

This contract is made on 2nd day of November 2018

- 1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("DFE"); and
- 2 Cognition Education (UK) Ltd registered in England and Wales under number 09209758 whose registered office is First Floor, Riverside Mill, Mountbatten Way, Congleton, Cheshire, CW12 1DY (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



Table of Contents

Contract Schedules

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

Schedule 1 – Specification

1. INTRODUCTION AND BACKGROUND

- 1.1 The purpose of this specification is to provide a description of the services that Potential Suppliers shall be required to deliver through multiple contracts to be awarded by the Department for Education (the Department) to support the recruitment and retention of teachers. This specification is for:
- Programme 1: Career Changer programme (Lot 1)
- 1.2 The Government believes that all pupils, regardless of birth or background, should receive an excellent education wherever they are. Central to this is ensuring all schools have access to high-quality teachers throughout England.
- 1.3 We have launched a range of measures to support the system recruit and retain the teachers it needs. These include the development of a new recruitment and retention strategy, the introduction of increased bursaries and scholarships, and the testing of new financial incentives for priority subject teachers.
- 1.4 The contracts awarded under this procurement will build on these measures, supporting career changers with previous employment and industry experience into the classroom.
- 1.5 We expect to award contracts in November 2018 to cover an initial two cohorts of the Career Changer programme with an option to extend for one further cohort/s. Each cohort will be on the programme for two years.
- 1.6 The option to extend to a third cohort will be solely at the Department's discretion and determined by success measures including, but not limited to:
- performance against recruitment and retention Key Performance Indicators (KPIs): Management Information data will identify recruitment and retention performance;
 - cost: We will monitor and track spend and ensure that the suppliers are delivering against KPIs within the agreed budget; and
 - participant satisfaction: as part of the evaluation process, we will seek feedback from participants on the programme. We will also seek the views of schools, head teachers, mentors etc. in order to assess the added value the trainees are bringing to the schools.
- 1.7 Potential Suppliers should be aware that the Department reserves the right to terminate, amend, or reduce the scope of any agreement should funding be withdrawn, changed or there is a significant change in government policy relating to the delivery of the programme and outputs required as part of this contract, by giving at least 3 months' notice. In addition, this procurement exercise, the service scope and the award of the contract is subject to any change in Ministerial priorities.
- 1.8 The Department will not accept liability for expenditure incurred in the bidding stage in this Procurement. The treatment of costs incurred by the Supplier post award will be covered in the contract.
- 1.9 This requirement relates to education and training services and will be conducted in accordance with the Public Contracts Regulations (PCR) 2015 for an open tender process (Regulation 27).

2. THE LOTS

- 2.1 The Services are divided into two Lots. Service requirements and Key Performance Indicators (KPIs) that apply to the Services for Lot 1: Career Changer Programme are set out in this Specification but may be subject to refinement following contract award in light of provider insight, experience or unique factors affecting the service proposal or target market/area.

3. LOT 1: CAREER CHANGER PROGRAMME

- 3.1 Career changers have the potential to bring extraordinary previous employment and industry experience to the classroom, which can inspire young people and influence teaching practice and wider school policies. Career changers, however, require more support than new graduate applicants to initial teacher training (ITT) in deciding to apply for teaching, and through the transition from their previous careers into the classroom.
- 3.2 Career changers face a number of challenges when moving to a new profession such as changing income, returning to training and successfully transferring their knowledge and skills to a new profession. Moving into

teaching after a long and successful career in another sector can be daunting, but can offer a rewarding opportunity to continue to grow professionally while making a real difference to young people.

- 3.3 The Department recognises that different approaches may be appropriate for different segments of the career changer market (for example those from different age groups or different industry backgrounds, those who are involuntarily leaving downsizing organisations and sectors and those who have enjoyed successful former careers and want to give something back to the next generation). We are therefore looking to award multiple contracts for the Career Changer programme to test different approaches targeted at different segments of the market in different areas of the country to secure a broad geographical spread. The actual number of contracts awarded for Lot 1 will depend on the value and quality of bids and affordability within the total available budget.
- 3.4 Each contract will target a specific Region or Regions and each contract will not exceed a maximum value of £3m in the initial contract period (i.e. for two cohorts of up to 200 participants in total). Potential Suppliers bidding for Lot 1 should identify (in Document 5 – Pricing Schedule (Potential Supplier Details tab)) up to three Service Delivery Area preferences. Potential Suppliers may include more than one region in each preference. For example the preference one could be 'North' and 'Lancashire and West Yorkshire', preference two could be 'West Midlands' and 'East Midlands and the Humber' and preference three could be 'South West'. Alternatively, if you are flexible on your specific area of delivery and would be willing to work as advised by the DfE please specify 'Any Region' as one of your preferred choices.
- 3.5 We seek bids from organisations that can demonstrate how they can attract, recruit and support career changers to make a successful transition into teaching, deliver 'added value' from their previous careers and retain them once trained. A career changer is a person who is moving from another career (including other roles within schools) into teaching. This may also include people on career breaks or not in current employment. We invite bids from individual organisations or consortia capable of delivering the Department's requirement in full.
- 3.6 We are keen to learn what the market can offer candidates and schools by way of a career development plan that will utilise candidates' previous career experience to benefit the pupils and schools and shape the early career development of the successful trainee. The proposal should put the career changers at the centre of the programme, both in terms of the development and design of the programme and its delivery to participants on the programme.
- 3.7 Any potential solution would need to 'wrap around' an existing ITT course leading to Qualified Teacher Status delivered by an accredited ITT provider. This exercise is not establishing new ITT, nor is it accrediting new ITT provision.
- 3.8 The core aim is to recruit and train new teachers; however, suppliers may also attract returning qualified teachers and offer a tailored support package for this group alongside other career changers.
- 3.9 Returning teachers who have been away from the classroom for an extended period may need a similar package of transitional support as a career changer. Potential suppliers should demonstrate how they would differentiate the programme for returners, as they will not require the ITT year.

Contract Scope

- 3.10 The initial scope of each Career Changer contract is for two intakes of up to 100 participants per cohort to start their training in 2019/20 (2019 cohort) and 2020/21 (2020 cohort) respectively. There is a possibility of an extension for one further cohort (see paragraph 1.6 above).
- 3.11 Each intake will be on the programme for two years, a year training on an ITT programme, with continuing support as a newly qualified teacher (NQT) in year two.
- 3.12 Whilst there are no restrictions to the subjects or phases a potential solution could recruit to, they must, as a minimum include, all EBacc subjects:
- English Language and Literature
 - Maths
 - Biology
 - Chemistry
 - Computer Science
 - Physics
 - Geography
 - History
 - Modern Foreign Languages
- 3.13 Potential suppliers should specify in their bids which segment of the career changer market they intend to target and why, they should specify how they would tailor their programme to that particular audience.

