

**Between:**

1 THE SECRETARY OF STATE FOR EDUCATION

and

2 University of York

**AGREEMENT**  
relating to

**The Centre for Excellence for Modern Foreign Languages Pedagogy**

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**THIS AGREEMENT** is made on 15<sup>th</sup> November 2018  
**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT ("**DFE**"); and
- (2) **THE UNIVERSITY OF YORK** a body incorporated in England and Wales by Royal Charter with registration number RC000679 whose principal offices are at Heslington, York, YO10 5DD, England (the "**Contractor**")

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

## **INTRODUCTION**

- (A) DFE has allocated £2.41m of funding for the periods 2018-19 and 2019-20 to set up and run a Modern Foreign Languages Hub Programme (the "**Programme**") with the overall purpose of providing support to schools to improve languages teaching at key stages 3 and 4. There is further funding committed for the period 2020-2022 should the Programme prove effective and if Ministers wish to extend it.
- (B) On 3<sup>rd</sup> July 2018 DFE advertised in the Official Journal of the European Union (reference OJEU 2018/S 127-289675), inviting prospective suppliers to submit proposals for the Centre for Excellence for Modern Foreign Languages Pedagogy.
- (C) The Contractor was awarded a contract following the Contractor's response to the advertisement and a subsequent tender process.
- (D) The Contractor is a leading provider of research-informed educational services and has experience in providing a Centre for Excellence for Modern Foreign Languages Pedagogy.

## **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:

"Associated Company"	means any company which is, in relation to another company, its holding company or its subsidiary or a subsidiary of its holding company. "Holding company" and "Subsidiary" will have the meanings attributed to them in section 736 and 736A of the Companies Act 1985 and section 1159 of the Companies Act 2006.
"Audit Agents"	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.

"CCN"	means a Change Control Note in the form set out in Schedule 5 (Change Control Procedure).
"CE"	means the Centre for Excellence whose functions are described in paragraphs 3.1 to 3.41 of the Specification, which will act as the locus of expertise for language pedagogy in secondary schools and will provide continuous and focussed support to Specialist Teachers and Hubs to deliver the Hub objectives.
"Charges"	means the fees payable to the Contractor for the provision of the Services calculated in accordance with clause 7 and Schedule 3 (Financials).
"Charges Rebate"	means a reduction in the Charges to reflect the lower quality service which is triggered by failure to achieve the KPI's.
"Commercially Sensitive Information"	means the information set out in Schedule 8 (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.
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the GDPR. Confidential Information shall not include information which: (a) was public knowledge at the time of disclosure; (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (d) is independently developed without access to the Confidential Information.
"Contract"	means the terms of this agreement between the Parties, and includes all Contract schedules and annexes as well as any CCNs.
"Contract Managers"	means, collectively, the DFE Contract Manager and Contractor Contract Managers.
"Contractor Equipment"	means the Contractor's ICT equipment.
"Contractor Premises"	means any premises where the Services are to be supplied as set out in the Specification.
"Contractor Representative"	means the Contractor's representative who is responsible for the day to day management of the Contract as set out in Schedule 6 (Key Personnel).
"Contractor's Solution"	means the Contractor's proposal submitted in response to the DFE's invitation to tender attached at Schedule 9 (Contractor's Solution).
"Copyright"	shall have the meaning given to that term in section 1 of Part 1 to the Copyright, Designs and Patents Act 1988
"Cost Matrix"	means the Contractor's Cost Matrix submitted in its response to the invitation to tender via the DFE e-Tendering Portal.
"Crown"	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and "Crown Body" is an emanation of the foregoing
"Default"	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.
"DFE Contract Manager"	means DFE's contract manager as notified to the Contract in writing from time to time

"DFE Data"	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;
"DFE Premises"	means any premises owned by, leased or hired to or otherwise controlled by DFE or which DFE nominates as such by notice in writing to the Contractor.
"DFE Security Standards"	means the security standards as set out in Schedule 7 (Systems Handling and Data Security).
"DFE Trade Marks"	means proprietary trade mark rights of DFE including those notified to the Contractor by DFE from time to time.
"Disclosure and Barring Service"	means the non-departmental public body of the Home Office, which assists organisations be 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.
"Dispute"	means any dispute between the Parties in connection with the Contract.
"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach" and "Data Protection Officer"	shall have the meanings given to those terms by the GDPR.
"DOTAS"	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.
"Data Protection Legislation"	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.
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Loss Event"	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.
"Data Subject Access Request"	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.
"Delivery Milestone"	Means a delivery milestone specified in the Implementation Plan set out in Schedule 4.
"Effective Date"	means 3 <sup>rd</sup> December 2018
"EIR"	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to them.
"Employment Liabilities"	means all actions, proceedings, costs (including reasonable legal costs), losses, damages, fines, penalties, compensation, awards,

	demands, orders, expenses and liabilities connected with or arising from all and any laws including, without limitation, directives, statutes, secondary legislation, orders, codes of practice, contractual obligations and other common law rights whether of the European Union, United Kingdom or any other relevant authority relating to or connected with: (a) the employment and dismissal of employees (including their health and safety at work); and (b) the engagement, use and termination of individuals other than employees who provide services (including their health and safety at work), and all wages, holiday pay and employment benefit costs due in respect of (a) or (b) above, including claims for protective awards.
"External Evaluators"	Means any organisation appointed by the DFE to evaluate the performance by the Contractor of its obligations under the Contract.
"Financial Distress Event"	the occurrence of one or more of the events listed in paragraph 3.1 of Schedule 11 (Financial Distress).
"Financial Year"	means the twelve (12) month period from [1] April to [31] March.
"FOIA"	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to it.
"Force Majeure"	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding: (a) any industrial action occurring within the Contractor's, or any of its Sub-Contractor's, organisation, or otherwise involving the Personnel; or (b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any Sub-contract.
"GDPR"	means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> ).
"General Anti-Abuse Rule"	means: (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into the United Kingdom Parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.
"General Change in Law"	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.
"Good Industry Practice"	means the standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
"Guarantee"	means the 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.
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C255/02 Halifax and others.
"HMRC"	means Her Majesty's Revenue and Customs.
"ICT"	means information and communications technology.
"Implementation Plan"	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).
"Initial Term"	means the period from the Effective Date to 2 <sup>nd</sup> December 2020
"Intellectual Property Rights"	means patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the

	foregoing, copyright, database rights, domain names, trade and/or business names, rights in confidential information and know how, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
"KPIs"	means the key performance indicators in relation to the Services set out in Schedule 2 (KPIs and Performance Management) which the Contractor shall comply with.
"Key Personnel"	means any of the Personnel identified as such in Schedule 6 (Key Personnel and Key Sub-Contractors).
"Key Sub-Contractor"	means any Sub-Contractor identified as a Key Sub-Contractor in Schedule 6 (Key Personnel and Key Sub-Contractors).
"Lead School Charges"	means the monies provided by the DFE to the Contractor to fund the Lead Schools.
"LED"	means the Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> ).
"Material Breach"	means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which DFE would otherwise derive from: (a) a substantial portion of the Contract; or (b) any of the obligations set out in clauses 5.15, 8, 9, 11, 12, 14, 17 and 32 and in Schedules 7 (Systems, Handling and Security) and 12 (Data Protection).
"NICs"	means National Insurance Contributions
"Occasion of Tax Non-Compliance"	means: (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of a taxavoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion.
"Open Government Licence"	Means the Open Government Licence for public sector information v3.0 as published by the National Archives at <a href="http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a> as amended and updated from time to time.
"Personnel"	means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.
"Programme"	means the MFL Hub Programme with the overall purpose of providing support to secondary schools to improve modern foreign languages teaching at Key stages 3 and 4; so that in the pilot schools. 1) More pupils take up modern foreign languages GCSEs; and 2) Schools are enabled to achieve viable and sustainable numbers and group sizes to secure the future of the subject.
"Prohibited Act"	means: (a) to directly or indirectly offer, promise or give any person working for or engaged by the DFE a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

	<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> <p>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;</p> <p>(ii) under legislation or common law concerning fraudulent acts; or</p> <p>(iii) the defrauding, attempting to defraud or conspiring to defraud the DFE;</p> <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>
"Protective Measures"	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 the such measures adopted by it.
"Quality Standards"	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.
"Regulated Activity"	Means:  In relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; and In relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
"Regulations"	means the Public Contracts Regulations 2015.
"Regulatory Body"	means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the DFE.
"Relevant Conviction"	means a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services.
"Relevant Requirements"	means all applicable 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.
"Relevant Tax Authority"	means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.
"Replacement Contractor"	means any third party supplier appointed by the DFE to supply any services which are substantially similar to any of the Services in substitution for the Contractor following the expiry, termination or partial termination of the Contract.
"Request for Information"	means a request for information under the FOIA or the EIR.
"Returning Employees"	means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Term.
"Services"	means the services described in Schedule 1 (Specification) and including all activities described in the Contractors Solution and as otherwise reasonably necessary to deliver the outcomes and objectives in the Specification.

"Service Period"	means the following:  (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 (b) after the first Service Period of the Contract, a Service Period shall be a calendar month during the Contract save that the final Service Period of the Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract.
"Service Users"	means those receiving the Services.
"Specification"	means the description of the Services to be supplied under the Contract set out in Schedule 1 (Specification).
"Specific Change in Law"	means a change in law that relates specifically to the business of the DFE and which would not affect a comparable supply;
"Sub-Contract"	means a contract between the Contractor and a Sub-Contractor.
"Sub-Contractor"	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.
"Sub-processor"	means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.
"Term"	means the period from the Effective Date until the date on which the Contract ends for whatever reason.
"Third Party Software"	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.
"Transparency Obligations"	means the legislative requirements and transparency policy commitments pertaining to the publication of procurement and contract information, as amended from time to time.
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
"Valid Invoice"	has the meaning given to it in Schedule 3
"Variation"	means any variation to the Contract requiring a CCN to be completed in accordance with Schedule 5 (Change Control Procedure).
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
"Working Day"	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 schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules; 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 and Schedules 1-4
  - (b) All the other Schedules and their annexes apart from Schedule 9; and
  - (c) 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:
  - (a) terminated in accordance with the provisions of this Contract or otherwise lawfully terminated; or
  - (b) 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, effectiveness of the CE and government/Ministerial support and funding. The contract extension may involve Lead Schools supporting an alternative set of Hub Schools. Any contract extension is subject to an enhanced KPI regime.

## 3. THE SERVICES

- 3.1 In consideration of the Contractor supplying the Services, the Contractor shall be paid the Charges.
- 3.2 The Contractor shall, in performing its obligations under the Contract:

- 3.2.1 conform to the requirements of the Specification and the Contractor's Solution, and any additional requirements that are agreed in writing between the Parties;
- 3.2.2 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;
- 3.2.2 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;
- 3.2.3 comply with Good Industry Practice;
- 3.2.4 ensure that the Services are provided by competent and appropriately trained Personnel;
- 3.2.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation bodies;
- 3.3.6 comply with the KPIs and Performance Management requirements set out in Schedule 2 (KPIs and Performance Management);
- 3.3.7 comply with Schedule 4 (Implementation Plan);
- 3.3.8 in so far as it is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within 10 Working Days of the same being brought to the attention of the Contractor by the DFE;
- 3.3.9 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
- 3.3.10 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE, the Service Users and all other persons including members of the public;
- 3.3.11 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Personnel also comply; and
- 3.3.12 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. TRANSFER AND SUB-CONTRACTING**

- 4.1 Save as set out in this clause 4, 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.
- 4.2 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.
- 4.3 The Contractor may award Sub-Contracts with a value per annum not exceeding £10,000 without the DFE’s consent.
- 4.4 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.
- 4.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract whose value exceeds £10,000 without obtaining the DFE’s prior written consent.
- 4.6 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 22 unless the Sub-Contractor can remedy the breach to the DFE’s satisfaction within 21 days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 4.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 4.8 If the DFE believes there are:
  - 4.8.1 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
  - 4.8.2 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.

#### **5. PERSONNEL AND SAFEGUARDING**

- 5.1 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.
- 5.2 If the DFE require the removal of any Personnel pursuant to clause 5.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor’s cost.
- 5.3 The Contractor shall use its best endeavours to ensure continuity of Personnel.

- 5.4 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.
- 5.5 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.
- 5.6 Any replacements to Key Personnel shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 5.7 The DFE shall not unreasonably withhold consent under clauses 5.5 or 5.6. 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.
- 5.8 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.
- 5.9 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.
- 5.10 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.
- 5.11 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.
- 5.12 All providers including all 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.
- 5.13 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 this Contract. The Contractor will agree these safeguards with the DFE before commencing work on the Contract.
- 5.14 The Contractor shall carry out checks with the Disclosure and Barring Service on all Personnel involved in a Regulated Activity. Contractors must have a Disclosure and Barring Service check done every three 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.

- 5.15 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.

## **6. STAFF TRANSFER and TUPE**

- 6.1 The provisions of Schedule 13 shall apply.

## **7. CHARGES**

- 7.1 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.
- 7.2 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 (as defined in that Schedule) being issued by the Contractor.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.

- 7.7 The DFE shall not pay an invoice which is not a Valid Invoice submitted in accordance with Schedule 3.
- 7.8 The DFE shall pay Valid Invoices within 10 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause (7.8) 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.
- 7.9 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Services.
- 7.10 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 30 days from the date the Contractor receives the Sub-Contractor's invoice.

## **8. TAX**

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 8.1 to 8.3 or why those clauses do not apply to it.
- 8.5 A request under clause 8.4 may specify the information which the Contractor must provide and the period within which that information must be provided.
- 8.6 The DFE may terminate this Contract if:
- 8.6.1 in the case of a request mentioned in clause 8.4 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 8.1 to 8.3 or why those clauses do not apply to it;
- 8.6.2 it receives information which demonstrates that, if clauses 8.1 to 8.3 apply, the Contractor is not complying with those clauses.

- 8.7 The DFE may supply any information which it receives under clause 8.4 to HMRC.
- 8.8 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.
- 8.9 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.
- 8.10 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 8.10 shall be paid in cleared funds by the Contractor to the DFE not less than five Working Days before the date upon which the tax or other liability is payable by the DFE.
- 8.11 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.
- 8.12 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 8.12.1 notify the DFE in writing of such fact within 5 Working Days of its occurrence; and
- 8.12.2 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. PREVENTION OF CORRUPTION**

- 9.1 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:
- 9.1.1 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
- 9.1.2 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.

9.2 The Contractor shall not:

9.2.1 commit a Prohibited Act; or

9.2.2 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.

9.3 The Contractor shall:

9.3.1 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

9.3.2 keep appropriate records of its compliance with its obligations under clause 9.3.1 and make such records available to the DFE on request.

9.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 9.1 and/or 9.2, or has reason to believe that it has or any of the Personnel have:

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

9.4.2 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

9.4.3 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.

9.5 If the Contractor notifies the DFE pursuant to clause 9.4, 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.

9.6 If the Contractor is in breach of any of its obligations under clauses 9.1 and/or 9.2, the DFE may by notice:

9.6.1 require the Contractor to remove from performance of the Contract any Personnel whose acts or omissions have caused the breach;

9.6.2 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;

- 9.6.3 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
- 9.6.4 recover in full from the Contractor the amount of value of any gift, consideration or commission.
- 9.7 Any notice served by the DFE under clause 9.6 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).

## 10. DISCRIMINATION

- 10.1 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).
- 10.2 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.
- 10.3 The Contractor shall take all necessary steps and inform the Authority 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).
- 10.4 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.

## 11. INTELLECTUAL PROPERTY

- 11.1 All Intellectual Property Rights in materials:
- 11.1.1 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
- 11.1.2 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**”).

- 11.2 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.
- 11.3 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 and to the Crown, 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 Replacement Contractor or to any other third party supplying goods and/or services to the Authority.
- 11.4 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.
- 11.5 The Contractor shall procure that all materials and resources that are made available to Service Users as part of the Programme as detailed in the Specification, shall be made available to Service Users under the Open Government Licence. In addition to the licence granted in 11.3 above, the Contractor hereby grants, or shall procure that the owner of the Service Specific IP Materials grants, to the DFE and to the Crown a perpetual and irrevocable licence, with a right to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying goods and/or services to the Authority, to publish all such Service Specific IP Materials under the terms of the Open Government Licence.
- 11.6 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 including without limitation the Service Specific IP Materials.
- 11.7 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 and the Crown 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, except where any such materials fall within the scope of clause 11.5 in which case, such licence must allow publication of such materials under the terms of the Open Government Licence. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the DFE and the Crown to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying goods and/or services to 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.
- 11.8 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 11, except to the extent that any such claim arises from:

11.7.1 items or materials supplied by the DFE; or

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

11.9 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.

11.10 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:

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

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

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

11.11 Notwithstanding clause 11.10 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.

11.12 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.

11.13 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:

11.13.1 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 11 shall apply mutatis mutandis to

such modified materials or services or to the substitute materials or services;  
or

11.13.2 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.

11.14 If the Contractor is unable to comply with clauses 11.13.1 and 11.13.2 within 20 Working Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.

