

**This contract is made on 04 day of November 2019**

- 1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and
- 2 Cardiff University registered in England and Wales under number RC000089 whose registered office is 7th Floor McKenzie House, 30 - 36 Newport Road, Cardiff CF24 0DE. (the "**Contractor**")

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

**It is agreed that:**

1. this contract, together with the attached schedules and annexes, collectively form the "**Contract**"; and
2. if there is a conflict between the provisions of the clauses of the Contract and the provisions of the schedules, the following order of precedence shall apply:
  - (a) schedule 2 (Terms and Conditions);
  - (b) schedule 1 (Specification);
  - (c) schedules 3 to 10; and
  - (d) schedule 11 (Contractor's Solution).

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

**SIGNED by the CONTRACTOR acting by**

**Authorised Signatory:**

.....

**In the presence of:**

.....

**Witness signature:**

.....

**Occupation:**

.....

**Address:**

.....

**Date:**

.....

**SIGNED by the DFE acting by**

**Authorised Signatory:**

.....

**In the presence of:**

.....

**Witness signature:**

.....

**Occupation:**

.....

**Address:**

.....

**Date:**

.....

## Table of Contents

### Contract Schedules

Schedule 1	<b>Specification</b>
Schedule 2	<b>Terms and Conditions</b>
Schedule 3	<b>Financials</b>
Schedule 4	<b>KPIs, Service Levels, Service Credits and Performance Measures.</b>
Schedule 5	<b>Implementation Plan</b>
Schedule 6	<b>Change Control Procedure</b>
Schedule 7	<b>Key Personnel and Key Sub-Contractors</b>
Schedule 8	<b>Data, Systems Handling and Security</b>
Schedule 9	<b>Commercially Sensitive Information</b>
Schedule 10	<b>Financial Distress</b>
Schedule 11	<b>Contractors Solution</b>

## Schedule 1 – Specification

### SERVICE SPECIFICATION

The Department for Education (DfE) is responsible for children’s services and education, including early years, schools, higher and further education policy, apprenticeships and wider skills in England. For more information please see:

<https://www.gov.uk/government/organisations/department-for-education/about>

This Service Specification outlines the DfE’s service requirement and Potential Providers are advised to read this document in full and consider its contents when completing their tender submission.

Any questions in relation to this document or the service requirement should be forwarded to the Authority via the messaging facility in the eTendering Suite (see Document 1, Paragraph 7 for more details).

#### 1. Background

##### Languages and the English Baccalaureate

- 1.1 We want more young people to study languages. As well as essential knowledge and understanding, languages bring social, cultural, linguistic and economic benefits to individuals and to communities. Taking a language at GCSE can enrich pupils’ studies and give them a broad general knowledge that will enable them to participate in and contribute to society. We know that employers value languages, and as we move into a post-Brexit economy, languages will become more important in ensuring we can compete in the global market.
- 1.2 The proportion of pupils in state-funded schools taking languages at GCSE has risen from 40% in 2010 to 46% in 2018, and we are developing a number of initiatives to encourage greater uptake.
- 1.3 We have made languages compulsory in the national curriculum at key stage two as well as key stage three. In key stage four, languages are an essential part of the English Baccalaureate (EBacc) school performance measure – the EBacc is a combination of subjects which the government believes should be studied as part of a broad and balanced curriculum. The government’s ambition is that 75% of year 10 pupils in state-funded mainstream schools will start GCSE study in the EBacc combination of subjects by September 2022, as an important stepping stone to reaching 90% of year 10 pupils studying GCSEs in the EBacc subjects by 2025. Languages are the main priority for us in order to achieve this ambition.

##### Digital Languages Mentoring Programme: Alpha phase, 2018/19

- 1.4 In October 2018 we commissioned Cardiff University to run the alpha phase of a pilot Digital Languages Mentoring Programme. Cardiff University worked with 20 mentors at Sheffield and Sheffield Hallam Universities to provide a programme for 200 pupils in 10 schools in South Yorkshire, which blended face-to-face mentoring with digital mentoring through an online platform. Mentors were selected through a rigorous process and took part in two days of training.
- 1.5 In weeks one and five of the programme, mentors worked with groups of 10 pupils in their schools, while in weeks 2-4, mentors supported pupils through an online chat function as pupils worked through a series of planned activities hosted by a digital platform. These activities aimed to inspire their interest in languages and to change their attitudes both towards languages and towards their own role in a multi-cultural society. In weeks 2-4 mentors offered online interaction and feedback via an online live chat messaging service; online sessions lasted approximately 40 minutes.
- 1.6 At the end of the mentoring cycle, all pupils were invited to their mentor’s home university to a Reward and Recognition ceremony. By bringing pupils to the university, the project encouraged the pupils to see university as accessible to them, regardless of background. The mentoring cycle began w/c 11th February and Award ceremonies took place at the end of April.
- 1.7 The evaluation of the alpha pilot will be available on request. Of pupils in participating schools who were *unsure* prior to the programme whether they would take a language at GCSE, 55% of pupils who participated in the mentoring programme chose a language, compared with only 46% of pupils who did not receive mentoring. Language take-up in participating schools has risen overall by 43% this year, although most participating schools have put in place additional measures to improve take-up.
- 1.8 The project has received positive responses from pupils who took part, with 62% rating it excellent and 34% good. The evaluation shows that the project has the capacity to change attitudes towards

languages: 62% of those mentored said that it has definitely changed the way they think about languages in relation to their future lives, and a further 30% said that it perhaps has.

- 1.9 Languages take-up in the schools receiving mentoring has risen even among the pupils who were not mentored, which could be an indirect result of the programme (as pupils said that they spoke about the programme with peers) or could be a result of increased activity more widely in the school to promote languages. The greatest impact has been in schools which had the lowest take-up rates at the start of the project.

#### **Digital Languages Mentoring Programme: Private Beta 2019/20 and Public Beta 2020/21**

- 1.10 The provider for the 2019/20 private beta phase of the pilot will build on the success of the 2018/19 alpha pilot and offer a mentoring programme to at least 1000 pupils using the principles and resources of the alpha stage pilot and improving on these where necessary. Whilst we are open to Suppliers proposing an alternative model, you must clearly set out in your application how this provides better value for money in delivering the service requirements. The resources used in the alpha pilot will be available to any potential suppliers.
- 1.11 The contract for this programme includes the option to extend the service to include a public beta phase in 2020/21. The public beta will involve rolling out the project to at least 6000 pupils in 2020/21. The option to extend the contract beyond the initial term is solely at the DfE's discretion and is subject to successful delivery of the private beta, funding and ministerial priorities.

#### **Digital platform**

- 1.12 The alpha pilot included a digital platform to facilitate the mentoring relationship and the DfE are currently in the process of appointing a digital development provider to undertake work on the platform to ensure that it is compliant with Government Digital Service (GDS) standards and relevant legislation (including for accessibility) to ensure a compliant minimum viable product is available in readiness for the start of service provision in early 2020.
- 1.13 The Provider will work alongside the digital development provider from the contract commencement until the end of December 2019. The Provider will be required to support the development of the digital platform as set out in a handover plan, including around development of content, and will take over responsibility for any further development of the platform from January 2020 and for maintenance and support for schools using the digital platform.
- 1.14 The Provider will ensure that the digital platform conforms to government digital security standards, will provide assurance to the Department about safeguarding of children during their use of the digital platform, and will follow the recommendations in the attached security report at Annex B.
- 1.15 The digital materials involved in this project are not intended to improve languages or study programmes (as outlined below there are other initiatives in train to support these areas); they are solely aimed at encouraging more pupils to take up study of the subject, showing them the opportunities that can be opened up by languages.

#### **Interdependent projects**

- 1.16 This project is part of a set of measures in place to improve languages provision in schools. In order to provide a pipeline of MFL teachers, we have MFL teacher bursaries and scholarships worth up to £26,000, and programmes of specialist teacher training. See <https://getintoteaching.education.gov.uk/funding-and-salary/overview/funding-by-subject/funding-for-training-to-teach-languages>
- 1.17 To improve the quality of MFL provision, we have launched our MFL Hubs programme. An MFL Centre of Excellence (<https://ncelp.org/>) provides specialist expertise, guidance, training and support to nine lead hub schools, who are working with schools in local hubs. This programme builds on the findings of the Teaching Schools Council's review of MFL pedagogy (<https://www.tscouncil.org.uk/wp-content/uploads/2016/12/MFL-Pedagogy-Review-Report-2.pdf>). The Centre for Excellence is developing high quality resources, specialist training and support, in order to improve MFL teaching and to enthuse pupils to continue to study languages. We have also developed a package of communications with schools, pupils and parents to highlight the value of languages.

#### **Focusing on areas of disadvantage**

- 1.18 The overarching goal of the mentoring project is to inspire pupils to want to study languages at GCSE level. Currently, whether or not pupils take the EBacc combination of GCSEs, including

languages, is affected by where they grow up and their socio-economic background, meaning that not all pupils have the same opportunities. The Department for Education wants to ensure that 90% of pupils, regardless of their background, prior attainment, or where they go to school, enter the EBacc by 2025. We want this mentoring project to inspire more pupils, including those from less affluent backgrounds and in areas of disadvantage, to take up a language. Having the opportunity to engage with a university student will help to give them encouragement and inspiration about the role that languages can play in unlocking future opportunities.

- 1.19 In terms of geographical location, low take-up of languages is particularly prevalent in the North and the Midlands, especially compared to London and the South East. The Provider should look to include delivering the project to at least 75% of the participating students in an area of high disadvantage and low take-up, most probably in the North or the Midlands. The Provider will need to, where relevant, build on relationships with schools that have been established in the alpha pilot phase.