4 MANDATORY REQUIREMENTS

- 4.1 As part of this specification, there are a number of mandatory requirements. Please note that the Department may refuse to consider your bid if you are unable to evidence compliance with these requirements.
- 4.1.1 Your organisation or consortium must have the capacity to deliver against the specified delivery timescales (programme development/design and participant recruitment to start from September 2018 following contract award, with programme delivery starting from September 2019).
 - 4.1.2 Your organisation must be able to commit to recruiting and delivering 200 Career Changers participants over two cohorts between 2018 and 2022 with the option of one further cohort: first cohort of 100 participants beginning ITT in September 2019 and a second cohort of 100 participants beginning ITT in September 2020.
 - 4.1.3 All training proposed against delivery of the contract must be located within England.
 - 4.1.4 Any accredited ITT provider involved in the programme must not be rated less than 'good' by Ofsted in their latest ITE inspection across the phase(s) for which they are responsible for training.
 - 4.1.5 Partnership agreements will be established with the named accredited ITT providers and delivery schools included in your bid.
 - 4.1.6 Your organisation will have a delivery plan showing how the programme will enable trainees to meet the Teachers' Standards.
 - 4.1.7 Your organisation will manage the programme from recruitment of suitable trainees through the training programme and into post-qualification employment in schools, reviewing service delivery for continuous improvement and ensuring the programme demonstrates value for money.
 - 4.1.8 If you are delivering this contract as part of a consortium, your organisation will agree to enter into binding agreements with other consortium members to ensure service delivery and compliance with all contractual requirements and expectations and due diligence declarations are met. Potential Suppliers are reminded that the lead organisation will be the single contract holder and will have overall accountability for service delivery and meeting the contract Key Performance Indicators (KPIs) (please see Document 3 – Selection Questionnaire for further details)
 - 4.1.9 Your organisation must agree to engage with a third party evaluation contractor if required by the Department.
 - 4.1.10 Your organisation must agree to put at risk 5% of the annual contract value against the non or under-achievement of the KPIs.
 - 4.1.11 Your organisation must facilitate pre-ITT Subject Knowledge Enhancement (SKE) courses with an accredited provider, where required.

5. AIMS AND OBJECTIVES

5.1 LOT 1 (Career Changers) Programme principles

- 5.1.1 The aspiration on the Career Changer programme is to attract, assess, train and retain a cohort of career changers who will bring skills, knowledge and industry experience into the school environment. The participants will use their previous experience to inspire the young people they teach and improve and influence the whole school environment.
- 5.1.2 The recruitment and assessment process should maximise all potential interest to meet Departmental aims. Where candidates are not suitable for the specific programme, but might otherwise make potentially good candidates for other ITT programmes, or for the Further Education sector, suppliers should consider how they might signpost this to participants and add value to the contract for the Department.
- 5.1.3 Suppliers will also consider how they will work with other suppliers across different regions to share/signpost opportunities to potential candidates who fall outside their catchment area.
- 5.1.4 The Career Changer programme will begin with transitional pre-ITT support, and continue with mentoring and peer support in the ITT year and early career development in the newly qualified teacher (NQT) year 'wrapped around' an existing ITT course leading to Qualified Teacher Status.
- 5.1.5 The transitional support, and the ongoing mentoring and support around the ITT should be delivered with the aim of ensuring high participant completion of QTS and retention in teaching beyond ITT. The programme design should also aim to draw out and utilise the 'added' value of the

participants' skills, knowledge and experience for maximum benefit of the pupils and school. We appreciate that there may be minimal attrition, and participant-based costs (including bespoke training, mentoring and ongoing support costs) will be adjusted accordingly to reflect participation levels.

- 5.1.6 The Career Changer programme will select and support career changers from different segments of the career changer market to successfully train and transition into teaching across multiple regions through multiple Suppliers appointed via this procurement. The aspirations are that this programme will grow with success and act as a catalyst for regions where currently there is no Career Changer programme in place.
- 5.1.7 The Career Changer programmes may also attract returning teachers who may have spent significant time out of the classroom working in other sectors. Where this is likely models may be adapted to reflect the different needs of these Career Changer 'Returners'.

6. OUTLINE PROGRAMME REQUIREMENTS

- 6.1 The Supplier will be responsible for the delivery of a bespoke programme that includes but is not limited to the following distinctive elements. The table below breaks the programme down into the key functions with further details provided in the Detailed Programme Requirements section at paragraph [8] below.

Table 1: List of deliverables.

A	<p>Recruitment process for participants, accredited ITT providers and partner schools</p> <p>You (the Supplier) will develop a communications and marketing strategy to attract suitably qualified candidates with the potential to train to teach to join the Career Changer programme and meet a target of 100 participants per cohort. You will also promote the programme to ITT providers and schools to ensure sufficient numbers of places for each cohort of 100 participants.</p> <p>Recruitment will be regionally focused on specific segments of the career changer market and may also include 'returners' to the teaching profession</p>
B	<p>Selection of participants</p> <p>You will develop a consistent, transparent, fair and open recruitment process to select suitably qualified participants. This should include assessment centres held jointly with the accredited ITT providers and potentially delivery schools in which participants will train, ensuring that participants meet the standard initial teacher training entry requirements for teaching.¹</p> <p>You will identify a strategy for maximising the conversion from expressions of interest, to applications, to selection. You will also consider how best to maximise the potential of candidates you attract, including those who are not selected for your career programme, but who might otherwise make good candidates for other Departmental programmes.</p>
C	<p>Matching of participants to schools and capacity to deliver the programme across a range of locations</p> <p>You will identify appropriate placements for all participants through detailed knowledge of both the individual participant and the delivery schools. You will ensure that each participant is offered a placement within a reasonable geographical area to suit their work life balance and travel needs. Where a candidate is unsuccessful at interview with a school you should offer an alternative school for a second interview where appropriate.</p>

¹ ITT Criteria and supporting advice (Feb 2018) <https://www.gov.uk/government/publications/initial-teacher-training-criteria/initial-teacher-training-itt-criteria-and-supporting-advice#entry-criteria>