11.15 The Contractor grants to the DFE and the Crown 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 Replacement Contractor or to any other third party supplying goods and/or services to the DFE. Notwithstanding the foregoing, where Contractor IP is within scope of materials which must be provided under the Open Government Licence under clause 11.5 and the Specification, the scope of the licence granted by the Contractor shall be as set out in clause 11.5.

11.16 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP except where such Contractor IP must be made available under the Open Government Licence pursuant to Clause 11.5, in which case, the terms of the Open Government Licence shall prevail.

11.17 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:

11.17.1 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 11.15; or

11.17.2 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 11.15.

11.18 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:

11.18.1 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

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

11.19 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.

11.20 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:

11.20.1 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

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

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

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

## **13. PUBLICITY AND PROMOTION**

13.1 Subject to clause 14.2, 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.

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

13.3 Without prejudice to the generality of clauses 11.19 and 13.1, the Contractor shall not itself, and shall procure that its Sub-Contractors 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.

13.4 Subject to clauses 13 and 14 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.

## **14. CONFIDENTIALITY**

14.1 Except to the extent set out in this clause 14 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.

- 14.2 The Contractor hereby gives its consent for the DFE to publish the Contract including from time to time agreed changes to the Contract.
- 14.3 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.
- 14.4 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.
- 14.5 Clause 14.1 shall not apply to the extent that:
- 14.5.1 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;
  - 14.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 14.5.3 such information was obtained from a third party without obligation of confidentiality;
  - 14.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 14.5.5 it is independently developed without access to the other Party's Confidential Information.
- 14.6 Nothing in clause 14 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
- 14.6.1 for the purpose of the examination and certification of the DFE's accounts;
  - 14.6.2 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;
  - 14.6.3 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
  - 14.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 14.6.3 and 14.6.4 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.

- 14.7 Nothing in clauses 14.1 to 14.6 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.
- 14.8 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 14.6 is made aware of the DFE's obligations of confidentiality.
- 14.9 If the Contractor does not comply with clauses 14.1 to 14.5 the DFE may terminate the Contract immediately on written notice to the Contractor.

## **15. FREEDOM OF INFORMATION**

- 15.1 The Parties acknowledge that they are subject to the requirements of the FOIA and the EIR. Notwithstanding the remainder of clause 15, should either the DFE or the Contractor receive a Request, the Parties will notify each other of the detail of any such Request and consult each other and keep each other informed regarding the handling and timing of any such Request.
- 15.2 The Contractor shall transfer to the DFE all Requests for Information that it receives which relates to the DFE as soon as practicable and in any event within 2 Working Days of receipt:
  - 15.2.1 give the DFE a copy of all information in its possession or control in the form that the DFE requires within 5 Working Days (or such other period as the DFE may specify) of the DFE's request;
  - 15.2.2 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
  - 15.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.
- 15.3 The DFE shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

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

- 16.1 The Contractor shall comply with the provisions of:
  - 16.1.1 the Official Secrets Acts 1911 to 1989; and

16.1.2 section 182 of the Finance Act 1989.

## **17. LIABILITY**

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

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

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

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

17.1.4 for its own fraud, fraudulent misrepresentation or fraudulent concealment; or

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

17.2 Subject to clauses 17.1 and 17.3, 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.

17.3 The Contractor does not exclude or limit its liability (if any):

17.3.1 pursuant to any indemnities given by it in clauses 11 (Intellectual Property), clause 8 (Tax); and

17.3.2 for any breach of the provisions of Schedule 12 (Data Protection).

17.4 Subject to clauses 17.1, 17.3 and 17.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort, under statute or otherwise (including in each case negligence)::

17.4.1 for any losses of an indirect or consequential nature; or

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

17.4.3 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.

17.5 Subject to clauses 17.1 and 17.3, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:

- 17.5.1 in respect of damage to property is limited to [to £5 million] in respect of any one incident or series of connected incidents; and
- 17.5.2 in respect of any claim not covered by clause 17.5.1, is limited in each calendar year in aggregate to 150% of the sum of the Charges paid and payable in the calendar year in which the event or series of events giving rise to the claim occurred.
- 17.6 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:
- 17.6.1 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;
- 17.6.2 any wasted expenditure or charges;
- 17.6.3 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;
- 17.6.4 any compensation or interest paid to a third party by the DFE; and
- 17.6.5 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.
- 17.6.6. without prejudice to the DFE's other rights, any cost of reconstitution of lost, or sufficiently degraded so as to be unusable data transmitted or processed in connection with the Contract, as well as the reimbursement to the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 17.7 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.
- 17.8 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.
- 17.9 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 £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 £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.

- 17.10 The Contractor shall supply to the DFE on demand copies of the insurance policies maintained under clause 17.9.
- 17.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 17.12 Notwithstanding the provisions of Clause 17.9, 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.

## **18. WARRANTIES AND REPRESENTATIONS**

18.1 The Contractor warrants and represents that:

18.1.1 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;

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

18.1.3 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;

18.1.4 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;

18.1.5 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 and it is entitled to grant the licences set out in Clause 11 of this Contract;

18.1.6 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

18.1.7 the use by the DFE, the Crown or any Replacement Contractor or other third party to whom rights are granted pursuant to this Contract (including Service Users accessing materials under the Open Government Licence), of any Intellectual Property Rights assigned or licensed to them by the Contractor under the Contract will not infringe or conflict with the rights of any third party;

18.1.8 in the three 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;

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

18.1.10 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.

## **19. FORCE MAJEURE**

19.1 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 19.3 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.

19.2 If either Party is prevented from performance of its obligations for a continuous period in excess of three 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.

19.3 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.

## **20. MONITORING: EXTERNAL EVALUATION AND REMEDIATION**

- 20.1 The Contractor shall promptly comply with any request for information and data relating to the Services from any External Evaluators and/or another Crown body monitoring the Contract.
- 20.2 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.
- 20.3 During such visits, the DFE's authorised representatives and/or its External Evaluators, may inspect and take copies of such of the records of the Contractor as relate to the performance of their obligations under the Contract.

### **Default**

- 20.4 If the Contractor is in Default which is not a Notifiable Default, 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.
- 20.5 If the Contractor has been notified of a Default in accordance with clause 20.4 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.
- 20.6 If the Contractor has been notified of a failure in accordance with clause 20.3, it shall:
- (a) use all reasonable endeavours to minimise the impact of the Default 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 20.5 and the progress of those measures until resolved to the satisfaction of the DFE.
- 20.7 If, having been notified of any Default, the Contractor fails to remedy it in accordance with clause 20.5 within the time specified by the DFE, the DFE may treat the continuing failure as a Material Breach and instigate the Remediation Process below.

### **Remediation Process**

20.8 In the event that:

- 20.8.1 there is, or is reasonably likely to be, a failure to achieve a Delivery Milestone under the Implementation Plan (Schedule 4);

20.8.2 the Contractor fails to meet the performance level required in relation to any of KPIs at the relevant Assessment Point further to Schedule 2 paragraph 9;

20.8.3 the Contractor is in persistent breach of its obligations to make payments to the Lead Schools each year, according to the payment schedule agreed with the Authority at the commencement of the Contract; or

20.8.4 the Contractor commits a Material Breach that is incapable of remedy

(each a "**Notifiable Default**"), the DFE may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without following the Remediation Plan Process set out below.

20.9 The Contractor shall promptly notify the DFE on becoming aware of a Notifiable Default.

20.10 If:

20.9.1 the Contractor notifies the DFE that a Notifiable Default has occurred; or

20.9.2 the DFE informs the Contractor that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Contractor has to rectify),

the Contractor shall comply with the Remediation Plan Process set out below.

#### **Submission of the draft Remediation Plan**

20.11 The Contractor shall submit a draft Remediation Plan to the DFE as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after either Party informs the other of a Notifiable Default in accordance with clause 20.5 above. The Contractor shall submit a draft Remediation Plan even if it disputes that it is responsible for the Notifiable Default.

20.12 The draft Remediation Plan shall set out:

20.12.1 full details of the Notifiable Default that has occurred, including a root cause analysis;

20.12.2 the actual or anticipated effect of the Notifiable Default;

20.12.3 the steps which the Contractor proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the remediation of the Notifiable Default (where applicable); and

20.12.4 where the Notifiable Default relates to failure to meet one or more KPI's, clear and measurable actions that the Contractor proposes to take in order to remedy underperformance against the relevant KPI and details of how the Contractor's performance will be monitored and assessed.

20.13 The Contractor shall promptly provide to DFE any further documentation that the DFE reasonably requires to assess the Contractor's root cause analysis. If the Parties do not agree on the root cause set out in the draft Remediation Plan, the Parties will deal with the Dispute in accordance with Clause 35.

### **Agreement of the Remediation Plan**

20.14 DFE may reject the draft Remediation Plan by notice to the Contractor if, acting reasonably, it considers that the draft Rectification Plan is inadequate, because the draft Remediation Plan (without limitation):

20.14.1 is insufficiently detailed to be capable of proper evaluation;

20.14.2 will take too long to complete;

20.14.3 will not prevent reoccurrence of the Notifiable Default;

20.14.4 will remedy the Notifiable Default but in a manner which is unacceptable to the DFE.

20.15 DFE shall notify the Contractor whether it consents to the draft Remediation Plan as soon as reasonably practicable. If DFE rejects the draft Remediation Plan, the DFE shall give reasons for its decision and the Contractor shall take the reasons into account in the preparation of a revised Remediation Plan. The Contractor shall submit the revised draft of the Remediation Plan to DFE for review within five (5) Working Days (or such other period as agreed between the Parties) of the DFE's notice rejecting the first draft.

20.16 If DFE consents to the Remediation Plan, the Contractor shall immediately start work on the actions set out in the Remediation Plan.

20.17 If DFE does not consent to the revised Remediation Plan, the matter shall be escalated in accordance with Clause 35.

20.18 DFE shall be entitled to suspend or terminate the process of agreeing any Change Control Notice (unless such change control is necessary to comply with any Change in Law or is necessary to give effect to the Remediation Plan) during any period where any part of the foregoing Remediation Plan process is ongoing.

## **21. STEP IN RIGHTS**

21.1 Without prejudice to DFE's rights of termination under clause 22 the DFE may exercise one or more of the rights set out in this clause 21 ("**Step In Rights**") if:

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

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

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

- 21.1.4 a serious risk exists to the health and safety of persons, property or the environment;
  - 21.1.5 it is necessary to discharge a statutory duty; or
  - 21.1.6 the Contractor becomes insolvent.
- 21.2 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.
- 21.3 The Step-In Notice shall set out:
- 21.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);
  - 21.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;
  - 21.3.3 the date on which it wishes to commence the Required Action;
  - 21.3.4 the time period which it believes will be necessary for the Required Action;
  - 21.3.5 whether the DFE will require access to the Contractor Premises; and
  - 21.3.6 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.
- 21.4 Following service of a Step-In Notice, the DFE shall:
- 21.4.1 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;
  - 21.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
  - 21.4.3 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
  - 21.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 21.5 For as long as and to the extent that the Required Action continues:
- 21.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
  - 21.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.

- 21.6 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.
- 21.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:
- 21.7.1 the Required Action it has taken; and
- 21.7.2 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 21.8.
- 21.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the date specified in clause 21.7.2, 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.
- 21.9 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.
- 21.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 21, 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 21.1.2 to 21.1.5 (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).

## **22. TERMINATION**

- 22.1 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:
- 22.1.1 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;
- 22.1.2 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);
- 22.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

- 22.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 22.1.5 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;
  - 22.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - 22.1.7 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
  - 22.1.8 any event similar to those listed in clauses 22.1.1 to 22.1.7 occurs under the law of any other jurisdiction.
- 22.2 The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:
- 22.2.1 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;
  - 22.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
  - 22.2.3 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;
  - 22.2.4 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;
  - 22.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
  - 22.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
  - 22.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - 22.2.8 any event similar to those listed in clauses 22.2.1 to 22.2.7 occurs under the law of any other jurisdiction.
- 22.3 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 months of:

22.3.1 being notified that a Change of Control has occurred; or

22.3.2 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.

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

22.4.1 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;

22.4.2 it is for any reason dissolved;

22.4.3 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;

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

22.4.5 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

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

22.4.6.1 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;

22.4.6.2 a petition is presented for his bankruptcy;

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

22.4.6.4 any event similar to those listed in clauses 22.4.1 to 22.4.6 occurs under the law of any other jurisdiction.

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

22.5.1 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;

- 22.5.2 it is for any reason dissolved;
- 22.5.3 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;
- 22.5.4 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;
- 22.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- 22.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
- 22.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 22.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 22.5.9 any event similar to those listed in clauses 22.5.1 to 22.5.8 occurs under the law of any other jurisdiction.
- 22.6 References to the Insolvency Act 1986 in clause 22.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 22.7 The DFE may terminate with immediate effect if:
- 22.7.1 the Contractor has not remedied a Notifiable Default having followed the Remediation Plan process in clause 20 to the satisfaction of the DFE within the period agreed in the Remediation Plan;
- 22.7.2 Further to paragraph 10 of Schedule 2, in the event that, having successfully completed a Remediation Plan to remedy a failure to achieve the performance target in relation to any KPI at the relevant Assessment Point, the Contractor again fails to meet the performance targets in relation to any KPI at any subsequent relevant Assessment Point,
- 22.7.3 The Parties are unable to agree a Remediation Plan in respect of a Notifiable Default; or
- 22.7.4 the Contractor is in Material Breach which is not, in the opinion of the DFE, capable of remedy.
- 22.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:

- 22.8.1 the Contractor's warranty in clause 18.1.10 is materially untrue;
- 22.8.2 the Contractor commits a material breach of its obligation to notify the DFE of any Occasion of Non-Tax Compliance;
- 22.8.3 the Contractor fails to provide details of proposed mitigating factors which, in the DFE's reasonable opinion are acceptable; or
- 22.8.4 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 22.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 22.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- 22.9.2 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
- 22.9.3 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.
- 22.10 If the DFE terminates the Contract under clause 22.7, 22.8 or 22.9:
- 22.10.1 and makes other arrangements for the supply of the Services, then without prejudice to its other rights, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
- 22.10.2 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.
- 22.11 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 90 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 clause 7.6 or to Force Majeure.
- 22.12 Save as otherwise expressly provided in the Contract:

22.12.1 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

22.12.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 7 (Charges), 8 (Tax), 9 (Prevention of Corruption), 11 (Intellectual Property), 12 (Data Protection, Systems Handling and Security), 14 (Confidentiality), 15 (Freedom of Information), 17 (Official Secrets Act and Finance Act 1989), 18 (Liability), 18 (Warranties and Representations), 22 (Termination) 23 (Retendering and Handover), 24 (Exit Management), 25 (Audit), and 36 (Governing Law and Jurisdiction).

22.13 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.

### **23. RETENDERING AND HANDOVER**

23.1 Within 30 days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the DFE to issue tender documents for the future provision of replacement services.

23.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 23.1 is given only to potential contractors of the replacement services.

23.3 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.

23.4 The Contractor shall allow access to the Contractor Premises in the presence of DFE's authorised representative, to any person representing any potential contractor whom the DFE has selected to tender for the future provision of the Services.

23.5 If access is required to the Contractor Premises for the purposes of clause 23.4, the DFE shall give the Contractor five Working Days notice of a proposed visit together with the names of all persons who will be visiting.

23.6 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.

23.7 Within 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.

## **24. EXIT MANAGEMENT**

24.1 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 Replacement Contractor, the Contractor shall co-operate fully with the DFE and any such Replacement Contractor and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

24.2 By no later than six (6) months of the Effective Date, the Contractor will deliver an exit plan to the DFE 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**"). This should include (without limitation):

24.2.1 detail on managing any transfer of staff (subject to the requirements of Schedule 12;

24.2.2 arrangements for the safe transfer of all data necessary for the continuation of the Services and timescales for any transfer in accordance with Schedule 7;

24.2.3 licensing requirements for software and documentation covering any bespoke software that has been developed;

24.2.3 the transfer of domain names and trade marks with respect to the CE; and

24.2.4 such other arrangements as may be reasonably requested by the DFE in advance.

24.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be dealt with in accordance with Clause 35.

24.4 In the event that the Contract is extended, the Contractor will review and (if appropriate) update the Exit Plan in the first month of each subsequent calendar year to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the DFE for review. Within 30 days following submission of the revised Exit Plan, the Parties shall use their 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 30 days, such dispute shall be dealt with in accordance with Clause 35.

24.5 The following commercial approach shall apply to any transfer of the Services required under clause 24.1: If the Contractor:

24.5.1 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

24.5.2 reasonably incurs additional costs, the Parties shall agree a Variation of the Charges.

- 24.6 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.
- 24.7 Within one month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 24.8 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Working Days from the date that that request was made.

## **25. AUDIT AND THE NATIONAL AUDIT OFFICE**

- 25.1 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**").
- 25.2 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 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.
- 25.4 The Contractor shall ensure that all of its contracts with Sub-contractors include obligations reflecting the requirements of the DFE under this clause.
- 25.5 The Contractor shall provide all records and accounts referred to in this clause 25 (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.
- 25.6 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.
- 25.7 The Contractor shall provide the rights set out in this clause 25 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.