## 2. Service Overview

- 2.1 The Provider will have the capacity, expertise and proven experience to deliver the following mandatory service requirements:
- All staff must have clearance to an equivalent of Baseline Personal Security Standard (BPSS) or working towards as a minimum requirement.
  - The supplier must have a minimum of Cyber Essentials certification or ISO 27001
  - Arrangement of DBS security checks for project team and any additional adults in contact with children or their personal information; including but not limited to student mentors
  - Service delivery in line with project milestones (see section 4 below).
  - Establish relationships and networks to recruit a pool of MFL undergraduate students to participate in the project.
  - Provision of training and mentoring support to students participating in the project.
  - Establish relationships and networks to recruit a pool of at least 1,000 Year 8 / 9 pupils from at least 40 schools in England to participate in the 2019/20 private beta project with a short lead-in time.
  - Establish relationship and networks to recruit a pool of at least 6000 pupils for the 2021/22 public beta project, if the contract is extended.
  - Provision of support to teachers and schools participating in the project.
  - Develop high quality resources which will be appealing to Year 8 / 9 pupils and inspire them to take languages.
  - Design and production of digital resources to support the project, and in full compliance with all GDS standards with the exception of standards 8 and 13 (<https://www.gov.uk/service-manual/service-standard>).
  - Collaborate with the digital development provider to integrate and continue with the development of the digital platform to support the project, which will include an online communication tool with mentors and responsibility for further developing the platform as required from January 2020.
  - Compliance with government data security standards and data protection legislation in relation to delivering digital solutions. Delivery of the beta project using Agile project management methodology as described in the GDS guidance here: <https://www.gov.uk/service-manual/service-standard/point-7-use-agile-ways-of-working>.
  - Provision of ongoing training to upskill a DfE official to fulfil a product owner/ product manager role in line with agile project management methodology, to work alongside a product owner / manager within the multi-disciplinary digital development team. This will include transition from the team developing the digital platform during the separate contract for platform development.
  - Evidence based independent evaluation of the project based on best practice as set out in the Magenta Book <https://www.gov.uk/government/publications/the-magenta-book> and presented in line with Departmental guidance, to be provided by the DfE. The evaluation should include measures to baseline and track progress and impact: surveys, mid-point and end-point assessments, and collation and assessment of relevant quantitative and qualitative evidence. The evaluation report should be completed in sufficient time for due diligence to be completed by DfE analysts and the Supplier should ensure that the independent evaluator is available to

develop the report based on this feedback.

- Collection and processing of the necessary data to evidence and benchmark service performance against the strategic policy aims, objectives and outcomes (and in compliance with GDPR).
- Support and maintenance of the digital platform and responsibility for secure access to the platform including before and after the project is live in schools.
- Production and targeted circulation of communications materials.

2.2 The Provider will have the relevant skills and experience at their disposal in relation to:

- Delivery of programmes using digital technology that have had a positive impact on the take-up of GCSE or A level courses.
- Delivery of projects taking a user centred approach to deliver an end to end service and digital outcomes.
- Evaluating the programme (skills and experience of conducting research and evaluation with schools/pupils, and appropriate analytical techniques). We require an independent evaluation and therefore the provider should detail how this would be achieved.

### 3. Service Requirement

#### Purpose

- 3.1 The Department for Education (DfE) is seeking to partner with a Provider who has the relevant expertise and experience to deliver the beta phase of the Digital Languages Mentoring Project, building on the 2018-19 alpha pilot, which will encourage pupils in Year 8 / 9 to choose Modern Foreign Languages (MFL) at GCSE level.
- 3.2 The project is to be targeted at Year 8 / 9 pupils in state maintained schools in England, with MFL undergraduate students from universities in England as mentors. The project recognises the value of pupils seeing someone like them studying MFL, as a role model that they can look up to and emulate. The mentoring relationship is designed to open pupils' eyes to these possibilities and to get them excited about languages.
- 3.3 This is a digital project (as well as involving face to face visits) – using a digital platform to host interesting and stimulating digital resources to spark pupils' attention related to global culture and the value of languages.
- 3.4 The project is the private beta phase of a pilot; the alpha phase was conducted in academic year 2018-19, and the private beta phase will provide more robust evidence with a greater sample size to test the impact of this approach to increasing languages uptake. The contract includes an option to progress the pilot to public beta phase in 2020/21 (subject to approval and funding).

#### Aims, Objectives and Outcomes

- 3.5 The desired aims, objectives and outcomes are below:  
Increase language uptake at GCSE in the pupils involved in the project
- 3.6 The aim for this project is to target 13 and 14 year olds in Year 9 at state-maintained schools in England who are unsure about whether to study languages at GCSE. These pupils will be of mixed abilities, mixed gender and mixed socio-economic backgrounds. We are particularly interested in the capacity for the project to affect the choices of disadvantaged pupils and pupils who might not otherwise choose a language. The project's ambition is to inspire them to choose to study languages at GCSE level.
- 3.7 The project will measure pupils' intended subject choices at the start and end points of the project – using actual GCSE subject choices at the end point where possible. The aim of the project is to increase the number choosing to take MFL GCSE.
- 3.8 Schools participating in a similar mentoring programme in Wales have seen uptake of MFL GCSEs rise from a national average of around 20% to an average uptake over three years of 49%, with a tripling of uptake observed in many areas. We have set a target of increasing MFL take-up in those involved in the project by 15-20%.  
Run a dedicated programme of engagement for pupils
- 3.9 The Provider will run a dedicated programme of engagement based on the programme used in the alpha phase. Rather than one-off events, engagement should be a sustained programme over a term and we expect the approach from the alpha phase to be continued, with a 6-week programme

of activities for pupils. Activities from the alpha pilot will be available to bidders on request.

- 3.10 The engagement programme will build week-by-week and include resources that support the ambition to increase MFL take-up amongst pupils involved in the project. Resources will build on the material developed in the alpha phase and these will be made available to the successful bidder.

Private beta pilot of the project in at least 40 schools in England

- 3.11 The private beta phase of the project will upscale from the alpha phase to be run in at least 40 schools in England, from late January 2020 to the end of February or early March. This will ensure the project is delivered by the time Year 9 pupils make their subject choices for GCSEs. Mentors will work with mentees in small groups of 10-12 pupils with a total pool of at least 1,000 pupils.

- 3.12 The contract includes the option to progress to the public beta phase of the programme, which will run in academic year 2020-21 and represent a further upscaling to a pool of at least 6,000 pupils.

Evaluation

- 3.13 It will be important to have a robust independent evaluation to benchmark performance, gather feedback, identify lessons learnt and inform the DfE's plans for potential expansion of the project. The evaluation design should reflect best practice guidance in the Magenta Book <https://www.gov.uk/government/publications/the-magenta-book> and the report should be presented as set out in DfE publishing guidance, to be provided by the DfE. The Provider will be responsible for working with the Department to develop and agree an evaluation model that provides clear evidence of the impact on participating pupils, including both qualitative and quantitative feedback. Quantitative data will include feedback from the teachers, mentors and others involved in the project, as well as from pupils. The evaluation should also enable specific assessment of the impact of the programme on disadvantaged pupils, on pupils with low digital literacy and for pupils with additional needs; SEND, EAL and use of assisted technologies.

GDS service assessment

- 3.14 The Provider will collaborate with the product manager within the DfE to prepare for the GDS service assessment at the end of the private beta pilot, focusing on the digital platform and compliance with GDS standards.

User-centred design

- 3.15 The Provider will commission user research to help shape and evaluate the digital platform. The user research report should be based on interviews with both pupils, mentors and teachers as well as an assessment of the accessibility of the platform including by pupils with assisted digital needs, with SEND and EAL requirements, and with low digital literacy. The user research will need to be compatible with and support assessment of the platform against GDS standards.

Collaboration with DfE digital team and security reviewers.

- 3.16 As part of the overall project, Provider will be required to liaise with digital experts both within the Department and third parties who will review the digital platform. The DfE digital team will not engage in the day to day running of the project, but will be reviewing the project in line with the GDS specifications. The DfE digital team's role will be to look at specific digital elements such as security and data protection, in order to support with GDS assessments and advise on future expansion of the digital element of the project.

Impact in areas of disadvantage and low MFL take-up

- 3.17 The Provider should consider levels of MFL take-up and levels of disadvantage (e.g. pupil premium) in the schools they propose to engage in this project to ensure we are able to evaluate the impact of the project in these target areas, with at least 75% of participating students in an area of high disadvantage and low take-up. We are especially interested in improving access to the subject amongst disadvantaged pupils and in increasing the level of study in schools which currently have relatively low take up and this will need to be reflected in the engagement/recruitment approach, geographical spread, and evaluation of the project.

**Detailed Requirement**

- 3.18 The main responsibilities of the Provider will be:

- Plan, coordinate and deliver the project with all stakeholders and partners, and update the DfE on progress on a regular basis. This will include the development, and regular review, of implementation, delivery and exit plans in collaboration with the DfE contract manager based on delivery against the project milestones and targets.
- Utilise the lessons learnt and feedback from the alpha phase, including both the qualitative and quantitative evaluation, the user research and the security review – all of which will be provided

by the Department - to further develop the service model and improve the quality and impact of provision, using a continuous improvement approach, at private beta stage (academic year 2019/20) and, if the contract is extended, at public beta stage (academic year 2020/21). This will include protection of personal data, ensuring secure transfers between suppliers, schools and universities.

- Work with new and existing networks and contacts to upscale the project and recruit undergraduate MFL students who are interested in inspiring pupils, communicating the value of languages, and piloting this digital project.
- Work with new and existing networks and contacts to upscale the project and recruit state-maintained secondary schools to be involved in this project.
- Review evidence and explore potential networks, relationships, and geographical coverage to identify areas of high disadvantage and low MFL take-up to participate in the beta project.
- Work with new and existing MFL heads of departments and teachers who will nominate Year 8 / 9 pupils who are unsure about taking languages at GCSE, as the key focus group.
- Provide materials, support and induction sessions for engaged schools and teachers, to prepare them for the project and support them throughout the duration of the project.
- Build on the alpha phase of the programme to improve resources for weekly digital and face-to-face sessions for mentors and pupils to engage with over a 6 week period. These sessions should foster a global outlook and an interest in wider cultures among pupils, and show them that languages could bring varied exciting opportunities to their lives and their careers. They should open pupils' eyes to the options that languages can bring, and inspire them to choose to study MFL at GCSE level.
- Facilitate the handover of the digital platform from the digital developer and develop, where necessary, the digital platform to support the sessions, so that resources can be accessed in schools and by mentors. Digital resources should be engaging and interactive, and should stimulate communication between mentors and pupils.
- Develop appropriate security, data protection and safeguarding processes and procedures to ensure the safe interactions of pupils on the digital platform and comply with GDPR requirements. The Provider must incorporate the findings and recommendations from the security review of the alpha phase (attached as Annex B).
- Provide training and mentoring support to the students, to facilitate positive relationships and constructive engagement. Training should include mentoring skills and the most effective way for mentors to interact with pupils using the digital platform.
- Provide Agile project management, including management of risks and issues. More information on agile project management can be found here: <https://www.gov.uk/service-manual/service-standard/point-7-use-agile-ways-of-working>.
- Provision of ongoing training to upskill a DfE official to fulfil a product owner/ product manager role in line with Agile project management methodology, to work alongside a product owner / manager within the multi-disciplinary digital development team. This will include transition from the team developing the digital platform during the separate contract for platform development.
- Provide support to schools to enable the mentoring programme to run smoothly in each school, including provide technical advice where related specifically to the platform rather than school facilities, to facilitate smooth running of the project.
- Arrangement and funding of all appropriate background security checks for mentors before they go into schools and for all personnel who have access to pupil data.
- Collect MI at regular intervals throughout the project to be used to review progress and performance, including baseline surveys, mid-point reviews and end-point reports, and particularly capturing final GCSE subject choice decisions. Also develop processes to capture mentors', teachers' and other involved parties' feedback and qualitative evidence. Opportunities to collect additional supporting information to assist with expanding the programme would be desirable e.g. on issues such as timetabling, teacher supervision, and communicating the project to the school more widely to maximise impact.
- Ensure independent evaluation of the programme, using best practice evaluation techniques, to evidence the outcomes and outputs of the project, support the beta phase assessment, and provide an evidence base for the decision on future expansion of the project.
- Manage budgets appropriately, demonstrating financial audit and governance whilst exploring opportunities for efficiency improvements or savings. This may include supporting the DfE contract manager to benchmark costs and demonstrate value for money. Where appropriate,

providing remuneration to delivery partners, consortia members and/or sub-contractors in line with government policy on prompt payment in the supply chain.