D	<p>Delivery of Initial Teacher Training Programme and partnerships with accredited ITT providers and delivery schools</p> <p>You will develop and deliver an effective induction programme which will include:</p> <ul style="list-style-type: none"> ensuring that participants gain school experience prior to starting the programme, including observation of lessons and the opportunity to interact with pupils; and an initial induction to the programme, covering information about the activities that will be undertaken and their responsibilities as programme participants. <ul style="list-style-type: none"> facilitating subject knowledge enhancement courses pre ITT where required <p>You will develop and deliver a consistent model for participants to:</p> <ul style="list-style-type: none"> be trained and accredited as Qualified Teachers, to be delivered by accredited ITT providers and delivery schools; and receive on-going professional development training throughout the programme. <p>You will agree formal partnership agreements with accredited ITT providers and delivery schools and ensure that partnership working is effective as this is fundamental to the successful development, delivery and viability of the Career Changer programme.</p>
E	<p>Participant retention and ongoing support</p> <p>You will develop a robust retention strategy to maximise the number of participants who achieve QTS, complete the programme and remain in teaching beyond the end of the programme.</p> <p>You will ensure that the on-going support for participants includes:</p> <ul style="list-style-type: none"> measures to support participants in light of their past experience; measures to support problem solving and dispute resolution between participants and other stakeholders; and opportunities for participants to share learning from the programme and best practice with other teachers within their own school and beyond. <p>You will develop a programme to support participants to provide added value in the schools where they are placed drawing on their prior experience and subject expertise.</p> <p>You should be aware of the proposals set out in Strengthening Qualified Teacher Status and improving career progression for teachers; Government Consultation Response, published May 2018. The proposals set out the Department's commitment to; the publication of an Early Career Framework for teachers, an extended induction period, published mentor standards, newly developed professional qualifications for teachers and a framework for CPD for teachers.</p> <p>You should develop a programme that supports retention, promotes early career development, and does so in a way that is compatible with forthcoming developments in response to that consultation response.</p>
F	<p>Robust knowledge and understanding of requirements to support career changers</p> <p>You will use previous experience in order to access information on how to support programme participants, and develop a strategy to provide appropriate and continuous support throughout the programme, including strategies for problem solving and dispute resolution.</p>

G	<p>A robust approach to programme management, quality assurance and governance</p> <p>You will develop robust programme management across your delivery structure and maintain quality throughout the delivery of all the requirements and key considerations within this invitation to tender.</p> <p>You will ensure that you use creative delivery strategies and solutions to recruit, maintain and quality assure the required numbers of accredited ITT providers and delivery schools to accommodate the target numbers of participants.</p> <p>In addition, as part of the contract management process you will be required to attend regular contract management meetings.</p>
H	<p>Management Information and Evaluation</p> <p>You will be required to collect and supply management information on the programme to the Department. You will ensure that the collection, transfer and storage of this information complies with the General Data Protection Regulation (GDPR). You will submit a security plan that explains how you will ensure that Departmental or personal data will be protected.</p> <p>You will be required to contribute to, and participate in regular reporting on management information including but not limited to application data, recruitment and retention data, marketing activity and financial spend.</p> <p>You will attend one-to-one monthly meetings to report progress, you will also attend occasional group meetings with other suppliers to share best practice.</p> <p>You will also be required to contribute towards the Department's evaluation of the impact of its programmes.</p>
I	<p>Finance - Detailed cost estimates and value for money</p> <p>You will be required to provide details of all costs needed to complete the requirements of this contract, showing how you will provide value for money and adhere to the funding and financial arrangements. You will also need to ensure that there are simple and clear governance controls for the management and distribution of funds, including those transferred to schools.</p>
J	<p>Performance Management and Key Performance Indicators</p> <p>You will be required to:</p> <ul style="list-style-type: none"> maintain accurate records of all successful and unsuccessful participants to the programme; prepare reports for and attend monthly contract review meetings and a detailed annual review meeting; and work with the Department to develop a clear Exit Strategy from the programme.

7. PROGRAMME TIMESCALES

- 7.1 It is imperative that the supplier is in a position to develop, recruit to and deliver the programme for commencement of initial teacher training in September 2019. The supplier will need to evidence that it will be able to work flexibly to find innovative solutions to meet these timescales.
- 7.2 The table below shows the indicative programme timings, which may be subject to change.

Table 2: Indicative programme timeline

Output	Date
Contract start	November 2018
Recruitment for 2019 Cohort starts	November 2018
Pre-training activity for 2019 Cohort	January – July 2019

School Direct Initial teacher training for 2019 Cohort starts	September 2019
Recruitment for 2020 Cohort starts	October 2019
2019 Cohort achieve QTS	July 2020
Pre-training activity for 2020 Cohort	Summer 2020
2019 Cohort employed as newly qualified teachers	September 2020
School Direct Initial teacher training for 2020 Cohort starts	September 2020
2020 Cohort achieve QTS	July 2021
2020 Cohort employed as newly qualified teachers	September 2021
2019 Cohort programme ends	July 2021
2020 Cohort programme ends	July 2022

Note: Dates for the optional third cohort will be agreed between the Department and the Supplier if a decision is taken to extend the contract for a third cohort. The date of decision is likely to be spring 2020. The decision on an extension will be solely at the Department's discretion and determined by success measures outlined.

8. DETAILED PROGRAMME REQUIREMENTS

8.1 The supplier will be required to deliver a high quality programme by offering the service requirements for each function listed below. Whilst suppliers need to ensure that their proposed programme covers the list requirements they should also look to develop new and innovative ways for working to ensure effective and efficient service delivery that is targeted to the region and/or segment of the market, and ensures value for money:

8.2 Function A: Recruitment process for participants, accredited ITT providers and delivery schools

The supplier will:

- 8.2.1 demonstrate that it has considered the teacher recruitment and retention issues in the target area and has secured early interest from accredited ITT providers and schools in delivering a career changer programme
- 8.2.2 develop a communications and marketing strategy to attract suitably qualified candidates with the potential to train to teach to join the programme and meet a target of 100 high quality individuals per cohort;
- 8.2.3 combine recruitment approaches with the very best of the expertise in the initial teacher training sector, aligning the programme to other teacher training pathways in terms of selection and recruitment;
- 8.2.4 recruit sufficient numbers of accredited ITT providers and delivery schools that demonstrate a proven track record of initial teacher training and mentorship and a commitment to the aims of the Career Changer programme, to ensure enough places available to meet the target numbers of participants for each cohort;
- 8.2.5 develop an approach for collecting and following up expressions of interest from both potential participants and schools;
- 8.2.6 target schools with experience of initial teacher training, especially teaching schools, and networks of schools to encourage creative deployment of participants, e.g. in pairs and across schools; and
- 8.2.7 make information about the Career Changer programme and alternative routes into teaching available to the target audience through targeted marketing activity.

8.3 Function B: Selection of participants

The supplier will:

- 8.3.1 develop a consistent, transparent, fair and open recruitment process to attract and select participants with potential to train to teach, be retained in the profession and have a positive impact on children and young people;

- 8.3.2 develop a rigorous process in conjunction with accredited ITT providers and delivery schools to identify participants with the commitment, potential and aptitude to become successful teachers;
- 8.3.3 ensure all participants meet all the entry requirements for initial teacher training as per the [ITT Criteria and Supporting Advice](#);
- 8.3.4 ensure all participants pass the skills tests before they start the programme. The responsibility to check this falls to the recruiting initial teacher training provider;
- 8.3.5 identify a strategy for maximising the conversion from expressions of interest, to applications, to selection; and
- 8.3.6 consider how best to maximise the potential of candidates you attract, including those who are not selected for your career programme, but who might otherwise make good candidates for other Departmental programmes. For example, registering participants with the wider Get into Teaching campaign, supporting recruitment to the Further Education sector and facilitating the return to the classroom of returning, qualified teachers who have been out of the profession for some time.