- 25.8 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.
- 25.9 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.
- 25.10 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.
- 25.11 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 all records and accounts referred to in this clause 25 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.
- 25.12 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.

## **26. ENTIRE AGREEMENT**

- 26.1 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.
- 26.2 All warranties, conditions or terms not set out in this Contract and which would otherwise be implied or incorporated into this Contract by statute, common law or otherwise are hereby excluded to the maximum extent permitted by law.
- 26.3 Each party acknowledges that in entering into this Contract it is not relying on, and shall have no rights or remedies (whether in contract, in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other party to this Contract.
- 26.4 Nothing in this clause shall exclude any liability which one Party would otherwise have to the other Party in respect of fraud, fraudulent misrepresentation or fraudulent concealment.

## **27. PARTNERSHIP**

- 27.1 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).

## **28. WAIVER**

- 28.1 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.

## **29. CHANGE CONTROL**

- 29.1 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). No Variation shall be effective unless made in accordance with Schedule 5.

## **30. COUNTERPARTS**

- 30.1 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.

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

- 31.1 The provisions of clauses 6.1 and 11.6 confer benefits on persons named in such provisions (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").
- 31.2 Subject to clause 31.1, 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.
- 31.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without the prior written consent of DFE.
- 31.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

## **32. CONFLICTS OF INTEREST**

### **32.1 The Contractor shall:**

32.1.1 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

32.1.2 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 32 as a **"Conflict of Interest"**.

32.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 32 the Contractor shall forthwith provide full particulars to the DFE.

32.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.

32.4 Without prejudice to the foregoing provisions of this clause 32, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:

32.4.1 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

32.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.

32.5 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).

32.6 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 32.

## **33. FURTHER ASSURANCE**

33.1 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.

### **34. NOTICES**

34.1 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).

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

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

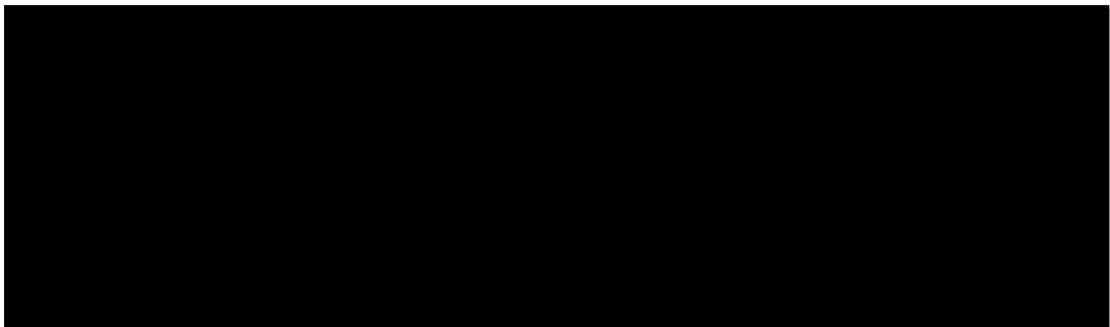
34.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;

34.2.3 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).

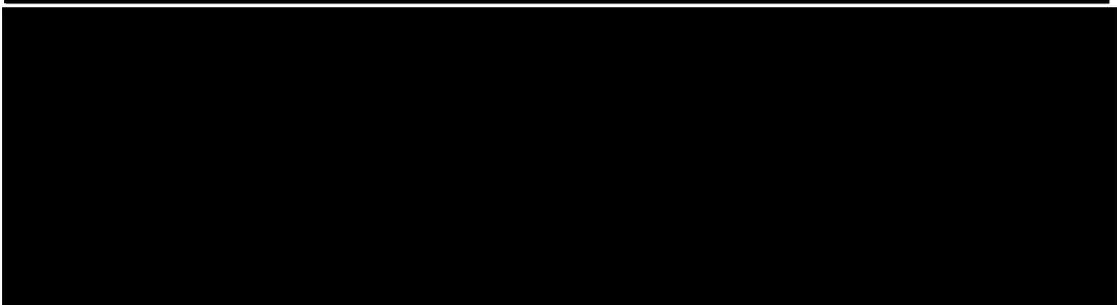
34.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

34.4 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)



(b)



## **35. DISPUTE RESOLUTION**

- 35.1 Any Dispute shall be dealt with in accordance with this clause 35.
- 35.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
- 35.3 If a Dispute cannot be resolved by negotiation as referred to in clause 35.2 within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

## **36. GOVERNING LAW AND JURISDICTION**

- 36.1 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.
- 36.2 The courts of England shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Contract.
- 36.3 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.

## **37 LEGISLATIVE CHANGE**

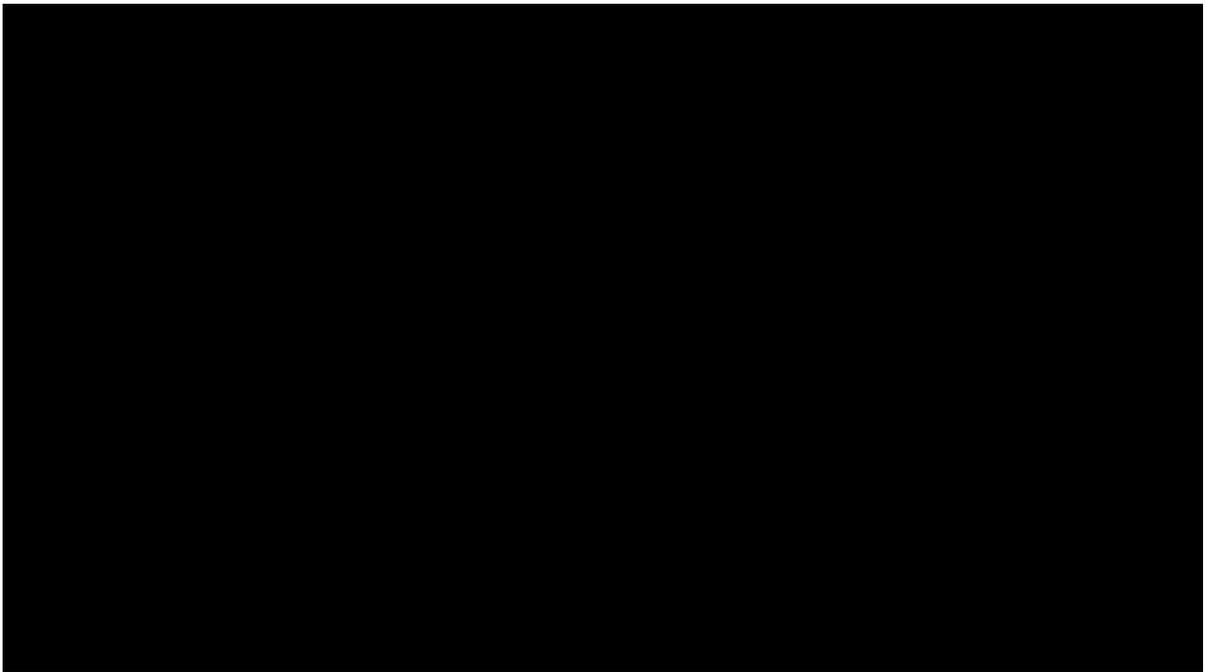
- 37.1 The Contractor shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law where the effect of that specific change in law on the Services is reasonably foreseeable at the Effective Date.
- 37.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 37.1(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.

37.3 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)

### **38 LICENCE TO OCCUPY PROPERTY**

- 38.1 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.
- 38.2 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.
- 38.3 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.
- 38.4 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.
- 38.5 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.



## Schedule 1 – The Specification

### SECTION 4: SPECIFICATION OF REQUIREMENTS

#### *Introduction and current issues in modern foreign languages education*

- 1.1 Modern foreign languages are one of the five subject pillars making up the English Baccalaureate (EBacc)<sup>1</sup> at GCSE level. Languages are important in preparing pupils to compete in a global job market. According to the Confederation of British Industry's (CBI)/Pearson Education and Skills Survey 2015, 'Inspiring Growth', 45% of businesses recognise foreign languages ability among their employees as beneficial, particularly for building relations with overseas contacts (36%), while their 2017 survey, 'Helping the UK Thrive' reported that the major European languages continue to be the most in demand. According to the Russell Group of universities, if studied at A level, the subjects that make up these 'facilitating pillars' of the EBacc "open more doors to more degrees". Despite this, fewer than half of pupils take a GCSE in a language, and only one third of pupils achieves a good GCSE grade (A\* - C) in a language. In addition, the number of pupils entering for a modern foreign languages ("MFL") A level, has fallen by 2 percentage points since 2010. This will have an impact on the pipeline for MFL teacher supply. We want to increase the uptake of languages and for more pupils to benefit from a rounded education.

#### *Review of MFL Pedagogy*

- 1.2 To support high quality language teaching and help address the low uptake and achievement of MFL by pupils, the Teaching Schools Council undertook a review of MFL pedagogy led by Ian Bauckham. This was a practical and practitioner-led review informed by sector research and the views of teachers, pupils, headteachers, parents, governors, researchers and others. The review looked for evidence around effective teaching of languages at secondary level, and made recommendations to improve language teaching and increase pupils' interest and success. The report (Nov 2016), can be found here: 'Modern Foreign Languages Pedagogy Review - A review of modern foreign languages teaching practice in Key Stage 3 and Key Stage 4' (the "Bauckham Review"). See Appendix B for the report's recommendations for schools and teachers.
- 1.3 The Social Mobility Action Plan, published by the Department in December 2017, also explains that as part of the challenge to support pupils from less advantaged backgrounds fulfil their potential, the Department will ensure that disadvantaged pupils can access the core academic subjects that unlock opportunity. The Social Mobility Action Plan states: "In particular, we will make it our mission to improve access to high quality modern foreign languages subject teaching, particularly for disadvantaged pupils, drawing on the findings of the Bauckham review – building expert hubs to share best practice, targeted in disadvantaged areas."

#### **Authority Requirements and Programme Description**

##### *Overall Purpose*

- 2.1 The Authority is seeking to procure a comprehensive and ambitious package of measures (the "Services") to set up and run an MFL Hub Programme (the "Programme") with the overall purpose of providing support to secondary schools to improve languages teaching at Key Stages 3 and 4, so that in the pilot schools:

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<sup>1</sup> The EBacc is a school performance measure which comprises the following combination of GCSEs: English language and English literature, mathematics, science (combined science or three out of four of: biology, chemistry, physics or computer science), history or geography, and a modern or ancient language.

- (1) more pupils take up languages GCSEs; and
- (2) schools are enabled to achieve viable and sustainable numbers and group sizes to secure the future of the subject.

2.2 Funding of up to £2.41m has been allocated for the periods 2018-19 and 2019-20 for the Programme. This includes the fixed funds being passed to the Lead Schools and Hub Schools (defined in the Glossary and at para 3.36 below). See section below on payment of funds under Authority requirements and objectives. There may be further funding available for the period 2020 - 2022 should the Programme prove effective and if Ministers wish to extend it.

2.3 Proposals should detail how value for money will be achieved through the proposed funding model, for example through no or low-cost elements, matched funding, and financial or in-kind contributions. Proposals should also cover what the Centre for Excellence ("CE") – as defined in the Glossary - might do in the longer term to facilitate improved MFL teaching and languages uptake for all children in schools, as part of a long term plan for sustainable activity beyond the period of funding.

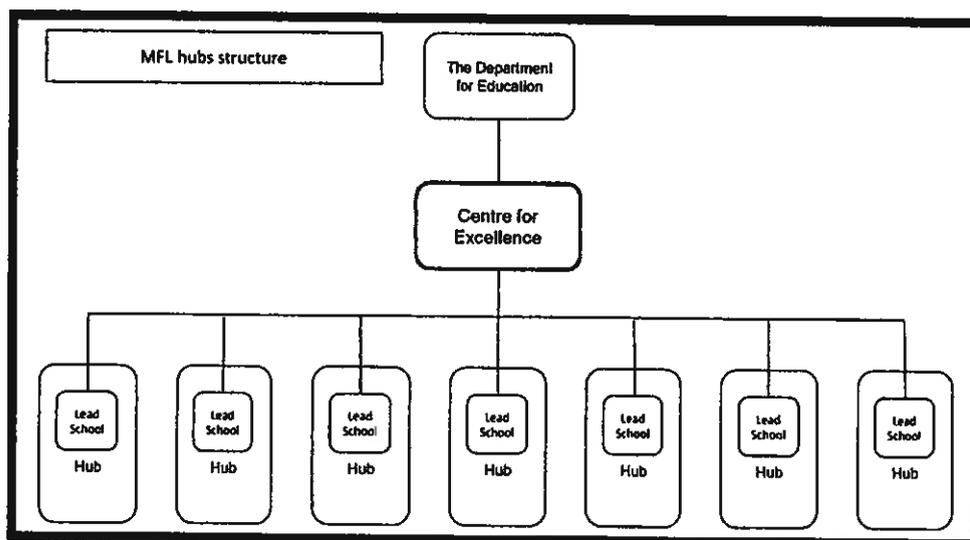
2.4 The principles and recommendations of the Bauckham Review (Appendix B) will be followed so as to improve language teaching practice in secondary schools.

#### *Structure of the Programme*

2.5 The Authority is seeking to procure the establishment of a Centre for Excellence to implement the Programme. The CE will perform the functions in Section 4, paragraphs 3.2 to 3.40 of this Specification.

2.6 In summary, the CE will become a locus of expertise in the MFL pedagogical approach as set out in the Bauckham Review, and will exhibit expertise and knowledge of this pedagogical approach. In building knowledge and expertise from universities, education consultants and existing research, the CE must ensure that it applies the approach set out in the Bauckham Review.

2.7 The CE will support a nationwide network of 9 clusters of schools ("Hubs"). All the schools within the Hub will have a commitment to improve MFL teaching in Key Stages 3 and 4 and increase uptake of languages at GCSE. Each Hub will be comprised of 5 schools: 1 "Lead School" and 4 "Hub Schools". The CE will be responsible for helping the Lead Schools to support Hub Schools to enter more pupils for language GCSEs. The diagram below shows the structure of the Programme and how the various key components link together.



- 2.8 In each Hub there will be at least 2 specialist languages teachers (“Specialist Teachers”) who will be trained as experts, by the CE, to deliver support to the schools in their Hub. The 2 Specialist Teachers are likely to come from the Lead School – but do not necessarily need to. The Specialist Teachers will work with each of the Hub Schools to develop their schemes of work, lesson plans and their teaching methods so that they align with the principles of the Bauckham MFL Review. The Lead Schools will drive this work. The Specialist Teachers will receive training and support from the CE, and the training and development of Specialist Teacher skills will be a continuous process, and may include intensive, residential courses from time to time.
- 2.9 The Authority is running a separate process, in parallel to the procurement of the CE, to identify and appoint 9 Lead Schools on the basis described in Appendix C, the Expression of Interest Form below. Since issuing the Expression of Interest Form there will now be 9 Lead Schools rather than 7 as originally described in the EoI. Schools that meet the criteria set out in paragraph 2.11 below were invited to express an interest in becoming a Lead School and have been selected based on how they demonstrate they can deliver the pedagogical approach through school to school support. The Lead Schools will be in place by the time the Contract commences and the DfE will work with Lead Schools in the period leading up to the start date of the Contract on 3 December 2018 including by hosting induction days for Lead Schools and asking Lead Schools to carry out pre-work with Hubs.
- 2.10 The Lead Schools will identify the Hub Schools that they are going to support. The Authority has not specified criteria for selection of Hub Schools, however it was stated in the Expression of Interest (Appendix C) requirements for the appointment of Lead Schools that all schools within the Hub will have a commitment to improve MFL teaching in Key Stages 3 and 4 and increase uptake of languages GCSE. The Lead Schools and Hub Schools will be in place by the time the Contract commences. After the commencement of the Contract, if any Hub School withdraws from “the Programme”, the CE in partnership with the Lead School for the affected Hub, will recruit another Hub School as a replacement. At this point, the CE (on behalf of the Lead School) must obtain Authority approval of the appointment of additional or replacement Hub Schools.
- 2.11 Lead Schools will be selected by the Authority as outlined in the Expression of Interest that was sent to those schools that met the specific criteria on 23 March 2018. The specific criteria are as follows:
- Above average Progress 8 and Attainment 8 in 2016 and 2017;

- Ofsted outstanding or good;
- EBacc entry rates of 38.2% or higher in 2017, which was the national average for state-funded schools;
- EBacc attainment at grade 5/C of 21.3% or higher in 2017, the national average for state-funded schools.

And either:

- GCSE languages entries of 75% or higher in 2015, 2016 and 2017 and at least an average proportion of A\*/A grades in 2017 (23%);

Or:

- Have increased their GCSE languages entry by at least 15% since 2011, have at least 60% languages entry in 2017 and at least an average proportion of A\*/A grades in 2017 (23%).

2.12 Working in conjunction with the CE, the Lead Schools will decide on which languages they will support, however, the Authority expects that during this pilot phase French, Spanish and German and other Indo-European languages are the focus. These are the languages most in demand according to the CBI/Pearson Education and Skills 2017 survey.