- Ensure adequate exit arrangements at the end of the contract period, including transferring IP to the DfE including the digital platform, which if required, will need to be compatible with the government open license to allow the potential to host on gov.uk in the future, and working in accordance with GDPR, Data Protection legislation, and the needs of the Department to either destroy or transfer data.

3.19 Throughout the delivery of the service the Provider will draw on and demonstrate their capacity, skills and experience to:

- Be passionate about promoting languages.
- Have an interest in our young people and widening their futures.
- Be ambitious about and committed to extending this pilot scheme which could ultimately be rolled out nationally.
- Have an interest in and commitment to working in areas of disadvantage and low MFL take-up.
- Provide evidence of using technology to deliver projects or programmes.
- Utilise previous experience of delivering similar projects or programmes.
- Have an interest in and commitment to working with undergraduate MFL students.
- Use best practice project management approaches and tools.

**Budget**

3.20 The maximum budget for this project is £485,000 (exclusive of VAT) for the private beta in the 2019-20 academic year. The optional public beta phase of the programme will have a maximum budget of £1.5m, taking the total maximum budget to £1,985,000 (exclusive of VAT), subject to funding being confirmed for this phase.

3.21 Payment will be made in arrears, following satisfactory delivery of pre-agreed deliverables in line with the providers' pricing schedule.

3.22 Before payment can be considered, an invoice must be submitted including a detailed breakdown of the work completed with the associated costs to be approved by the contract manager.

3.23 VAT will be charged on elements within the agreed contract. The provider must investigate VAT issues with HMRC, identify which services are exempt, and which would be classified to attract VAT at the prevailing rate. The supplier shall add VAT to the price at the prevailing rate as applicable.

3.24 As part of the Government's commitment to efficiency controls, there are restrictions on all paid-for communications, marketing, ICT and digital activities. Any items that fall within the [Cabinet Office's Efficiency Controls](#) guidance should be clearly identified to the contract manager.

3.25 Throughout the contract the Provider will be required to review service costs in an attempt to identify opportunities for efficiencies and savings and alongside exploring continuous improvement, will report on its findings via the ongoing contract management and annual review processes.

**4. Performance Management**

**Performance Management**

4.1 The Provider's performance will be monitored against the following Key Performance Indicators (KPIs). The provider will collect and return evidence of its performance against these KPIs, which will be discussed at contract management meetings. The KPIs are subject to clarification and refinement during the implementation period, although any changes are at the sole discretion of the DfE.

4.2 Where the specified minimum level of performance for a KPI is not achieved in the defined monitoring period, this will be considered a 'Service Failure' and Service Credits may be applied as set out in Table 1 below.

4.3 The DfE may, at its sole discretion, apply a financial consequence against the invoiced value for the relevant period in accordance with the Service Credits accrued. As part of the contract management process, the DfE will consider any extenuating circumstances and/or mitigating actions before exercising its discretion to apply Service Credits to an invoice period. This will be a maximum of 10% and will be calculated as follows:

<b>KPIs failed</b>	<b>Service Credit</b>
--------------------	-----------------------

	(reduction applied to invoiced value)
1	2%
2	4%
3	6%
4	8%
5	10%

4.4 Where the Provider fails to meet the specified minimum level of performance for any KPI both parties must meet to work together in good faith to attempt to understand why the KPI has not been achieved. Any strategies jointly agreed between the parties must be implemented to attempt to enable the Provider to achieve the KPI in the next review period. As part of these discussions, the DfE may agree to interim performance levels or review periods whilst the strategies are implemented. If in consecutive periods following the implementation of the strategy, the Provider fails to achieve the agreed performance levels, the DfE may terminate this agreement on 30 days' notice to the Provider.

4.5 If the Provider fails to achieve the specified minimum level of performance for any of the KPIs in 3 consecutive review periods, the DfE may terminate this agreement on 30 Business Days' notice to the Provider.

4.6 In addition to the Provider's performance against the KPIs being managed at regular contract management meetings they will also be reviewed annually to ensure that they continue to represent high standards of performance, recognise service developments or challenges, and are considerate of any new or evolving influences on the programme. Therefore, there is discretion to amend the performance levels, either temporarily or permanently, at the annual review where there is justification to do so. For example, if the Provider is routinely exceeding a KPI there could be justification to increase the performance level to reflect this and maintain performance standards. Alternatively, where a KPI has routinely not been achieved and mitigating or external factors have been identified, there could be justification to decrease the performance level to reflect the evolving nature of the programme.

4.7 Table 1: KPIs

KPI	Measure	Metric	
1	Programme outcome	MFL GCSE take-up among pupils participating in the project.	Aspirational target – 50%
			Expected target – 35%
			Minimum target – 15%
2	School recruitment	Recruitment of schools to participate in the programme.	Expected target – 40
			Minimum target – 36
3a	Pupil recruitment – private beta	Recruitment of pupils to participate in the programme for AY 2019/20.	Expected target – 1,000
			Minimum target - 900
3b	Pupil recruitment – public beta	Recruitment of pupils to participate in the programme for AY 2020/21.	Expected target – 6,000
			Minimum target – 5,400
4a	Mentor recruitment – private beta	Recruitment of student mentors to participate in the programme for AY 2019/20.	Expected target – 80
			Minimum target - 70
4b	Mentor recruitment – public beta	Recruitment of student mentors to participate in the programme for AY 2020/21.	Expected target – 300
			Minimum target - 270
5	Participant feedback	Baseline, mid-point and end-point surveys to measure feedback from pupils, mentors, teachers, and others involved in the project	60% of feedback surveys completed on time.

**Management Information**

- 4.8 The Provider will be responsible for collecting Management Information (MI) to evidence service delivery, track programme performance and report against the KPIs. An up to date MI return will need to be provided for each invoice period, to validate the charges and enable measurement against the KPIs.
- 4.9 The specific data to be collected and the timescales for submitting MI returns will be agreed with the Provider during the implementation period, but as a guide it is expected that MI will need to be captured to evidence the following as a minimum:
- Impact on MFL GCSE subject choices by end point.
  - Recruitment of target schools
  - Recruitment of coordinators necessary to deliver the project.
  - Recruitment of target student mentors.
  - Recruitment of target pupils.
  - Development of digital platform and resources based on the alpha phase.
  - Delivery of mentor training.
  - Completion of background security checks for staff and mentors.
  - Delivery of 6 week programme with at least two face-to-face sessions with mentors.
  - Delivery reports for each week, for each school, completed by the mentor.
  - Baseline and end-point surveys to measure pupil subject choices at GCSE level; end point surveys should look at pupils' actual GCSE choices.
  - Baseline, mid-point and end-point surveys to measure feedback from pupils, mentors, teachers, and others involved in the project.
  - Completion of independent report.
- 4.10 The Provider will also be required to support the Department with any ad hoc or urgent data collection as a result of legislative requirements, e.g. Freedom of Information, or ministerial or parliamentary questions. The Provider will be required to act in a flexible and timely manner to provide the requested data within the agreed timescales, and without additional cost to the Department.

**5. Project Milestones**

5.1 The key milestones related to the delivery of the project are outlined in the table below:

Activity	Date(s)
DfE award contract to winning bidder and finalise details.	w/c 21 October 2019
Initial project inception meeting between Provider and DfE.	w/c 21 October 2019
November checkpoint meetings to update DfE on plans for recruitment, security measures in place, and development of digital platform and resources.	w/c 4 November 2019 w/c 18 November 2019
December checkpoint meetings to update DfE on recruitment, security measures in place, and development of digital platform and resources.	w/c 2 December 2019 w/c 16 December 2019
January checkpoint meetings to update DfE on readiness to go live. Update on It Health Check and Authority to Operate.	w/c 6 January 2020 w/c 20 January 2020
<b>Anticipated start of project.</b>	<b>w/c 27 January 2020</b>
Project live checkpoint meetings to update DfE on progress of weekly sessions.	w/c 3 February 2020 w/c 10 February 2020 w/c 17 February 2020 w/c 24 February 2020 w/c 3 March 2020 w/c 11 March 2020

Digital Languages Mentoring Project - Beta  
Terms and Conditions

March checkpoint meetings to update DfE on conclusion of mentoring project & commencement of evaluation work.	w/c 24 March 2020
April checkpoint meetings to update DfE on evaluation work and to discuss potential for expansion.	w/c 7 April 2020 w/c 21 April 2020
May checkpoint meetings. End of project evaluation.	w/c 5 May 2020 w/c 19 May 2020
May decision checkpoint for extension of contract to academic year 2020/21	w/c May 2020

## Schedule 2 – Terms and Conditions

### CONTENTS

#### CLAUSE

1	DEFINITIONS AND INTERPRETATION
2	TERM
3	THE SERVICES
4	CONSORTIA
5	TRANSFER AND SUB-CONTRACTING
6	PERSONNEL
7	TUPE
8	CHARGES
9	TAX AND VAT
10	PREVENTION OF CORRUPTION
11	DISCRIMINATION
12	INTELLECTUAL PROPERTY
13	DATA, SYSTEMS HANDLING AND SECURITY
14	PUBLICITY AND PROMOTION
15	CONFIDENTIALITY
16	FREEDOM OF INFORMATION
17	OFFICIAL SECRETS ACT AND FINANCE ACT
18	LIABILITY
19	WARRANTIES AND REPRESENTATIONS
20	FORCE MAJEURE
21	MONITORING AND REMEDIATION
22	STEP IN RIGHTS
23	TERMINATION
24	RETENDERING AND HANDOVER
25	EXIT MANAGEMENT
26	AUDIT
27	ENTIRE AGREEMENT
28	PARTNERSHIP
29	WAIVER
30	CHANGE CONTROL
31	COUNTERPARTS
32	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
33	CONFLICTS OF INTEREST
34	FURTHER ASSURANCE
35	NOTICES
36	DISPUTE RESOLUTION
37	GOVERNING LAW AND JURISDICTION

## 1. DEFINITIONS AND INTERPRETATION

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

**“Area”** means the geographical area within England in respect of which the Contractor is appointed to provide the Services.

