 1989), 18 (Liability), 19 (Warranties and Representations), 23 (Termination) 24 (Retendering and Handover), 25 (Exit Management), 26 (Audit), and 37 (Governing Law and Jurisdiction).

23.18 The DFE may terminate the Contract with immediate effect and without compensation to the Contractor where Paragraph 4 of Schedule 11 (Financial Distress) applies. The Parties shall comply with the provisions of that schedule in relation to the assessment of the financial standing of the Contractor and the consequences of a change to that financial standing.

## **24. RETENDERING AND HANDOVER**

24.1 Within thirty (30) days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable



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

- 24.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 24.1 is given only to potential contractors of the replacement services.
- 24.3 The DFE shall require that all potential contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the DFE; and that they shall not use it for any other purpose.
- 24.4 The Contractor shall allow access to the Contractor Premises in the presence of DFE's authorised representative(s), to any person representing any potential contractor whom the DFE has selected to tender for the future provision of the Services.
- 24.5 If access is required to the Contractor Premises for the purposes of clause 24.4, the DFE shall give the Contractor five (5) Working Days notice of a proposed visit together with the names of all persons who will be visiting.
- 24.6 The Contractor shall co-operate fully with the DFE during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 24.7 Within ten (10) Working Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued digital format, to operate on a proprietary software package identical to that used by the DFE.

## **25. EXIT MANAGEMENT**

- 25.1 If the DFE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the DFE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 25.2 Where requested by the DFE, the Contractor will, within thirty (30) days following receipt of the request, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its Replacement Contractor at the end of the Term (an "**Exit Plan**").

- 25.3 Within thirty (30) days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan, the dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the DFE for review. Within thirty (30) days following submission of the revised Exit Plan, the Parties shall use best endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within thirty (30) days, such dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.5 The following commercial approach shall apply to any transfer of the Services required under clause 25.1. If the Contractor:
- 25.5.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or
- 25.5.2 reasonably incurs additional costs, the Parties shall agree a Variation of the Charges.
- 25.6 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.
- 25.7 Within one (1) month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 25.8 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than fifteen (15) Working Days from the date that that request was made.

## **26. AUDIT, the NATIONAL AUDIT OFFICE and OPEN BOOK DATA**

- 26.1 The Contractor shall keep and maintain until six (6) years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services

supplied under it and all Charges (the “**Documentation Retention Period**”).

- 26.2 Without prejudice to the generality of clauses 26.1, the Contractor shall, at all times, upon written request by the DFE, provide written confirmation of a summary of any of the Open Book Data, including details of any funds held by the Contractor specifically to cover its on-going costs, in such other form and detail as the DFE may reasonably require, to enable the DFE to monitor the performance by the Contractor of its obligations under the Contract, its solvency and the level of profit the Contractor is making from the supply of the Services.
- 26.3 The Contractor shall provide (or procure provision of) access at all reasonable times to the DFE, its duly authorised Personnel or agents and any Audit Agents to inspect the Open Book Data and such records and accounts (including those of Sub-contractors) as the DFE may require from time to time. The DFE shall be entitled to interview the Personnel in order to obtain appropriate oral explanations of the records and accounts and the Contractor shall provide (or procure provision of) access to the relevant Personnel at such times as may be reasonably required to enable the DFE to do so.
- 26.4 The Contractor shall ensure that all of its contracts with Sub-contractors include obligations reflecting the requirements of the DFE under this clause.
- 26.5 The Contractor shall provide the Open Book Data and all records and accounts referred to in this clause 26 (together with copies of the Contractor's published accounts) until the end of the contract, and shall provide such records and accounts on request until the end of the Document Retention Period, to the DFE and the Audit Agents.
- 26.6 The DFE shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the supply of the Services, save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Audit Agents is outside of the control of the DFE.
- 26.7 The Contractor shall provide the rights set out in this clause 26 to any duly authorised staff or agents of DFE, the National Audit Office, the Audit Agents and any third parties as notified by DFE to the Contractor from time to time.
- 26.8 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.
- 26.9 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

- 26.10 The Contractor (and its agents) shall permit the Controller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Controller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.
- 26.11 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Contractor or any third party in relation to supply of the Services, the DFE reserves for itself and any Audit Agents or any government department the right of immediate access to the Open Book Data and all records and accounts referred to in this clause 26 and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Contract or at any time thereafter.
- 26.12 The Contractor shall indemnify and keep indemnified the DFE in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Contractor (or any Sub-contractor) of this clause.

## **27. ENTIRE AGREEMENT**

- 27.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.
- 27.2 Nothing in this clause shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

## **28. PARTNERSHIP**

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

## **29. WAIVER**

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

## **30. CHANGE CONTROL**

- 30.1 Either Party may at any time request in writing a Variation in accordance with the change control procedure set out in Schedule 5 (Change Control Procedure).
- 30.2. The DFE may request additional services by exercising the Option at any point during the Term where:
- 30.2.1 the Contractor is fully and properly performing its obligations under the Contract; and
  - 30.2.2 the DFE, in its considered opinion, identifies a need for additional services.
- 30.3 Subject to the limitations in clause 30.4 the Option may be exercised any number of times.
- 30.4 Additional services may include an increase in volume of the Deliverables, and/or developments to the Services in accordance with clause 30.5, provided always that any additional services must not:
- 30.4.1 exceed a cumulative total of either fifty per cent (50%) additional Service Users or fifty per cent (50%) of the original agreed Charges for the Initial Term; or
  - 30.4.2 alter the overall nature of the contract.
- 30.5 For the purposes of clause 30.4, developments to the services may include:
- 30.5.1 additional training modules for Service Users;
  - 30.5.2 new methods of testing; and/or
  - 30.5.3 improved course materials.
- 30.6 The Option must be exercised in accordance with the change control procedure set out in Schedule 5 (Change Control Procedure).
- 30.7 The Option is not a guarantee of further business and the DfE is not obliged to exercise the Option.
- 30.8 No Variation or Option shall be effective unless made in accordance with Schedule 5 (Change Control Procedure).

## **31. COUNTERPARTS**

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

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

- 32.1 The provisions of clause 12.6 confer benefits on persons named in the clause (together “**Third Party Provisions**”) other than the Parties (each person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (“CRTPA”).
- 32.2 Subject to clause 32.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 32.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without the prior written consent of DFE.
- 32.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

## **33. CONFLICTS OF INTEREST**

- 33.1 The Contractor shall:
- 33.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and
- 33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 33 as a “**Conflict of Interest**”.
- 33.2 If the Contractor becomes aware of any Conflict of Interest or other situation which has arisen or may arise and which may cause a breach of this clause 33 the Contractor shall forthwith provide full particulars to the DFE.

- 33.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.
- 33.4 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest arises or is likely to arise, the Contractor shall:
- 33.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and
- 33.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.
- 33.5 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest.
- 33.6 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing breach by the Contractor of the provisions of this clause 33.

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

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

#### **35. NOTICES**

- 35.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).
- 35.2 The notice, demand or communication shall be deemed to have been duly served:
- 35.2.1 if delivered by hand, when left at the proper address for service;

35.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail fourteen (14) days after being posted;

35.2.3 if given or made by e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

35.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

35.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

(a) For the DFE:

Contact Name: Graham Tanfield;

Address: DEPARTMENT FOR EDUCATION, 2 St Paul's Place, 125  
Norfolk Street,  
Sheffield, S1 2FJ and

Email: graham.tanfield@education.gov.uk

(b) For the Contractor:

Contact Name: Alan Kinder;

Address: THE GEOGRAPHICAL ASSOCIATION, 160 Solly Street,  
Sheffield, South Yorkshire, S1 4BF

Email: akinder@geography.org.uk.

## **36. DISPUTE RESOLUTION**

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

36.2 In the first instance, an authorised representative of each Party will each use their best endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within fifteen (15) days of



the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their best endeavours to resolve the Dispute.

- 36.3 If a Dispute cannot be resolved by negotiation as referred to in clause 36.2 within thirty (30) days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

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

- 37.1 The Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.
- 37.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Contract.
- 37.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

## **38. LEGISLATIVE CHANGE**

- 38.1 The Contractor shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law where the effect of that specific change in law on the Services is reasonably foreseeable at the Effective Date.
- 38.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 38.1(b), the Contractor shall:
- (a) notify the DFE as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services, the Charges or this Contract; and
  - (b) provide the DFE with evidence:
    - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

- (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
- (iii) demonstrating that any expenditure that has been avoided, has been taken into account in amending the Charges.

38.3 Any change in the Charges or relief from the Contractors obligations resulting from a Specific Change in Law (other than as referred to in Clause 38.1(b)) shall be implemented in accordance with Schedule 5 (Change Control Procedure).

## **39 LICENSE TO OCCUPY PROPERTY**

39.1 Any DFE Premises made available from time to time to the Contractor by the DFE in connection with this contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The contractor shall have the use of such land or DFE Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

39.2 The Contractor shall limit access to the land or DFE Premises to such staff as is necessary to enable it to perform its obligations under this contract and the Contractor shall co-operate (and ensure that its staff cooperate) with such other persons working concurrently on such land or DFE Premises as the DFE may reasonably request.

39.3 The Contractor shall (and shall ensure that its staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such DFE Premises as determined by the DFE, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the building, plant, fixed equipment or fittings therein.

39.4 The parties agree that there is no intention on the part of the DFE to create a tenancy of any nature whatsoever in favour of the Contractor or its staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this contract, the DFE retains the right at any time to use any DFE Premises owned or occupied by it in any manner it sees fit.

39.5 Should the Contractor require modifications to the DFE's Premises such modifications shall be subject to prior approval and shall be carried out by the DFE at the Contractor's expense. The DFE shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the DFE.

## **40 OFFSHORING**

- 40.1 The Contractor shall comply with the DFE Offshoring Policy.
- 40.2 The Contractor shall provide the DFE with full details of any storage of DFE Data (including Personal Data and any other information) outside of the UK or any future intention to host DFE Data outside the UK or to perform any form of ICT management, support or development function from outside the UK.
- 40.3 The Contractor shall not offshore without the prior written agreement of the DFE. Any request for offshoring shall be in a form which is to be determined by the DFE. Such approval shall not be unreasonably withheld provided that storage, processing and management of any DFE Data is only carried out offshore within:
- (a) the European Economic Area (EEA);
  - (b) in the US if the Contractor and/or any relevant Sub-contractor are registered under the US-EU Privacy Shield agreement; or
  - (c) in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the European Commission.

#### **41. EVALUATION AND RANDOMISED CONTROL TRIALS**

- 41.1 The Contractor shall comply with the provisions of Schedule 13 (Evaluation and Randomised Control Trials).

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

**SIGNED by the CONTRACTOR acting by**

**Authorised**

**Signatory.....**

**In the presence of**

**Witness**

**signature.....**

**.**

**Occupation.....**

**.....**

**Address.....**

**.....**

**.....**

**.....**

**Date.....**

**SIGNED by DFE acting by**

**Authorised**

**Signatory.....**

**Position.....**

**.....**

**In the presence of**

**Witness**

**signature.....**

**Occupation.....**

**.....**

**Address.....**

**.....**

**.....**

**.....**

**Date.....**

## **Schedule 1 – The Specification**

### **Teaching and Leadership Innovation Fund Specification:**



Annex F TLIF Round  
2 Specification.docx

## Schedule 2 – Service Levels, KPIs and Performance Management

- 1 This schedule sets out the Service Levels and KPIs against which the Parties shall measure the Contractor's performance. In this Schedule, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

<b>“Improvement Notice”</b>	means the notice referred to in paragraphs 24.2 and 25 of this Schedule, setting out improvements DfE requires the Contractor to implement.
<b>“Intervention Cycle”</b>	Means the period of time for the completion of the proposed provision with service users.
<b>“Performance Improvement Plan”</b>	means a plan to be produced by the Contractor, setting out the ways in which they will improve performance, and the timescales in which the improvements will be achieved.
<b>“Priority Area”</b>	means category 5 and 6 areas.
<b>“Priority Schools”</b>	means Ofsted schools rated 3 or 4.
<b>“Programme”</b>	Means the implementation and management of the proposed provision.
<b>“Recruitment Cycle”</b>	Means the period of time for recruiting and confirming Service Users into the Programme.
<b>“School-Based Improvement Initiative”</b>	Means an impact-focused project with the aim of raising standards, grades and life chances of the pupils in the Service User's area of responsibility, with measurable results.

- 2 The objective of the Service Levels and KPIs is to:

- 2.1 ensure that the Services are of a consistently high quality and meet the requirements of the DFE;
- 2.2 provide a mechanism whereby the DFE can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Services; and
- 2.3 incentivise the Contractor to meet the Service Levels/KPIs and to remedy any failure to meet the Service Levels/KPIs expeditiously.

## **SERVICE LEVELS**

- 3 The Contractor shall ensure compliance with the Service Levels listed in Table 1 (Service Levels).
- 4 The Contractor and the DFE shall monitor the Contractor's performance against each of the Service Levels listed in Table 1 (Service Levels).
- 5 The Contractor shall send to the DFE a monthly report (template included at Annex I) with a Red, Amber or Green rating ("**RAG rating**") against each Service Level. Red means failed to achieve, Amber means at risk of failing to achieve and Green means achieved.
- 6 The Service Levels related to the geographical spread of Service Users (GS1 to GS4) shall be measured and applied in the final Service Period of each completed Recruitment Cycle.
- 7 If during a Service Period, the Contractor:
  - 7.1 achieves a Service Level, no Service Credits will accrue in respect of that Service Level;
  - 7.2 fails to achieve a Service Level, the appropriate number of Service Credits will accrue in respect of that Service Level; or
  - 7.3 fails to meet two (2) or more Service Levels for three (3) consecutive months, the DFE may terminate the Contract and/or seek damages in relation to any Service Credits which have already been accrued by the Contractor and are payable by the Contractor to the DFE.

**Table 1 – Service Levels**

<b>Subject</b>	<b>Reference</b>	<b>Service Levels</b>
Reporting and Meetings	R1	Submit to the DFE a completed monthly report by the twenty-fifth (25 <sup>th</sup> ) of the following month using the template provided by the DFE at Annex I to this schedule.
	R2	Attend monthly contract management meetings.
	R3	Attend any ad hoc development and operational meetings as required by the DFE.
	R4	Attend bi-annual review meetings.
Administration/ Communication	C1	Respond to one hundred per cent (100%) of queries and correspondence within three (3) Working Days from the date of receipt.
Finance	F1	Ensure that Valid Invoices are submitted to DFE within twenty (20) Working Days of the end of the relevant Service Period.
Complaints	COMPL1	The Contractor's Performance Manager to report all complaints from Service Users about the Services orally by telephone or in person, as well as in writing, to DFE within three (3) Working Days from the date of the complaint..
	COMPL2	The Contractor's Performance Manager to respond to all complaints from Service Users orally by telephone or in person, as well as in writing, copying in DFE, within five (5) Working Days from the date of the complaint.
Records questionnaires and	R1	All questionnaires shall be completed and returned to DFE within ten (10) Working days from the date of completion, and any information requested by the DFE shall be provided by the Contractor to the DFE within five (5) Working days from the date



		of the request.
Delivery	DEL1	Delivery of the Programme against the dates and milestones identified in Schedule 4 (Implementation Plan).
Geographical spread of Service Users*  N.B. For the avoidance of doubt, these Service Levels apply for each Recruitment Cycle.	GS1	A minimum of seventy per cent (70%) of delivery must be in Priority Areas. (Category 5 and 6 areas).
	GS2	Within Priority Areas, a minimum of seventy per cent (70%) of delivery must be aimed at teachers and leaders in Priority Schools. (Ofsted rated 3 or 4).
	GS3	Within Priority Areas, up to thirty per cent (30%) of delivery can be aimed at teachers and leaders in any schools for whom the Contractor can demonstrate need.
	GS4	Of the maximum of thirty per cent (30%) of delivery not in Priority Areas, all delivery must be aimed at teachers and leaders in Priority Schools. (Ofsted rated 3 or 4).

## SERVICE CREDITS

- 8 One (1) Service Credit will be applied for every one (1) failure to achieve any of the Service Levels during a Service Period. All Service Credits will be applied at the discretion of the DFE, and the DFE may choose not to apply a Service Credit for any particular Service Period, and instead rate the Service Level as Amber in anticipation of remedial action or where further information may mitigate the failure. An Amber rating will become a Red rating if a Service Level has not been achieved and if the issue is not resolved to the DFE's satisfaction by the next monthly performance meeting. RAG ratings and the application of Service Credits are at the discretion of the DFE.
- 9 The Contractor agrees that the Charges will be reduced by up to eight per cent (8%) for failure to achieve the Service Levels (which is to be split as 4% for each academic year of the Contract) in accordance with Table 2a (Financial consequences of missed Service Levels). Given the length of the Term, the Parties acknowledge that the second academic year will consist of only 2 academic terms and will end in March 2020. The Service Credits mechanism will be cumulative for the academic year. Table 2a below provide a breakdown of the financial consequences which will apply in the event of failure to achieve the Service Levels.
- 10 The DFE shall offset the value of any Service Credits against the appropriate invoice in accordance with this schedule.
- 11 The Contractor confirms that it has modelled the Service Credits and has taken them into account in calculating the Charges. Both Parties agree that the Service Credits are a reasonable method of adjusting the Charges to address poor performance.

**Table 2a - Financial consequences of missed Service Levels**

<b>Service Credit Mechanism</b>	<b>Academic Year 1 (4% of Charges at risk)</b>	<b>Academic Year 2 (4% of Charges at risk)</b>
<b>1 x Service Level missed = 1 Service Credit</b>	0.5% of Charges (£1,800)	0.5% of Charges (£1,800)
<b>2 x Service Levels missed = 2 Service Credits</b>	1% of Charges (£3,600)	1% of Charges (£3,600)
<b>3 x Service Levels missed = 3 Service Credits</b>	1.5% of Charges (£5,400)	1.5% of Charges (£5,400)
<b>4 x Service Levels missed = 4 Service Credits</b>	2.0% of Charges (£7,200)	2.0% of Charges (£7,200)
<b>5 x Service Level missed = 5 Service Credits</b>	2.5% of Charges	2.5% of Charges

<b>Credits</b>	<b>(£9,000)</b>	<b>(£9,000)</b>
<b>6 x Service Levels missed = 6 Service Credits</b>	3.0% of Charges (£10,800)	3.0% of Charges (£10,800)
<b>7 x Service Levels missed = 7 Service Credits</b>	3.5% of Charges (£12,600)	3.5% of Charges (£12,600)
<b>8 x Service Levels missed = 8 Service Credits</b>	4.0% of Charges (£14,400)	4.0% of Charges (£14,400)

## **KPIs**

- 12 The Parties shall monitor the Contractor's performance against each of the KPIs listed in Table 3 (KPIs) at the agreed intervals.
- 13 If at the end of each academic year, the Contractor:
  - 13.1 achieves the KPIs, no financial penalty will accrue;
  - 13.2 does not achieve the KPIs, KPI Credits will be applied in accordance with Table 3 (KPIs).

## **KPI Credits**

- 14 The Contractor agrees that the Charges will be reduced by up to seven and a half per cent (7.5%) up to the value of £27,000, in the event of failure to achieve the KPIs (which is to be split as 3.75% [£13,500] in each academic year) in accordance with Table 3 (KPIs). Given the length of the Term, the Parties acknowledge that the second academic year will consist of only 2 (two) academic terms and will end in March 2020. Table 3 lists the KPIs which will result in the application of KPI Credits where there is a failure to achieve any of the KPIs.
- 15 The DFE shall offset the value of any KPI Credits against the appropriate invoice in accordance with this schedule.
- 16 The Parties agree that the KPI Credits are a reasonable method of adjusting the Charges to address poor performance.



**Table 3 - KPIs**

	<b>KPI</b>	<b>Measure</b>	<b>Monitoring Method</b>	<b>Financial Penalty (Lots 1 and 2)</b>	<b>Financial Penalty (Lot 3)</b>	<b>Target and Measure for application of Financial Penalty</b>
<b>1</b>	<b>Recruitment</b>	<p>A minimum of 300 schools to be recruited during the Initial Term</p> <p>135 schools to be recruited in the first academic year (by end May 2019)</p> <p>165 schools to be recruited in the second academic year (by end of December 2019)</p>	<p>Monthly monitoring during each Recruitment Cycle.</p> <p>Success against target will be measured at the end of the first academic year of the programme (July 2019) and at the end of the Autumn term of the second academic year of the Programme (December 2019).</p>	<b>No</b>	<p>100% of 135 schools by 31 May 2019</p> <p>100% of 165 schools by 31 December 2019</p>	<b>1</b>
<b>2</b>	<b>Recruitment</b>	<p>A minimum of 1000 participants to be recruited during the Initial Term</p> <p>455 participants to be recruited by 31 May 2019 in the first</p>	<p>Monthly monitoring during each Recruitment Cycle.</p> <p>Success against target will be measured at the</p>	<p><b>2.5% of the Charges = £9,000</b></p> <p><b>(1.25% per academic year) = £4500</b></p>	<p>100% of 455 participants by 31 May 2019</p>	<b>2</b>

		academic year (2018/2019) of the programme  545 participants to be recruited by 31 December 2019 in the second academic year (2019/2020) of the programme	end of the first academic year of the Programme and at the end of the Autumn term (Dec 2019) of the second year of the Programme.		100% of cohort of 545 participants by 31 December 2019.	
3	Retention	Recruit and engage candidates throughout so that ninety-five (95%) of participants complete the Programme.	Retention rates will be measured from the start of the Programme through to the end of the first academic year (July 2019) of the Programme and to the end of the Programme (March 2020)  The retention KPI will measure withdrawals for reasons within the Contractor's control (e.g. those leaving due to issues with programme quality or appropriateness)	<b>2.5% of the Charges = £9,000</b>  <b>(1.25% per academic year) = £4,500</b>	Targets as specified in July 2019  Targets as specified in March 2020	3

			of the programme to their needs).			
<b>4</b>	<b>Satisfaction</b>	<p>First academic year (18/19): eighty per cent (80%) of participants rate the overall Programme as good or above.</p> <p>Second academic year (19/20): eighty-five (85%) of participants rate the overall Programme as good or above.</p>	Satisfaction will be measured through a survey completed by all Service Users at the end of each year of the Programme.	<p><b>2.5% of the Charges = £9,000</b></p> <p><b>(1.25% per academic year) = £4500</b></p>	<p>Yr1 – Targets as specified in July 2019</p> <p>Yr2 – Targets as specified in March 2020</p>	<b>4</b>

## **Performance management**

17. The DFE shall monitor the Contractor's performance and progress against the Implementation Plan (Schedule 4) on a monthly basis and during performance review meetings. The Contractor shall cooperate with the DFE in this regard and provide any information and evidence reasonably required by the DFE within five (5) Working Days of a request being received.
18. The Contractor shall appoint a named Performance Manager who will cooperate with the DFE to ensure that the Contract is delivered as specified in the Contract and that Service Levels and KPIs are achieved.
19. The purpose of the performance review meetings is to encourage an open and regular dialogue between the Parties. The Parties shall review performance, discuss opportunities for continuous improvement, and address any complaints or persistent problems encountered.
20. Performance reviews shall be documented. The Contractor shall provide any information requested by the DFE to facilitate the reviews and arrange, where necessary, access to any of Contractor Premises or delivery locations, including those operated by Sub-Contractors.
21. The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that the Implementation Plan and/or a Performance Improvement Plan is not being complied with, and the Contractor shall take such remedial action.
22. If there is a failure to achieve a Service Level or KPI, the Contractor shall use all reasonable endeavours to immediately minimise the impact of any failure and to prevent such a failure from recurring.
23. The Contractor shall ensure that all systems and processes used for the monitoring and recording of performance are robust.

## **Remedial action in the event of failure to achieve KPIs**

24. Without prejudice to the any other rights under this Contract, if the Contractor fails to achieve any KPI on one or more occasions within any twelve (12) month rolling period, the Contractor agrees that the DFE shall have the right to exercise (in its absolute and sole discretion) one or more of the following remedial actions in addition to the DFE's entitlement to KPI Credits:
  - 24.1 Upon request the DFE may require the Contractor to produce a Performance Improvement Plan, which the Contractor shall prepare and provide to the DFE within ten (10) Working Days of a written request. The Performance Improvement Plan shall be subject to approval by the DFE. The Contractor



shall implement any approved Performance Improvement Plan as soon as reasonably practicable; and

24.2 The DFE may serve an Improvement Notice on the Contractor and the Contractor shall implement such requirements for improvement as set out in the Improvement Notice.

25. In the event that the DFE has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Contractor:

25.1 Fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

25.2 Fails to implement a Performance Improvement Plan approved by the DFE to the DFE's satisfaction;

then (without prejudice to any other rights and remedies of termination provided for in this Contract), the DFE may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

## **Memorandum of Understanding**

26. The Contractor shall seek agreement for a Memorandum of Understanding (MoU) with each school they intend to work with. A draft MoU is attached at Annex J for amendment as appropriate for each contractor's programme of delivery.

## **Annexes**

Annex I – Draft Monthly Report (now published as a separate attachment)



Annex I Draft  
Monthly Reporting Te

Annex J – Draft MOU (now published as a separate attachment)



Annex J Draft  
MOU.docx

## **Schedule 3 – Financials**

1. The DfE shall pay the Contractor the Charges in arrears based on costs as agreed in line with the submitted Pricing Schedule, subject to successful delivery of the Services against the KPIs and Service Levels set out in Schedule 2 (KPIs, Service Levels and Performance Management).
2. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise in writing between the Contractor and the DfE, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
3. Indexation shall not apply to the Charges.
4. The Contractor shall be entitled to invoice the Charges on satisfactory completion of milestones as set out in the delivery milestones, outputs or outcomes (as set out in the tables at Annex A).
5. Invoices shall be submitted within twenty (20) Working Days of the end of the relevant Service Period.
6. At any time during the Term (including, for the avoidance of doubt, at any time before and/or after payment by the DfE to the Contractor) the DfE shall be entitled to validate any claim for payment made by the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the DfE (including without limitation, procuring the consent of Service Users) to enable the DfE to validate any claim for payment made by the Contractor.

### **Charges on Service Users**

7. Neither the Contractor nor its agents or Sub-Contractors shall levy any charge on Service Users in respect of the Services except as expressly permitted in advance and in writing by the DfE (at its sole discretion).

### **Charges to Schools (School Contribution)**

8. Neither the Contractor nor its agents or Sub-Contractors shall levy any charge on schools in respect of the Services except as expressly agreed in advance and in writing by the DfE (at its sole discretion).

### **Recovery of Sums Due**

9. Whenever under the Contract any sum of money is recoverable from the Contractor, or payable by the Contractor (including any sum which the Contractor is liable to pay to the DfE in respect of any breach of the Contract), the DfE may unilaterally deduct the sum from any sum due, or which at any later time may become any other agreement or contract with the DfE or the Crown.

10. Any overpayment by either Party, whether of the Charges or of VAT or otherwise shall be the sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
11. The Contactor shall make any payments due to the DfE without any deductions whether by way of offset, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by DfE to the Contractor.
12. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society as the recipient Party may from time to time direct.

### **Disputed Claims**

16. Notwithstanding paragraph 6 of this Schedule, payment by the DFE of all or any part of any Charges rendered or other claim for payment by the Contractor shall not signify approval. The DFE reserves the right to verify Charges after the date of payment and subsequently to recover any sums which have been overpaid.
17. If any part of a claim rendered by the Contractor is disputed or subject to question by the DFE either before or after payment then, upon request, the Contractor shall provide such further documentary and oral evidence as the DFE may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the DFE.
18. If any part of a claim rendered by the Contractor is disputed or subject to question by the DFE, the DFE shall not withhold payment of the remainder.
19. If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the DFE and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the DFE.
20. The DFE shall be entitled to deduct from sums due to the Contractor by way of offset any amounts owed to it or which are in dispute or subject to question either in respect of the fee for which payment is being made or any previous fee.

### **Continuous Improvement**

21. The Contractor shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the DFE the Services and the manner in which it is providing the Services with a view to reducing the DFE's costs, and/or improving the quality and efficiency of the Services. The Contractor and the DFE will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.
22. Without limiting paragraph 21 of this Schedule 3, upon a request from the DFE, the Contractor shall produce a plan for improving the provision of Services and/or reducing the Charges produced by the Contractor pursuant to this Schedule 3 and

reducing the Charges (without adversely affecting the performance of the Contract) during that year of the Contract (an "**Continuous Improvement Plan**") for the approval of the DFE. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:

- 22.1 identifying the emergence of new and evolving technologies which could improve the Services;
  - 22.2 identifying changes in behaviour by the DFE that could/would result in a cost saving and a reduction in the Charges;
  - 22.3 identifying and implementing efficiencies in the Contractor's internal processes and administration that may lead to cost savings and reductions in the Charges;
  - 22.4 identifying and implementing efficiencies in the way the DFE interacts with the Contractor that may lead to cost savings and reductions in the Charges;
  - 22.5 identifying and implementing efficiencies in the Contractor's supply chain that may lead to cost savings and reductions in the Charges;
  - 22.6 baselining the quality of the Contractor's Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Term; and
  - 22.7 measuring and reducing the sustainability impacts of the Contractor's operations and supply-chains pertaining to the Services, and identifying opportunities to assist the DFE in meeting its sustainability objectives.
23. Where requested, a Continuous Improvement Plan shall be submitted by the Contractor to the DFE for approval within ninety (90) Working Days of the Effective Date.
24. The DFE shall notify the Contractor of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the DFE's notice of rejection and of the deficiencies of the proposed Improvement Plan, the Contractor shall submit to the DFE a revised Continuous Improvement Plan reflecting the changes required. Once approved by the DFE.
25. Once any Improvement Plan has been approved by the DFE, it shall be agreed as a CCN in accordance with Schedule 5 (Change Control Procedure) and:
- 25.1 the Contractor shall use all reasonable endeavours to provide the Services in accordance with the Continuous Improvement Plan; and
  - 25.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the DFE and the Contractor) to review progress against the Continuous Improvement Plan.

28. Should the Contractor's costs in providing the Services to the DFE be reduced as a result of any changes implemented as a result of a Continuous Improvement plan, all of the cost savings shall be passed on to the DFE by way of a reduction in the Charges for the Services agreed in accordance with Schedule 5 (Change Control Procedure).

#### **Adjustment of the Charges**

29. The Charges may only be varied by means of a CCN, and in accordance with the provisions of this Contract.

## **Annex A to Schedule 3 – Contract Pricing Information**

The Contractor shall provide the Services in accordance with the cost matrix as set out below.

Funds allocated to a particular expenditure heading in “Implementation plan and cost schedule” are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only.



GA+Implementation  
+Plan\_170818.xlsx

## **Schedule 4 - Implementation Plan**

The Contractor shall provide the Services in accordance with the Implementation Plan set out in Annex A of this schedule.

The Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any agreed changes shall be made in accordance with Schedule 5 (Change Control Procedure).

The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Effective Date the Contractor is able to provide the Services:

3.1 in accordance with the provisions of the Contract; and

3.2 in a manner that maintains the continuity of Services to the DFE.

The Contractor shall monitor its performance against the Implementation Plan and report to the DFE monthly (or more frequently if so required by the DFE) on its performance.



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+Plan\_170818.xlsx

## **Schedule 5 - Change Control Procedure**

- 1 The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Parties' respective contract managers.
- 2 The Contractor shall use reasonable endeavours to incorporate minor changes requested by the DFE within the current Charges and shall not serve a CCN unless the change involves a demonstrable material increase to its costs or requires a material change to the Contract.
3. The DFE may request a Variation or exercise the Option by completing the CCN and giving the Contractor sufficient information to assess the extent of the Variation or Option and consider whether any change to the Charges are required in order to implement the Variation or the Option within a reasonable time limit specified by the DFE. If the Contractor accepts the Variation or the Option it shall confirm it in writing within twenty-one (21) days of receiving the CCN.
4. If the Contractor is unable to accept the Variation or the Option or where the Parties are unable to agree a change to the Charges, the DFE may allow the Contractor to fulfil its obligations under the Contract without variation or if the Parties cannot agree to the Variation or Option the Dispute will be determined in accordance with clause 36.
5. If the Contractor wishes to introduce a change to the Contract it may request a Variation by serving the CCN on DFE.
6. The DFE shall confirm in writing within twenty-one (21) days of receiving the CCN if it accepts or rejects the Variation.
7. The DFE may at its absolute discretion reject any request for a Variation proposed by the Contractor.
8. The Parties acknowledge that no Variation can be agreed where its implementation would amount to a "substantial" change within the meaning of regulation 72 of the Regulations.



## Change Control Note

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

<b>Variation Requested:</b>	
<b>Originator of Variation:</b> (tick as appropriate)	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)	
<b>Payment Profile:</b> (if applicable) e.g. milestone payments	
<b>Revised daily rate:</b> (if applicable)	
<b>Impact on original contract:</b> (if applicable)	

<b>Supporting Information:</b>  (please attach all supporting documentation for this Change Control)	
<b>Terms and Conditions</b>	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.

<b>Variation Agreed</b>	
<b>For the Contractor</b>	<b>For the DfE</b>
<b>Signature:</b> .....  <b>Full Name:</b> .....  <b>Title:</b> .....  <b>Date:</b> .....	<b>Signature:</b> .....  <b>Full Name:</b> .....  <b>Title:</b> .....  <b>Date:</b> .....

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

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

## Schedule 6 - Key Personnel and Key Sub Contractors

**“This Schedule to be completed by the Contractor”**

### Key Personnel

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement

## Key Sub-Contractors

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

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

## Schedule 7 – Systems, Handling and Security

### Definitions

<b>“BPSS”</b> <b>“Baseline Personnel Security Standard”</b>	a level of security clearance described as pre-employment checks in the National Vetting Policy.
<b>“CCSC”</b> <b>“Certified Cyber Security Consultancy”</b>	is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy">https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</a>
<b>“CCP”</b> <b>“Certified Professional”</b>	is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-professional">https://www.ncsc.gov.uk/scheme/certified-professional</a>
<b>“CC”</b> <b>“Common Criteria”</b>	the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.
<b>“CPA”</b> <b>“Commercial Product Assurance”</b> <b>(formerly called “CESG Product Assurance”)</b>	is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website: <a href="https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</a>
<b>“Cyber Essentials”</b> <b>“Cyber Essentials Plus”</b>	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.
<b>“Departmental Security Standards”</b>	means the DFE's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
<b>“Digital Marketplace / G-Cloud”</b>	the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.

<b>“FIPS 140-2”</b>	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.
<b>“Good Industry Practice”</b> <b>“Industry Good Practice”</b>	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
<b>“Good Industry Standard”</b> <b>“Industry Good Standard”</b>	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
<b>“GSC”</b> <b>“GSCP”</b>	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a>
<b>“HMG”</b>	means Her Majesty’s Government
<b>“ICT”</b>	means Information and communications technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
<b>“ISO/IEC 27001” “ISO 27001”</b>	is the International Standard for Information Security Management Systems Requirements
<b>“ISO/IEC 27002” “ISO 27002”</b>	is the International Standard describing the Code of Practice for Information Security Controls.
<b>“ISO 22301”</b>	is the International Standard describing for Business Continuity
<b>“IT Security Health Check”</b> <b>“Penetration Testing”</b>	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
<b>“Need-to-Know”</b>	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.
<b>“NCSC”</b>	The National Cyber Security Centre (NCSC) is the UK government’s National Technical DFE for Information Assurance. This supersedes CESG, which was formerly the National Technical DFE. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a>
<b>“NCSC IAP”</b> <b>“NCSC Information Assurance Policy”</b>	means the NCSC (formerly CESG) Information Assurance policy Portfolio containing HMG policy and guidance on the application of ‘security assurance’ for HMG systems.

<b>Portfolio”</b>	
<b>“OFFICIAL”</b> <b>“OFFICIAL-SENSITIVE”</b>	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.</p> <p>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.</p>
<b>“Secure Sanitisation”</b>	<p>Secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure Sanitisation” (“IS5”) issued by the former CESG. Guidance can now be found at: <a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a></p>
<b>“Security and Information Risk Advisor”</b> <b>“CCP SIRA”</b> <b>“SIRA”</b>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: <a href="https://www.ncsc.gov.uk/articles/about-certified-professional-scheme">https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</a></p>
<b>“SPF”</b> <b>“HMG Security Policy Framework”</b>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.</p>
<b>“Tailored Assurance”</b> <b>(formerly called “CTAS”,</b> <b>or,</b> <b>“CESG Tailored Assurance”)</b>	<p>is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks.</p>

- 1.1 The Contractor shall comply with Departmental Security Standards for Contractors which include but are not limited by the following paragraphs.
- 1.2 Where the Contractor will provide ICT products or Services or otherwise handle information at OFFICIAL level on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 1.3 The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4 The Contractor shall follow the GSCP in respect of any DFE Data being handled in the course of providing the Services, and will handle this data in accordance with its security classification. Where the Contractor has an existing protective marking scheme then the Contractor may continue to use this but must ensure that the GSCP is also followed, and that the correct controls are applied to the DFE Data.
- 1.5 DFE Data being handled in the course of providing the Services must be segregated from other data on the Contractor’s or Sub-Contractor’s own IT equipment to both protect the DFE Data and enable it to be identified and securely deleted when required. In the event that it is not possible to segregate any DFE Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with paragraph 1.14.
- 1.6 The Contractor shall have in place and maintain physical security and entry control mechanisms (e.g. door access) to premises and sensitive areas and separate logical access controls (e.g. identification and authentication) to ICT systems to ensure only authorised Personnel have access to DFE Data.
- 1.7 The Contractor shall have in place and shall maintain procedural, Personnel, physical and technical safeguards to protect DFE Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.8 Any electronic transfer methods across public space or cyberspace, including third party provider networks must be protected via encryption which has been certified to a minimum of FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any DFE Data.
- 1.9 Storage of DFE 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 paragraphs 1.10 and 1.11 below.
- 1.10 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



DFE 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 DFE.

- 1.11 All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process DFE 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 Services. 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 DFE.
- 1.12 Whilst in the Contractor's care all removable media and hardcopy paper documents containing DFE Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure waste paper organisation.
- 1.13 When necessary to hand carry removable media and/or hardcopy paper documents containing DFE Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has access to the material being carried. This paragraph shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.14 At the end of the contract or in the event of equipment failure or obsolescence, all DFE Data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or Sub-Contractor shall protect the DFE Data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.15 Access by Contractor or Sub-Contractor Personnel to DFE 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 DFE Data must be subject to pre-employment checks equivalent to or higher than the HMG Baseline Personnel Security Standard (BPSS)
- 1.16 All Contractor or Sub-Contractor Personnel who handle DFE Data must have annual awareness training in protecting information.
- 1.17 The Contractor shall, as a minimum, have in place robust and ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might be, or could lead to, a disruption, loss, emergency or crisis. When a certificate is not available it shall be necessary to verify the ongoing

effectiveness of the ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures, to the extent that the Contractor must have tested/exercised these plans within the last 12 months and produced a written report of the test/exercise, outcome and feedback, including required actions.

- 1.18 Any non-compliance with the Departmental Security Standards for Contractors, or other applicable security standards, or any suspected or actual breach of the confidentiality, integrity or availability of DFE Data being handled in the course of providing this service, shall be investigated immediately and escalated to DFE by a method agreed by both parties.
- 1.19 The Contractor shall ensure that any IT systems and hosting environments that are used to hold DFE Data being handled, stored or processed in the course of providing this service shall be subject to an independent IT Health Check (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with DFE and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.20 The Contractor or Sub-Contractor/s providing the Services will provide the Department with full details of any actual storage outside of the UK or any future intention to host DFE Data outside the UK or to perform any form of ICT management or support function from outside the UK. The Contractor or Sub-Contractor will not go ahead with any such proposal without the prior written agreement of DFE.
- 1.21 DFE reserves the right to audit the Contractor or Sub-Contractors providing the Services within a mutually agreed timeframe but always within five Working Days of notice of a request to audit being given. The audit shall cover the overall scope of the Services and the Contractor's, and any Sub-Contractors, compliance with the paragraphs contained in this Schedule.
- 1.22 The Contractor shall contractually enforce all the Departmental Security Standards for Contractors onto any third-party suppliers, Sub-Contractors or partners who could potentially access DFE Data in the course of providing the Services.

## Schedule 8 Contractor's Commercially Sensitive Information

- 1 DFE acknowledges that the Contractor has requested that the following information be treated as Commercially Sensitive Information;

Document	Page Number	Section	Condition or Paragraph Number	Explanation of harm which may result from disclosure and time period applicable to sensitivity.

- 2 DFE will consult with the Contractor on any Request for Information that relates to the Contractor's Commercially Sensitive Information listed above.
- 3 DFE reserves the right to disclose any of the Contractor's Commercially Sensitive Information held within this Contract in response to a Request for Information in accordance with Clause 16.
- 4 DFE reserves the right to determine whether any information provided in this Schedule does constitute Commercially Sensitive Information prior to publication.

## Schedule 9 - Contractor's Solution



001-SRHP1.2.b.ii\_Bidding\_Model.docx



002-SRHP\_1.3.a.h\_Contact\_details\_and\_de



2016 GA Annual Report and Financial !



2017 GA Annual

Report and Financial !



004-SRHP6.1\_Relevant\_experience\_\_Contr



005-TLIF\_R2\_Project\_Specific\_Questions\_v2



006-TLIF\_R2\_Bid\_Profile\_Information.docx

### The Geographical Association's response to ITT procurement stage.



002-Appendix\_A\_Form\_of\_Tender\_(comple



001-Annex\_H\_Answer\_Form\_GA\_ASE.docx



## **Schedule 10 – Guarantee (Not relevant)**

## Schedule 11 – Financial Distress

### 1. DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Credit Rating Level”</b>	a credit rating level as specified in Annex 2 of this Schedule (Financial Distress);
<b>“Credit Rating Threshold”</b>	the minimum Credit Rating Level for the Contractor and the Guarantor (if applicable) as set out in Annex 3 of this Schedule and for each Key Sub-contractor listed in Schedule 6 (Key Personnel and Key Sub-contractors);
<b>“Rating Agencies”</b>	the rating agencies listed in Annex 1; and
<b>“Financial Distress Event”</b>	the occurrence of one or more of the events listed in Paragraph 3.1 of this Schedule;
<b>“Financial Distress Service Continuity Plan”</b>	a plan setting out how the Contractor will ensure the continued performance and delivery of the Services in accordance with the Contract in the event that a Financial Distress Event occurs;

### 2. CREDIT RATING AND DUTY TO NOTIFY

- 2.1 The Contractor (and Guarantor if applicable) warrants and represents to the DFE for the benefit of the DFE that as at the Effective Date the long term credit ratings issued for the Contractor by each of the Rating Agencies are as set out in Annex 3.
- 2.2 The Contractor shall promptly notify (or shall procure that its auditors promptly notify) the DFE in writing if there is any downgrade in the credit rating issued by any Rating Agency for the Contractor (and in any event within five (5) Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for the Contractor, the Contractor shall ensure that the Contractor’s auditors thereafter provide the DFE within ten (10) Working Days of the end of each Year and within ten (10) Working Days of written request by the DFE (such requests not to exceed four (4) in any Year) with written calculations of the quick ratio for the Contractor as at the end of each Year or such other date as may be requested by the DFE. For these purposes the **“quick ratio”** on any date means:

$$\frac{A+B+C}{D}$$

*D*

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Contractor;
- B is the value of all marketable securities held by the Contractor determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Contractor; and
- D is the value at the relevant date of the current liabilities of the Contractor.

2.4 The Contractor shall:

- (a) regularly monitor the credit ratings of the Contractor with the Rating Agencies; and
- (b) promptly notify (or shall procure that its auditors promptly notify) the DFE in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Contractor first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the credit rating of the Contractor, shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Contractor at or below the applicable Credit Rating Level.

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

3.1 In the event of:

- (a) the credit rating of the Contractor dropping below the applicable Credit Rating Threshold;
- (b) the Contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Contractor;
- (d) the Contractor committing a material breach of covenant to its lenders;



- (e) a Sub-contractor notifying the DFE that the Contractor has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (f) any of the following:
  - i) commencement of any litigation against the Contractor with respect to financial indebtedness greater than one hundred and fifty thousand GBP (£150000) or obligations under a service contract with a total contract value greater than one hundred and fifty thousand GBP (£150000);
  - ii) non-payment by the Contractor of any financial indebtedness;
  - iii) any financial indebtedness of the Contractor becoming due as a result of an event of Default; or
  - iv) the cancellation or suspension of any financial indebtedness in respect of the Contractor,

in each case which the DFE reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Contract;

then, immediately upon notification of the Financial Distress Event (or if the DFE becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Contractor), the Contractor shall have the obligations and the DFE shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Sub-contractor pursuant to Paragraph 3.1(e), the DFE shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Contractor ten (10) Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the DFE'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 DFE, meet the DFE as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the DFE 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 Contract; and
- (b) where the DFE reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:

- i) submit to the DFE for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within the (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the DFE may permit and notify to the Contractor in writing); and

- (c) provide such financial information relating to the Contractor as the DFE may reasonably require.

3.4 The DFE shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the DFE does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Contractor 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 DFE within five (5) Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by DFE or referred to the Dispute Resolution Procedure under Paragraph 3.5.

3.5 If the DFE 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 Contract, 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.

3.6 Following approval of the Financial Distress Service Continuity Plan by the DFE, 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 Contract;
- (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 DFE 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 DFE and the Parties may agree that the Contractor shall be relieved of its obligations under Paragraph 3.6.

#### **4. TERMINATION RIGHTS**

4.1 The DFE shall be entitled to terminate this Contract if:

- (a) the Contractor fails to notify the DFE of a Financial Distress Event in accordance with Paragraph 2.4(b).
- (b) 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
- (c) 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).

## **5. PRIMACY OF CREDIT RATINGS**

5.1 Without prejudice to the Contractor's obligations and the DFE's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(f), the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- (a) the Contractor shall be relieved automatically of its obligations under Paragraphs 3.3; and
- (b) the DFE shall not be entitled to require the Contractor to provide financial information in accordance with Paragraph 3.3(b).

## **ANNEX 1: RATING AGENCIES**

- 1 Dunn & Bradstreet (through Sid4Gov)

## **ANNEX 2: CREDIT RATING LEVELS**

- 1      Credit Rating Level 1
  - D& B Rating - 1 = minimal risk
- 2      Credit Rating Level 2
  - D& B Rating - 2= lower than average risk
- 3      Credit Rating Level 3
  - D& B Rating - 3 = Higher than average risk;
- 4      Credit Rating Level 4
  - D& B Rating - 4 = High risk

### ANNEX 3: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Entity	Credit rating (long term)	Credit Rating Threshold
Contractor	Credit rating 2	Credit rating 2

## Schedule 12 – Data Protection

### DATA PROTECTION

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

- (i) the Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex A to this Schedule);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Personnel who have access to the Personal Data and ensure that they:
  - A. are aware of and comply with the Contractor's duties under this paragraph;
  - B. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
  - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the DFE or as otherwise permitted by this Contract; and
  - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the DFE has been obtained and the following conditions are fulfilled:
  - (i) the DFE or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the DFE;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the DFE in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the DFE with respect to the processing of the Personal Data;
- (e) at the written direction of the DFE, delete or return Personal Data (and any copies of it) to the DFE on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

1.5 Subject to paragraph 1.6 below, the Contractor shall notify the DFE immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;



- (d) receives any communication from the Information Commissioner or any other regulatory authority;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 1.6 The Contractor's obligation to notify under paragraph 1.5 shall include the provision of further information to the DFE in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Contractor shall provide the DFE with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under paragraph 1.5 (and insofar as possible within the timescales reasonably required by the DFE) including by promptly providing:
- (a) the DFE with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the DFE to enable the DFE to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the DFE, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the DFE following any Data Loss Event;
  - (e) assistance as requested by the DFE with respect to any request from the Information Commissioner's Office, or any consultation by the DFE with the Information Commissioner's Office.
- 1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph. This requirement does not apply where the Contractor employs fewer than 250 Personnel, unless:
- (a) the DFE determines that the processing is not occasional;
  - (b) the DFE determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the DFE determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Contractor shall allow for audits of its Data Processing activity by the DFE or the DFE's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Prime Contractor must:
- (a) notify the DFE in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the DFE;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph such that they apply to the Sub-processor; and
  - (d) provide the DFE with such information regarding the Sub-processor as the DFE may reasonably require.
- 1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 DFE may, at any time on not less than thirty (30) Working Days' notice, revise this paragraph by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The DFE may on not less than thirty (30) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **Annex A: Processing, Personal Data and Data Subjects**

1. The Contractor shall comply with any further written instructions with respect to processing by the DFE.

2. Any such further instructions shall be incorporated into this Schedule.

3. The contact details of the Authority Data Protection Officer are:

[Insert Contact details]

4. The contact details of the Contractor Data Protection Officer are:

[Insert Contact details]

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the DFE is the Controller and the Contractor is the Processor unless specified otherwise in this schedule.
Subject matter of the processing	Leadership training for Service Users in Priority Schools located in Priority Areas. The contractor will collate personal Service Users' Personal Data for the purpose of delivering training and evaluating the impact of such training in accordance with the contract.
Duration of the processing	The Term
Nature and purposes of the processing	<p>The nature of the processing includes any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).</p> <p>The purpose of the processing is to enable communication between Service Users and the Contractor and to obtain</p>

	impact analysis of the programme during and at the end of the Services.
Type of Personal Data	Names of Service Users, Addresses, Contact Telephone Numbers, Contact E-Mail addresses, Teacher Reference Numbers.
Categories of Data Subject	Service Users and Personnel
Plan for return and destruction of the data  once the processing is complete UNLESS  requirement under union or member state law to preserve that type of data	Upon expiry of the Term, unless the Personal Data is required to be preserved under law or elsewhere in this Contract, the Personal data shall be deleted or destroyed.

## **Schedule 13 – Evaluation and Randomised Control Trials**

### **1. Evaluation**

1.1 DFE intends to appoint External Evaluators of the TLIF (including its funded projects). This is to ensure objectivity in monitoring the effectiveness of the fund, and to share experience and evidence so that the marketplace might become more effective and sustainable. The evaluation will involve process, impact and economic evaluations whether evidenced based or innovative as well as the fund overall.

1.2 The Contractor shall cooperate with External Evaluators to enable an overarching evaluation of the Services, which will assess how the Services implemented (process evaluation), what changes appear in desired outcomes (impact evaluation) and whether the Services offer good value for money (economic evaluation). The Contractor agrees that the results of the evaluation shall become public.

1.3 The Contractor shall throughout the Term cooperate at all times with the External Evaluators and will provide such information requested by the External Evaluators in order that the effects of the delivery of the Services can be assessed, including but not limited to information concerning:

- a. service user satisfaction;
- b. learning;
- c. behavioural and attainment outcomes;
- d. improvements in the standards of schools; and
- e. the commissioning of impact studies.

1.4 Upon request, the Contractor shall supply the External Evaluators with accurate and sufficient data on recruitment and retention, geographical spread, intermediate outcomes, and longer-term impact beyond the life of the fund.

1.5 The Contractor shall cooperate with the External Evaluators to enable the effective evaluation of the Services against six long term outcomes looking at quality, progression, and retention of teachers and leaders, and improving the evidence base and market for CPD, and specifically progress towards:

- An improved quality of teachers and effective teaching in classrooms.
- An improved quality of leaders at all levels.
- An improved career progression of teachers and leaders.
- An improved retention of teachers and leaders.
- An improved evidence base on what works in leadership development and teacher CPD, including value for money.
- A professional development and leadership development market that meets the needs of schools in challenging circumstances.

1.6 If requested by the External Evaluators, the Contractor shall:

- a) Issue participants with a privacy notice (which the DfE will provide) that explains how this data will be used for the purposes of evaluation and monitoring of the programme;
- b) Collate individual level data relating to participants on a termly basis and provide this information in the required format and by the required deadlines;
- c) Limit the Contractor's own data collection to ensure that participants are not over evaluated; and
- d) As and when requested by the External Evaluators, provide information and access to Service Users to support the design and planning of the evaluation as well as the carrying out of the evaluation and the evidence gathering for the process, impact and economic evaluation.

## 2. Randomised Control Trials

2.1 DfE may determine at its absolute discretion that the Contract is to be evaluated by means of a Randomised Control Trial ("**RCT**").

2.2 The Contractor agrees that DfE may share the Contractor's tender documentation with the External Evaluators to enable the External Evaluators to decide whether the programme is suitable for a RCT. Whether the programme is selected for a RCT will depend on several factors, including but not limited to:

- a) Whether there is a sufficiently large intervention group so that there is a good chance of having confidence in the results;
- b) Whether the proposals are relatively consistent across schools, in terms of timing of the delivery, the intensity of the programme and the likely impacts and outcomes;
- c) Whether the proposal has clear attainment outcomes, although other outcomes (e.g. behaviour) can also be assessed if there are good measures; and
- d) Whether the proposal includes outcomes to be achieved that are measured for a consistent cohort(s)

2.3 Upon request, the Contractor shall cooperate with the External Evaluators to complete a RCT.

2.4 The Contractor shall cooperate with the External Evaluators to change their delivery plans in a way which can accommodate the evaluation via a RCT. The External Evaluators may require the Contractor to make one or more changes, including but not limited to:

- a) Extending the recruitment phase to allow for greater numbers of schools to be recruited to the RCTs;
- b) Ensuring a sufficiently large intervention group;
- c) Recruiting twice the number of schools for the RCT, and the schools must be comfortable to be either an intervention or a control group;
- d) Ensuring schools remain in their allocated group for the duration of the RCT and control schools cannot begin the intervention during a RCT;

- e) Data collection and consent procedures must be undertaken with recruited schools before they are randomised to a control or intervention group;
- f) The programme should be relatively consistent across the intervention schools, as regards timing, intensity and so on; and
- g) Outcomes should be measured for a consistent cohort.

2.5 The Contractor may claim for any pre agreed administration costs reasonably incurred as a direct result of evaluation via a RCT from the DFE.