### **Authority Requirements and Objectives**

#### **The Centre for Excellence**

3.1 The precise functions of the CE will include, but not be restricted to, the following areas:

*Plans for facilitating improvement of participation at Key Stages 3 and 4 and at GCSE.*

The CE will:

3.2 Provide support to schools to improve languages teaching at Key Stages 3 and 4, so that in the pilot schools, more pupils take up languages GCSEs and schools are enabled to achieve viable and sustainable numbers and group sizes to secure the future of the subject. It will facilitate this by developing the links within and between the Hubs, helping Lead Schools build their Hubs, and ensuring best practice and resources are shared throughout the network of Hubs via a Resource Portal.

*Promoting and adopting MFL pedagogy as set out in the Bauckham MFL pedagogy review.*

The CE will:

3.3 Develop, promote and share "Pedagogy Resources" based on the recommendations of the "Bauckham Review of MFL Pedagogy" (as defined in the Glossary) with Hubs via a "Resource Portal", with the aim that the MFL pedagogy as outlined in the Bauckham Review is adopted by Hub Schools. When taken together these resources will support a clear coherent curriculum. These resources include but are not limited to lesson plans, worksheets, department improvement plans and training materials. All shared resources, which must comply with the MFL pedagogy as set out in the Bauckham Review, must be quality assured by the CE.

3.4 Promote the use of textbooks in schools by:

3.4.1 Developing best practice advice for schools on how to use high-quality textbooks and other coherent published teaching programmes in the classroom, and advising on how they can support teaching;

3.4.2 Identifying the essential features of good textbooks to assist schools and teachers and support learning; and

3.4.3 Including within the resource portal a list of any textbooks recommended by the Authority, to encourage their use by schools.

*Acquire specialist expertise to advise the CE*

The CE will:

3.5 Ensure that they are equipped with appropriate expertise in the MFL pedagogy as set out in the Bauckham review to quality assure the development and delivery of their own training and resources, and that of the Lead Schools.

*Work with and support prospective Lead and Hub Schools*

The CE will be responsible for providing support to Lead and Hub Schools as follows:

3.6 Support the Lead Schools to recruit their Hub Schools and maintain their Hub, by encouraging good communications between the schools within the Hub – providing administrative support where required. Exploring the use of social media in this context and supporting Hubs to use the best methods of communications between themselves, the Specialist Teachers and all the other MFL teachers within the Hub.

3.7 Support Lead Schools to establish teacher groups within the Hub that use evidence-informed approaches to professional development such as lesson study, where teachers collaborate to plan lessons to deliver aspects of the curriculum and then demonstrate and observe excellent teaching.

3.8 Support Lead Schools with administrative tasks, for example arranging meetings/CPD events within the Hub.

3.9 Support Hubs to build their capacity to provide effective leadership and support to secondary schools outside the Hub in their area, by helping them to develop strategies to widen their communications to schools in their local areas to explain the work of the Hub and to let schools know what resources they have available to support MFL teachers. To work alongside the Hubs to deliver at least 1 CPD event which is promoted to all local secondary schools aimed at promoting the work of the Hub and demonstrating what excellent MFL pedagogy looks like.

3.10 Facilitate the Hubs to set up MFL teacher research groups that would develop their understanding of MFL pedagogy through reviewing the existing evidence and developing their practice in the light of this research. The CE must be able to provide access to the research by teachers and coach teachers in research techniques.

3.11 Manage any turnover of Specialist Teachers within the budget available, ensuring each Hub has two Specialist Teachers.

*Develop and secure participation in high quality training programmes for Specialist Teachers*

3.12 Provide Specialist Teachers from the Lead Schools with 10 days of training per Specialist Teacher (of which there will be 18) per year (i.e. 180 days of training in total). This includes the delivery of an initial two-day briefing and training residential for the Specialist Teachers from the Lead Schools at the start of the Programme. The purpose of this two-day briefing is to ensure that Specialist Teachers are fully cognisant of, and demonstrate fidelity to, the MFL pedagogy review and what excellent MFL pedagogy looks like; and to familiarise them with the evidence base for excellent MFL pedagogy.

- 3.13 The CE will ensure that CPD delivered to Specialist Teachers and to any other teachers during the Programme is delivered in accordance with the Standards for Teachers' Professional Development, July 2016<sup>2</sup>.
- 3.14 The CE will ensure that all CPD reflects that teachers need to acquire skills to teach GCSE to a wide ability range and to large class sizes.
- 3.15 The CE will provide at least one regional training event for each Hub per annum – open to languages teachers from the wider area to attend for free. The training event should be advertised widely and through established local networks to ensure good attendance.

*Ensure trained Specialist Teachers work effectively in providing intensive support*

- 3.16 The CE will assist Specialist Teachers to undertake diagnostic work in Hub Schools to determine what support is required and inform planning of bespoke, school to school support packages;
- 3.17 The CE will help Specialist Teachers prepare resources for training Hub School teachers. The resources will: cover the whole of Key Stage 3 and GCSE syllabuses; outline long, medium and short term programmes of work, which will support teachers with the broader work schemes, as well as providing specific lesson resources. The CE will ensure that Hub Schools are supported in the effective use of resources that support their teaching. The CE will also assess the quality of the Specialist Teachers.
- 3.18 The CE will provide advice to Specialist Teachers as to what CPD activities and other forms of less intensive support they would offer to these 90 schools, including support provided at a school's request. The CE will also collect and provide management information on the quantity and quality of this activity.

*Communications plan*

The CE will ensure that the Programme is communicated effectively, and that best practice is shared effectively as follows:

- 3.19 Develop the network of Lead Schools that links the Hub Schools to each other by establishing communication channels between them, facilitating introductions at senior leadership team (SLT) level and between Specialist Teachers, ensuring that Hubs understand their common purpose and can share good practice and expertise where necessary. Exploring the use of social media in this context and supporting Hubs to use the best methods of communications.
- 3.20 Establishes itself so that it is recognised across England as promoting effective evidence-based practice and acts as a central point of contact for languages pedagogy support for secondary schools.
- 3.21 By ensuring that Specialist Teachers have opportunities to meet and talk about the work they are doing (either physically or through virtual means) to support pedagogical improvement in the schools in their Hub.
- 3.22 Ensuring the availability of resources from the CE, and from the Lead Schools and Hub Schools, is communicated to all schools, both within the Hubs network and nationally.
- 3.23 Ensure that all resources or materials produced will be accessible or adapted for all users.

<sup>2</sup> <https://www.gov.uk/government/publications/standard-for-teachers-professional-development>

### *Project and risk management*

- 3.24 The CE will be required to be available throughout the period between the notification of the award decision, and the commencement of the Contract, for the purpose of ensuring that the CE is ready to commence services on 3 December 2018.
- 3.25 The CE will be responsible for making payment of funds to Lead Schools and for managing the project, including identifying risks and issues.
- 3.26 The CE will be responsible for ensuring both Lead and Hub Schools are reimbursed for the support activities they deliver, ensuring that all expenses are paid on time, and providing full accountability for the use of funds. To facilitate this, the CE will be expected to have a contract and Service Level Agreements with each of the Lead Schools (containing provisions as broadly set out in Summary of the respective roles at Section 4).
- 3.27 The CE will ensure that the Programme is run in accordance with good industry practices, particularly with regard to achieving good value for money, risk management and data management/protection. Suppliers must have processes and systems in place for ensuring costs and pricing are managed appropriately.
- 3.28 The CE will maintain a central record of training attendance and participation of all training activities led by the CE and the Lead Schools/Specialist Teachers.
- 3.29 The CE will include a full Implementation Plan (as defined in the Contract), including ambitious but realistic outputs and milestones. The Implementation Plan will cover the implementation stage and the delivery stage. The Plan will focus on, agreeing and implementing joint governance structures and processes; defining and implementing work streams, identify leads, scope and responsibilities; agree and develop joint plans and shared risks; and identify a dedicated resource to manage the day to day relationship whose targeted role is to unblock issues and identify solutions rapidly. Suppliers will need to provide to the Authority monthly updates during the implementation period on milestone delivery, risk and issues, including how they will manage the risk of availability of key staff during school holidays.
- 3.30 The CE will put in place systems to monitor and measure the impact of school to school support within the Hub, tracking what support is being delivered and gathering feedback on that support. For management information purposes, monitoring must include the post code of the schools involved.
- 3.31 The CE will monitor the quality and consistency of the delivery by Lead Schools and hold them to account for following the principles of the Bauckham Review of MFL pedagogy, by monitoring and providing quality assurance of all CPD and resources delivered by the Specialist Teachers, regularly reviewing the work of the Specialist Teachers in connection with their participation in the Programme, and reporting to the Authority.
- 3.32 The CE will ensure any issues that may adversely affect the quality of support are raised with Lead Schools in a timely manner, making sure that Hub Schools have direct communication with the CE, and putting in place effective, remedial intervention as soon as possible to improve the support being offered to Hub Schools. The CE will ensure any issues that may adversely affect the quality of support are raised with Lead Schools in a timely manner, making sure that Hub Schools have direct communication with the CE, and putting in place effective, remedial intervention as soon as possible to improve the support being offered to Hub Schools.
- 3.33 The CE will provide regular (quarterly) updates and progress reports to the Authority on all activity including support provided to the Lead Schools, support provided from Lead Schools

to Hub Schools, any feedback on or impact of that support, and any remedial interventions delivered.

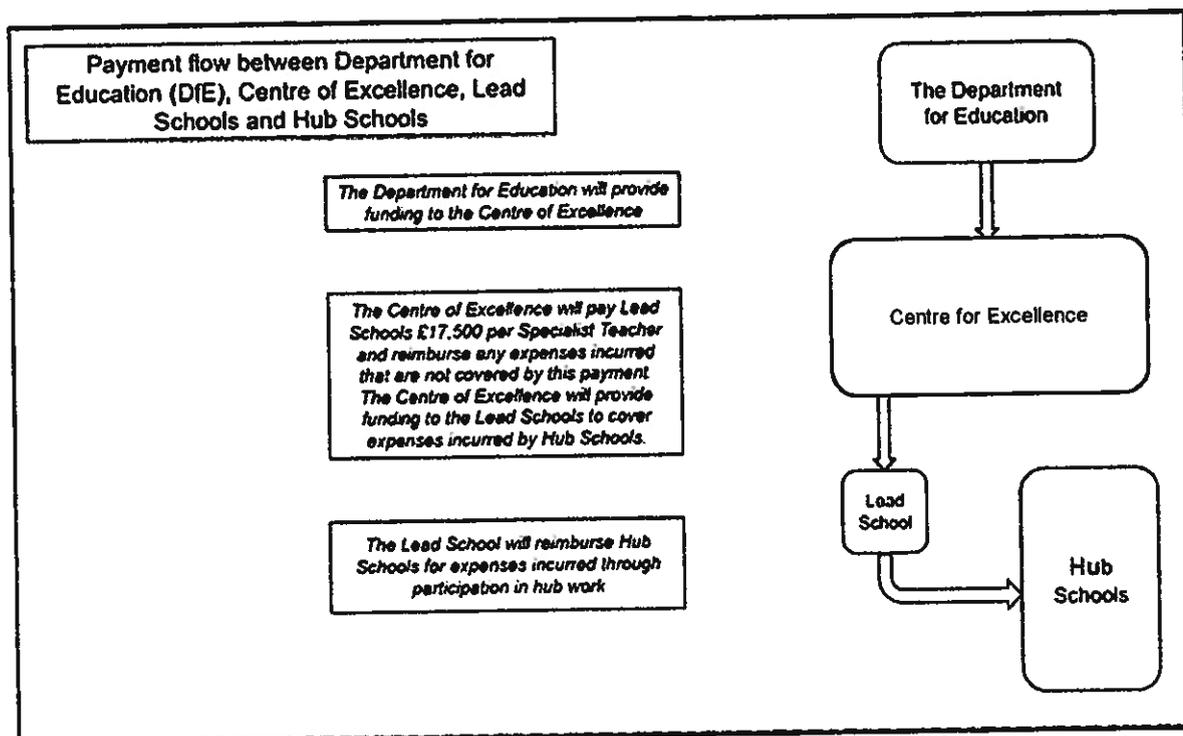
- 3.34 The CE will engage fully with any external evaluator appointed by the Authority and collect management information data and feedback from Lead Schools on various aspects of the Programme to evaluate the delivery and impact of the Programme. This will include data on the number of Specialist Teachers trained; the numbers of schools supported; which year groups are being supported in each school; pupil uptake of languages at GCSE; and pupil assessments and teacher and parent surveys.
- 3.35 The CE will have in place robust systems to ensure the accurate collection of management information and data required to measure progress against all agreed KPIs and milestones, and achieve the overall purposes of the Programme; in addition, maintain this data in line with the requirements of the Data Protection Act 2018 and General Data Protection Regulation (GDPR) legislation.
- 3.36 The CE will ensure that mechanisms, including data sharing, exist to liaise with the Authority and any relevant Third Party nominated by the Authority to support the delivery and evaluation of the Contract, and to engage in analysis and formative evaluation to ensure that lessons learned are incorporated into the ongoing delivery as part of an ongoing quality improvement cycle.
- 3.37 The CE will pay no less than £35,000 per annum to each Lead School, in accordance with the payment schedule. This is a fixed amount and only in an extreme case would any of this funding be withheld. If one of the Specialist Teachers is employed by a school other than a Lead School, the £35,000 funding will be split equally between the Lead School and the school that employs the Specialist Teacher. This means that the Lead School will receive £17,500 and the school that employs the other Specialist Teacher will receive £17,500. In addition to this £35,000 the CE will provide funding to the Lead School which will be used as follows:
- The schools which employ the Specialist Teachers receive recompense for attendance at training at the agreed rate i.e. £300 per day for each Specialist Teacher, and allowances for travel and subsistence where appropriate. The Specialist Teachers will attend 10 training days per annum, which means that the total amount payable to each Lead School will be £6,000 plus travel expenses up to a maximum of a further £1,000 per Lead School per annum i.e. £7,000 maximum per Lead School per annum.
  - For Lead Schools to pay funding to cover supply cover – to allow languages teachers (not Specialist Teachers) to be released from teaching to attend training and participate in the work of the Hub – for 14 days per school per year. The daily rate will be £250 for each teacher. We expect that each Hub School would match fund the supply cost for each teacher that participates in any activity. In total each Hub School, other than the Lead School, could receive a maximum of £3,500 to cover supply costs each year.
- 3.38 If a Hub is underperforming in any way, the CE must flag this to the Lead School and put in place such measures as necessary to support the Hub to enable it to achieve a satisfactory level of performance.
- 3.39 If the CE provides evidence to the Authority that despite all attempts to support the Lead School, Specialist Teachers and Hub Schools, the Hub has failed to deliver the programme of support agreed at the beginning of the Programme, the Authority will consider withholding all outstanding funding; and will consider appointing a new Lead School.
- 3.40 The CE will make the following payments to the Lead Schools each year, according to the payment schedule agreed with the Authority at the commencement of the Contract.

Description of payment	Amount to be paid to each Lead School	Total amount for 9 Hubs per annum
Annual fixed payment to each Lead School.	£35,000	£315,000
To recompense Lead Schools for 2 Specialist Teachers attending 10 days training, provided by the CE @£300 per teacher per day.	£6,000	£54,000
To reimburse travel costs for Specialist Teachers attending 10 days training, provided by the CE - where the training is not held at the Lead School.	£1000	£9,000
To allow Lead Schools to reimburse Hub Schools cover costs to allow MFL teachers to be released from teaching to participate in support or other hub activity. Based on 14 days @£250 per day for each of the four Hub Schools.	£14,000	£126,000

3.41 The Lead Schools will make the following payments to the schools within their hub each year, according to the payment schedule agreed with the Authority at the commencement of the Contract:

Description of payment	Amount to be paid to each Hub School	Total amount for each Hub per annum
To reimburse Hub Schools cover costs to allow MFL teachers to be released from teaching to participate in support or other hub activity based on 14 days @£250 per day.	£3,500	£14,000

3.42 The diagram below sets out the payment flow:



### Summary of the respective roles

#### The Authority will:

- Manage the CE, through agreed key performance indicators, including collection and analysis of data;
- Hold the CE to account for how funding is used and ensuring value for money;
- Manage the recruitment and selection, including making final decisions, of the Lead Schools and Hub Schools;
- Make final decisions on whether MFL hub status should be removed from any Hub, based on recommendations from the CE, including the process and criteria through which continuing hub status will be assessed;
- Make payments on receipt of invoices and progress reports; and
- Commission and manage the external evaluation of the Programme.

#### The CE will:

- Facilitate improvement of participation at Key Stages 3 and 4 and at GCSE by promoting and ensuring compliance with the MFL pedagogy set out in the Bauckham Review of MFL pedagogy;
- Acquire specialist expertise to advise the CE;
- Work with and support prospective Lead and Hub Schools;
- Produce Pedagogy Resources that will support teaching in Lead Schools and Hub Schools;
- Performance manage the Lead Schools and assess the quality of teaching in those schools;
- Develop and secure participation in high quality training programmes for Specialist Teachers;
- Ensure trained Specialist Teachers work effectively in providing intensive support;
- Ensure that the Programme is communicated effectively;

- Make payment of funds to Lead Schools and manage the project, including identifying risks and issues; and
- Participate in the external evaluation of the Programme.