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

**“Business Days”** means Mondays to Fridays (inclusive) in each week, excluding bank and other public holidays in England.

**“CCN”** means a Change Control Note in the form set out in schedule 6.

**“Charges”** means the fees subject to clause 8 payable to the Contractor for the provision of the Services calculated in accordance with schedule 3.

**“Commercially Sensitive Information”** means the information set out in schedule 1 comprising the information of a commercially sensitive nature relating to:

- (a) the Price;
- (b) details of the Contractor’s Intellectual Property Rights; and
- (c) the Contractor’s business and investment plans

which the Contractor has indicated to DFE that, if disclosed by the Authority, would cause DFE significant commercial disadvantage or material financial loss.

**“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 DPA. 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.

**“Consortium”** means an association of 2 or more persons acting together to deliver the Services but excludes Sub-Contractors.

**“Consortium Agreement”** means, if the Contractor is a Consortium, an agreement:

- (a) signed by all the Consortium Members as at the Effective Date; and
- (b) adhered to by Consortium Members who join the Consortium after the Effective Date by signing a Deed of Adherence

which sets out, amongst other things, how the Consortium Members will work together to deliver the Services.

**“Consortium Member”** means a member of a Consortium (if any).

**“Contractor Equipment”** means the Contractor’s ICT equipment.

**“Contractor’s Solution”** means the Contractor’s proposal submitted in response to the DFE’s invitation to tender attached at schedule 10.

**“Copyright”** means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including,

but not limited to, government ministers, government departments, government offices and government agencies and **“Crown Body”** is an emanation of the foregoing.

**“Database Rights”** means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

**“Deed of Adherence”** means a deed under which a new Consortium Member shall covenant with the other Consortium Members to adhere to the terms of the Consortium Agreement in either the form set out in schedule 10 or in any other form approved by DFE in writing.

**“Default”** means breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Personnel in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

**“DFE Premises”** means any premises owned by, leased or hired to or otherwise controlled by DFE or which DFE nominates as such by notice in writing to the Contractor.

**“DFE Security Standards”** means the security standards as set out in schedule 8.

**“DFE Trade Marks”** means proprietary trade mark rights of DFE including those notified to the Contractor by DFE from time to time.

**“Dispute”** means any dispute between the Parties in connection with the Contract.

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

**“DPA”** means the Data Protection Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice published by the Information Commissioner or relevant government department in relation to such legislation.

**“Effective Date”** means 01 November 2019.

**“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.

**“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.

**“General Anti-Abuse Rule”** means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

**“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.

**“Halifax Abuse Principle”** means the principle explained in the CJEU Case C-255/02 Halifax and others.

**“HMRC”** means Her Majesty’s Revenue and Customs.

**“ICT”** means information and communications technology.

**“Implementation Plan”** means the plan and time schedule for the completion of the obligations of the Contractor under the Contract as set out in schedule 5 as the same may be replaced by any subsequent more detailed plan and time schedule as the Parties may agree in writing from time to time.

**“Initial Term”** means the period from the Effective Date to 31 August 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.

**“IP Materials”** means any materials used or developed for the purposes of the Contract including any programme materials, guidance, papers and research data, results, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

**“KPIs”** means the key performance indicators in relation to the Services set out in schedule 4 which the Contractor shall comply with.

**“Key Personnel”** means any of the Personnel identified as such in schedule 7 or otherwise identified as such by DFE pursuant to clause 6.

**“Key Sub-Contractor”** means any Sub-Contractor identified as such in schedule 7 or otherwise identified as such by DFE.

**“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 the DFE would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses 9, 10, 12, 15, 17 and 33 and in schedule 8.

**“NICs”** means National Insurance Contributions.

**“Occasion of Tax Non-Compliance”** means:

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

**“Performance Measures/Standards”** means the standards which the Contractor will be measured against in respect of the delivery of the Services aligned to defined Key Performance Indicators (KPIs)

**“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.

**“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;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts; or
  - (iii) the defrauding, attempting to defraud or conspiring to defraud the DFE;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

**“Regulations”** means the Public Contract Regulations 2015.

**“Regulatory Body”** means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of 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 Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

**“Relevant Tax Authority”** means HMRC or, if applicable, a tax authority in the jurisdiction in which the 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.

**“Restricted Country”** means:

- a) any country outside the United Kingdom; and
- b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC

**“Returning Employees”** means those persons agreed by the Parties to be employed by the 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 the Specification.

**“Services Commencement Date”** means 01 November 2019

**“Service Credits”** means the service credits specified in schedule 4 which shall be payable to the DFE by the Contractor in the event that the Service Levels are not met in respect of Services.

**“Service Level”** means the levels of Service defined in schedule 4.

**“Service Period”** means the following:

- (a) the first Service Period of the Contract shall begin on the Services Commencement Date and shall expire at the end of the calendar month in which the Service Commencement Date falls; and
- (b) after the first Service Period of the Contract a Service Period shall be a calendar month during the Contract save that the final Service Period of the Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract.

“**Service Users**” means those receiving the Services.

“**Specification**” means the description of the Services to be supplied under the Contract set out in schedule 1.

“**Staff**” 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.

“**Sub-Contract**” means a contract between 2 or more suppliers, at any stage of remoteness from DfE in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and “**Sub-Contractor**” shall be construed accordingly.

“**Term**” means the period from the Effective Date until the date the Contract ends for whatever reason.

“**TFEU**” means the Treaty on the Functioning of the European Union.

“**Treaties**” means the TFEU and the Treaty on European Union.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“**Variation**” means any variation to the Contract requiring a Change Control Note to be completed in accordance with schedule 6.

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

- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;
- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;
- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
- 1.2.7 the schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.

## 2. TERM

- 2.1 The Contract commences on the Effective Date and, subject to any provision of this Contract for earlier termination, or extension set out in this clause 2, will be for an initial Private Beta phase of up to 10 months and terminate at the end of the Initial Term.
- 2.2 DFE may extend the Initial Term for a Public Beta phase of up to 12 months by giving not less than 2 months written notice to the Contractor prior to the expiry of the Initial Term.

## 3. THE SERVICES

- 3.1 The Contractor shall provide the Services in the Area in accordance with the Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.
- 3.2 The DFE may appoint other Contractors for the Services in the Area.
- 3.3 The Contractor shall, in performing its obligations under the Contract:
  - 3.3.1 conform to the requirements of the Specification and the Contractor’s Solution or as otherwise agreed in writing between the Parties;
  - 3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;
  - 3.3.3 comply with Good Industry Practice;

- 3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;
  - 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
  - 3.3.6 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 4;
  - 3.3.7 comply with the Implementation Plan;
  - 3.3.8 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within 14 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; and
  - 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.
- 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.
- 3.5 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 unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the DFE.
- 3.6 Any land or DFE Premises made available from time to time to the Contractor by the DFE in connection with the 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 a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or DFE Premises was made available.
- 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the DFE retains the right at any time to use any DFE Premises in any manner.

#### **4. CONSORTIA**

- 4.1 If the Contractor is a Consortium it shall comply with the terms of this clause 4.
- 4.2 The Contractor may appoint additional or replacement Consortium Members to assist it in carrying out its obligations under the Contract subject to compliance with clause 4.3.
- 4.3 No new person or entity may become a Consortium Member until:
- 4.3.1 the DFE has given its prior written consent to the new Consortium Member;
  - 4.3.2 the new Consortium Member has signed a Deed of Adherence; and
  - 4.3.3 a copy of the Deed of Adherence has been given to the DFE.
- 4.4 The Contractor shall promptly inform the DFE if and how any Consortium Member breaches the terms of the Consortium Agreement.

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

- 5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a "**Transfer**") without the prior written consent of the DFE.
- 5.2 If the DFE consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 The Contractor may award Sub-Contracts with a value per annum not exceeding £10,000 without the DFE's consent.
- 5.4 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.

- 5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE's prior written consent.
- 5.6 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE's right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the DFE's satisfaction within 21 days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.8 If the DfE believes there are:
- 5.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
  - 5.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

## **6. PERSONNEL**

- 6.1 The DFE may refuse admission to DFE Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the DFE believes is a security risk.
- 6.2 If the DFE require the removal of any Personnel pursuant to clause 8.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.
- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the DFE's prior written consent.
- 6.5 For each of the Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the 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 or what would reasonably be regarded as an inappropriate record.
- 6.6 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 7 as at the Effective Date.
- 6.7 Key Personnel shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Personnel shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
- 6.10 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.
- 6.11 The DFE shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.
- 6.12 Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not

specifically targeted at staff of the other Party.

## 7. TUPE

- 7.1 No later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:
- 7.1.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;
  - 7.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;
  - 7.1.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;
  - 7.1.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
  - 7.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union
- (together the “**TUPE Information**”).
- 7.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.
- 7.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.4 The DFE may use TUPE Information for the purposes of any retendering process.
- 7.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
- 7.5.1 the provision of TUPE Information;
  - 7.5.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
  - 7.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
  - 7.5.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
  - 7.5.5 any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 7.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.
- 7.7 This clause 7 applies during the Term and indefinitely thereafter.
- 7.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
- 7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
  - 7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than

in circumstances in which the termination is for reasons of misconduct or lack of capability);

- 7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- 7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## 8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.7 being issued by the Contractor.
- 8.3 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 8.4 The Charges are exclusive of Value Added Tax (“VAT”) and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 8.5 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 8.6 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.7 Invoices shall be submitted to [SSCL.POINVOICEPAYMENTS@sscl.gse.gov.uk](mailto:SSCL.POINVOICEPAYMENTS@sscl.gse.gov.uk) and/or sent, within 30 days of the end of the relevant invoicing date, to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool, FY5 3TA. An invoice is a “Valid Invoice” if it is legible and includes:
- 8.7.1 the date of the invoice;
- 8.7.2 Contractor's full name and address;
- 8.7.3 Contract reference number;
- 8.7.4 the charging period;
- 8.7.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
- 8.7.6 days and times worked (if applicable);
- 8.7.7 Service Credits (if applicable); and
- 8.7.8 VAT if applicable.
- 8.8 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.9 The DFE intends to pay Valid Invoices within 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 8.9 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.10 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.11 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE. The final invoice shall

be submitted not later than 30 days after the end of the Term.

- 8.12 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service.
- 8.13 The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- 8.14 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending resolution of the dispute.
- 8.15 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

## **9. TAX and VAT**

- 9.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 9.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.
- 9.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 9.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.
- 9.5 A request under clause 9.4 may specify the information which the Contractor must provide and the period within which that information must be provided.
- 9.6 The DFE may terminate this Contract if:
  - 9.6.1 in the case of a request mentioned in clause 9.4 the Contractor:
    - (i) fails to provide information in response to the request within a reasonable time; or
    - (ii) provides information which does not demonstrate either how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it;
  - 9.6.2 it receives information which demonstrates that, if clauses 9.1 to 9.3 apply, the Contractor is not complying with those clauses.
- 9.7 The DFE may supply any information which it receives under clause 9.4 to HMRC.
- 9.8 The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.
- 9.9 The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract. The Contractor shall indemnify DFE against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under the Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by DFE in connection with any such assessment or claim.
- 9.10 The Contractor authorises the DFE to provide HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under the Contract whether or not DFE is obliged as a matter of law to comply with such request.
- 9.11 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
  - 9.11.1 notify the DFE in writing of such fact within 5 Business Days of its occurrence; and
  - 9.11.2 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.

## 10. PREVENTION OF CORRUPTION

- 10.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Personnel, have at any time prior to the Effective Date:
  - 10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
  - 10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 10.2 The Contractor shall not:
  - 10.2.1 commit a Prohibited Act; or
  - 10.2.2 do or suffer anything to be done which would cause the DFE or any of its employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 10.3 The Contractor shall:
  - 10.3.1 and procure that its Sub-Contractors shall, establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - 10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.2 and make such records available to the DFE on request.
- 10.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Personnel have:
  - 10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
  - 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE's enquiries, co-operate with any investigation, and allow the DFE to audit any books, records and any other relevant documentation.
- 10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the DFE may by notice:
  - 10.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - 10.6.2 immediately terminate the Contract.
- 10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

## 11. DISCRIMINATION

- 11.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable equality law.
- 11.2 The Contractor shall comply with DFE's equality and diversity policy as given to the Contractor from time to time and any other requirements and instructions which the DFE reasonably imposes in connection with any equality obligations imposed on the DFE at any time under equality law.
- 11.3 The Contractor indemnifies the DFE in full 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 Personnel in respect of anti-discrimination legislation. The Contractor will also provide all reasonable cooperation, assistance and information as the DFE may request in connection with any investigation by the DFE into any complaint or other grievance received by it from any of the DFE Personnel or Personnel in

respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any Personnel.

## 12. INTELLECTUAL PROPERTY

12.1 All Intellectual Property Rights in materials:

12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the “**DFE IP Materials**”) shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown); and

12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with the Contract (the “**Service Specific IP Materials**”) shall vest in the DFE (save for Copyright and Database Rights which shall vest in the Crown)

(together the “**IP Materials**”).

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

12.3 The Contractor hereby assigns to the DFE or undertakes to procure the assignment to the DFE of all Intellectual Property Rights which may subsist in the Service Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials and shall include, without limitation, an assignment to the DFE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by the DFE and necessary to execute and perfect these assignments and to otherwise evidence the DFE’s or the Crown’s ownership of such rights.

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

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

12.6 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 DFE and any Replacement Contractor 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 14, except to the extent that any such claim arises from:

12.6.1 items or materials supplied by the DFE; or

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

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

12.8 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 shall:

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

12.8.2 take due and proper account of the interests and concerns of the DFE; and

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

- 12.9 Notwithstanding clause 12.8. the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.
- 12.10 The DFE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 12.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:
- 12.11.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
- 12.11.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.
- 12.12 If the Contractor is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.
- 12.13 The Contractor grants to the DFE and, if requested by DFE, to a Replacement Contractor, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-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 (or a Replacement Contractor) 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.
- 12.14 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
- 12.15 If the Contractor is not able to grant to the DFE a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:
- 12.15.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Contract grants to the DFE a licence on the terms set out in clause 12.13; or
- 12.15.2 if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the DFE a sub-licence on the terms set out in clause 12.13.
- 12.16 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the DFE IP Materials any act or thing which:
- 12.16.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or
- 12.16.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.
- 12.17 The Contractor shall comply with the DFE's branding guidelines and shall not use any other branding, including its own, other than as set out in the DFE's branding guidelines or as otherwise agreed with the DFE.
- 12.18 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:
- 12.18.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or

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

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

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

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

14.1 Subject to clause 15.2, without prejudice to the DFE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

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

14.3 Without prejudice to the generality of clauses 12.18 and 14.1, the Contractor shall not itself, and shall procure that Consortium Members shall not, use the DFE's name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.

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

### **15. CONFIDENTIALITY**

15.1 Except to the extent set out in this clause 15 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

15.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract.

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

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

15.5 Clause 15.1 shall not apply to the extent that:

15.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;

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

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

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

15.5.5 it is independently developed without access to the other Party's Confidential Information.

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

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

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

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

15.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 15.8.3 and 15.8.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 15.7 Nothing in clauses 15.1 to 15.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 15.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the DFE's obligations of confidentiality.
- 15.9 If the Contractor does not comply with clauses 15.1 to 15.5 the DFE may terminate the Contract immediately on notice to the Contractor.

## **16. FREEDOM OF INFORMATION**

- 16.1 The Contractor acknowledges that the DFE is subject to the requirements of the FOIA and the EIR.
- 16.2 The Contractor shall transfer to the DFE all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receipt:
- 16.2.1 give the DFE a copy of all Information in its possession or control in the form that the DFE requires within 5 Business Days (or such other period as the DFE may specify) of the DFE's request;
  - 16.2.2 provide all necessary assistance as reasonably requested by the DFE to enable the DFE to comply with its obligations under the FOIA and EIR; and
  - 16.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.
- 16.3 The DFE shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

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

- 17.1 The Contractor shall comply with the provisions of:
- 17.1.1 the Official Secrets Acts 1911 to 1989; and
  - 17.1.2 section 182 of the Finance Act 1989.

## **18. LIABILITY**

- 18.1 Neither Party excludes or limits its liability (if any) to the other:
- 18.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
  - 18.1.2 for personal injury or death resulting from the its negligence;
  - 18.1.3 under section 2(3) Consumer Protection Act 1987;
  - 18.1.4 any breach of clause 15 or schedule 8;
  - 18.1.5 for its own fraud; or
  - 18.1.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
- 18.2 Subject to clauses 18.1 and 18.3, 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 Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- 18.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and 9 (Tax).
- 18.4 Subject to clauses 18.1, 18.3 and 18.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:
- 18.4.1 for any losses of an indirect or consequential nature;
  - 18.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or

- 18.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 18.5 Subject to clauses 18.1 and 18.3, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:
- 18.5.1 in respect of damage to property is limited to £5 million in respect of any one incident or series of connected incidents; and
- 18.5.2 in respect of any claim not covered by clause 18.5.1, is limited in each calendar year in aggregate to 150% of the sum of the Charges payable in that year.
- 18.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:
- 18.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
- 18.6.2 any wasted expenditure or charges;
- 18.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- 18.6.4 any compensation or interest paid to a third party by the DFE; and
- 18.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 18.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.8 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 18.9 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.
- 18.10 The Contractor shall supply to the DFE on demand copies of the insurance policies maintained under clause 18.9.
- 18.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 18.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

## **19. WARRANTIES AND REPRESENTATIONS**

- 19.1 The Contractor warrants and represents that:
- 19.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 19.1.2 in entering the Contract it has not committed any fraud;
- 19.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;
- 19.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;
- 19.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are

necessary for the performance of its obligations under the Contract;

- 19.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 19.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 19.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 19.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 19.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- 19.1.10 it has notified the DFE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

## **20. FORCE MAJEURE**

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

## **21. MONITORING AND REMEDIATION**

- 21.1 The DFE or its authorised representatives may visit on reasonable notice to the Contractor any premises of the Contractor, any Consortium Member or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Services.
- 21.2 During such visits, the DFE may inspect and take copies of such of the records of the Contractor and any Consortium Member as relate to the performance of their obligations under the Contract.
- 21.3 If the DFE reasonably considers that any provision of the Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:
- 21.3.1 require the Contractor to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the DFE (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and
  - 21.3.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the DFE reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the DFE in this regard.

- 21.4 If the Contractor fails to comply with any provision of the Contract or fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the DFE may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the DFE may direct.
- 21.5 The DFE may review from time to time the progress of the Contractor against the Implementation Plan. The Contractor shall cooperate with the DFE in this regard and provide any information and evidence reasonably required by the DFE.
- 21.6 The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that the Implementation Plan is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

## 22. STEP IN RIGHTS

- 22.1 Without prejudice to DFE's rights of termination under clause 23 the DFE may exercise one or more of the rights set out in this clause 22 ("**Step In Rights**") if:
- 22.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;
  - 22.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
  - 22.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 22 is necessary;
  - 22.1.4 a serious risk exists to the health and safety of persons, property or the environment;
  - 22.1.5 it is necessary to discharge a statutory duty; or
  - 22.1.6 the Contractor becomes insolvent.
- 22.2 If the DFE has a Step In Right it may serve notice on the Supplier (a "**Step-In Notice**") that it will take action under this clause 22 either itself or with the assistance of a third party.
- 22.3 The Step-In Notice shall set out:
- 22.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
  - 22.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;
  - 22.3.3 the date on which it wishes to commence the Required Action;
  - 22.3.4 the time period which it believes will be necessary for the Required Action;
  - 22.3.5 whether the DFE will require access to the Contractor's premises; and
  - 22.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.
- 22.4 Following service of a Step-In Notice, the DFE shall:
- 22.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
  - 22.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
  - 22.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and
  - 22.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 22.5 For as long as and to the extent that the Required Action continues:
- 22.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
  - 22.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service

Credits and the DFE's costs of taking the Required Action.

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

### 23. TERMINATION

- 23.1 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- 23.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 23.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - 23.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
  - 23.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 23.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 23.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - 23.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 23.1.8 any event similar to those listed in clauses 23.1.1 to 23.1.7 occurs under the law of any other jurisdiction.
- 23.2 The DFE may terminate the Contract with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:
- 23.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
  - 23.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
  - 23.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;

- 23.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
  - 23.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
  - 23.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
  - 23.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - 23.2.8 any event similar to those listed in clauses 23.2.1 to 23.2.7 occurs under the law of any other jurisdiction.
- 23.3 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:
- 23.3.1 being notified that a Change of Control has occurred; or
  - 23.3.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control
- but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 23.4 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:
- 23.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 23.4.2 it is for any reason dissolved;
  - 23.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
  - 23.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;
  - 23.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
  - 23.4.6 any of the following occurs in relation to any of its partners:
    - 23.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
    - 23.4.6.2 a petition is presented for his bankruptcy;
    - 23.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or
    - 23.4.6.4. any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the law of any other jurisdiction.
- 23.5 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:
- 23.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 23.5.2 it is for any reason dissolved;
  - 23.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
  - 23.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

- 23.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
  - 23.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
  - 23.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 23.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 23.5.9 any event similar to those listed in clauses 23.5.1 to 23.5.8 occurs under the law of any other jurisdiction.
- 23.6 References to the Insolvency Act 1986 in clause 23.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 23.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 23.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within 21 Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
  - 23.7.2 the Default is not, in the opinion of the DFE, capable of remedy; or
  - 23.7.3 the Default is a Material Breach.
- 23.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.8.1 the Contractor's warranty in clause 19.1.10 is materially untrue;
  - 23.8.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance;
  - 23.8.3 the Contractor fails to provide details of proposed mitigating factors which, in the DfE's reasonable opinion are acceptable; or
  - 23.8.4 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 23.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
  - 23.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
  - 23.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
- 23.10 If the DFE terminates the Contract under clauses 23.7, 23.8 or 23.9:
- 23.10.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
  - 23.10.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 23.
- 23.11 Either Party may terminate the Contract (or any part of it) at any time by giving at least 3 months' prior written notice to the other Party.
- 23.12 If the DFE terminates the Contract under clause 23.11 the DFE shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE.
- 23.13 If any funding from governmental or other sources for the provision of the Services, or for a programme or a

project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Contract cannot reasonably continue the DFE may terminate the Contract (or any part of it) by serving 3 months' written notice on the Contractor.

- 23.14 If the DFE terminates the Contract under clause 23.13 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavoidability of such costs.
- 23.15 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 23.16 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 90 Business 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 8.6 or to Force Majeure.
- 23.17 Save as otherwise expressly provided in the Contract:
- 23.17.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 23.17.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Payment), 9 (Tax and VAT), 10 (Prevention of Fraud), 12 (Intellectual Property Rights), 13 (Data), 15 (Confidentiality), 16 (Freedom of Information), 17 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 180 (Warranties and Representations), 19 (Liability), 23 (Termination) 24 (Retendering and Handover), 25 (Exit Management), 26 (Audit), and 37 (Governing Law and Jurisdiction).
- 23.18 Termination by DfE if monthly Performance Standards not met
- 23.18.1 If the Contractor fails to meet any of the monthly Performance Standards in any two consecutive months, at either party's request to the other party, both parties must meet to work together in good faith to attempt to understand why the monthly Performance Standards have not been achieved and implement strategies jointly agreed between the parties to attempt to enable the Contractor to achieve the monthly Performance Standards.
- 23.18.2 If the parties agree on a strategy under clause 23.18.1 and, in the month following the implementation of the joint strategy under clause 23.18.1 the Contractor fails to achieve any of the monthly Performance Standards, DfE may terminate this agreement on 30 days' notice to Contract.
- 23.18.3 If Contractor fails to meet any of the monthly Performance Standards in any three consecutive months, DfE may terminate this agreement on 10 Business Days' notice to the Contractor.

## **24. RETENDERING AND HANDOVER**

- 24.1 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.
- 24.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 24.1 is given only to potential contractors who have qualified to tender for the future provision of the replacement services.
- 24.3 The DFE shall require that all potential Contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the DFE; and that they shall not use it for any other purpose.
- 24.4 The Contractor shall allow access to the 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.
- 24.5 If access is required to the Contractor's Premises for the purposes of clause 26.4, the DFE shall give the Contractor 7 days' notice of a proposed visit together with the names of all persons who will be visiting.

- 24.6 The Contractor shall co-operate fully with the DFE during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 24.7 Within 10 Business 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 disk format, to operate on a proprietary software package identical to that used by the DFE.

## 25. EXIT MANAGEMENT

- 25.1 If the DFE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the DFE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 25.2 The Contractor will, within 3 months of the Effective Date, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its Replacement Contractor at the end of the Term (an "Exit Plan").
- 25.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the DFE for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.5 If the Contractor:
- 25.5.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or
  - 25.5.2 reasonably incurs additional costs
- the Parties shall agree a variation of the Charges.
- 25.6 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.
- 25.7 Within one month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 25.8 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Business Days from the date that that request was made.

## 26. AUDIT

- 26.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.
- 26.2 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services
- 26.3 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- 26.4 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.

**27. ENTIRE AGREEMENT**

- 27.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.
- 27.2 Nothing in this clause 27 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

**28. PARTNERSHIP**

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

**29. WAIVER**

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

**30. CHANGE CONTROL**

- 30.1 Either Party may at any time request in writing a Variation in accordance with the change control procedure set out in schedule 6 (the "**Change Control Procedure**"). No Variation shall be effective unless made in accordance with the Change Control Procedure.

**31. COUNTERPARTS**

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

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

- 32.1 The provisions of clauses 7.5 and 12.6 confer benefits on a Replacement Contractor and are intended to be enforceable by a Replacement Contractor by virtue of the Contracts (Rights of Third Parties ) Act 1999 ("**CRTPA**").
- 32.2 Subject to clause 32.1, a person who is not a Party has no right under CRTPA to enforce provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 32.3 A Replacement Contractor may not enforce or take steps to enforce the provisions of clauses 7.5 or 12.6 without DFE's prior written consent.
- 32.4 The Parties may amend the Contract without the consent of any Replacement Contractor.

**33. CONFLICTS OF INTEREST**

- 33.1 The Contractor shall:
  - 33.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and
  - 33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 33 as a "**Conflict of Interest**".
- 33.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 35 the Contractor shall forthwith provide full particulars to the DFE.
- 33.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.
- 33.4 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:
  - 33.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in

each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and

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

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

33.6 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing breach by the Contractor of the provisions of this clause 33.

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

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

#### **35. NOTICES**

35.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).

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

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

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

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

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

#### **36. DISPUTE RESOLUTION**

36.1 Any Dispute shall be dealt with in accordance with this clause 36.

36.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.

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

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

37.1 The Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.

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

37.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

### **Schedule 3 – Financials**

1. The DfE shall pay the Contractor the Charges in accordance with the Contract, subject to successful delivery of the Services against the KPIs or Service Levels set out in schedule 4.
2. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise between the Contractor and the DfE, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
2. The DfE may review the detailed costs set out in the Implementation Plan to ensure that the Contract is value for money.
3. Indexation shall not apply to the Charges.
4. The Contractor shall be entitled to invoice the Charges following acceptance by the DfE of satisfactory completion of the Services or, where performance of the Services will continue, either monthly in arrears or on satisfactory completion of milestones as set out in the delivery milestones, outputs or outcomes (as set out in Annex 1 to this Schedule).
5. At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by the DfE to the Contractor) DfE shall be entitled to validate any claim for payment made by the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the DfE (including without limitation, procuring the consent of participants) to enable DfE to validate any claim for payment made by the Contractor.

#### **Charges on Customers**

6. The Contractor nor its agents or sub-contractors, shall levy any charge on participants in respect of the Services express as expressly permitted (at its sole discretion) in advance and in writing by the DfE.

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

7. The Contractor nor its agents or sub-contractors, shall levy any charge on schools in respect of the Services express as expressly permitted (at its sole discretion) in advance and in writing by DfE.

#### **Additional Costs**

8. Subject to the provisions of this Contract (including without limitation this schedule 3 (Financials) and Schedule 4 – (KPI's Service Levels and Service Credits) and the detailed cost matrix, the fees are fixed and unless otherwise agreed in accordance with paragraph 30 of this schedule and Schedule 6 (Change Control) any additional or unforeseen costs incurred by the Contractor in delivering the Services shall be borne solely by the Contractor.

#### **Interruption of Service**

9. If there is at any time and interruption in the delivery of the Services as a result of a Default on the part of the Contractor, DfE shall not be liable for payment of any Fees which relate to such period of interruption caused by the Default by the Contractor.

#### **Final Claims**

10. Provided all previous claims have been paid (and subject to the provisions of this Contract and any antecedent breach), DfE shall have no further liability to make payment of any kind to the Contractor once the final claims have been paid.

#### **Recovery of Sums Due**

11. Whenever under the contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to DfE in respect of any breach of the Contract), DfE may unilaterally deduct the sum from any sum due, or which at any later time may become any other agreement or contract with DfE or the Crown.
12. Any overpayment by either Party, whether the fees 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.
13. The Contractor shall make any payments due to DfE without any deduction 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.
14. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society as the recipient Party may from time to time direct.

### Disputed Claims

16. Notwithstanding paragraph 3.5 of this Schedule, payment by the DFE of all or any part of any Contract Price rendered or other claim for payment by the Contractor shall not signify approval. The DFE reserves the right to verify Contract Price after the date of payment and subsequently to recover any sums which have been overpaid.
17. If any part of a claim rendered by the Contractor is disputed or subject to question by the DFE either before or after payment then the DFE may call for the Contractor to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the DFE
18. If any part of a claim rendered by the Contractor is disputed or subject to question by the DFE, the DFE shall not withhold payment of the remainder.
19. If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the DFE and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the DFE.
20. The DFE shall be entitled to deduct from sums due to the Contractor by way of set-off any amounts owed to it or which are in dispute or subject to question either in respect of the fee for which payment is being made or any previous fee.

### Continuous Improvement

21. The Contractor shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the DFE the Services and the manner in which it is providing the Services with a view to reducing the Authority's costs, and/or improving the quality and efficiency of the Services. The Contractor and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.
22. Without limiting paragraph 21 of this Schedule, the Contractor shall produce at the start of each Contract Year a plan for improving the provision of Services and/or reducing the Charges produced by the Contractor pursuant to this Schedule and reducing the Contract Price (without adversely affecting the performance of the Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Approval of the DFE. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:
  - 22.1 identifying the emergence of new and evolving technologies which could improve the Services;
  - 22.2 identifying changes in behaviour by the DFE that results in a cost saving and a reduction in the Contract Price;
  - 22.3 identifying and implementing efficiencies in the Contractors internal processes and administration that may lead to cost savings and reductions in the Contract Prices;
  - 22.4 identifying and implementing efficiencies in the way the DFE interacts with the Contractor that may lead to cost savings and reductions in the Contract Price;
  - 22.5 identifying and implementing efficiencies in the Contractors supply chain that may lead to cost savings and reductions in the Contract Price;
  - 22.6 baselining the quality of the Contractors Service and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Contract Period; and
  - 22.7 measuring and reducing the sustainability impacts of the Contractors operations and supply-chains pertaining to the Services, and identifying opportunities to assist the Authority in meeting their sustainability objectives.
23. The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Contractor to the DFE for Approval within ninety (90) Business Days of the Contract Commencement Date.
24. The DFE shall notify the Contractor of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Business Days of receipt. Within ten (10) Business Days of receipt of the DFE's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Contractor shall submit to the DFE a revised Continuous Improvement Plan reflecting the changes required. Once approved by the DFE, the programme shall constitute the Continuous Improvement Plan for the purposes of this Contract.
25. Once the first Continuous Improvement Plan has been approved in accordance with paragraph 24 of this Schedule:

- 25.1 the Contractor shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
- 25.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the DFE and the Contractor) to review progress against the Continuous Improvement Plan.
26. The Contractor shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in paragraph 22 of this Schedule.
27. All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Contract Price.
28. Should the Contractors costs in providing the Services to the DFE be reduced as a result of any changes implemented by the DFE, all of the cost savings shall be passed on to the DFE by way of a consequential and immediate reduction in the Contract Price for the Services.

#### **Adjustment of the Contract Price**

29. The Contract Pricing Information shall only be varied:
- 29.1 due to a change in Law which is not already anticipated in the Contract, relates specifically to the business of the Authority, would not affect the supply of the same or similar services by the Contractor to another of its customers, which impacts on the performance of the Services and which comes into force after the Commencement Date, in relation to which the Parties agree that a change is required to all or part of the Contract Price;
- 29.2 where all or part of the Contract Price is reviewed and reduced in accordance with paragraphs 21 to 28 of this Schedule 3 (Continuous Improvement);
- 29.3 where all or part of the Contract Price is reviewed and reduced in accordance with paragraphs 30 and 31 of this Schedule 3 (Supplier Periodic Assessment of Contract Price);

#### **Supplier Periodic Assessment of Contract Price**

30. Every twelve (12) Months during the Contract Period, the Contractor shall assess the level of the Contract Price to consider whether it is able to reduce them.
31. Such assessments by the Contractor under paragraph 30 of this Schedule shall be carried out on the anniversary of the Contract Commencement Date each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Business Day, on the next Business Day following such dates). To the extent that the Contractor is able to decrease all or part of the Contract Price it shall promptly notify the DFE in writing and such reduction shall be implemented in accordance with paragraph 32 below.

#### **Implementation of Adjusted Contract Price**

32. Variations in accordance with the provisions of this Schedule to all or part the Contract Price (as the case may be) shall be made by the DFE to take effect:
- 32.1 where an adjustment to the Contract Price is made in accordance with paragraph 29 of this Schedule 3;
- and the Parties shall amend the Contract Pricing Information shown in Annex 1 to this Schedule to reflect such variations.

**Schedule 3 – Annex 1**

**Pricing Schedule**

Table 1 – Cost Breakdown

	Private Beta	Public Beta	Total
<b>Fixed Costs / Overheads</b>	<i>REDACTED – COMMERCIALY SENSATIVE</i>		
<b>Recruitment &amp; Engagement</b>			
<b>Mentoring</b>			
<b>Digital Platform</b>			
<b>Other</b>			
<b>Total</b>			

All costs are exclusive of VAT

For a full breakdown of the service costs refer to the detailed Pricing Schedule at Appenidx 1

## Schedule 4 - KPIs, Service Levels and Service Credits

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

### KEY PERFORMANCE INDICATORS (KPIs)

- 2 This schedule 4 sets out the KPIs against which the Contractor shall measure its performance.
- 3 The Contractor shall monitor its performance against of each of the KPIs and send the DFE a report detailing the KPIs which were achieved in accordance with the provisions of this schedule 4.

### PERFORMANCE STANDARDS/MEASURES

- 4 The Contractor must meet the Performance Measure for each identified KPI as set out in table 1 below within the agreed Service Period.
- 5 If during a Service period the Contractor achieves a KPI, no Service Credit ("reduction in total amount of charges payable to the Contractor") will accrue to the Contractor in respect of that KPI.
- 6 The Contractor confirms that it has taken Performance Measures and Service Credits into account in calculating the Charges. Both Parties agree that the Performance Measures and Service Credits are a reasonable method of adjusting the Charges to reflect poor Contractor performance.

### CONSEQUENCES OF FAILURE TO MEET KPIS

- 7 A failure to meet at least the minimum target will be considered a "Service Failure" in respect of the KPIs set out in Table 1 below
- 8 If performance levels are considered a Service Failure in one or more of the KPIs listed in Table 1 in any given service period, DfE will be entitled at its sole discretion, to reduce the total amount of charges payable to the Contractor ("Service Credit") for that period by:
- 8.1 2% for one KPI failed
  - 8.2 4% for two KPIs failed
  - 8.3 6% for three KPIs failed.
  - 8.4 8% for four KPIs failed.
  - 8.5 to a maximum of 10% for five or more KPIs failed
- 9 Before applying any financial consequences the Department will consider any external factors outside the control of the supplier and/or any action taken by the provider in an attempt to address the 'service failure'.
- 10 Where the Contractor fails to meet the specified level of performance for a KPI in any 2 consecutive months, at either party's request to the other party, both parties must meet to work together in good faith to attempt to understand why the monthly Performance Standards have not been achieved. Strategies jointly agreed between the parties must be implemented to attempt to enable the Contractor to achieve the monthly Performance Standards. If the parties agree on a strategy, and, in the month following the implementation of the strategy, the Contractor fails to achieve any of the monthly Performance Standards, DfE may terminate this agreement on 30 days' notice to the Contractor.
- 11 If the Contractor fails to meet any of the monthly Performance Standards in any 3 consecutive months, DfE may terminate this agreement on 30 Business Days' notice to the Contractor.

12 Table 1: KPIs

KPI		Measure	Metric
1	Programme outcome*	MFL GCSE take-up among pupils participating in the project.	Aspirational target – 50%
			Expected target – 35%

			Minimum target – 15%
2	School recruitment	Recruitment of schools to participate in the programme.	Expected target – 40
			Minimum target – 36
3a	Pupil recruitment – private beta	Recruitment of pupils to participate in the programme for AY 2019/20.	Expected target – 1,000
			Minimum target - 900
3b	Pupil recruitment – public beta	Recruitment of pupils to participate in the programme for AY 2020/21.	Expected target – 6,000
			Minimum target – 5,400
4a	Mentor recruitment – private beta	Recruitment of student mentors to participate in the programme for AY 2019/20.	Expected target – 80
			Minimum target - 70
4b	Mentor recruitment – public beta	Recruitment of student mentors to participate in the programme for AY 2020/21.	Expected target – 300
			Minimum target - 270
5	Participant feedback	Baseline, mid-point and end-point surveys to measure feedback from pupils, mentors, teachers, and others involved in the project	60% of feedback surveys completed on time.

\* KPI 1 will only be subject to the Servie Credit mechanism detailed in paragraph 8 for AY 2020/21 and will be measured for reference only in AY 2019/20 with failure to meet the metric carrying no financial consequence.

### PERFORMANCE MONITORING

- 13 The Contractor shall manage the Contract and any Sub-contractors, including addressing poor performance. The Contractor must therefore ensure that all systems and processes used for the monitoring and recording of performance are robust, provide a clear audit trail of evidence and give confidence to the DFE that the Contractor and its supply chain are delivering the Services in accordance with its contractual obligations.
- 14 The DFE will regularly monitor Contractor performance. The initial Contract review will be informed by the award of Contract process and reviewed thereafter.
- 15 The Contractor will be required to appoint a named Contractor Performance Manager who will cooperate with the DFE Performance Manager to ensure that the Contract is delivered as specified in the Contract and that required standards and contractual performance levels are met.

### CONTRACT PERFORMANCE REVIEWS

- 16 The purpose of the Contract performance reviews is to encourage an open and regular dialogue between the Parties with the purpose of ensuring that the Services, including the contractual standards and outputs are being delivered appropriately and to drive up the performance and quality of the Services. They will encourage the Parties to review performance, discuss opportunities for continuous improvement and raise and address any complaints or persistent problems encountered with the Contract. Where issues cannot be immediately addressed, the DFE and the Contractor may follow the dispute resolution process detailed in clause 36 or the Performance Improvement Process as detailed in the Contract.
- 17 Review meetings between the DFE and the Contractor shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.
- 18 Contractor performance reviews must be formally undertaken and documented. The Contractor will be expected to provide any additional Management Information required by the DFE to facilitate the reviews and arrange where necessary access to any of its delivery locations, including those operated by Sub-contractors.

- 19 Any improvements or actions agreed between the Parties will form part of the continuous improvement activity recorded in the performance improvement plan. It will be the Contractor's responsibility to develop the performance improvement plan which will be discussed and agreed with the Performance Manager.

#### **CONTRACTOR MANAGEMENT INFORMATION (MI) REQUIREMENTS**

- 20 The DFE intends, wherever it can, to capture and collate information through its IT system(s). However, the DFE does reserve the right to make reasonable requests for information (at no additional charge) from the Contractor including ad-hoc requests for information from time to time.
- 21 The Contractor shall supply information requested relevant to the delivery of the Services to the DFE, using formats and to timescales specified by the DFE.
- 22 The Contractor shall also capture and use their own MI and retain evidence for contractual and performance purposes. This should include pipeline data (forward look performance information relating to attainment of Participants) to inform performance discussions with the Contractor Performance Managers and robust tracking systems to be able to identify and performance manage Participants.
- 23 Where an on-going, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule.
- 24 The Contractor shall supply Management Information relevant to the delivery of the Services to the DFE, using formats and to timescales as detailed in the Specification.
- 25 The DFE shall be entitled to amend the reporting frequency and format in respect of any or all Management Information or waive the requirement for any aspect of the Management Information to be reported upon by giving the Contractor not less than one (1) Month's notice in writing.

#### **PERFORMANCE IMPROVEMENT**

- 26 Without prejudice to any other rights or remedies arising under this Contract, including under Clause 23.7 (Termination on Material Breach), if the Contractor fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Contractor acknowledges and agrees that the DFE shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:
- 26.1 The DFE shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the DFE, an plan for improvement (an "**Improvement Plan**") within ten (10) Business Days of a written request by the DFE for such Improvement Plan. Such Improvement Plan shall be subject to the DFE's prior approval and the Contractor will be required to implement any approved Improvement Plan, as soon as reasonably practicable.
- 26.2 The DFE shall be entitled to require the Contractor, and the Contractor agrees to attend, within a reasonable time one (1) or more meetings at the request of the DFE in order to resolve the issues raised by the DFE in its notice to the Contractor requesting such meetings.
- 26.3 The DFE shall be entitled to serve an Improvement Notice on the Contractor and the Contractor shall implement such requirements for improvement as set out in the Improvement Notice.
- 26.4 In the event that the DFE has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Contractor either:
- (a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
  - (b) fails to implement an Improvement Plan Approved by the DFE;
- then (without prejudice to any other rights and remedies of termination provided for in this Contract), the DFE shall be entitled to terminate this Contract for material Default.

### **Schedule 5 - 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 Service Commencement 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 monthly (or more frequently if so required by the DFE) on its performance.

See Appendix 2 – Private Beta Implementation Plan and Appendix 3 – Public Beta Implementaiton Plan.

### **Schedule 6 – Change Control Procedure**

- 1 The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Parties' respective contract managers.
- 2 The Contractor shall use reasonable endeavours to incorporate minor changes requested by the DFE within the current Charges and shall not serve a Contractor Notice of Change 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 36.
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 evaluate the Contractor's proposed Variation in good faith, taking into account all relevant issues.
8. The DFE shall confirm in writing within 21 days of receiving the Change Control Note if it accepts or rejects the Variation.
9. The DFE may at its absolute discretion reject any request for a Variation proposed by the Contractor.

**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)	
<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>
Signature.....	Signature.....
Full Name.....	Full Name.....
Title.....	Title.....
Date.....	Date.....

**Please note that no works/services described in this form should be undertaken, and no invoices will be paid until 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 – Key Personnel and Key Sub Contractors

### Key Personnel

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement
<i>REDACTED - CONFIDENTIAL</i>		

### Key Sub-Contractors

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

Sub-contractor Name	Company Number	Value <sup>1</sup>	Role in delivery of the Services
The University of Sheffield	RC000667	<i>REDACTED – COMMERCIALY SENSATIVE</i>	Recruiting schools to participate and undergraduate students as mentors
Sheffield Hallam University	n/a		Recruiting schools to participate and undergraduate students as mentors
Warwick University	RC000678		Recruiting schools to participate and undergraduate students as mentors
The University of Leeds	RC000658		Recruiting schools to participate and undergraduate students as mentors for the Public Beta
Tinint	3347890		Delivering and supporting the continuous improvement of the digital platform
OnData Research	SC621169		Constructing and delivering an evaluation for the Private and Public Betas
The British Council	209131		Developing and implementing a plan to recruit Modern Languages Ambassadors

<sup>1</sup> Expressed as a percentage of total projected Charges over Term

## Schedule 8 – Data, Systems Handling and Security

### Definitions

<b>"Control"</b>	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>"Controls"</b> and <b>"Controlled"</b> are interpreted accordingly;
<b>"Data Loss Event"</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
<b>"DPA"</b>	Data Protection Act 2018
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>"Data Protection Legislation"</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>"Data Subject Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>"Controller", "Processor," "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"</b>	shall have the meanings given in the GDPR;
<b>"GDPR"</b>	the General Data Protection Regulation (Regulation (EU) 2016/679)
<b>"Law"</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680)
<b>"Processor Personnel"</b>	employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract.
<b>"Protective Measures"</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those set out in the Contract.
<b>"Sub-processor"</b>	any third Party appointed to process Personal Data on behalf of the Processor related to this Contract

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 8 Annex 2. The only processing that the Processor is authorised to do is listed in Schedule 8 Annex 2 by the Controller and may not be determined by the Processor
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - (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 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - (a) process that Personal Data only in accordance with Schedule 8 Annex 2 , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (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 Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 3a);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Processor 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 Controller 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 Controller has been obtained and the following conditions are fulfilled:
    - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:
  - (a) receives a Data Subject Request (or purported Data Subject Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority 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 Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
  - (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

- 1.13 The Controller may, at any time on not less than 30 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 Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## Schedule 8 – Annex 1

### DFE SECURITY STANDARDS

<b>“BPSS”</b> <b>“Baseline Personnel Security Standard”</b>	a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a>
<b>“CCSC”</b> <b>“Certified Cyber Security Consultancy”</b>	is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy">https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</a>
<b>“CCP”</b> <b>“Certified Professional”</b>	is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-professional">https://www.ncsc.gov.uk/scheme/certified-professional</a>
<b>“CC”</b> <b>“Common Criteria”</b>	the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.
<b>“CPA”</b> <b>“Commercial Product Assurance”</b> formerly called “CESG Product Assurance”	is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website: <a href="https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</a>
<b>“Cyber Essentials”</b> <b>“Cyber Essentials Plus”</b>	Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.  There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: <a href="https://www.iasme.co.uk/apply-for-self-assessment/">https://www.iasme.co.uk/apply-for-self-assessment/</a>
<b>“Department’s Data”</b> <b>“Department’s Information”</b>	is any data or information owned or retained in order to meet departmental business objectives and tasks, including:  (a) any data, text, drawings, diagrams, images or sounds

(together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Contractor by or on behalf of the Department; or

(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or

(b) any Personal Data for which the Department is the Data Controller;

**“DfE”**

means the Department for Education

**“Department”**

**“Departmental Security Standards”**

means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.

**“Digital Marketplace / GCloud”**

the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.

**“FIPS 140-2”**

this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.

**“Good Industry Practice”**

**“Industry Good Practice”**

means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

**“Good Industry Standard”**

**“Industry Good Standard”**

means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

**“GSC”**

**“GSCP”**

means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at:

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

**“HMG”**

means Her Majesty’s Government

**“ICT”**

means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution

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

<https://www.ncsc.gov.uk/articles/about-certified-professional-scheme>

**“SPF”**

**“HMG Security Policy Framework”**

This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.

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

**”Tailored Assurance”**

formerly called “CTAS”, or,

”CESG Tailored Assurance”

is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks.

<https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology>

- 1.1 The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2 Where the Contractor will provide ICT products or services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 1.3 The 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 UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 1.5 Departmental Data being handled in the course of providing an ICT solution or service must be segregated from all other data on the Contractor’s or sub-contractor’s own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 1.14.
- 1.6 The Contractor shall have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas
- 1.7 The Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- 1.8 The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- 1.9 Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which

has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.

- 1.10 Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 1.11 and 1.12 below.
- 1.11 Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.12 All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.13 Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.14 When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.15 At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.16 Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor staff must complete this process before access to Departmental Data is permitted.
- 1.17 All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.18 The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.19 Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.20 The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.

- 1.21 The Contractor or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 1.22 The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-contractors, compliance with the clauses contained in this Section.
- 1.23 The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.
- 1.24 The Contractor and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. Contractor and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the DfE Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Contractor's and sub-contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA).

## Schedule 8 – Annex 2

### Processing, Personal Data and Data Subjects

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

- 1 The contact details of the Controller's Data Protection Officer is:  
Louise Baker  
Level 1, Sanctuary Buildings, Great Smith Street, London SW1P 3BT  
Tel: 020 7783 8656
- 2 The contact details of the Processor's Data Protection Officer is:  
*REDACTED - CONFIDENTIAL*
- 3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the DfE is the Controller and the Contractor is the Processor in accordance with Clause 17.1.
Subject matter of the processing	The processing is needed to ensure that that the Processor can provide a service to schools and their pupils
Duration of the processing	1 November 2019 to 31 July 2021
Nature and purposes of the processing	<i>REDACTED – CONFIDENTIAL &amp; COMMERCIALY SENSATI E</i>
Type of Personal Data	
Categories of Data Subject	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	

### Schedule 9 – Commercially Sensitive Information

- 1.1 Without prejudice to the DFE's general obligation of confidentiality, the Parties acknowledge that the DFE may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause 16 (Freedom of Information).
- 1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4 Without prejudice to the DFE's obligation to disclose Information in accordance with the FOIA and the EIR, the DFE will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY
Financial information (including cost breakdown)	01 Nov 2019	Contractual term
Personnel	01 Nov 2019	Contractual term
Implementation and mobilisation plans	01 Nov 2019	Contractual term
Contractors solution, including attachments	01 Nov 2019	Contractual term

## Schedule 10 - Financial Distress

### 1. DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>“Credit Rating Level”</b>	a credit rating level issued by the Rating Agency as specified in Annex 1;
<b>“Credit Rating Threshold”</b>	the minimum Credit Rating Level for the Contractor as set out in Annex 1;
<b>“Rating Agency”</b>	the rating agency 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 Commencement Date the Credit Rating Level for the Contractor issued by the Rating Agency is set out in Annex 1.
- 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 Level issued by the Rating Agency for the Contractor (and in any event within 5 Business Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade in the Credit Rating Level issued by the Rating Agency for the Contractor, the Contractor shall ensure that the Contractor’s auditors thereafter provide the DFE within 10 Business Days of the end of each Year and within 10 Business Days of a 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:

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

where:

- (a) is the value at the relevant date of all cash in hand and at the bank of the Contractor;
- (b) is the value of all marketable securities held by the Contractor determined using closing prices on the Business 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. The Contractor shall:
- (a) regularly monitor the Credit Rating Level of the Contractor with the Rating Agency; 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 Business 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 Credit Rating Threshold if the Rating Agency has rated the Contractor at or below the Credit Rating Threshold.

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

- 3.1 The following shall constitute a Financial Distress Event:

- (a) the Credit Rating Level of the Contractor dropping below the 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 £5m or obligations under a service contract with a total contract value greater than £5m;
  - 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;

- 3.2 Immediately upon notification of the Financial Distress Event to the DFE by the Contractor (or if the DFE becomes aware of the Financial Distress Event without notification and bring the event to the attention of the Contractor), the Contractor shall have the obligations and the DFE shall have the rights and remedies set out in paragraphs 3.3 to 3.6.

- 3.3 In the event of a late or non-payment of a Sub-contractor pursuant to Paragraph 3.1(f), the DFE shall not exercise any of its rights or remedies under Paragraph 3.4 without first giving the Contractor 10 Business Days to:

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

- 3.4 The Contractor shall:

- (a) at the request of the DFE, meet the DFE as soon as reasonably practicable (and in any event within 3 Business 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 3.4 (a) 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 Business 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.
- 3.5 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 Business 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 3.6.
- 3.6 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.
- 3.7 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 3.7(a), submit an updated Financial Distress Service Continuity Plan to the DFE for its approval, and the provisions of Paragraphs 3.5 and 3.6 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).
- 3.8 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 3.7.

#### **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 3.4 to 3.6; 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 3.7(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 3.4; and
  - (b) the DFE shall not be entitled to require the Contractor to provide financial information in accordance with Paragraph 3.4(c).

### Schedule 10 – Annex 1

#### Rating Agency

Supplier Registration (Sid4Gov)

#### Credit Rating Level

Credit Rating (Failure Score) *REDACTED – COMMERCIALY SENSATIVE*

- Rating Agency 1: Supplier Registration (Sid4Gov)

#### Credit Rating Threshold

Entity	Credit Rating	Credit Threshold
Cardiff University	<i>REDACTED – COMMERCIALY SENSATIVE</i>	79 / 100

**Schedule 11 – The Contractor’s Solution**

See Appendix 4 – Service Proposal