8.4 Function C: Matching participants to schools and capacity to deliver the programme across a range of locations

The supplier will:

- 8.4.1 identify appropriate placements for all participants through detailed knowledge of both the individual participants and the participating schools;
- 8.4.2 ensure that each participant is offered a placement within a reasonable geographical area to suit their work life balance and travel needs;
- 8.4.3 offer an alternative school for a second interview where a candidate is unsuccessful at interview with a school;
- 8.4.4 deliver the programme across a range of locations within the regions specified in your application;
- 8.4.5 be willing to engage in creative employment and deployment possibilities for participants recruited on to the programme; and
- 8.4.6 ensure appropriate reach and ensuring that schools are at the centre of their chosen delivery model.

8.5 Function D: Delivery of initial teacher training programme in partnership with accredited ITT providers and delivery schools

The supplier will:

- 8.5.1 develop and deliver an effective induction programme which will include:
 - put the career changers at the centre of the programme, both in terms of the development and design of the programme and its delivery to participants on the programme;
 - ensuring that participants gain school experience prior to starting the programme, including observation of lessons and the opportunity to interact with pupils;
 - an initial induction to the programme, covering information about the activities that will be undertaken, how they will arrange their training plans and their responsibilities as programme participants this may include pre-course preparation (such as a summer school or intensive seminar programme); and
 - facilitating subject knowledge enhancement courses pre ITT where required.
- 8.5.2 develop and deliver a consistent model for participants to:
 - be trained and achieve Qualified Teacher Status, with training delivered through a partnership approach with accredited ITT providers and delivery schools; and
 - receive on-going professional development training throughout the programme.
- 8.5.3 set out the respective roles and responsibilities of the accredited ITT provider and delivery schools in a formal partnership agreement. The quality of the partnership agreement will be crucial to the success by setting out as a minimum:
 - which elements of the programme are to be delivered by the supplier and which by the school;

- arrangements for the distribution of funds between the partners, including the cost of the programme delivery;
- agreements with the partnership schools providing employment/training placements;
- the roles and responsibilities of the school and the initial teacher training provider, particularly with regard to: assessment; quality assurance; subject knowledge training and selection procedures; and
- the balance between teaching duties trainees are able to take on and the arrangements for QTS.

8.5.4 ensure that the accredited ITT provider, and schools delivering the programme, will be responsible for training or employing participants as unqualified teachers during their training year and as qualified teachers for the second year of the programme. Participants on salaried ITT should be paid at least the minimum of the qualified teacher's pay scale for their location ([Teachers Pay and Conditions Document 2017](#)).

Ofsted ratings

- 8.5.5 The supplier will ensure all partners engaged in delivering the programme are of a high quality as defined by Ofsted:
- Accredited initial teacher training providers: There is a requirement that initial teacher training providers are rated not less than 'Good' by Ofsted across the phases in which they are training.
 - Delivery schools: the requirements of the School Direct route should be adhered to in relation to the employment/placement of participants for the duration of the programme.

8.6 **Function E: Participant retention and ongoing support**

The supplier will:

- 8.6.1 develop clear proposals on how they will support retention of participants;
- 8.6.2 develop and supply peer support sessions for all participants;
- 8.6.3 provide support or advice regarding the participants training and future employment ensuring that the on-going support for participants includes:
 - measures to support participants in light of their past experience;
 - measures to support problem solving and dispute resolution between participants and other stakeholders;
 - support participants in early career development including how they might progress to National Professional Qualifications for leadership.
 - making the most of the participants past experience to benefit their school community; and
 - opportunities for participants to share learning from the programme and best practice with other teachers within their school and beyond.
- 8.6.4 develop approaches to and systems for managing candidate deferrals/withdrawals.

8.7 **Function F: Robust knowledge and understanding of requirements to support career changers**

- 8.7.1 Suppliers will need an understanding of both the wealth of skills and expertise that career changers can bring with them and the specific needs and challenges associated with transitioning to a life in the classroom.
- 8.7.2 The successful tenderer should establish and maintain strong working relationships with relevant subject associations, teaching school alliances and other organisations as appropriate.

8.8 **Function G: A robust approach to programme management, quality assurance and governance**

The supplier will:

- 8.8.1 be responsible for managing and controlling all elements of the delivery of the contract requirements ensuring robust programme management across the delivery of the programme, and its structure to secure the best value for money;
- 8.8.2 have processes and systems in place for ensuring costs and pricing are managed appropriately;
- 8.8.3 ensure that there are simple and clear governance controls for the management and distribution of funds, including those transferred to schools;
- 8.8.4 ensure the project delivery plan includes data collection and the provision of timely and accurate data in line with the governance arrangements;
- 8.8.5 maintain quality assurance processes throughout the delivery of all services provided across all of its partners; and
- 8.8.6 be required to ensure that all aspects of their processes adhere to statutory legal requirements for equality and diversity; further information about the Equality Act is available at <https://www.gov.uk/guidance/equality-act-2010-guidance>.

8.9 Function H: Management Information and project evaluation

The supplier will:

- 8.9.1 be required to provide management information to meet the needs of the Department (or an independent evaluation contractor). The schedule of information to be provided will be negotiated with the supplier post contract award, but may include:
 - a unique identifier and relevant personal data for each individual;
 - number of career changers applying to programme;
 - numbers progressing through different stages of the assessment process including offers made and accepted;
 - numbers starting programme;
 - numbers successfully completing training and completing the programme;
 - participants prior vocational qualifications and experience;
 - number, type and location of schools or partnerships of schools recruited to deliver the programme; and
 - reports of participants' activity through the programme, including the scale, scope and effectiveness of bespoke activity linked to participants' prior experience. The Department will use the MI provided by the supplier to assist measurement of contract performance for discussion at contract review meetings.
- 8.9.2 In addition to specific management information requirements, the supplier is expected to cooperate fully with any evaluation of the programme that is commissioned by the Department. (This may include ad hoc requests for further information, participation in research studies or workshops, and permitting observation of the provision.) The Department has established the following criteria against which evaluation will be conducted, including but not limited to:
 - take-up and completion i.e. rates of application, participation and completion and the characteristics of participants;
 - engagement i.e. participants' satisfaction with programme structure and content; and
 - learning outcomes i.e. skills, knowledge and understanding achieved by participants.

The purpose of this evaluation work is to assess whether the programme is meeting its aims and objectives and whether it is meeting the needs of its participants and assess the impact on the schools, which have participated on the programme. You will be required to undertake some self-evaluation against the above and may also be required to co-operate with independent evaluation activity commissioned by the Department.

- 8.9.3 The supplier should have processes in place to ensure they record and act on lessons learned and drive continuous improvement. The supplier is also expected to share knowledge acquired during the contract term with the Department to improve awareness of strategic approaches and market intelligence; and to further share the learnings to internal and external stakeholders. The supplier will be required to self-evaluate its own work and share best practice outcomes with other suppliers

delivering similar programmes. The supplier will be expected to attend programme meetings and deliver presentations linked to findings of the programme.

- 8.9.4 The supplier will be required to collect equality and diversity, including records of any reasonable adjustments implemented, and support the department with any data collection relating to equality and diversity of programme participants.
- 8.9.5 The supplier 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 supplier will be required to act in a flexible and timely manner to provide the requested data within the agreed timescales without additional cost to the Department.

Data Management and Security Standards

- 8.9.6 As the supplier will receive data regarding potential candidates throughout the course of this contract they must ensure adherence to data security standards (i.e. how and where it will store this data, how it will plan to dispose of it once the contract has expired) as outlined in Schedule 8 of the attached Terms and Conditions (document 6)
- 8.9.7 To take appropriate action to ensure that the collection and transfer of information complies with the Data Protection Act, General Data Protection Regulation Act, which will include adding specific statements (on which the Department will advise) to a privacy notice to be issued to participants, and ensuring the secure storage and transfer of data.
- 8.9.8 Places on the Career Changer programme will be subject to the same data management and audit requirements as any other initial teacher training places. The supplier will need to include them in their census returns, Association of Graduate Recruiters, and Audited Accounts. Relevant training will be provided by the Department. The supplier will be required to sign up to the Cyber Essentials Scheme: Requirements for basic technical protection from cyber-attacks.

Security of Data

- 8.9.9 The supplier shall have a robust process to ensure data security and confidentiality in compliance with the Departmental data security standards in Schedule 8 of the Terms and Conditions. The successful supplier will be required to submit a security plan that explains how you will ensure that departmental or personal data will be protected including a risk assessment within 30 days of contract award.

8.10 Function I: Finance - Detailed cost estimates and value for money

- 8.10.1 Contract funding will be available to support the delivery of the programme. The detail below is intended to give an indication of the timing of the activities and the phasing of funding should be calculated on this basis. The Pricing Schedule (see document 5) should be completed against the Department's financial year (1 April to 31 March).

Table 3: Funding timetable

Detailed Output	Academic Year
<ul style="list-style-type: none"> Recruitment, assessment and selection of 2019 Cohort participants and accredited ITT providers and delivery schools. Design all aspects of the programme, e.g. induction, school orientation, training sessions. Cost estimates provided. Relevant infrastructure and partnerships agreements established. 	2018/19
<ul style="list-style-type: none"> Implementation and delivery of first year of the programme to 2019 Cohort participants Maintaining partnerships and other informal partnerships to deliver the programme. Maintaining programme governance with the Department. Funding of programme costs. Recruitment, assessment and selection of 2020 Cohort participants and accredited ITT providers and delivery schools. 	2019/20

<ul style="list-style-type: none"> Implementation and delivery of second year of the programme to 2019 Cohort participants and first year of the programme to 2020 Cohort participants. Maintaining partnerships and other informal partnerships to deliver the programme. Maintaining programme governance with the Department. Funding of programme costs 	2020/21
<ul style="list-style-type: none"> Implementation and delivery of second year of the programme to 2020 Cohort participants. Maintaining partnerships and other informal partnerships to deliver the programme. Maintaining programme governance with the Department. Funding of programme costs 	2021/22

Programme Costs

- 8.10.2 The Department will fund programme costs, which are likely to include, but are not restricted to, recruitment, assessment, programme induction, bespoke support and mentoring, continuing support and administration costs.
- 8.10.3 Suppliers are invited to submit their projected costs for delivering the programme. Suppliers should identify the proportion of costs that are fixed and those that will vary according to the number of participants in the programme.
- 8.10.4 Suppliers should profile their intended expenditure on a monthly basis throughout the lifespan of the contract (November 2018 to July 2020).

Marketing costs and Cabinet Office Controls

- 8.10.5 As part of the Government's commitment to efficiency controls, you should be aware that there are restrictions on all paid-for communications, marketing and digital activities. Any items that fall within the Cabinet Office's Efficiency Controls guidance should be clearly outlined in the cost matrix. The controls relating to communications and marketing activity include printing, publications, events and public relations (PR).

Payments to support a successful delivery structure

- 8.10.6 The supplier will be required to receive funding from the Department and will be expected to provide full monthly or quarterly financial breakdowns of expenditure (including explanations of any variances). This will show fixed and variable costs and during the delivery phase these will be updated on a monthly basis to reflect actual number of participants
- 8.10.7 During the development phase, it is expected that payments will be on a monthly basis, in arrears and as work is completed.
- 8.10.8 During the implementation/delivery phase, it is expected that payments for programme costs will be on a monthly basis in arrears on the invoice dates to be agreed with the supplier
- 8.10.9 The supplier is expected to forward budgets on to ITT providers and onwards to schools for delivering the programme in line with costs accepted by the Department

Costs

- 8.10.10 Payments will be made by BACS transfer following receipt of a valid invoice.
- 8.10.11 The successful supplier should provide details of discounts for prompt payment.

VAT

- 8.10.12 VAT will be charged on elements within the agreed contract. The supplier 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.

8.11 Function J: Performance Management and Key Performance Indicators

- 8.11.1 As part of the contract/performance management process suppliers will be required to:
- o maintain accurate records of all successful and unsuccessful participants to the programme, including name, contact details, for evaluation purposes;

- commit to monthly senior stakeholder contract review meetings with the Department and a detailed annual review meeting, both of which will include a review of the allocation of resources. The successful provider will prepare all necessary documentation requested by the Department to support these meetings, including monthly profiling during the recruitment cycle;
- produce an annual report (for discussion with the Department) that summarises the annual costs of delivery; progress and impact of the programme; and
- work with the Department to develop a clear Exit Strategy from the programme. A draft exit plan will be provided by the provider for review with the Department within three months of contract award; and will be reviewed regularly thereafter to ensure it remains fit for purpose.

8.11.2 The plan should be developed in line with the draft contract within this Invitation to Bid, it should clearly set out how you plan to ensure the quality of the service provision of the final cohort and ensure that any data is disposed of in line with the Department's standards.

Key Performance Indicators (KPIs) and contract/performance management

- 8.11.3 The supplier's performance will be measured against a set of Key Performance Indicators (KPIs) which should support the successful delivery of the key programme objectives. The supplier will be required to propose a set of relevant KPIs and associated performance measures and a suite of management information as part of their bid. These will be subject to negotiation and refinement with the successful bidder at Bid Clarification stage and will feed into Schedule 4 of the contract (see Document 6 – Terms and Conditions).
- 8.11.4 The supplier will monitor its performance against the agreed KPIs, substantiating evidence monthly or as agreed, and this will be discussed at contract management meetings.
- 8.11.5 If during a Service period (either monthly, quarterly or annually) the supplier achieves a KPI then no Service Credit ("reduction in amount of charges payable to the supplier") will accrue to the Department in respect of that KPI. Where a KPI is not met, this will be considered a 'service failure'. The Department may, at its sole discretion, apply a financial consequence to the invoiced value for the relevant period up to a maximum 5% of the programme costs. A system of penalty points will be used to determine the scale of any financial consequence. (Please note: the penalty will not be applied to the salary uplift element of the Maths and Physics Chairs programme.)
- 8.11.6 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'.
- 8.11.7 Where the supplier fails to meet the specified level of performance for the KPI, 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 specified performance level for a KPI has not been achieved. Strategies jointly agreed between the parties must be implemented to attempt to enable the contractor to achieve the agreed performance levels. If the parties agree on a strategy, and, in the period following the implementation of the strategy, the supplier fails to achieve any of the agreed performance levels the Department may terminate this agreement as set out in the terms and conditions, the contract.

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.

"Cohort" means a period of programme delivery with each Cohort lasting for a period of 2 years inline with the academic year (01 September to 31 August). The initial contract term is for 2019 and 2020 Cohorts with the option to extend for an additional 2021 Cohort. See paragraph 2.3 for cohort start and end dates.

"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 2 November 2018.

"EIR" means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to them.

"Employment Liabilities" means all actions, proceedings, costs (including reasonable legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities connected with or arising from all and any laws including, without limitation, directives, statutes, secondary legislation, orders, codes of practice, contractual obligations and other common law rights whether of the European Union, United Kingdom or any other relevant authority relating to or connected with:

- (a) the employment and dismissal of employees (including their health and safety at work); and
- (b) the engagement, use and termination of individuals other than employees who provide services (including their health and safety at work),

and all wages, holiday pay and employment benefit costs due in respect of (a) or (b) above, including claims for protective awards.

"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 2022.

“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 2 November 2018.

"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 period of 2 Cohorts and terminate at the end of the Initial Term.
- 2.2 DfE may extend the Initial Term for an additional Cohort by giving not less than 3 months’ written notice to the Contractor prior to the expiry of the Initial Term.
- 2.3 The below table outlines the cohort dates:

Cohort	Start Date	End Date
2019 Cohort	02 November 2018	31 August 2021
2020 Cohort	01 September 2019	31 August 2022
Optional 2021 Cohort	01 September 2020	31 August 2023

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 33 the Contractor shall forthwith provide full particulars to the DFE.
- 33.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.
- 33.4 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest (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 Price;
 - 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 Contractor's 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

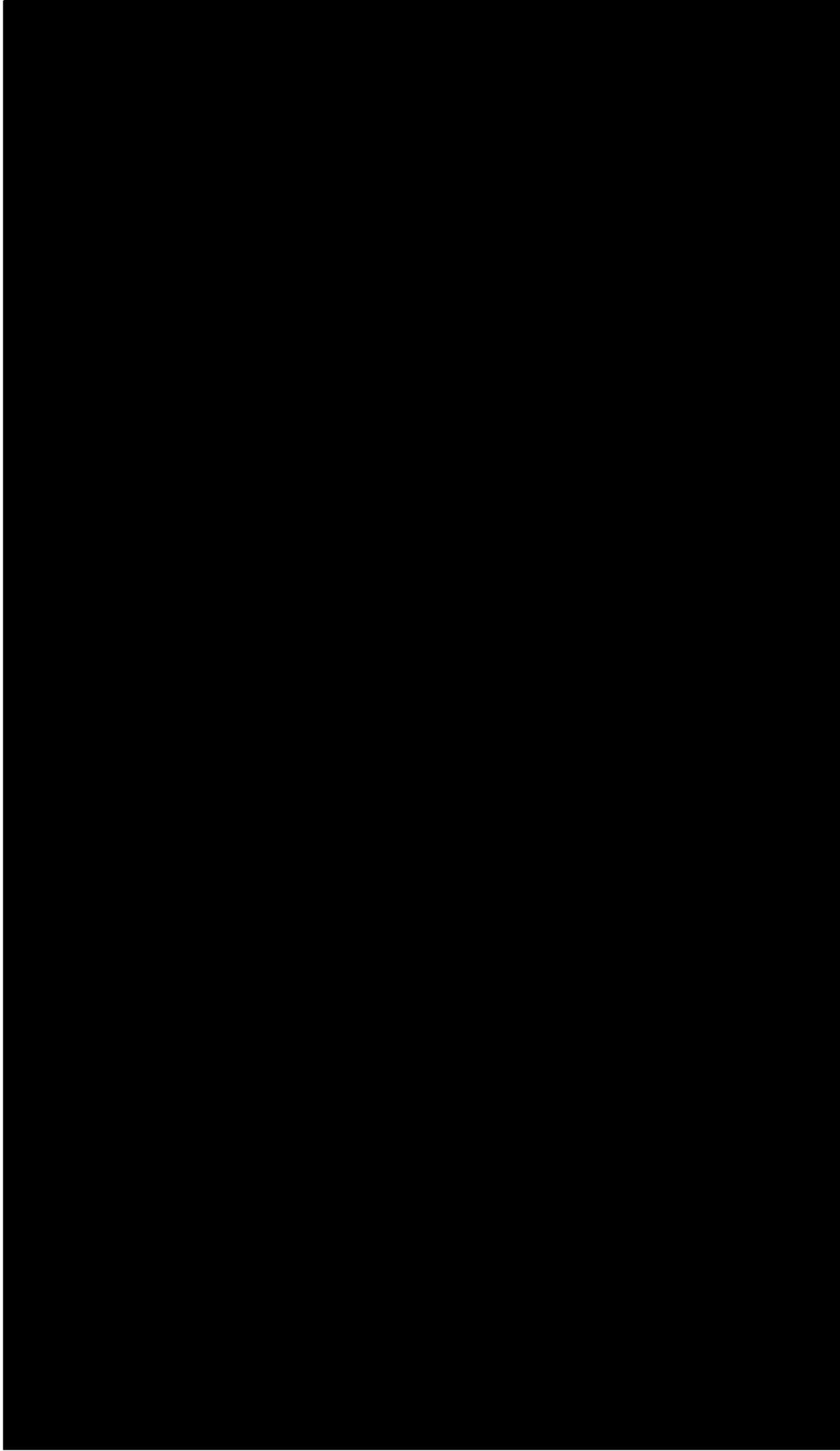
- 29. The Contract Pricing Information shall only be varied:
 - 29.1 due to a change in Law which is not already anticipated in the Contract, relates specifically to the business of the Authority, would not affect the supply of the same or similar services by the Contractor to another of its customers, 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);

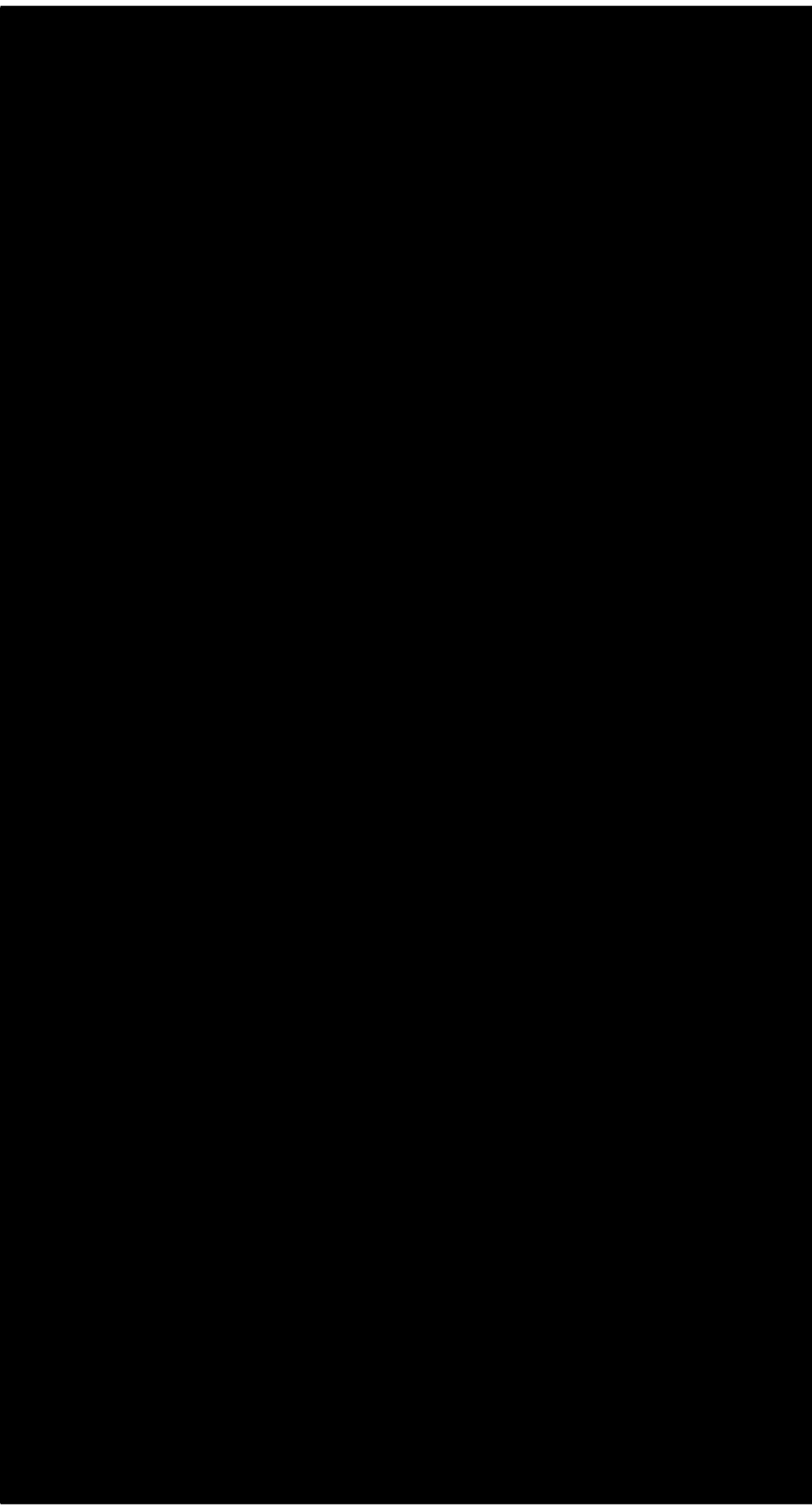
Supplier Periodic Assessment of Contract Price

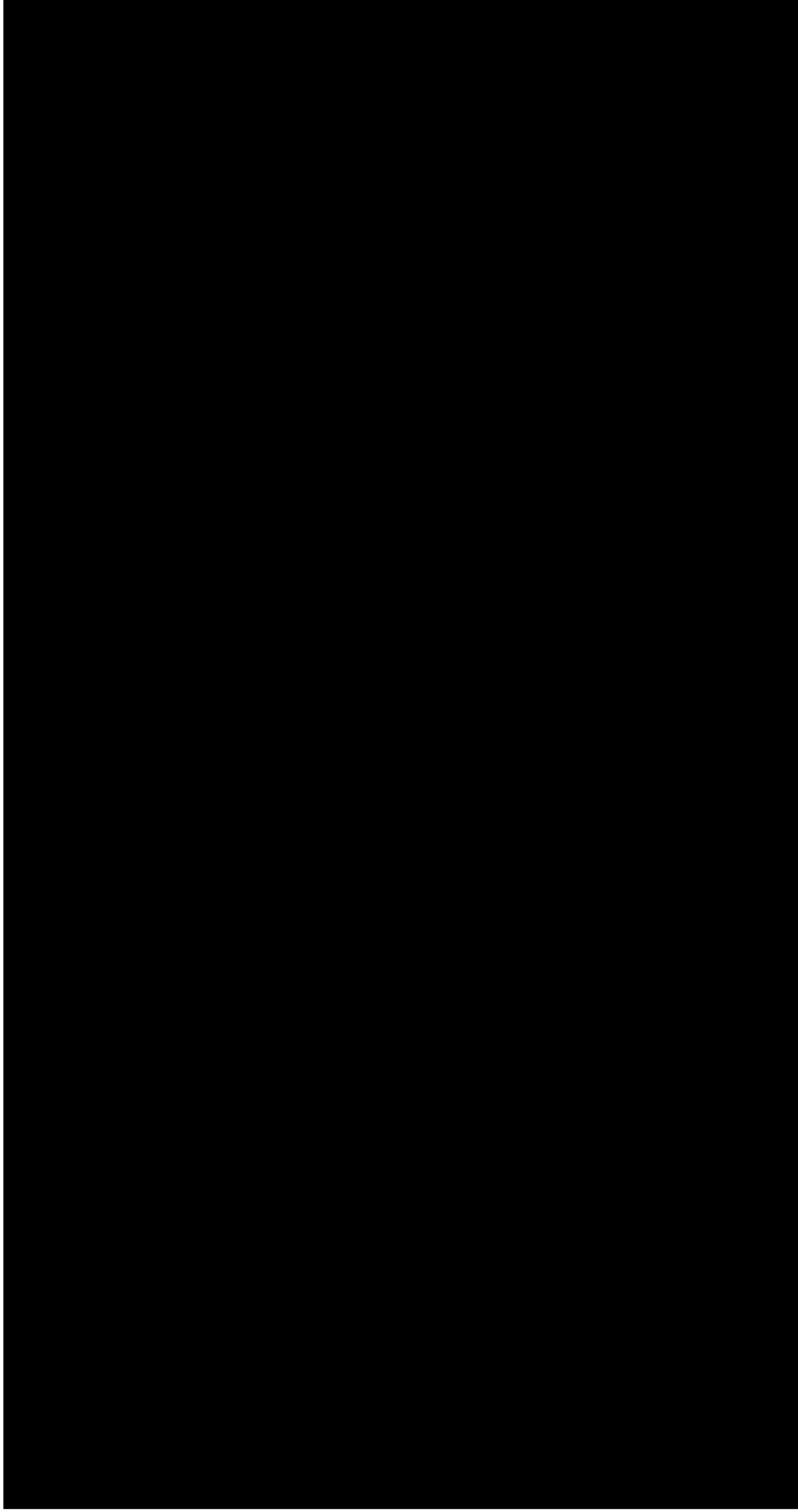
- 30. Every twelve (12) Months during the Contract Period, the Contractor shall assess the level of the Contract Price to consider whether it is able to reduce them.
- 31. Such assessments by the Contractor under paragraph 30 of this Schedule shall be carried out on the anniversary of the Contract Commencement 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.

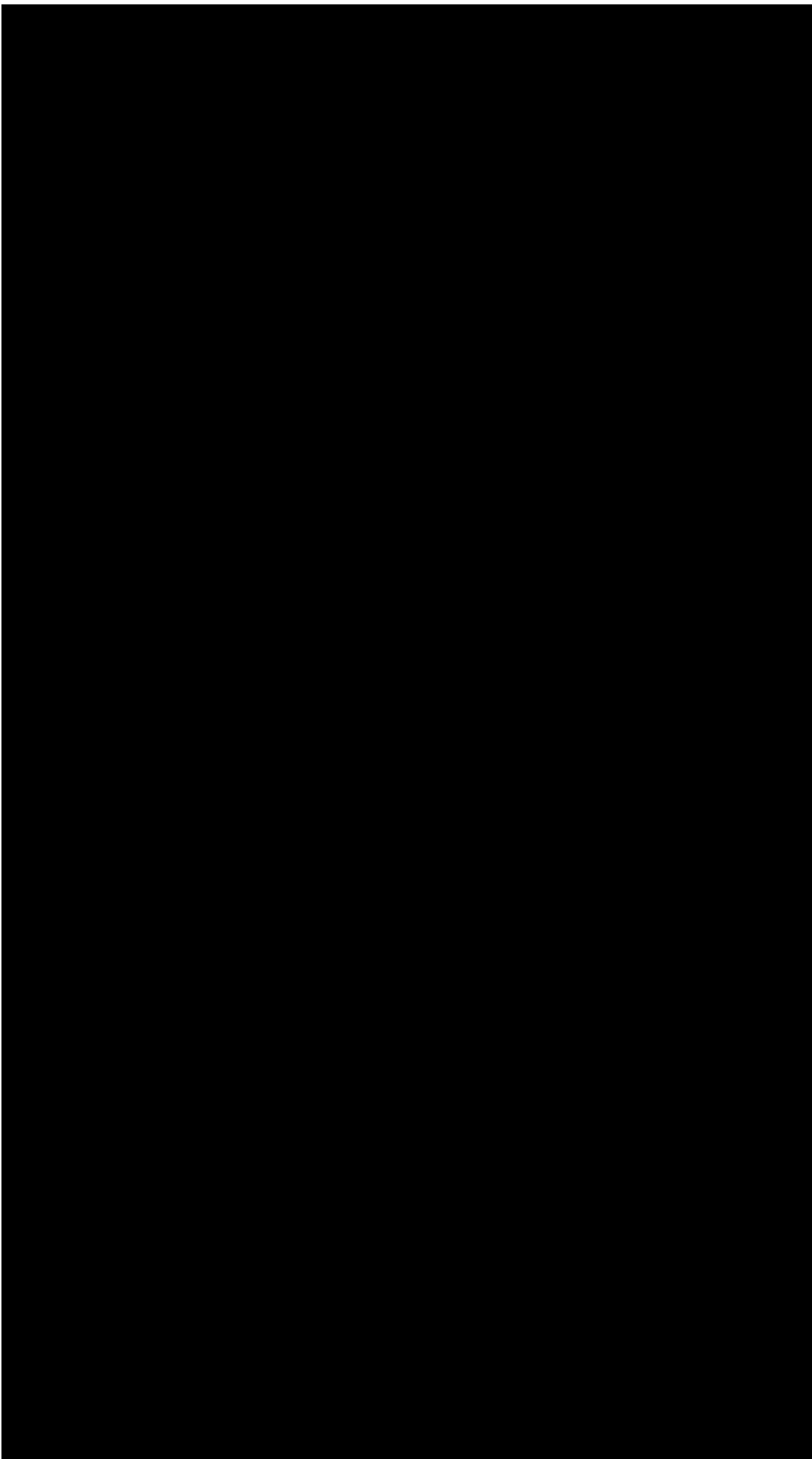
Implementation of Adjusted Contract Price

- 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 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 required performance level will be considered a "Service Failure" in respect of the KPIs set out in Table 1 below
- 8 If performance level is a Service Failure in one or more of KPIs 1-3 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. The percentage Service Credit that will apply is set out in the following table. The percentages apply to the Charges for the previous 12 months.

KPI Number	30 September 2019	30 September 2020	30 September 2021	30 September 2022
1	Max 2.5% (2019 Cohort)	Max 2.5% (2020 Cohort)	-	-
2	-	Max 2.5% (2019 Cohort)	Max 2.5% (2020 Cohort)	-
3	-	-	Max 2.5% (2019 Cohort)	Max 2.5% (2020 Cohort)
Total %	2.5%	5%	5%	2.5%

- 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 Number	KPI	Measure	Monitoring method	Financial Consequence
1	Recruitment	100% successful recruitment of 100 participants to each cohort. Measure is taken at the point a participant starts the programme. Measured annually at end of September 2019 and end of September 2020.	Monthly monitoring during the recruitment cycle Success against target will be measured for each cohort.	90% - 100% of target = 0% 80% - 89% of target = 1.25% Below 80% of target = 2.5%
2	Retention Year 1	At least 85% of participants that start the programme achieve Qualified Teacher Status by end of year one ¹ . Measured annually in September 2020 and September 2021.	Monthly monitoring during the programme. Success against target will be measured for each cohort.	90% - 100% of target = 0% 80% - 89% of target = 1.25% Below 80% of target = 2.5%
3	Retention Year 2	At least 75% of participants achieving Qualified Teacher Status by end of year one complete their NQT induction by end of year two ² . Measured annually in September 2021 and September 2022.	Monthly monitoring during the programme. Success against target will be measured for each cohort.	90% - 100% of target = 0% 80% - 89% of target = 1.25% Below 80% of target = 2.5%
4	Programme Quality	70% of participants, providers and schools provide feedback . Measured annually.	Feedback and timing at the discretion of the supplier	No
5	Contract Management and Reporting	100% of management information returns, including invoices, for the purposes of contract management and audit, submitted on time and in full. Measured annually in September each year	Monthly Meeting and reports to be produced by the supplier	No

¹ Participants that have deferred/delayed QTS will be excluded from this calculation

² Participants that have delayed NQT completion (eg those employed Part Time) will be excluded from this calculation

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.