The Lead Schools will:

- Release Specialist Teachers for training and CPD;
- Develop and agree support plans for each of their Hub Schools responding to individual school need;
- Share pedagogy expertise with the Hub Schools they support;
- Ensure their Specialist Teachers form supportive, trusting and collaborative relationships with Hub Schools they are supporting intensively;
- Organise less intensive CPD activities for up to 10 additional secondary schools to the Hub Schools;
- Collect data from their Hub Schools on:
  - attendance at training and CPD quarterly;
  - the number of pupils studying MFL annually; and
  - confidence of both teaching staff and pupils annually.
- Authorise and reimburse Hub Schools for any expenses incurred;
- Report to the CE on their own and their Hub Schools' CPD activities and number of pupils studying MFL and confidence of both teaching staff and pupils; and
- Participate in the external evaluation of the Programme.

The Hub Schools will:

- Attend training and CPD on the pedagogical approach;
- Develop and implement a plan to deliver the pedagogical approach, with support from their Lead School. This should be ready for implementation within the first two months of the contract, and will cover the life of the pilot programme;
- Commit to increasing their MFL take up at Key Stages 3 and 4 and at GCSE;
- Participate in the support activities organised by the Lead Schools;
- Contribute to the development of resources to deliver the pedagogical approach;
- Provide data as required by the Lead Schools; and
- Participate in the external evaluation of the Programme.

### Detailed requirements

- 4.1 All Tenderers must fill out the **Standard Selection Questionnaire** referred to in Section 5. We will assess the tenders of all Tenderers who satisfy these requirements. Tenderers will be assessed against the evaluation criteria in **Section 2: Award Criteria** above.

### Key Performance Indicators (KPIs)

- 5.1 The Authority's contract manager will convene quarterly meetings with the Supplier, at which management information and progress against key performance indicators will be discussed. The Supplier will be expected to present a progress and update report at each meeting for the board's consideration.
- 5.2 The Supplier will be held to account against the four KPIs listed below. The first relates to delivery of the Bauckham pedagogical approach and is weighted 40%. The next two set out how the Authority want this achieved, i.e. engagement in the Programme and resource development (20% weighting each), and the fourth relates to increased uptake of languages at GCSE (also 20% weighting).

5.3 In setting delivery targets and measures for these KPIs, Tenderers should take into account that the KPIs identified in the table below are linked to a rebate mechanism. This rebate mechanism will be used as a means to adjust the charges that will be payable to the Supplier (the "Supplier Charges") but not, for the avoidance of doubt, the monies provided by the Authority to the Supplier to fund the Lead Schools (the "Lead School Charges") if the Supplier fails to deliver according to these KPIs. This rebate (the "Charges Rebate") will be calculated against Supplier Charges (excluding the Lead School Charges) for the preceding Academic Year. The Charges Rebate will, where applicable, be paid by the Supplier by way of a KPI credit against future Supplier Charges, or at the end of the term of the Contract.

5.4 Failure to meet a KPI will not, of itself, be considered a breach of Contract. However, failure to achieve a KPI will indicate that the quality of the Services delivered has fallen short of the Authority's requirements and that consequently the Supplier Charges should be reduced by a corresponding amount to reflect the loss of enjoyment of the Services.

	Description	Method and frequency of assessment	Charges rebate (if applicable)	Proportion of overall score of KPI
1.	90% of MFL teachers in Lead and Hub Schools are confident in their delivery of the MFL pedagogical approach as described in the Bauckham Review of MFL Pedagogy.	Assessed by baseline survey and follow up survey on impact of training on own practice in schools.  Monitored on a quarterly basis; assessed annually.	4% of the Annual Supplier Charges	40%
2.	A full complement of Lead Schools (i.e. 9) is sustained throughout the Programme.	Assessed by MI data provided by the Supplier.  Monitored on a quarterly basis; assessed annually.	2% of the Annual Supplier Charges	20%
3.	90% of MFL teachers in Lead Schools and Hub Schools report that the Pedagogy Resources produced by the CE support teaching.	Assessed by surveys administered by the CE or the Authority's external evaluator.  Monitored twice a year; assessed by the end of year 2.	2% of the Annual Supplier Charges	20%
4.	15 percentage point increase in the numbers of Y10 pupils starting to study languages GCSE in September 2020 across the Hub Schools.	The CE will establish the method of collecting evidence from Hub Schools to provide data on numbers of pupils choosing to take languages GCSEs.  Monitored on a quarterly basis; assessed by the end of year 2.	2% of the Annual Supplier Charges	20%

## **Monitoring and Evaluation**

- 6.1 The CE will be expected to collect and analyse management information data from Lead and Hub Schools at appropriate intervals to monitor KPIs, as well as responding to ad hoc data requests from the Authority and work with any relevant Third Party nominated by the Authority to support the delivery and evaluation of the Contract. The CE will also be expected to obtain feedback from teachers on the delivery and impact of various aspects of the Programme to evaluate its effectiveness and sustainability. This will be done in a variety of ways, such as evaluation forms at the end of training or regional events, annual surveys to teachers covering broader aspects of the Programme, pupil surveys disseminated via schools, and interviews or case studies at schools. An interim and final report must be provided to the Authority that sets out the structure of the Programme, the support activities provided and an assessment of their effectiveness, and the impact on pedagogy. The final report must be suitable for publication.

## **Costs and Value for Money**

- 7.1 The total funding for this Programme is up to £2.41m over a 2 year period – 2018-19 and 2019-20. Subject to supplier performance, Ministerial approval and funding being available the Authority may extend the contract from 2020-2022 should the Programme prove effective.
- 7.2 This is inclusive of VAT and any other service or consumption tax. Proposals that exceed this figure will not be considered. The total includes £504k per annum that will be passed onto Lead and Hub Schools. Monies released should not be spent on capital items for the CE; its presence will be online and will not have a designated building/site.
- 7.3 Where the contract price agreed between the Authority and supplier is inclusive of any VAT, further amounts will not be paid by the Authority should a vatable supply claim be made at any later stage. The Authority will expect monthly reporting against spending. No additional costs will be charged to the Authority unless agreed with the contract manager prior to expenditure. Payments of costs to the supplier will be made by BACS transfer following receipt of a valid invoice.
- 7.4 Where the overall contract price is exclusive of VAT, the Authority will pay any VAT incurred at the prevailing rate (currently 20%). If the VAT rate changes the Authority will pay any VAT incurred at the new rate. It is the responsibility of tenderers to check the VAT position with HMRC before submitting a bid.
- 7.5 The CE must ensure that all estimated costs are real, auditable and can be justified. Tenderers need to be sure they separately identify and include all expenditure that they expect to incur in relation to proposed activities, i.e. costs associated with overheads e.g. training venues/facilities/licences and staffing, e.g. management, delivery and administration.
- 7.6 As part of their response to this tender Tenderers should indicate what (if any) comms or marketing activity they think they will need to deliver to support this Programme, with indicative costs. Once the contract is awarded, any communications and marketing activity planned by the successful Tenderer will be subject to a separate clearance process by the Department's communications team on behalf of the Department's Director of Communications to ensure value for money. The Department would expect that the provider will undertake appropriate low/no cost and creative communications/marketing strategies where required to meet the targets for the Programme.

- 7.7 Proposals should include a summary of projected costs for each financial year of the Programme. Costs should be detailed in the attached Cost Matrix document.
- 7.8 Proposals should detail how value for money will be achieved through the proposed funding model, for example through no- or low-cost elements, matched funding, and financial or in-kind contributions.
- 7.9 Suppliers should take into account that KPIs are linked to a rebate mechanism as described at 5.3 above. The final details of the funding to be subject to the Charges Rebate will be confirmed with successful Tenderers.

## Schedule 2 – KPIs and Performance Management

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

<b>"Assessment Point"</b>	Has the meaning in paragraph 4 of this Schedule 2
<b>"Charges Rebate"</b>	Means a reduction in the Charges to reflect the lower quality service which is triggered by failure to achieve the KPI's.

### General:

- 2 The objective of the KPIs is to:
- 2.1 Set out minimum standards to which the Services must be performed;
  - 2.2 provide a rebate mechanism whereby the DFE can adjust the Charges where the standard of the Services has been degraded, as evidenced by a failure by the Contractor to achieve the minimum standards required by the KPI's;
  - 2.3 provide a structure for monitoring persistent underperformance against the KPI's.

### KPIs – monitoring and reporting

- 3 To monitor the Contractor's performance against each of the KPIs listed in Table 1, DFE's contract manager will convene quarterly meetings with the Contractor, at which management information and progress against KPIs will be discussed. The Contractor will present an update and progress report at each quarterly meeting.
- 4 By no later than 31 October 2019 ("**Assessment Point**") the Contractor shall deliver a KPI report (the "**KPI Report**") for KPIs 1 and 2, and no later than 31 October 2020 for all KPIs and annually thereafter by no later than 31 October. The KPI Report shall provide such evidence as necessary to demonstrate performance against these KPIs and details of any Charges Rebate calculated as per the methodology below.
- 5 If at the Assessment Point, the Contractor:
- 5.1 achieves all KPIs, no further action is required with respect to the KPIs;
  - 5.2 does not achieve the KPIs, the Contractor shall pay KPI Credits to reflect the Charges Rebate (once agreed) which shall reflect the reduced quality of Services actually received by the DFE from the Contractor. The Charges Rebate will be calculated on the total Charges paid to the Contractor for the preceding Academic Year (the "**Supplier Annual Charges**") but not, for the avoidance of doubt, the monies provided by the DFE to the Contractor to fund the Lead Schools (the "**Lead School Charges**").

- 6 The Supplier shall provide full details of its calculations of any Charges Rebate to be applied as part of the KPI Report and shall promptly respond to any requests for further information as required by DFE to verify the proper application of the Charges Rebate.
- 7 Where DFE agrees with the calculation of any applicable Charges Rebate it shall confirm this in writing to the Contractor Representative and a KPI Credit to the value of the Charges Rebate will be applied as set out in paragraph 8 and Schedule 3. Where the Parties do not agree on the calculation of Charges Rebate, the Contract Managers shall meet promptly to discuss this as deemed necessary by the DFE Contract Manager. If after a reasonable time the Charges Rebate remains in dispute, the Parties shall follow the procedure in Clause 35

**KPI Credits:**

- 8 Reduction of the Charges for failure to meet one or more KPIs will be done by via application of a KPI Credit to the next monthly invoice once the Charges Rebate has been agreed by the DFE or at the end of the term of the Contract if applicable. Applicable KPI Credits to the value of the Charges Rebate assessed by DFE according to the above methodology paid in accordance with Schedule 3 paragraph 16.

**Failure to meet KPIs: remediation**

- 9 In addition to any KPI Credits applied, if the Contractor fails to meet the performance level required in relation to any KPI at the relevant Assessment Point, this will trigger the Remediation Process in Clause 20 of the Contract.
- 10 In the event that, having successfully completed a Remediation Plan further to Clause 20 of the Contract, the Contractor fails to meet the performance targets in relation to any KPI at any subsequent relevant Assessment Point, DFE may enforce the Remediation Process again or may choose to terminate the Contract on written notice with immediate effect in accordance with clause 22.7 of the Contract.

**Table 1 – KPIs**

	<b>Description</b>	<b>Method and frequency of assessment</b>	<b>Charges rebate (if applicable)</b>	<b>Proportion of overall KPI score</b>
1.	90% of MFL teachers in Lead and Hub Schools are confident in their delivery of the MFL pedagogical approach as described in the Bauckham Review of MFL Pedagogy.	Assessed by baseline survey and follow up survey on impact of training on own practice in schools.  Monitored on a quarterly basis; assessed annually.	<i>4% of the Annual Supplier Charges</i>	40%
2.	A full complement of Lead Schools is sustained throughout the Programme.	Assessed by MI data provided by the Supplier.  Monitored on a quarterly basis; assessed annually.	<i>2% of the Annual Supplier Charges</i>	20%
3.	90% of MFL teachers in Lead Schools and Hub Schools report that the Pedagogy Resources produced by the CE support teaching.	Assessed by surveys administered by the CE or the Authority's external evaluator.  Monitored twice a year; assessed by the end of year 2.	<i>2% of the Annual Supplier Charges</i>	20%
4.	15 percentage point increase in the numbers of Y10 pupils starting to study languages GCSE in September 2020 across the Hub Schools.	The CE will establish the method of collecting evidence from Hub Schools to provide data on numbers of pupils choosing to take languages GCSEs.  Monitored on a quarterly basis; assessed by the end of year 2.	<i>2% of the Annual Supplier Charges</i>	20%

### Schedule 3 – Financials

1. In this Schedule, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

<b>“Reconciliation Period”</b>	Means the period ending 10 days after receipt of the Monthly Spending Report by the DFE Contract Manager further to paragraph 9 of this Schedule 3.
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2. The DFE shall pay the Contractor the Charges in arrears based on costs and timetable submitted in the Cost Matrix, subject to the reconciliation process outlined below and satisfactory performance of the Services against the KPIs set out in Schedule 2 (KPIs and Performance Management).
3. 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.
4. Indexation shall not apply to the Charges.
5. The Contractor must submit a Monthly Spending Report prior to issuing an Invoice. Invoices shall be raised at the end of the Reconciliation Period as set out below.
6. At all times the Contractor shall provide all necessary assistance as requested by the DFE to enable the DFE to validate any claim for payment made by the Contractor.

#### Spending Reports and Reconciliation:

7. The Cost Matrix sets out projected monthly costs for delivery of the Services.
8. The Contractor must submit a Monthly Spending Report to the DFE Contract Manager no later than 15 days after the end of the Service Period to which it relates.
9. Each Monthly Spending Report must contain:
  - 9.1 Details of the costs of delivering the Services for the relevant Service Period itemised to reflect the categories in the Cost Matrix; and
  - 9.2 Any other information requested by DFE in advance of preparing the report, in order to assist in the reconciliation process.
10. Every Monthly Spending Report will be reconciled against the budget profile, as set out in the cost matrix, and any variance will be discussed by the Contract Managers during the Reconciliation Period. The Contractor Representative must make themselves available during the Reconciliation Period to promptly respond to any requests for further information. The Contractor Representative shall nominate an alternative person with equivalent knowledge, expertise and authority to act on their behalf if they will be unavailable for any significant amount of time during the Reconciliation Period.

11. During the Reconciliation Period the Parties will agree the Charges to be invoiced. At the end of the Reconciliation Period, the Contractor must promptly submit a Valid Invoice for payment of the agreed Charges in accordance with paragraph 19 to 20 below. Where Charges are not agreed at the end of the Reconciliation Period, the Contractor shall have the option to either:
  - 11.1 issue an invoice for all agreed Charges and follow the disputed claims process below in respect of the remaining Charges, or
  - 11.2 elect to extend the Reconciliation Period to allow further time for discussion before submitting an invoice.
12. In each Financial Year, the Authority will not pay more than the figure set in the Cost Matrix for that Financial Year unless the Charges have been varied via a CCN. DFE shall not permit any such transfer of funds across two or more Financial Years.

### **Charges**

13. The Contractor may only invoice the DFE for payment of Charges set out in the Cost Matrix where it has provided confirmation in the Monthly Spending Report of the nature of the Charges, and specifically, where relevant, that the relevant Hub has received payment of their share of the Charges in accordance with the terms of the Contract or service level agreement between the Contractor and the Hub.

### **KPI Credits:**

14. Where a Charges Rebate applies (as set out in Schedule 2) this will be done by payment of a KPI Credit by the Contractor.
15. Any applicable KPI Credits will be payable after the DFE has confirmed in writing that it agrees with the Charges Rebate calculations in the Contractor's KPI Report at the relevant Assessment Point according as set out in Schedule 2.
16. KPI Credits shall be paid either:
  - 16.1 as a deduction from the Contractor's monthly invoice for the Service Period following the month in which the KPI Credit is confirmed by DFE; or
  - 16.2 in the event that applicable KPI Credits exceed the value of the next monthly invoice, by an invoice for payment issued by DFE to the Contractor; and/or
  - 16.3 Such other arrangement (whether combining aspects of the above or otherwise) as the Parties may reasonably agree in writing.
17. Any payment to the DFE will be made in accordance with paragraphs 21-24.

### **Invoicing:**

18. Invoices shall be submitted to the DFE Contract Manager promptly at the end of the Reconciliation Period and must comply with the provisions set out below.

19. An invoice is a "**Valid Invoice**" if it is legible and includes:

- 19.1 the date of the invoice;
- 19.2 Contractor's full name and address;
- 19.3 Contract reference number;
- 19.4 the charging period;
- 19.5 a detailed breakdown of the agreed Charges itemised according to the agreed Monthly Spending Report;
- 19.6 KPI Credits (if applicable); and
- 19.7 VAT if applicable.

### **Recovery of Sums Due**

- 20. 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 under this Contract (subject to any agreement on payment of KPI Credits made under paragraph 17.3).
- 21. 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.
- 22. The Contractor shall make any payments due to the DFE without any deductions whether by way of set-off, 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.
- 23. 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**

- 24. If any part of the Monthly Spending Report 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.
- 25. If the DFE disputes any amount specified in a Valid Invoice it shall notify the Contractor of the reasons for disputing the invoice within 10 days. The DFE may withhold the disputed amount pending resolution of the dispute. If an invoice is disputed, the Contractor may re-issue an invoice for any undisputed amounts and DFE shall pay undisputed sums further to a re-issued invoice notwithstanding any ongoing dispute.

26. If any invoice 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.
27. The DFE shall be entitled to deduct from sums due to the Contractor by way of set-off any amounts owed to it or which are in dispute or subject to question either in respect of the Charges for which payment is being made or any previous Charges.
28. The Parties shall use all best endeavours to resolve any dispute over invoices within 10 Working Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with Clause 35.

#### **Variation of the Charges**

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



### Schedule 4 - Implementation Plan

1. The Contractor shall provide the Services in accordance with the Implementation Plan set out below.
2. The Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
3. The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the 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.
4. The Contractor shall monitor its performance against the Implementation Plan and report to the DFE quarterly (or more frequently if so required by the DFE) on its performance.
5. The following are the Delivery Milestones:

QUARTER 1: 03/12/18- 31/12/18	
	<p>Paid each Lead School £8,750 and expenses for Specialist Teachers attending training @£300 per day plus travel and subsistence, as per the Cost Matrix, on receipt of the signed Service Level Agreement between the CE and each Lead School.</p> <p>Throughout this Implementation Plan, per quarter, per Lead School: expenses for day release of Specialist Teachers for attending training are up to £1,500 (i.e. £6k per annum); and expenses for travel and subsistence for Specialist Teachers attending training are up to £250 per Lead School (i.e. £1k per annum).</p> <p>Paid each Lead School £875 per each of its Hub Schools, for Hub Schools' MFL teachers to be freed up from their teaching commitments to participate in support and training activity, on receipt of both a) the signed Service Level Agreement between the CE and each Lead School and b) the signed Service Level Agreement between each Lead School and each of its Hub Schools. Throughout this implementation plan, this regular payment is to cover 14 days per Hub school per year.</p>
	<p>Check the Lead Schools have set up payment to the Hub schools' expenses for teacher days release @£250 per day for MFL teachers up to £875 per quarter per school, to allow MFL teachers to be freed up from their teaching commitments to participate in support and training activity, as per the Cost Matrix, on receipt of the signed Service Level Agreement between each Lead School and each of its Hub Schools.</p>
QUARTER 2: 01/01/19- 31/03/19	

Will have established a platform to share resources and communications with Hubs. The platform will be updated at least 4 times a year, ahead of each quarterly review, to include resources developed in the preceding period and resources and communications that will help Lead and Hub Schools plan support activity and teaching for the next academic term.

Will have set up administrative structure and personnel to support Hubs network e.g. for event management for CPD, communications.

Agreed with DFE the range of MI data which will be required to measure progress against KPIs at the end of each quarter.

Put in place the mechanism for collecting MI data from Lead Schools, and establish mechanism for Lead schools to collect MI data from Hub schools. The CE should not add to the burden of teachers by imposing lesson observations and monitoring, beyond those proposed in the Response to the ITT. Effort will be made to work with the senior leadership teams in each of the schools to make use of existing arrangements for lesson observation, learning walks, book scrutiny and other performance management activity to gather data, in addition to data provided about uptake and data gathered from questionnaires (and focus groups late in 2020, as per the response to the ITT) administered through the CE.

Will have set up an ongoing mechanism for paying each Lead school.

Will have agreed the programme of training for Specialist Teachers for AY 2018/19. Each specialist teacher to have attended a two-day residential (1-2 February 2019) and a further 1.5 day's CPD, giving a total of 3.5 days by 31 March 2019.

Will have set out programme of wider CPD events for each of the 9 Hubs for AY 2018/19.

Agreed the specific priorities for supporting each Hub with the Specialist Teachers – up to end of academic year 2018/19.

Agreed the KPI for each Hub based on the priorities agreed up to end AY 2018/19.

The Centre for Excellence will pay each Lead School £8,750 and expenses for Specialist Teachers attending training @£300 per day plus travel and subsistence, as per the Cost Matrix.

Paid each Lead School £875 per each of its Hub Schools, for Hub Schools' MFL teachers to be freed up from their teaching commitments to participate in support and training activity.

Check that the Lead Schools have paid Hub Schools' expenses for teacher days release @£250 per day for MFL teachers up to £875 per quarter per school, to allow MFL teachers to be freed up from their teaching commitments to participate in support and training activity, as per the Cost Matrix.

<b>QUARTER 3: 01/04/19- 30/06/19</b>	
	Each specialist teacher to have attended a further three days training by end June, including Hub day 1. (The CE will provide at least 1 CPD event per Hub that will be open to schools from the local area to attend by end June/early July 2019 accommodating to local school time calendars where possible). This gives a running total of 6.5 days training to Specialist Teachers.
	<p>Paid each Lead School £8,750 and expenses for Specialist Teachers attending training @£300 per day plus travel and subsistence, as per the Cost Matrix.</p> <p>Paid each Lead School £875 per each of its Hub Schools, for Hub Schools' MFL teachers to be freed up from their teaching commitments to participate in support and training activity.</p> <p>Check that the Lead Schools have paid Hub schools' expenses for teacher days release @£250 per day for MFL teachers up to £875 per quarter per school, to allow MFL teachers to be freed up from their teaching commitments to participate in support and training activity as per the Cost Matrix.</p>
<b>QUARTER 4: 01/07/19- 30/09/19</b>	
	Will have agreed the programme of training for Specialist Teachers for AY 2019/20. STs to attend 2-day residential and participate in one further half-day. Giving a running total of 9 days.
	Will have set out programme of wider CPD events for each Hub for AY 2019/20.
	Agreed the specific priorities for supporting each Hub with the Specialist Teachers – up to end of academic year 2019/20.
	Agreed the KPI for each Hub based on the priorities agreed up to end AY 2019/20.
	<p>Paid each Lead School £8,750 and expenses for Specialist Teachers attending training @£300 per day plus travel and subsistence, as per the Cost Matrix.</p> <p>Paid each Lead School £875 per each of its Hub Schools, for Hub Schools' MFL teachers to be freed up from their teaching commitments to participate in support and training activity.</p> <p>Check Lead Schools have paid Hub Schools' expenses for teacher days release @£250 per day for MFL teachers up to £875 per quarter per school, to allow MFL teachers to be freed up from their teaching commitments to participate in support and training activity, as per the Cost Matrix.</p>

<b>QUARTER 5: 01/10/19- 31/12/19</b>	
	<p>Each Specialist Teacher to have attended a further 2.5 training days (total number of days' training will be 11.5 days) by 20 December 2019. (Note, this is 1.5 days <i>more</i> than the 10 days per year in the ITT).</p> <p>Paid each Lead School £8,750 and expenses for Specialist Teachers attending training @£300 per day plus travel and subsistence, as per the Cost Matrix.</p> <p>Paid each Lead School £875 per each of its Hub Schools, for Hub Schools' MFL teachers to be freed up from their teaching commitments to participate in support and training activity.</p> <p>Check Lead Schools have paid Hub Schools' expenses for teacher days release @£250 per day for MFL teachers up to £875 per quarter per school, to allow MFL teachers to be freed up from their teaching commitments to participate in support and training activity, as per the Cost Matrix.</p>
<b>QUARTER 6: 01/01/20- 31/03/20</b>	
	<p>Specialist Teachers to have attended a further 1.5 days training by 31 March 2020 (running total 13 days).</p> <p>Paid each lead school £8,750 and expenses for specialist teachers attending training @£300 per day plus travel and subsistence, as per the Cost Matrix.</p> <p>Paid each Lead School £875 per each of its Hub Schools, for Hub Schools' MFL teachers to be freed up from their teaching commitments to participate in support and training activity.</p> <p>Check Lead Schools have paid Hub Schools' expenses for teacher days release @£250 per day for MFL teachers up to £875 per quarter per school, to allow MFL teachers to be freed up from their teaching commitments to participate in support and training activity, as per the Cost Matrix.</p>
<b>QUARTER 7: 01/04/20- 30/06/20</b>	
	<p>Specialist Teachers to have attended 2.5 further training days by 30 June. (Running total 14.5 days)</p> <p>Paid each Lead School £8,750 and expenses for specialist teachers attending training @£300 per day plus travel and subsistence, as per the Cost Matrix.</p> <p>Paid each Lead School £875 per each of its Hub Schools, for Hub Schools' MFL teachers to be freed up from their teaching commitments to participate in support and training activity.</p> <p>Check Lead Schools have paid Hub Schools' expenses for teacher days release @£250 per day for MFL teachers up to £875 per quarter per school, to allow MFL teachers to be freed up from their teaching commitments to participate in support and training activity, as per the Cost Matrix.</p>
<b>QUARTER 8: 01/07/20 - 30/09/20</b>	

	<p>The CE will provide at least 1 CPD event per Hub that will be open to schools from the local area to attend by end July 2020, and STs will have an additional 0.5 days training. STs will have attended the third 2-day residential by end September 2020. (Running total 18 days).</p>
	<p>Paid each Lead School £8,750 and expenses for Specialist Teachers attending training @£300 per day plus travel and subsistence, as per the Cost Matrix.</p> <p>Paid each Lead School £875 per each of its Hub Schools, for Hub Schools' MFL teachers to be freed up from their teaching commitments to participate in support and training activity.</p> <p>Check Lead Schools have paid Hub Schools' expenses for teacher days release @£250 per day for MFL teachers up to £875 per quarter per school, to allow MFL teachers to be freed up from their teaching commitments to participate in support and training activity, as per the Cost Matrix.</p>
<p><b>QUARTER 9:01/10/20 - 02/12/20</b></p>	
	<p>The final full day's training by 20 October 2020. Each ST will also receive a further 2 half days CPD by 2 December 2020. (Running total for each ST = 20 days by 2 December 2020).</p>

## **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 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 Change Control Note unless the change involves a demonstrable material increase to its costs or requires a material change to the Contract.
- 3 Either Party may request a Variation provided that such Variation does not amount to a material change.
4. The DFE may request a Variation by completing the Change Control Note and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Charges are required in order to implement the Variation within a reasonable time limit specified by the DFE. If the Contractor accepts the Variation it shall confirm it in writing within 21 days of receiving the Change Control Note.
5. If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Charges, the DFE may allow the Contractor to fulfil its obligations under the Contract without Variation or if the Parties cannot agree to the Variation the Dispute will be determined in accordance with Clause 35.
6. If the Contractor wishes to introduce a change to the Contract it may request a Variation by serving the Change Control Note on DFE.
7. The DFE shall confirm in writing within 21 days of receiving the Change Control Note if it accepts or rejects the Variation.
8. The DFE may at its absolute discretion reject any request for a Variation proposed by the Contractor.
9. The Parties acknowledge that no Variation can be agreed where its implementation would amount to a "substantial" change within the meaning of regulation 72(8) of the Regulations (to be assessed by the DFE).

### 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>	

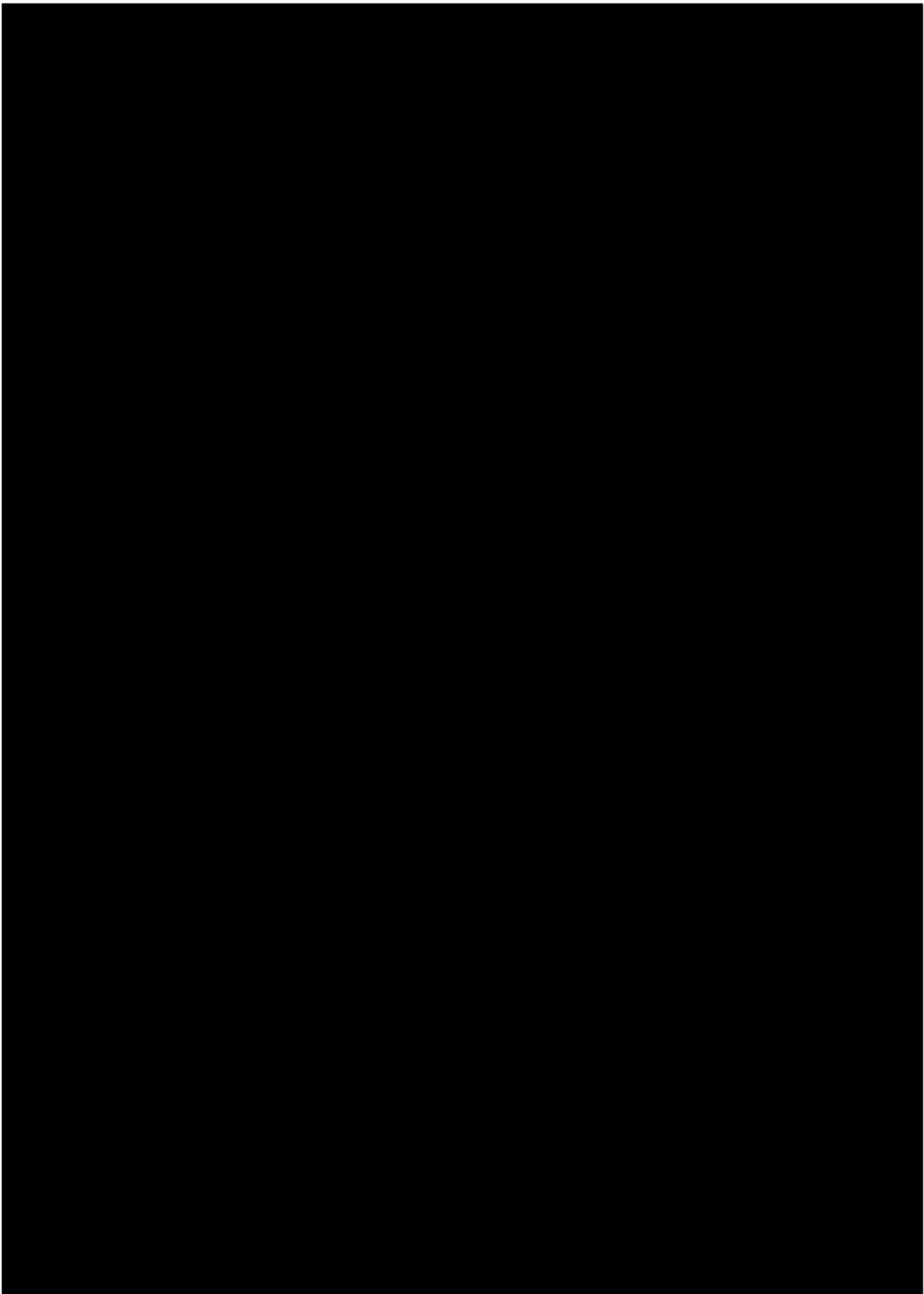
<b>Variation Requested:</b>	
<b>Originator of Variation:</b> (tick as appropriate)	DFE <input type="checkbox"/> Contractor <input type="checkbox"/>
<b>Date:</b>	
<b>Reason for Variation:</b>	
<b>Summary of Variation:</b> (e.g. specification, finances, contract period)	
<b>Date of Variation commencement:</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	

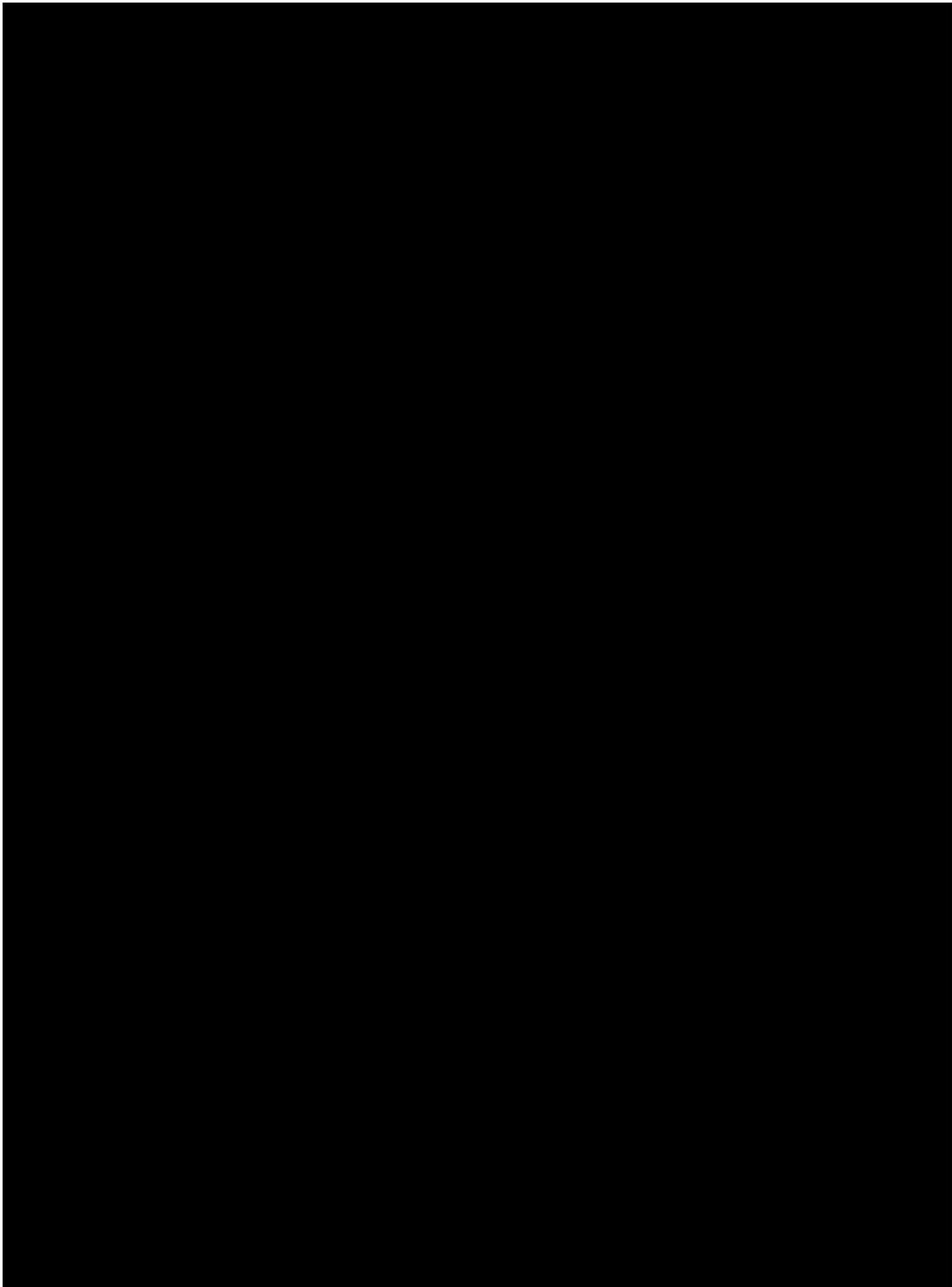
<b>Revised daily rate:</b> (if applicable)	
<b>Impact on original contract:</b> (if applicable)	
<b>Supporting Information:</b> (please attach all supporting documentation for this Change Control)	
<b>Terms and Conditions</b>	Save as herein amended all other terms and conditions of the Original Contract 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>Signature:</b> .....
<b>Full Name:</b> .....	<b>Full Name:</b> .....
<b>Title:</b> .....	<b>Title:</b> .....
<b>Date:</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.

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





## Schedule 7 - Data, Systems Handling and Security

### Definitions

<p><b>“BPSS”</b> <b>“Baseline Personnel Security Standard”</b></p>	<p>a level of security clearance described as pre-employment checks in the National Vetting Policy.</p>
<p><b>“CCSC”</b> <b>“Certified Cyber Security Consultancy”</b></p>	<p>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></p>
<p><b>“CCP”</b> <b>“Certified Professional”</b></p>	<p>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></p>
<p><b>“CC”</b> <b>“Common Criteria”</b></p>	<p>the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.</p>
<p><b>“CPA”</b> <b>“Commercial Product Assurance”</b> <b>[formerly called “CESG Product Assurance”]</b></p>	<p>is an 'information assurance scheme' which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. 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></p>
<p><b>“Cyber Essentials”</b> <b>“Cyber Essentials Plus”</b></p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p>
<p><b>“Departmental Security Standards”</b></p>	<p>means the DFE's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>
<p><b>“Digital Marketplace / GCloud”</b></p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.</p>

<p><b>“FIPS 140-2”</b></p>	<p>this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.</p>
<p><b>“Good Industry Practice”</b> <b>“Industry Good Practice”</b></p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p><b>“Good Industry Standard”</b> <b>“Industry Good Standard”</b></p>	<p>means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p><b>“GSC”</b> <b>“GSCP”</b></p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p><b>“HMG”</b></p>	<p>means Her Majesty's Government</p>
<p><b>“ICT”</b></p>	<p>means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution</p>
<p><b>“ISO/IEC 27001” “ISO 27001”</b></p>	<p>is the International Standard for Information Security Management Systems Requirements</p>
<p><b>“ISO/IEC 27002” “ISO 27002”</b></p>	<p>is the International Standard describing the Code of Practice for Information Security Controls.</p>
<p><b>“ISO 22301”</b></p>	<p>is the International Standard describing for Business Continuity</p>
<p><b>“IT Security Health Check”</b> <b>“Penetration Testing”</b></p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>
<p><b>“Need-to-Know”</b></p>	<p>the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.</p>
<p><b>“NCSC”</b></p>	<p>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></p>

<p><b>“NCSC IAP”</b>  <b>“NCSC Information Assurance Policy Portfolio”</b></p>	<p>means the NCSC (formerly CESC) Information Assurance policy Portfolio containing HMG policy and guidance on the application of ‘security assurance’ for HMG systems.</p>
<p><b>“OFFICIAL”</b>  <b>“OFFICIAL-SENSITIVE”</b></p>	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.</p> <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>
<p><b>“Secure Sanitisation”</b></p>	<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 CESC. 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>
<p><b>“Security and Information Risk Advisor”</b>  <b>“CCP SIRA”</b>  <b>“SIRA”</b></p>	<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>
<p><b>“SPF”</b>  <b>“HMG Security Policy Framework”</b></p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.</p>
<p><b>“Tailored Assurance”</b>  <b>[formerly called “CTAS”, or, “CESG Tailored Assurance”]</b></p>	<p>is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks.</p>

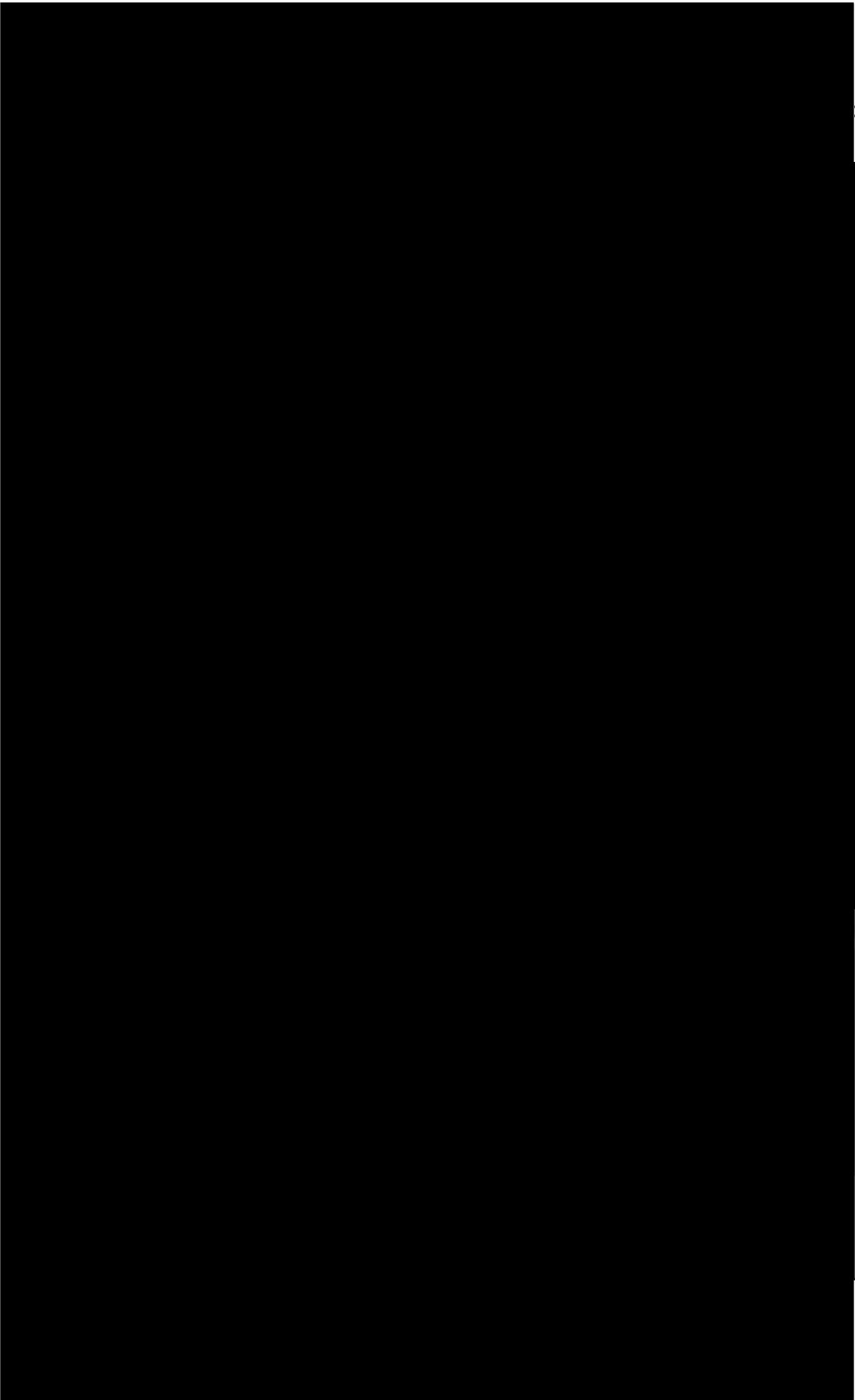
- 1.1 The Contractor shall comply with Departmental Security Standards for Contractors which include but are not limited by the following paragraphs.
- 1.2 Where the Contractor will provide ICT products or Services or otherwise handle information at OFFICIAL level on behalf of the Department, the requirements 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.

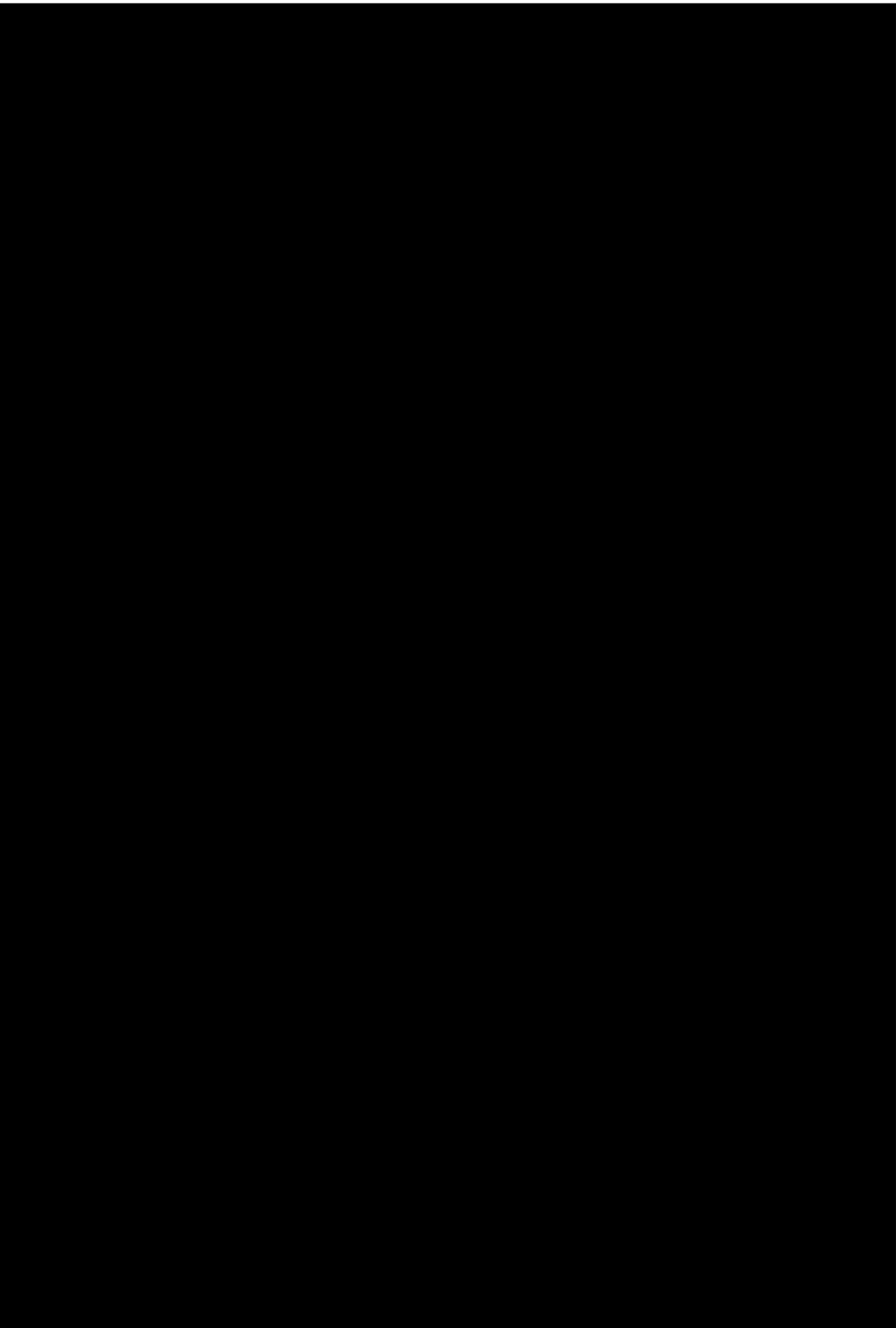
- 1.11 All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process DFE Data to deliver and support the service, shall be under the control and configuration management of the Contractor or Sub-Contractors 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.

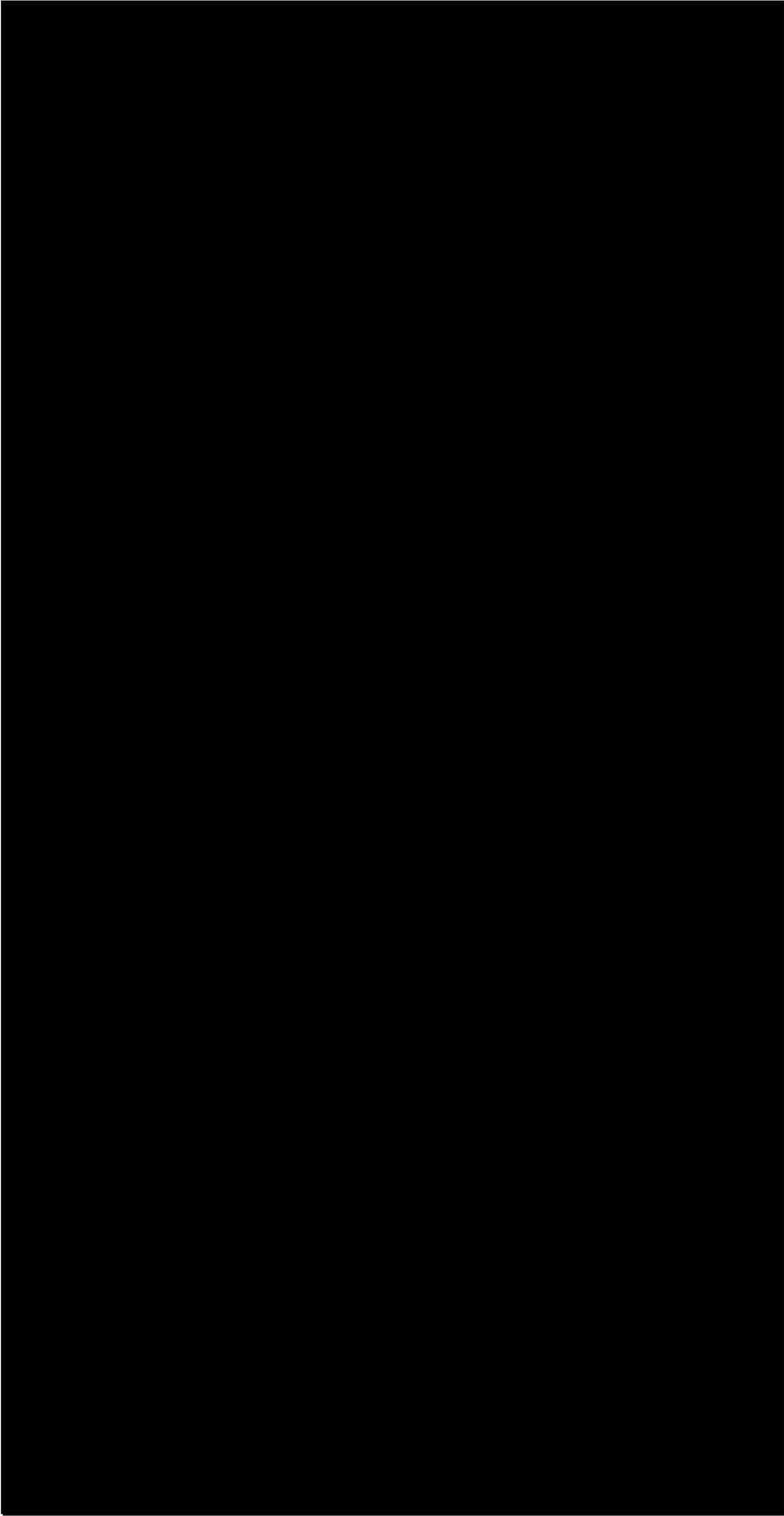
- 1.18 Any non-compliance with the Departmental Security Standards for Contractors, or other applicable security standards, or any suspected or actual breach of the confidentiality, integrity or availability of DFE Data being handled in the course of providing this service, shall be investigated immediately 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.



2







**Schedule 10 – Guarantee – NOT USED  
DEED OF GUARANTEE**

**THIS DEED OF GUARANTEE is made the                      day of                      2018**

**BETWEEN:**

(1) *[Insert the name of the Guarantor]* [a company incorporated in England and Wales with number [                      ] whose registered office is at *[insert details of the Guarantor's registered office here]* a company incorporated under the laws of xxx *[insert country]*, registered in *[insert country]* with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office details]* ("**Guarantor**"); in favour of

(2) The DFE ("**Beneficiary**")

**WHEREAS:**

- (A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Contractor, (No: xx) whose registered office address is situated at xxx to guarantee all of the Contractor's obligations under the Guaranteed Agreement.
- (C) It is the intention of the Beneficiary and the Guarantor that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

**1. Definitions and Interpretation**

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
  - a) "**Guaranteed Agreement**" means the Contract made between the Beneficiary and the Contractor *[insert ref if applicable]* on *[insert date]*;
  - b) "**Guaranteed Obligations**" means all obligations and liabilities of the Contractor to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Contractor to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement; and

c) **“Contractor Termination Event”** means the occurrence of one or more of the following events:

- I. the Contractor committing a Material Breach as defined in the Guaranteed Agreement, which is irremediable;
- II. where a right of termination is expressly reserved in the Guaranteed Agreement;
- III. a representation and warranty given by the Contractor pursuant to Clause 19 (Warranties and Representations) of the Guaranteed Agreement being materially untrue or misleading;
- IV. a Change of Control (as defined in Clause 23.3 of the Guaranteed Agreement) of the Contractor or a guarantor unless:
  - i. the Beneficiary has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - ii. the Beneficiary has not served notice of termination within 6 months of the later of the date on which the Change of Control took place or the date on which the Beneficiary was given notice of the Change of Control;
- V. a Change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Beneficiary that it objects to such change of Control, the Contractor terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Beneficiary;
- VI. the Beneficiary has become aware that the Contractor should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or
- VII. a failure by the Contractor to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; and

1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time.

## **2. Guarantee and indemnity**

2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Contractor duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Contractor to the Beneficiary.

2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Contractor to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

2.3 If at any time the Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

a) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

b) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Contractor to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Contractor under the Guaranteed Agreement.

2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **3. Obligation to enter into a new contract**

3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Contractor, or if the Guaranteed Agreement is disclaimed by a liquidator of the Contractor or the obligations of the Contractor are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

#### **4. Demands and Notices**

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

- a) [Address of the Contractor in England and Wales]
- b) For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or email for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- a) if delivered by hand, at the time of delivery; or
- b) if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
- c) if sent by email, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the email message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

#### **5 Beneficiary's protections**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Contractor and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

- a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Contractor of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

- b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Contractor, the Beneficiary, the Guarantor or any other person;
- c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Contractor of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other breach in respect of the same Guaranteed Obligation.

5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Contractor or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Contractor or any third party, or to take any action whatsoever against the Contractor or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and

liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## **6 Guarantor intent**

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

## **7 Rights of subrogation**

- 7.1 The Guarantor shall, at any time when there is any breach in the performance of any of the Guaranteed Obligations by the Contractor and/or any breach by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- (a) of subrogation and indemnity;
- (b) to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Contractor's obligations; and
- (c) to prove in the liquidation or insolvency of the Contractor,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand.

- 7.2 The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion.
- 7.3 The Guarantor hereby confirms that it has not taken any security from the Contractor (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to take any further security until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

## **8 Deferral of rights**

- 8.1 Until all amounts which may be or become payable by the Contractor under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- a) claim any contribution from any other guarantor of the Contractor's obligations under the Guaranteed Agreement; or
  - b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.

8.2 Until all amounts which may be or become payable by the Contractor under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Financial Distress Event or Contractor Termination Event:

- a) exercise any rights it may have to be indemnified by the Contractor;
- b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Contractor; or
- c) claim any set-off or counterclaim against the Contractor.

8.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **9 Representations and warranties**

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

- (a) the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- (c) the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - (i) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - (ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - (iii) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- (d) all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

- (e) this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **10 Payments and set-off**

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **11 Guarantor's acknowledgement**

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

## **12 Assignment**

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

## **13 Severance**

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

## **14 Third party rights**

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of

Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **15 Governing Law**

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 The Guarantor hereby irrevocably designates, appoints and empowers the Contractor, either at its registered office or by email from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

*[Insert name of the Guarantor] acting by [Insert/print names]*

Director

Director/Secretary

## 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;
<b>“Credit Rating Threshold”</b>	the minimum Credit Rating Level for the Contractor);
<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 ( <i>Financial Distress</i> );
<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 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 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 10 Working Days of the end of each Year and within 10 Working Days of written request by the DFE (such requests not to exceed 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:

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 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 £150k or obligations under a service contract with a total contract value greater than £150k;

(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 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.

The Contractor shall:

- (a) at the request of the DFE, meet the DFE as soon as reasonably practicable (and in any event within 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 3.30) 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 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 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

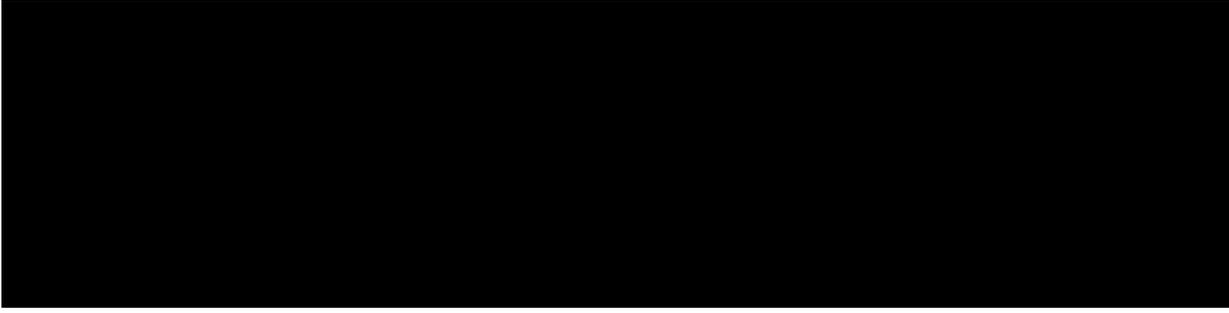
subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- (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 Supplier Registration (Sid4Gov)
- 2 Dun & Bradstreet





## 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. 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 DFE 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 clause;
  - 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 clause 1.6, the Contractor shall notify the DFE immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access 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 DFE in connection with Personal Data processed under this Contract;
- (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 clause 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 and any complaint, communication or request made under clause 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 Access 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 clause. 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; or
  - (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 The Contractor shall designate a 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 clause 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 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 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 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 contact details of the Controller's Data Protection Officer are: [Insert Contact details].
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details].
3. The Contractor shall comply with any further written instructions with respect to processing by the DFE.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and the Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the DFE is the Controller and the Contractor is the Processor in accordance with Clause 1.1.
Subject matter of the processing	The subject matter of the Processing is the Processing of Personal Data in relation to specialist teachers and other key school contacts. The Processor will Process the Personal Data in relation to teachers/key school personnel, in respect of which the DFE is the Controller, in providing the Services to the DFE.
Duration of the processing	The Processor will Process the Personal Data for the duration of this Agreement or as otherwise specified in the data protection provisions.
Nature and purposes of the processing	The nature of the Processing is the Processing of teachers/key school personnel's Personal Data for the purposes of providing Services. The Processor will use the Personal data to make contact with the teachers and key contacts at schools in order to provide the Service which includes arranging meetings and attendance at training, providing access to resources and maintaining communication throughout the project to monitor progress.

Type of Personal Data	Name and contact information including address, telephone number, email address
Categories of Data Subject	The Personal Data concerns teachers/key school contacts.
Plan for return and destruction of the data  once the processing is complete <b>UNLESS</b>  requirement under union or member state law to preserve that type of data	The data will be retained for the duration of the Project while the Processor performs the Services. On completion of the Project the Personal Data will be destroyed in accordance with the Processor's information security and retention policies and in compliance with audit requirements of the Project and of the Controller.

## SCHEDULE 13

### TUPE Provisions

#### Staff Transfer

#### DEFINITIONS

1. In this Schedule, the following definitions shall apply:

<b>“Admission Agreement”</b>	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;
<b>“Contractor’s Final Contractor Personnel List”</b>	a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
<b>“Contractor’s Provisional Supplier Personnel List”</b>	a list prepared and updated by the Contractor of all Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;
<b>“Eligible Employee”</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
<b>“Fair Deal Employees”</b>	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 9.1 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
<b>“Former Supplier”</b>	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such subcontractor);

<b>“New Fair Deal”</b>	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
<b>“Notified Subcontractor”</b>	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Subcontractor”</b>	a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Schemes”</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “Alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Contractor or a Replacement Sub-contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Staffing Information”</b>	in relation to all persons identified on the Contractor’s Provisional Contractor Personnel List or Contractor’s Final Contractor Personnel List, as the case may be, such information as the Authority

	<p>may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</li> <li>(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting Party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;</li> <li>(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</li> <li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</li> <li>(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and</li> <li>(j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;</li> </ul>
<b>"Transferring Authority</b>	those employees of the Authority to whom the

<b>Employees”</b>	Employment Regulations will apply on the Relevant Transfer Date.
<b>“Transferring Contractor Employees”</b>	those employees of the Contractor and/or the Contractor's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.
<b>“Transferring Former Supplier Employees”</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.

## **INTERPRETATION**

2. Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Contractor or Replacement Sub-contractor, as the case may be.

## **Part C: No Transfer Of Employees At Commencement Of Services**

### **Procedure In The Event Of Transfer**

3. The DFE and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
4. If any employee of the DFE and/or a Former Supplier claims, or it is determined in relation to any employee of the DFE and/or a Former Supplier, that his/her contract of employment has been transferred from the DFE and/or the Former Supplier to the Contractor and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 4.1. the Contractor shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the DFE and, where required by the DFE, give notice to the Former Supplier; and
  - 4.2. the DFE and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the DFE or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
5. If an offer referred to in Paragraph 4.2) is accepted (or if the situation has otherwise been resolved by the DFE and/or the Former Supplier), the Contractor shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

6. If by the end of the 15 Working Day period specified in Paragraph 4.2:

- 6.1. no such offer of employment has been made;
- 6.2. such offer has been made but not accepted; or
- 6.3. the situation has not otherwise been resolved,

the Contractor and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

## **INDEMNITIES**

7. Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 4 to 6 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 10, the DFE shall:

- 7.1. indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the DFE referred to in Paragraph 4 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 7.2. procure that the Former Supplier indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 6 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

8. If any such person as is described in Paragraph 4 is neither re employed by the DFE and/or the Former Supplier as appropriate nor dismissed by the Contractor and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 6 such person shall be treated as having transferred to the Contractor and/or the Sub-contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

9. Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to Paragraph 8, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the DFE and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the DFE and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-contractor.

10. The indemnities in Paragraph 7 shall not apply to any claim for:

- 10.1 discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

- 10.2 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or
- 10.3 any claim that the termination of employment was unfair because the Contractor and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 10.4 shall apply only where the notification referred to in Paragraph 4.1 is made by the Contractor and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

## **PROCUREMENT OBLIGATIONS**

11. Where in this Part C the DFE accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the DFE's contract with the Former Supplier contains a contractual right in that regard which the DFE may enforce, or otherwise so that it requires only that the DFE must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **PART D: Employment Exit Provisions:**

### **PRE-SERVICE TRANSFER OBLIGATIONS**

12. The Contractor agrees that within 20 Working Days of the earliest of:
  - 12.1. receipt of a notification from the DFE of a Service Transfer or intended Service Transfer;
  - 12.2. receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
  - 12.3. the date which is 12 months before the end of the Term; and
  - 12.4. receipt of a written request of the DFE at any time (provided that the DFE shall only be entitled to make one such request in any 6 month period), it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it shall provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by the Authority.
13. At least 20 Working Days prior to the Service Transfer Date, the Contractor shall provide to the DFE or at the direction of the DFE to any Replacement Contractor and/or any Replacement Sub-contractor:
  - 13.1. the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
  - 13.2. the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).
14. The DFE shall be permitted to use and disclose information provided by the Contractor under Paragraphs 12 and 13 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.
15. The Contractor warrants, for the benefit of the DFE, any Replacement Contractor, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 12 and 13 shall be true and accurate in all material respects at the time of providing the information.
16. From the date of the earliest event referred to in Paragraph 12.1, 12.2 and 12.3, the Contractor agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and shall not without the approval of the DFE (not to be unreasonably withheld or delayed):
  - 16.1. replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- 16.2. make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Contractor Personnel (including any payments connected with the termination of employment);
  - 16.3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
  - 16.4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Contractor Personnel List;
  - 16.5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
  - 16.6. terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Contractor Personnel List save by due disciplinary process, and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the DFE or, at the direction of the DFE, any Replacement Contractor and any Replacement Sub-contractor of any notice to terminate employment given by the Contractor or relevant Sub-contractor or received from any persons listed on the Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.
17. During the Term, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the DFE any information the DFE may reasonably require relating to the manner in which the Services are organised, which shall include:
- 17.1. the numbers of employees engaged in providing the Services;
  - 17.2. the percentage of time spent by each employee engaged in providing the Services; and
  - 17.3. a description of the nature of the work undertaken by each employee by location.
18. The Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the DFE, any Replacement Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the DFE or, at the direction of the DFE, to any Replacement Contractor and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor Employee:
- 18.1. the most recent month's copy pay slip data;
  - 18.2. details of cumulative pay for tax and pension purposes;

- 18.3. details of cumulative tax paid;
- 18.4. tax code;
- 18.5. details of any voluntary deductions from pay; and
- 18.6. bank/building society account details for payroll purposes.

## **EMPLOYMENT REGULATIONS EXIT PROVISIONS**

19. The DFE and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The DFE and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.
20. The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.
21. Subject to Paragraph 22, the Contractor shall indemnify the DFE and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- 21.1. any act or omission of the Contractor or any Sub-contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;
  - 21.2. the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:

- 21.2.1. any collective agreement applicable to the Transferring Contractor Employees; and/or
  - 21.2.2. any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
  - 21.3. any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - 21.4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - 21.4.1. in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
    - 21.4.2. in relation to any employee who is not identified in the Contractor's Final Contractor Personnel listlist, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to the DFE and/or Replacement Contractor and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
  - 21.5. a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);
  - 21.6. any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel list for whom it is alleged the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - 21.7. any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Contractor to comply with regulation 13(4) of the Employment Regulations.
22. The indemnities in Paragraph 21 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- 22.1.1. arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
  - 22.1.2. arising from the Replacement Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
23. If any person who is not identified in the Contractor's Final Contractor Personnel list claims, or it is determined in relation to any person who is not identified in the Contractor's Final Contractor Personnel list a Transferring Contractor Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
  - 23.1.1. the DFE shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contractor; and
  - 23.1.2. the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
24. If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the DFEy shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
25. If after the 15 Working Day period specified in Paragraph 23.1.2 has elapsed:
  - 25.1.1. no such offer of employment has been made;
  - 25.1.2. such offer has been made but not accepted; or
  - 25.1.3. the situation has not otherwise been resolved the DFE shall advise the Replacement Contractor and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
26. Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 23 to 25, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 25 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

27. The indemnity in Paragraph 26 shall not apply to any claim for:
- 27.1. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - 27.2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-contractor; or
  - 27.3. any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
  - 27.4. shall apply only where the notification referred to in Paragraph 23.1.1 is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within 6 months of the Service Transfer Date.
28. If any such person as is described in Paragraph 23 is neither re-employed by the Contractor or any Sub-contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-contractor within the time scales set out in Paragraphs 23 to 25, such person shall be treated as a Transferring Contractor Employee.
29. The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Contractor's Final Contractor Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 29.1. the Contractor and/or any Sub-contractor; and
  - 29.2. the Replacement Contractor and/or the Replacement Sub-contractor.
30. The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the DFE and any Replacement Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the DFE, the Replacement Contractor and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The DFE shall procure that the Replacement Contractor and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-contractor in writing such information as is necessary to enable the Contractor and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

31. Subject to Paragraph 32, the DFE shall procure that the Replacement Contractor indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 31.1. any act or omission of the Replacement Contractor and/or Replacement Sub-contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee);
  - 31.2. the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:
    - 31.2.1. any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List; and/or
    - 31.2.2. any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List which the Replacement Contractor and/or Replacement Sub-contractor is contractually bound to honour;
  - 31.3. any claim by any trade union or other body or person representing any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
  - 31.4. any proposal by the Replacement Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List on or after their transfer to the Replacement Contractor or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Contractor's Final Contractor Personnel List who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
  - 31.5. any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
  - 31.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - 31.6.1. in relation to any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, to the extent that the proceeding, claim or

demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

31.6.2. in relation to any employee who is not a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

31.7. a failure of the Replacement Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List in respect of the period from (and including) the Service Transfer Date; and

31.8. any claim made by or in respect of a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

32. The indemnities in Paragraph 31 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

## **ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS**