

## **Schedule 12: Benchmarking (Not Applicable)**

## Schedule 13: Contract Management

### 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

**"Project Manager"** the manager appointed in accordance with paragraph 2.1 of this Schedule;

### 2. Project Management

- 2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
- 2.3 Without prejudice to paragraph 4 below, the Parties agree to operate the governance specified as set out in the Annex to this Schedule.

### 3. Role of the Supplier Project Manager

- 3.1 The Supplier Project Manager shall be:
- 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
  - 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
  - 3.1.3 able to cancel any delegation and recommence the position themselves; and
  - 3.1.4 replaced only after the Buyer has received notification of the proposed change.
- 3.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to the Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

#### **4. Role of the Programme Management Board**

- 4.1 The Programme Management Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 The Programme Management Board frequency and purpose are set out in Annex A to the Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed Programme Management Board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed).
- 4.4 Each Party shall ensure that its Programme Management Board members shall make all reasonable efforts to attend the Programme Management Board meetings at which that Programme Management Board member's attendance is required. If any Programme Management Board member is not able to attend an Programme Management Board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Programme Management Board meeting in their place (wherever possible) and that the delegate is properly briefed and prepared and that they are debriefed by such delegate after the Programme Management Board meeting.
- 4.5 The purpose of the Programme Management Board meetings will be to review the Supplier's performance under this Contract, including the Performance Monitoring Report, and agree any decisions that require mutual agreement from the Supplier and Buyer Representative. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier at least two (2) Working Days in advance of that meeting. The Supplier may request agenda items to be added for discussion.

#### **5. Additional meetings**

- 5.1 Each Party shall ensure that it any members of the additional meetings detailed in Annex A to this Schedule shall make all reasonable efforts to attend the meetings at which their attendance is required. If any required member is not able to attend a meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the meeting in their place (wherever possible) and that the delegate is properly briefed and prepared and that they are debriefed by such delegate after the meeting.

#### **6. Contract Risk Management**

- 6.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.

- 6.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
  - 6.2.1 the identification and management of risks;
  - 6.2.2 the identification and management of issues; and
  - 6.2.3 monitoring and controlling project plans.
- 6.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 6.4 The Supplier will maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

## Annex: Boards and meetings

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

Board/Meeting name	Purpose	Frequency
Programme Management Board	To monitor the performance of the Contract and formalise decisions impacting delivery of the Contract.	Monthly
Annual Performance Meeting	To discuss and agree content within the Contract Year Performance Report and Maths Hub Annual Performance Report.	Within 2 months after the end of the Contract Year, or two months before the end of the Contract.
KIT meetings	To discuss and agree day-to-day management and/or the Supplier's future policy changes (confirmed or potential) which impact the delivery of the Contract and/or Maths Hub programme/.	Monthly
Ad hoc meetings	To make informal or formal decisions, or provide direction for, the day-to-day management of the Contract and/or the Maths Hub Programme but which do not require input from Senior authority within the Buyer or Supplier.	As appropriate

## Schedule 14: Business Continuity and Disaster Recovery

### 1. DEFINITIONS

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Business Continuity and Disaster Recovery Plan" or "BCDR Plan"</b>	has the meaning given to it in Paragraph 2.1 of this Schedule;
<b>"Business Continuity Plan"</b>	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
<b>"Disaster Recovery Deliverables"</b>	the Deliverables embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
<b>"Disaster Recovery Plan"</b>	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
<b>"Disaster Recovery System"</b>	the system embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
<b>"Related Supplier"</b>	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
<b>"Review Report"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule; and
<b>"Supplier's Proposals"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule;

### 2. BCDR Plan

2.1 No later than two (2) Months after the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan BCDR Plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- 2.1.1 ensure continuity of the business processes and operations supported by the Deliverables following any failure or disruption of any element of the Deliverables; and
- 2.1.2 the recovery of the Deliverables in the event of a Disaster.

2.2 The BCDR Plan shall be divided into three sections:

- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;

- 2.2.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
- 2.2.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 3. **General Principles of the BCDR Plan (Section 1)**
- 3.1 Section 1 of the BCDR Plan shall:
  - 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
  - 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
  - 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
  - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
  - 3.1.6 contain a risk analysis, including:
    - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
    - (b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
    - (c) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
    - (d) a business impact analysis of different anticipated failures or disruptions;
  - 3.1.7 provide for documentation of processes, including business processes, and procedures;
  - 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
  - 3.1.9 identify the procedures for reverting to "normal service";

- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
  - 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
  - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Measures or Performance Levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

#### **4. Business Continuity (Section 2)**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Deliverables including:
  - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
  - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
  - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;



- 4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Measures or Performance Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
- 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

## **5. Disaster Recovery (Section 3)**

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Deliverables following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Supplier's Disaster Recovery Plan shall include an approach to disaster recovery that addresses the following:
  - 5.2.1 loss of access to the Buyer Premises;
  - 5.2.2 loss of utilities to the Buyer Premises;
  - 5.2.3 loss of the Supplier's helpdesk or CAFM system;
  - 5.2.4 loss of a Subcontractor;
  - 5.2.5 emergency notification and escalation process;
  - 5.2.6 contact lists;
  - 5.2.7 staff training and awareness;
  - 5.2.8 BCDR Plan testing;
  - 5.2.9 post implementation review process;
  - 5.2.10 any applicable Performance Measures with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Performance Measures or Performance Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
  - 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
  - 5.2.13 testing and management arrangements.

## 6. Review and changing the BCDR Plan

### 6.1 The Supplier shall review the BCDR Plan:

- 6.1.1 on a regular basis and as a minimum once every six (6) Months;
- 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
- 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

### 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Deliverables which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.

### 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a **"Review Report"**) setting out the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.

### 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### 6.5 The Supplier shall as soon as reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

## **7. Testing the BCDR Plan**

### **7.1 The Supplier shall test the BCDR Plan:**

- 7.1.1 regularly and in any event not less than once in every Contract Year;
- 7.1.2 in the event of any major reconfiguration of the Deliverables; and
- 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).

### **7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.**

### **7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.**

### **7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.**

### **7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:**

- 7.5.1 the outcome of the test;
- 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
- 7.5.3 the Supplier's proposals for remedying any such failures.

### **7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.**

## **8. Invoking the BCDR Plan**

### **8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Buyer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.**

## **9. Circumstances beyond your control**

### **9.1 The Supplier shall not be entitled to relief under Clause 20 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.**

## **Schedule 15: Minimum Standards of Reliability (Not Applicable)**

## Schedule 16: Security

### Part A: Short Form Security Requirements

#### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

**"Breach of Security"** the occurrence of:

- any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or
- the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,

in either case as more particularly set out in the Security Policy where the Buyer has required compliance there with in accordance with Paragraph 2.1;

**"Security Management Plan"**

the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer no later than 1<sup>st</sup> September 2022, and as updated from time to time.

#### 2. Complying with security requirements and updates to them

- 2.1 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 2.2 Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 2.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Variation to the Buyer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.

- 2.4 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

### **3. Security Standards**

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
- 3.2.1 is in accordance with the Law and this Contract;
  - 3.2.2 as a minimum demonstrates Good Industry Practice;
  - 3.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and
  - 3.2.4 where specified by the Buyer in accordance with Paragraph 2.1 complies with the Security Policy and the ICT Policy.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

### **4. Security Management Plan**

- 4.1 Introduction
- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule, an example for which can be found in Annex 2. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.
- 4.2 Content of the Security Management Plan
- 4.2.1 The Security Management Plan shall:
    - (a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;
    - (b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
    - (c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) and any

system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;

- (d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Deliverables and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
- (f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with the Security Policy as set out in Paragraph 2.1; and
- (g) be written in plain English in language which is readily comprehensible to the Supplier Staff and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

#### 4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission,

the matter will be resolved in accordance with the Dispute Resolution Procedure.

4.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However, a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

4.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.

#### 4.4 Amendment of the Security Management Plan

4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:

- (a) emerging changes in Good Industry Practice;
- (b) any change or proposed change to the Deliverables and/or associated processes;
- (c) where necessary in accordance with Paragraph 2.2, any change to the Security Policy;
- (d) any new perceived or changed security threats; and
- (e) any reasonable change in requirements requested by the Buyer.

4.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include:

- (a) suggested improvements to the effectiveness of the Security Management Plan;
- (b) updates to the risk assessments; and
- (c) suggested improvements in measuring the effectiveness of controls.

4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.

4.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure



for the purposes of formalising and documenting the relevant change or amendment.

## **5. Security Breach**

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:
  - 5.2.1 immediately use all reasonable endeavours (which shall include any action or changes reasonably required by the Buyer) necessary to:
    - (a) minimise the extent of actual or potential harm caused by any Breach of Security;
    - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Deliverables to the extent within its control against any such Breach of Security or attempted Breach of Security;
    - (c) prevent an equivalent breach in the future exploiting the same cause failure; and
    - (d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.
- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with Paragraph 2.1 ) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

## **6. Malicious Software**

- 6.1 The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 6.2 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
- 6.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 6.2 shall be borne by the Parties as follows:

- 6.3.1 by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
- 6.3.2 by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

**Part B: Long Form Security Requirements (Not Used)**

## Annex 1: Departmental Security Standards

### 1. Definitions

<b>“BPSS”</b>	means the Government’s HMG Baseline Personal Security Standard. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a>
<b>“Baseline Personnel Security Standard”</b>	
<b>“CCSC”</b>	is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC’s standards.
<b>“Certified Cyber Security Consultancy”</b>	See website: <a href="https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy">https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</a>
<b>“CCP”</b>	is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website: <a href="https://www.ncsc.gov.uk/information/about-certified-professional-scheme">https://www.ncsc.gov.uk/information/about-certified-professional-scheme</a>
<b>“Certified Professional”</b>	
<b>“CPA”</b>	is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards.. See website: <a href="https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</a>
<b>“Commercial Product Assurance”</b>	
<b>[formerly called “CESG Product Assurance”]</b>	
<b>“Cyber Essentials”</b>	Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.
<b>“Cyber Essentials Plus”</b>	There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers: <a href="https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body">https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</a>

<b>“Data”</b>	shall have the meanings given to those terms by the Data Protection Act 2018
<b>“Data Controller”</b>	
<b>“Data Protection Officer”</b>	
<b>“Data Processor”</b>	
<b>“Personal Data”</b>	
<b>“Personal Data requiring Sensitive Processing”</b>	
<b>“Data Subject”, “Process” and “Processing”</b>	
<b>“Department’s Data”</b>	is any data or information owned or retained in order to meet departmental business objectives and tasks, including:
<b>“Department’s Information”</b>	<p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<b>“DfE”</b>	means the Department for Education
<b>“Department”</b>	
<b>“Departmental Security Standards”</b>	means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
<b>“Digital Marketplace / G-Cloud”</b>	means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.
<b>End User Devices</b>	means the personal computer or consumer devices that store or process information.
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as

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

<b>“OFFICIAL”</b>	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP).
<b>“OFFICIAL-SENSITIVE”</b>	the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP.
<b>“RBAC”</b> <b>“Role Based Access Control”</b>	means Role Based Access Control. A method of restricting a person’s or process’ access to information depending on the role or functions assigned to them.
<b>“Storage Area Network”</b> <b>“SAN”</b>	means an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage.
<b>“Secure Sanitisation”</b>	means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.  NCSC Guidance can be found at: <a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a>  The disposal of physical documents and hardcopy materials advice can be found at: <a href="https://www.cpni.gov.uk/secure-destruction">https://www.cpni.gov.uk/secure-destruction</a>
<b>“Security and Information Risk Advisor”</b> <b>“CCP SIRA”</b> <b>“SIRA”</b>	means the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: <a href="https://www.ncsc.gov.uk/articles/about-certified-professional-scheme">https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</a>
<b>“Senior Information Risk Owner”</b> <b>“SIRO”</b>	means the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arms length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.
<b>“SPF”</b> <b>“HMG Security Policy Framework”</b>	means the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.

## **2. Departmental Security Standards**

- 2.1. The Supplier shall be aware of and comply the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable DfE Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 2.2. Where the Supplier will provide products or services or otherwise handle information at OFFICIAL for the Department, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14](#) dated 25 May 2016, or any subsequent updated document, are mandated, namely that contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials Plus certification at the appropriate level for the Contract Period The certification scope shall be relevant to the services supplied to, or on behalf of, the Department.
- 2.3. Where clause 2.2 above has not been met, the Supplier shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements).  
  
The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 2.4. The Supplier shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service and will handle all data in accordance with its security classification. (In the event where the Supplier has an existing Protective Marking Scheme then the Supplier may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 2.5. Departmental Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Contractor's or sub-contractor's own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required in line with clause 2.3.
- 2.6. The Supplier shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.
- 2.7. The Supplier shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Departmental Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Departmental Data or systems shall be considered to be sensitive data and must be protected accordingly.
- 2.8. The Supplier shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to:

- physical security controls;
  - good industry standard policies and processes;
  - malware protection;
  - boundary access controls including firewalls, application gateways, etc;
  - maintenance and use of fully supported software packages in accordance with vendor recommendations;
  - use of secure device configuration and builds;
  - software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
  - user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
  - any services provided to the department must capture audit logs for security events in an electronic format at the application, service and system level to meet the department's logging and auditing requirements, plus logs shall be:
    - retained and protected from tampering for a minimum period of six months;
    - made available to the department on request.
- 2.9. The Supplier shall ensure that any departmental data (including email) transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 2.10. The Supplier shall ensure that any departmental data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Department except where the Department has given its prior written consent to an alternative arrangement.
- 2.11. The Supplier shall ensure that any device which is used to process departmental data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>
- 2.12. Whilst in the Supplier's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation. The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".
- 2.13. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises. The term 'under cover'



means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.

- 2.14. In the event of termination of contract due to expiry, liquidation or non-performance, all information assets provided, created or resulting from the service shall not be considered as the Supplier's assets and must be returned to the department and written assurance obtained from an appropriate officer of the supplying organisation that these assets regardless of location and format have been fully sanitised throughout the organisation in line with clause 2.14.
- 2.15. In the event of termination, equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored by the Supplier must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Supplier or Sub-contractor shall protect the Department's information and data until such time, which may be long after the end of the contract, when it can be securely cleansed or destroyed. Evidence of secure destruction will be required in all cases.
- 2.16. Access by Supplier or Sub-contractor staff to Departmental Data, including user credentials, shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Supplier or Sub-contractor staff must complete this process before access to Departmental Data is permitted. Any Supplier or Sub-contractor staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact.
- 2.17. All Supplier or Sub-contractor employees who handle Departmental Data shall have annual awareness training in protecting information.
- 2.18. The Supplier shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the Supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Supplier has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 2.19. Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data, including user credentials, used or handled in the course of providing this service shall be recorded as an incident. This includes any non-

compliance with these Departmental Security Standards for Suppliers, or other Security Standards pertaining to the solution.

- Incidents shall be reported to the department immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If incident reporting has been delayed by more than 24 hours, the contractor should provide an explanation about the delay.
- Incidents shall be reported through the department's nominated system or service owner.
- Incidents shall be investigated by the contractor with outcomes being notified to the Department.

2.20. The Supplier shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.

2.21. The Supplier or Sub-contractors providing the service will provide the Department with full details of any actual or future intent to develop, manage, support, process or store Departmental Data outside of the UK mainland. The Supplier or Sub-contractor shall not go ahead with any such proposal without the prior written agreement from the Department.

2.22. The Department reserves the right to audit the Supplier or Sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Supplier's, and any Sub-contractors', compliance with the clauses contained in this Section.

2.23. The Supplier and Sub-contractors shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the Department. This will include obtaining any necessary professional security resources required to support the Supplier's and Sub-contractor's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes.

2.24. Where the Supplier is delivering an ICT solution to the Department they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Departmental Policy. The Supplier will provide the Department with evidence of compliance for the solutions and services to be delivered. The Department's expectation is that the Supplier shall provide written evidence of:

- Compliance with HMG Minimum Cyber Security Standard.
- Any existing security assurance for the services to be delivered, such as:

ISO/IEC 27001 / 27002 or an equivalent industry level certification.

- Any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.
- Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Supplier shall provide details of who the awarding body or organisation will be and date expected.

2.25. The Supplier shall contractually enforce all these Departmental Security Standards for Suppliers onto any third-party suppliers, Sub-contractors or partners who could potentially access Departmental Data in the course of providing the Deliverables.

## Annex 2: Security Management Plan

### Security Management Plan Template

<Insert Project Name>    <Insert Prime Supplier Name>

#### Executive Summary

*<This section should contain a brief summary of the business context of the system, any key IA controls, the assurance work done, any off-shoring considerations and any significant residual risks that need acceptance.>*

#### System Description

##### Background

*< A short description of the project/product/system. Describe its purpose, functionality, aim and scope.>*

##### Organisational Ownership/Structure

*< Who owns the system and operates the system and the organisational governance structure. This should include how any ongoing security management is integrated into the project governance e.g. how a Security Working Group reports to the project board.>*

##### Information assets and flows

*<The information assets processed by the system which should include a simple high level diagram on one page. Include a list of the type and volumes of data that will be processed, managed and stored within the supplier system. If personal data, please include the fields used such as name, address, department DOB, NI number etc.>*

##### System Architecture

*<A description of the physical system architecture, to include the system management. A diagram will be needed here>*

##### Users

*<A brief description of the system users, to include HMG users as well as any service provider users and system managers. If relevant, security clearance level requirements should be included.>*

##### Locations

*<Where the data assets are stored and managed from. If any locations hold independent security certifications (e.g. ISO27001:2013) these should be noted. Any off-shoring considerations should be detailed.>*

##### Test and Development Systems

*<Include information about any test and development systems, their locations and whether they contain live system data.>*

## Key roles and responsibilities

*<A brief description of the lead security roles such as that of the SIRO, IAO, Security manager, Accreditor >*

## Risk Assessment

### Accreditation/Assurance Scope

*<This section describes the scope of the Accreditation/Assurance for the system. The scope of the assurance assessment should be clearly indicated, with components of the architecture upon which reliance is placed but assurance will not be done clearly shown e.g. a cloud hosting service. A logical diagram should be used along with a brief description of the components.>*

### Risk appetite

*<A risk appetite should be agreed with the SIRO/SRO and included here.>*

### Business impact assessment

*< A description of the information assets and the impact of their loss or corruption (e.g. large amounts of Official Sensitive personal data the loss of which would be severely damaging to individuals, embarrassing to HMG, and make HMG liable to ICO investigations) in business terms should be included. This section should cover the impact on loss of confidentiality, integrity and availability of the assets. The format of this assessment may be dependent on the risk assessment method chosen.>*

### Risk assessment

*<The content of this section will depend on the risk assessment methodology chosen, but should contain the output of the formal information risk assessment in a prioritised list using business language. Experts on the system and business process should have been involved in the risk assessment to ensure the formal risk methodology used has not missed out any risks. The example table below should be used as the format to identify the risks and document the controls used to mitigate those risks. >*

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening	Very low

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
				C4: Protective monitoring C5: Application access control C16: Anti-virus for incoming files C54: Files deleted when processed C59: Removal of departmental identifier	
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing	Very low
R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users bank details can be altered as part of the normal business function.	C12. System administrators hold SC clearance. C13. All changes to user information are logged and audited. C14. Letters are automatically sent to users home addresses when bank details are altered.	Low



Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
				C15. Staff awareness training	

#### Controls

*<The controls listed above to mitigate the risks identified should be detailed. There should be a description of each control, further information and configuration details where relevant, and an assessment of the implementation status of, and assurance in, the control. A sample layout is included below.>*

ID	Control title	Control description	Further information and assurance status
C1	Internet-facing firewalls	Internet-facing firewalls are in place between the internet and the system', which restrict access from the internet to the required ports only.	Assured via ITHC firewall rule check
C2	Internet-facing IP whitelist	An IP whitelist is in place for all access from the internet.	Assured via ITHC
C15	Staff awareness training	All staff must undertake annual security awareness training and this process is audited and monitored by line managers.	Assured as part of ISO27001 certification

#### Residual risks and actions

*<A summary of the residual risks which are likely to be above the risk appetite stated after all controls have been applied and verified should be listed with actions and timescales included.>*

#### In-service controls

*< This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or*

*maintained ISO27001 certification should be included. This section should include at least:*

- (a) information risk management and timescales and triggers for a review;*
- (b) contractual patching requirements and timescales for the different priorities of patch;*
- (c) protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;*
- (d) configuration and change management;*
- (e) incident management;*
- (f) vulnerability management;*
- (g) user access management; and*
- (h) data sanitisation and disposal.>*

### **Security Operating Procedures (SyOPs)**

*< If needed any SyOps requirements should be included and referenced here.>*

### **Major Hardware and Software and end of support dates**

*< This should be a table which lists the end of support dates for hardware and software products and components. An example table is shown below.>*

Name	Version	End of mainstream Support/Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

### **Incident Management Process**

*<The suppliers' process, as agreed with the Authority/Customer, should be included here. It must as a minimum include the protocol for how and when incidents will be reported to the Authority/customer and the process that will be undertaken to mitigate the incidents and investigate the root cause.>*

### **Security Requirements for User Organisations**

*<Any security requirements for connecting organisations or departments should be included or referenced here.>*



## Required Changes Register

*<The table below shows the headings for the Required Changes Register which should be maintained and used to update the contents of this document at least annually.>*

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status
1	6.4	A new Third Party supplier XXXX will be performing the print capability.	Authority name	11/11/2018	Jul-2019	Open

## Personal Data Processing Statement

*<This should include: (i) the types of Personal Data which the Supplier and/or its Sub-contractors are Processing on behalf of the Authority; (ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors are Processing on behalf of the Authority; the nature and purpose of such Processing; (iii) the locations at which the Supplier and/or its Subcontractors Process Authority Data; and, (iv) the Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect the Authority Data against a Security Breach including a Personal Data Breach.>*

## Annex A. ISO27001 and/or Cyber Essential Plus certificates

*<Any certifications relied upon should have their certificates included>*

## Annex B. Cloud Security Principles assessment

*<A spreadsheet may be attached>*

## Annex C. Protecting Bulk Data assessment if required by the Authority/Customer

*<A spreadsheet may be attached>*

## Annex D. Latest ITHC report and Vulnerability Correction Plan

## **Schedule 17: Service Recipients (Not Applicable)**

## Schedule 18: Supply Chain Visibility

### 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Contracts Finder"</b>	The Government's publishing portal for public sector procurement opportunities; and
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises.

### 2. Visibility of Sub-Contract Opportunities in the Supply Chain

- 2.1 The Supplier shall:
- 2.1.1 subject to Paragraph 2.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;
  - 2.1.2 within 30 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;
  - 2.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
  - 2.1.4 provide reports on the information at Paragraph 2.1.3 to the Buyer in the format and frequency as reasonably specified by the Buyer in Schedule 27 (Key Subcontractors); and
  - 2.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 2.2 Each advert referred to at Paragraph 2.1.1 of this Schedule 18 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 2.3 The obligation on the Supplier set out at Paragraph 2.1 shall only apply in respect of Sub-Contract opportunities arising after the Start Date.

- 2.4 Notwithstanding Paragraph 2.1, the Buyer may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

### **3. Visibility of Supply Chain Spend**

- 3.1 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “SME Management Information Reports”) to the Buyer which incorporates the data described in the Supply Chain Information Report Template which is:
- (a) the total contract revenue received directly on the Contract;
  - (b) the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
  - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 3.2 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Buyer from time to time. The Supplier agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Paragraph 3.1(a) –(c) and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Buyer issuing a replacement version. The Buyer agrees to give at least thirty (30) days’ notice in writing of any such change and shall specify the date from which it must be used.
- 3.3 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Buyer.

## Annex 1: Supply Chain Information Report template



Supply Chain Information  
Report template

### SME Data Collection Guidance

The UK government has made a commitment that 33% of central government procurement spend should go to Small and Medium-sized Enterprises (SMEs), either directly or via the supply chain, before the end of this parliament (2022). To support this key agenda item and to measure progress, the UK government is now requesting that from 1 April 2018 all new contracts valued over £5 million per annum provide data on supply chain spend.

Guidance about the data required is provided below.

- 1) When answering the survey please endeavour to answer every section in full to the best of your knowledge.
- 2) Please only report on the relevant contract - do not include spend you have with the departments on other contracts

Questions A1-A3: Please specify the numbers in full. All figures should be in GBP pounds sterling. Please see an example of how to complete the questions below.

#### **A1. Total contract revenue (£) received directly from selected department including arms length bodies (ALBs).**

Supplier X has received £1,200,000 revenue directly from the selected department within the requested financial reporting period. Enter £1,200,000 for question A1.

#### **A2. Total value of subcontracted revenues (£),** (Please note that this is the total value of all sub-contracted revenues for SMEs and non-SMEs).

Of the £1,200,000 Supplier X received directly from the selected department, £50,000 was subcontracted to SMEs and £140,000 was subcontracted to organisations not covered by the definition of an SME. Enter £190,000 for question A2.

#### **A3. Total value of subcontracted revenues to SMEs (£)**

Of the £1,200,000 Supplier X received from the selected department, £50,000 was subcontracted to an SME. Enter £50,000 for question A3.

In the event we need to contact you about your return, please provide your full contact details. Please provide details of the preferred contact for future reporting (if different).



Please also provide your DUNS Number. The Data Universal Numbering System (DUNS) is a system developed and regulated by Dun & Bradstreet which assigns a unique numeric identifier, referred to as a 'DUNS Number' to a single business entity.

#### Definitions and Interpretations:

- (a) **Department(s)** – means central government department that you have a contract with.
- (b) **Supplier(s)** – means a company or organisation that sells or supplies goods or services not limited to the UK.
- (c) **SMEs** – means Suppliers with less than 250 employees and whose annual turnover does not exceed €50m or annual balance sheet total does not exceed €43m. The organisation also has to be autonomous.
- (d) **Autonomous** – means that the SME does not have more than 25% of its capital or voting rights owned by an organisation or multiple organisations that themselves do not meet the definition of a SME.
- (e) **Contract Revenue** – means the monetary value (Excl VAT) received through a contract between you and a Central Government Department or its ALBs.
- (f) **Subcontracted Revenue** – means the monetary value of the contract (Excl VAT) that has been passed to a supplier within the supply chain. It should not include the suppliers overhead expenditure e.g. cleaning services, that might be provided by an SME.
- (g) **Supply Chain** – means all suppliers that are involved in the production, handling, provision and /or distribution of any part of the contract.
- (h) **Contract** – means the commercial agreement between the department or its Arms Length Bodies and the supplier for the provision of goods or services.

Organisation name:	Financial Year:	
Department:	£	%
Contract Name:		
A1. Total contract revenue (£) received directly from selected contract.	£	%
A2. Total value of subcontracted revenues (£)	£	%
A3. Total value of subcontracted revenues to SMEs (£)	£	%

Data Provided by:	
Name	
Organisation	
DUNNS number	
Email	
Phone	
Date	

## Schedule 19: Cyber Essentials Scheme

### 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Cyber Essentials Scheme"</b>	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a>
<b>"Cyber Essentials Certificate"</b>	Cyber Essentials Plus Certificate to be provided by the Supplier as set out in the Award Form
<b>"Cyber Essential Scheme Data"</b>	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme
<b>"Cyber Essentials Plus Certificate"</b>	the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

### 2. What Certification is required

- 2.1 The Supplier must provide a Cyber Essentials Plus Certificate or recognised equivalent prior to the Operational Deliverable Commencement Date to provide the appropriate assurance level to the Buyer. Where the Supplier fails to comply with this Paragraph 2.1 it shall be prohibited from commencing the provision of Deliverables under the Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.
- 2.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Contract Period of the Contract the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Plus Certificate or recognised equivalent on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.

- 2.3 Where the Supplier is due to Process Cyber Essentials Scheme Data after the Start Date of the Contract but before the end of the Contract Period, the Supplier shall deliver to the Buyer evidence of:
- 2.3.1 a valid and current Cyber Essentials Plus Certificate or recognised equivalent before the Supplier Processes any such Cyber Essentials Scheme Data; and
  - 2.3.2 renewal of the valid Cyber Essentials Plus Certificate or recognised equivalent on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.
- 2.4 In the event that the Supplier fails to comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer reserves the right to terminate this Contract for material Default.
- 2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under Paragraph 2.1 of this Schedule.
- 2.6 This Schedule shall survive termination or expiry of this Contract.



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## Schedule 21: Variation Form

This form is to be used in order to change a contract in accordance with Clause 24 of the Core Terms (Changing the Contract)

Contract Details		
This variation is between:	The Secretary of State for Education (" <b>the Buyer</b> ") And Tribal Education Limited (" <b>the Supplier</b> ")	
Contract name:	The National Centre for Excellence in the Teaching of Mathematics (NCETM) Mid-Tier Contract for the delivery and support of a national network of Maths Hubs with the aim of improving mathematics teaching and attainment in England. ( <b>"the Contract"</b> )	
Contract reference number:	[insert contract reference number]	
Details of Proposed Variation		
Variation initiated by:	[delete as applicable: Buyer/Supplier]	
Variation number:	[insert variation number]	
Date variation is raised:	[insert date]	
Proposed variation		
Reason for the variation:	[insert reason]	
An Impact Assessment shall be provided within:	[insert number] days	
Impact of Variation		
Likely impact of the proposed variation:	[Supplier to insert assessment of impact]	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: [Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]	
Financial variation:	Original Contract Value:	£ [insert amount]
	Additional cost due to variation:	£ [insert amount]

	New Contract value:	£ <b>[insert amount]</b>
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This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Buyer

Words and expressions in this Variation shall have the meanings given to them in the Contract.

The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Signed by an authorised signatory for and on behalf of the Buyer**

Signature

Date

Name (in Capitals)

Address

**Signed by an authorised signatory to sign for and on behalf of the Supplier**

Signature

Date

Name (in Capitals)

Address

## Schedule 22: Insurance Requirements

### 1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

### 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### 3. What happens if you aren't insured

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which

would entitle any insurer to refuse to pay any claim under any of the Insurances.

- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

**4. Evidence of insurance you must provide**

- 4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

**5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity.

**6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

**7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of the Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in

excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.

- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **Annex 1: Required Insurances**

1. The Supplier shall hold the following insurance cover from the Start Date in accordance with this Schedule:
  - 1.1 professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000);
  - 1.2 public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000); and
  - 1.3 employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000).

## Schedule 23: Guarantee

### 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

**"Guarantee"** a deed of guarantee in favour of a Buyer in the form set out in the Annex to this Schedule; and

**"Guarantor"** the person acceptable to a Buyer to give a Guarantee;

### 2. Guarantee

- 2.1 Where a Buyer has notified the Supplier that the award of the Contract by the Buyer shall be conditional upon receipt of a valid Guarantee, then, on or prior to the execution of the Contract, as a condition for the award of that Contract, the Supplier shall deliver to the Buyer:

2.1.1 an executed Guarantee from a Guarantor; and

2.1.2 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.

- 2.2 Where a Buyer has procured a Guarantee from the Supplier under Paragraph 1 above, the Buyer may terminate the Contract for material Default where:

2.2.1 the Guarantor withdraws the Guarantee for any reason whatsoever;

2.2.2 the Guarantor is in breach or anticipatory breach of the Guarantee;

2.2.3 an Insolvency Event occurs in respect of the Guarantor;

2.2.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever; or

2.2.5 the Supplier fails to provide the documentation required by Paragraph 2.1 by the date so specified by the Buyer;

2.2.6 and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Buyer.

## **Annex 1: Form of Guarantee**

**TRIBAL GROUP PLC**

**- AND -**

**SECRETARY OF STATE FOR EDUCATION**

**DEED OF GUARANTEE**



## DEED OF GUARANTEE

**THIS DEED OF GUARANTEE** is made the                      day of                      2022

### PROVIDED BY:

Tribal Group Plc a company incorporated in England and Wales with number 04128850 whose registered office is at Kings Orchard Queen Street, St, Philips. Bristol BS2 0HQ ("**Guarantor**")

### WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

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

### 1. Definitions and interpretation

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

<b>"Beneficiary(s)"</b>	means the Secretary of State for Education;
<b>"Deliverables"</b>	has the enhancing given to it in the Contract;

<b>"Goods"</b>	has the meaning given to it in the Contract;
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<b>"Guaranteed Agreement"</b>	means the contract with Contract reference CON_13851 for the Deliverables dated on or about the date hereof made between the Beneficiary and the Supplier;
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<b>"Guaranteed Obligations"</b>	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
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<b>"Supplier"</b>	means Tribal Education Limited, Kings Orchard, One Queen Street, Bristol, BS2 0HQ, registration number 04163300.
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- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

## **2. Guarantee and indemnity**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally

undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

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

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

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

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

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

### **4. Demands and notices**

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

Tribal Group PLC, Kings Orchard, One Queen Street, Bristol BS2 0HQ

For the Attention of Mark Pickett, Chief Executive Officer

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

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

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post.

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

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

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

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

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

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

5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove

to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
- 5.8 The Guarantor shall afford any auditor of the Beneficiary appointed under the Guaranteed Agreement access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of

the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

## **6. Guarantor Intent**

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

## **7. Rights Of Subrogation**

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

- 7.1.1 of subrogation and indemnity;
- 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

## **8. DEFERRAL OF RIGHTS**

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- 8.1.1 exercise any rights it may have to be indemnified by the Supplier;
- 8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
- 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
- 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

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

## **9. REPRESENTATIONS AND WARRANTIES**

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

## **10. PAYMENTS AND SET-OFF**

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

## **11. GUARANTOR'S ACKNOWLEDGEMENT**

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

## **12. ASSIGNMENT**

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

## **13. SEVERANCE**

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

## **14. THIRD PARTY RIGHTS**

Other than the Beneficiary, a person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.



## **15. SURVIVAL**

This Deed of Guarantee shall survive termination or expiry of the Guaranteed Agreement.

## **16. GOVERNING LAW**

- 16.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 16.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 16.4 The Guarantor hereby irrevocably designates, appoints and empowers the Supplier at its registered office from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.

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

EXECUTED as a DEED by

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

Director

Director/Secretary

## Schedule 24: Financial Difficulties

### 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>“Applicable Financial Indicators”</b>	means the financial indicators from Annex 1 which are to apply to the FDE Group Members as set out in Annex 2;
<b>"Financial Distress Service Continuity Plan"</b>	a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with the Contract in the event that a Financial Distress Event occurs. This plan should include what the Buyer would need to put in place to ensure performance and delivery of the Deliverables in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity;
<b>“Financial Indicators”</b>	in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at Annex 1; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;
<b>“Financial Target Thresholds”</b>	means the target thresholds for each of the Financial Indicators set out at Annex 1; and
<b>“Primary Metric”</b>	financial indicators pursuant to Paragraph 3.4.

### 2. When this Schedule applies

- 2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the FDE Group and the consequences of a change to that financial standing.
- 2.2 The terms of this Schedule shall survive under the Contract during the Contract Period.

### 3. Financial Indicators

- 3.1 The Supplier shall monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Annex 1 (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the accounting reference date.

- 3.2 Subject to the calculation methodology set out at Annex 1 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as set out in Appendix I: *Standard Financial Ratios of Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers – May 2021* (as amended, supplemented or replaced from time to time) which as at the Start Date can be found at:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/987132/Assessing and monitoring the economic and financial standing of suppliers guidance note May 2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987132/Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf)
- 3.3 Each report submitted by the Supplier pursuant to Paragraph 3.1 shall:
- 3.3.1 be a single report with separate sections for each of the FDE Group entities;
  - 3.3.2 contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
  - 3.3.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes; and
  - 3.3.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable.
- 3.4 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 6 if financial indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:
- 3.4.1 a report submitted by the Supplier pursuant to Paragraph 3.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for any one of the Financial Indicators set out in Annex 1 of this Schedule;
  - 3.4.2 a report submitted by the Supplier pursuant to Paragraph 5.1 does not comply with the requirements set out in Paragraph 3.3; or
  - 3.4.3 the Supplier does not deliver a report pursuant to Paragraph 3.1 in accordance with the applicable monitoring and reporting frequency.

#### **4. What happens if there is a financial distress event**

- 4.1 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 4.2 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 4.4 to 4.6.
- 4.3 In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 4.4 without first giving the Supplier ten (10) Working Days to:
  - 4.3.1 rectify such late or non-payment; or
  - 4.3.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.4 The Supplier shall (and shall procure that each Additional FDE Group Member shall):
  - 4.4.1 at the request of the Buyer meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of the Contract and delivery of the Deliverables in accordance the Contract; and
  - 4.4.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 4.4.1) that the Financial Distress Event could impact on the continued performance of the Contract and delivery of the Deliverables in accordance with the Contract:
    - (a) submit to the Buyer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event);
    - (b) use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information

relating to that Additional FDE Group Member to the Buyer; and

- (c) provide such financial information relating to FDE Group entity as the Buyer may reasonably require.

4.5 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is either:

- 4.5.1 Approved;
- 4.5.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Service Continuity Plan has not been Approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Service Continuity Plan (to be held within 28 days of the date of the notice); or
- 4.5.3 finally rejected by the Buyer.

4.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:

- 4.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance the Contract and delivery of the Deliverables in accordance with the Contract;
- 4.6.2 provide a written report of the results of each review and assessment carried out under Paragraph 4.6.1 to the Buyer;
- 4.6.3 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 4.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
- 4.6.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.6.

## **5. When the Buyer can terminate for financial distress**

- 5.1 The Buyer shall be entitled to terminate this Contract for material Default if:
- 5.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 4.1;
  - 5.1.2 the Supplier fails to comply with any part of Paragraph 4.4;
  - 5.1.3 subject to Paragraph 5.2, the Buyer finally rejects a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.5.3;
  - 5.1.4 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not meet within 28 days of the date of the notice of referral pursuant to Paragraph 4.5.2;
  - 5.1.5 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not agree the Financial Distress Service Continuity Plan after it has been referred pursuant to Paragraph 4.5.2; and/or
  - 5.1.6 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.4.
- 5.2 A material Default may only occur under Paragraph 5.1.3 after the expiry of the first five (5) Working Days period for the Supplier to submit a revised draft of the first draft of the Financial Distress Service Continuity Plan starting on and from the date on which the Buyer first notified the Supplier that Supplier must submit a revised draft of the first draft Financial Distress Service Continuity Plan.

## **6. What happens If your Primary Metric is still good**

Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 4, if, following the occurrence of a Financial Distress Event, the Supplier evidences to the Buyer's satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then:

- 6.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.4 to 4.6; and
- 6.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.4.2.

# ANNEX 1: FINANCIAL INDICATORS

## Financial Indicators

Financial Indicator	Calculation <sup>1</sup>	Financial Target Threshold:	Monitoring and Reporting Frequency
<b>1</b> <b>Operating Margin</b>	$\text{Operating Margin} = \frac{\text{Operating Profit}}{\text{Revenue}}$	>5%	<i>Tested and reported yearly in arrears within 90 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date</i>
<b>2</b> <b>Net Debt to EBITDA Ratio</b>	$\text{Net Debt to EBITDA ratio} = \frac{\text{Net Debt}}{\text{EBITDA}}$	<3.5 times	<i>Tested and reported yearly in arrears within 90 days of each accounting reference date based upon EBITDA for the 12 months ending on, and Net Debt at, the relevant accounting reference date</i>
<b>3</b> <b>Acid Ratio</b>	$\text{Acid Ratio} = \frac{\text{Current Assets} - \text{Inventories}}{\text{Current Liabilities}}$	> 0.8 times	<i>Tested and reported yearly in arrears within 90 days of each accounting reference date based upon figures at the relevant accounting reference date</i>

# ANNEX 2 – ADDITIONAL FDE GROUP MEMBERS

## Part A: Additional FDE Group Members

1. Tribal Group PLC
2. Mathematics in Education and Industry

## Schedule 25: Rectification Plan

Request for [Revised] Rectification Plan		
Details of the Default:	[Guidance: Explain the Default, with clear schedule and clause references as appropriate]	
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]	
Signed by Buyer:		Date: <input type="text"/>
Supplier [Revised] Rectification Plan		
Cause of the Default	[add cause]	
Anticipated impact assessment:	[add impact]	
Actual effect of Default:	[add effect]	
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]
	[...]	[date]
Timescale for complete Rectification of Default	[X] Working Days	
Steps taken to prevent recurrence of Default	<b>Steps</b>	<b>Timescale</b>
	1.	[date]
	2.	[date]



	3.	[date]	
	4.	[date]	
	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan Buyer</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

## Schedule 26: Sustainability

### Definitions

<b>“Modern Slavery Assessment Tool”</b>	means the modern slavery risk identification and management tool which can be found online at: <a href="https://supplierregistration.cabinetoffice.gov.uk/msat">https://supplierregistration.cabinetoffice.gov.uk/msat</a>
<b>“Supply Chain Map”</b>	<p>means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:</p> <p>the name, registered office and company registration number of each entity in the supply chain;</p> <p>the function of each entity in the supply chain; and</p> <p>the location of any premises at which an entity in the supply chain carries out a function in the supply chain;</p>
<b>“Waste Hierarchy”</b>	<p>means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:</p> <p>Prevention;</p> <p>Preparing for re-use;</p> <p>Recycling;</p> <p>Other Recovery; and</p> <p>Disposal.</p>

### Part A

#### 1. Public Sector Equality Duty

- 1.1 In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:
- 1.1.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and
  - 1.1.2 advance:
    - (a) equality of opportunity; and
    - (b) good relations,

- 1.1.3 between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

## **2. Employment Law**

- 2.1 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

## **3. Modern Slavery**

- 3.1 The Supplier:
  - 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
  - 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
  - 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
  - 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
  - 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
  - 3.1.6 shall have and maintain throughout the Contract Period its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
  - 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
  - 3.1.8 shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 3;
  - 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;

- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors; and
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

#### **4. Environmental Requirements**

- 4.1 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
- 4.2 In performing its obligations under the Contract, the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Buyer:
  - 4.2.1 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
  - 4.2.2 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and
  - 4.2.3 ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
- 4.3 In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.
- 4.4 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the Contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.
- 4.5 The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

The Buyer expects to meet and expects its Suppliers and Subcontractors to meet, the standards set out in the Environmental Policy found at Annex 1. The Buyers also aligns with wider Government Environmental Policies.

## **5. Supplier Code of Conduct**

- 5.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)

The Buyer expects to meet, and expects its Suppliers and Subcontractors to meet, the standards set out in that Code.

## **6. Reporting**

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this Part A above within fourteen (14) days of such request.

## **Part B**

### **1. Equality, Diversity and Inclusion – Further Requirements**

- 1.1 In delivering the Deliverables, the Supplier will comply with the Buyer's equality, diversity and inclusion requirements, to be provided to the Supplier by the Buyer.
- 1.2 The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.

### **2. Modern Slavery– Further Requirements**

- 2.1 The Supplier shall comply with any request by the Buyer to complete the Modern Slavery Assessment Tool within sixty (60) days of such request.
- 2.2 The following shall be added to the definition of "Audit" in Schedule 1 immediately after limb (k):
- "(l) carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier Staff in a confidential manner and in the native language of such Supplier Staff in respect of workforce conditions, working or employment practices and recruitment practices;"
- 2.3 For the purposes of an audit carried out pursuant to limb (l) of the definition of "Audit", in addition to any other rights under the Contract, the Buyer may instruct the Supplier to carry out such an audit of any Subcontractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Buyer within ninety (90) days of such instruction.
- 2.4 If the Supplier or the Buyer identifies any occurrence of modern slavery connected to this Contract, the Supplier shall comply with any request of the Buyer to submit a remedial action plan which follows the form set out in Annex

D of the guidance *Tackling Modern Slavery in Government Supply Chains*, which can be found at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/830150/September 2019 Modern Slavery Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf)

and such remedial action plan shall be deemed to be a Rectification Plan.

- 2.5 The Supplier shall comply with any request by the Buyer to provide a Supply Chain Map within fourteen (14) days of such request.
- 2.6 The Supplier shall comply with any request by the Buyer to provide a copy of any reports of any Subcontractor regarding any or all of workforce conditions, working or employment practices and recruitment practices within fourteen (14) days of such request.
- 2.7 The Supplier shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied.
- 2.8 The Supplier shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its operations and supply chains to the Buyer and relevant national or local law enforcement agencies.

### **3. Further Reporting Requirements**

- 3.1 The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1 and 2 of this Part B above within thirty (30) days of such request.
- 3.2 The Supplier shall complete the reports in Table A of this Part B in relation to its provision of the Deliverables under this Contract and provide these to the Buyer on the date and frequency outlined in Table A of this Part B.

**Table A**

<b>Sustainability Report Name</b>	<b>Content of Report</b>	<b>Frequency of Report</b>
<b>Carbon reduction plan</b>	Carbon Reduction Plans must include the supplier's current carbon footprint (current emissions reporting) and its commitment to reducing emissions to achieve Net Zero emissions by 2050 (emissions reduction targets).  This may include environmental management measures such as certification schemes like	On anniversary of the start of the Contract Year

	<p>ISO14001 or PAS 2060, signing up to SBTi or specific measures such as the adoption of LED/PIR lighting controls, changes to policy resulting in a reduction in company travel and flights or the electrification of the company fleet.</p> <p>Carbon Reduction Plans must be completed in accordance with PPN 06/21 and associated guidance and reporting standards.</p> <p><a href="https://www.gov.uk/government/publications/procurement-policy-note-0621-taking-account-of-carbon-reduction-plans-in-the-procurement-of-major-government-contracts">https://www.gov.uk/government/publications/procurement-policy-note-0621-taking-account-of-carbon-reduction-plans-in-the-procurement-of-major-government-contracts</a></p>	
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## Annex 1: Environmental Policy

### Overview

The Department for Education recognises that the delivery of its operations inevitably impacts on the environment in a number of ways, for example, through the generation of waste and the use of energy for heating and lighting. Through the DfE's Sustainability and Climate Change Strategy, it aims to respond and adapt to the effects of climate change, thus ensuring that our business operation is undertaken in such a manner as to have a positive impact on the environment and achieve biodiversity net gain.

### DfE's Sustainability and Climate Change Strategy

The DfE published [a strategy](#) in April 2022, which sets out ambitious activity to respond to recommendations for education from the Committee for Climate Change, the Dasgupta Review, Green Jobs Taskforce report and supports the delivery of the Government's 25 Year Environment Plan and Net Zero Strategy.

### Greening Government Commitments

The [Greening Government Commitments](#) set out the actions UK government departments and their agencies undertook to reduce their impacts on the environment in the period 2016 to 2020 and their Commitments for the period 2021 to 2025.

Individual departments are required to publish their own sustainability reports either as part of their annual report, or as separate reports. The latest report for DfE can be found [here](#).

The DfE is committed to minimising the impact of its activities on the environment throughout all its procurement supply chains.

### The Social Value Act

In line with [The Social Value Act](#) using [The Social Value Model](#), Environmental Criteria

may be included, where appropriate, in our tender document sets.

Any social value benefit proposed by tenderers must relate to additional improvements in the economic, social and/or environmental wellbeing of the relevant area to be delivered through the contract, and not replace the assessment and management of the environmental impacts of the core contract elements (direct and through the supply chain) and how they can be reduced, which must instead form a part of the core tender (i.e. not the social value element)

The social value 'Reporting Metrics' are based around the reduction of three of the target areas in the [Greening Government Commitments](#): greenhouse gases, waste and water. In addition, there are Reporting Metrics relating to protecting and improving the environment and creating green spaces.

### **Sustainable procurement: the Government Buying Standards (GBS)**

The DfE will make sure that we meet the minimum mandatory Government Buying Standards (GBS) standards on [Sustainability](#) when buying goods and services. We encourage our suppliers to meet, where possible, the best practice standards, which go further than the mandatory standards.

### **Greening government: ICT and digital services strategy 2020 to 2025**

This strategy sets out how the government will work in partnership with industry and other sectors to provide ICT and digital services to help:

- achieve the United Nation's Sustainable Development Goals
- implement Defra's 25 Year Environment Plan
- meet the government's net zero commitments

The strategy is to be used by everyone involved and interested in government ICT and digital services, including suppliers and supply chains.

### **Taking account of Carbon Reduction Plans in the procurement of major government contracts**

In 2019, the UK became the first major economy to adopt a legal commitment to achieve 'Net Zero' carbon emissions by 2050. To support this, the Government Commercial Function has developed a new commercial policy measure for all central government departments and arm's length bodies.

This measure requires suppliers bidding for major government contracts to commit to achieving Net Zero by 2050 when procuring goods and/or services and/or works with an anticipated contract value above £5 million per annum (excluding VAT) by publishing a '[Carbon Reduction Plan](#)' and to provide their current GHG emissions. This is subject to the Public Contracts Regulations 2015 save where it would not be related and proportionate to the contract.

Suppliers will be deselected from the procurement if they fail to comply with the policy.



## Further Information

Sustainability and Climate Change Strategy:

<https://www.gov.uk/government/publications/sustainability-and-climate-change-strategy>

Sustainable procurement | Crown Commercial Service:

<https://www.crowncommercial.gov.uk/buy-and-supply/making-responsible-decisions/sustainability/>

Carbon Net Zero - CCS (crowncommercial.gov.uk):

<https://www.crowncommercial.gov.uk/buy-and-supply/carbon-net-zero>

Microsoft Word - Glossary-of-terms -Carbon-Net-Zero-and-Smart-Solutions-.odt

(crowncommercial.gov.uk): [https://assets.crowncommercial.gov.uk/wp-content/uploads/Glossary-of-terms\\_-Carbon-Net-Zero-and-Smart-Solutions-.pdf](https://assets.crowncommercial.gov.uk/wp-content/uploads/Glossary-of-terms_-Carbon-Net-Zero-and-Smart-Solutions-.pdf)

Greenhouse Gas Protocol | (ghgprotocol.org): <https://ghgprotocol.org/>

National Procurement Policy Statement.pdf (publishing.service.gov.uk):

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/990289/National\\_Procurement\\_Policy\\_Statement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990289/National_Procurement_Policy_Statement.pdf)

## Schedule 27: Key Subcontractors

### 1. Restrictions on certain subcontractors

- 1.1 The Supplier is entitled to sub-contract its obligations under the Contract to the Key Subcontractors set out in the Award Form.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 1.2.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.2.3 the proposed Key Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
  - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
  - 1.3.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
  - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
  - 1.3.4 the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
  - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Distress)) of the Key Subcontractor.
- 1.4 If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
  - 1.4.1 a copy of the proposed Key Sub-Contract; and
  - 1.4.2 any further information reasonably requested by the Buyer.

- 1.5** The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
- 1.5.1 provisions which will enable the Supplier to discharge its obligations under the Contract;
  - 1.5.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
  - 1.5.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 1.5.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
  - 1.5.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Contract in respect of:
    - (a) the data protection requirements set out in Clause 14 (Data protection);
    - (b) the FOIA and other access request requirements set out in Clause 16 (When you can share information);
    - (c) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
    - (d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
    - (e) the conduct of audits set out in Clause 6 (Record keeping and reporting);
  - 1.5.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 10.4 (When the Buyer can end this contract) and 10.5 (What happens if the contract ends) of this Contract; and
  - 1.5.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer.

## **Schedule 28: ICT Services & Agile Development (Not Applicable)**

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[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

## Schedule 30: Exit Management

### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

<b>"Exclusive Assets"</b>	Supplier Assets used exclusively by the Supplier or a Key Subcontractor in the provision of the Deliverables including Supplier Existing IPR;
<b>"Exit Information"</b>	has the meaning given to it in Paragraph 3.1 of this Schedule;
<b>"Exit Manager"</b>	the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Net Book Value"</b>	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	those Supplier Assets used by the Supplier or a Key Subcontractor in connection with the Deliverables but which are also used by the Supplier or Key Subcontractor for other purposes;
<b>"Registers"</b>	the Asset Register and configuration database referred to in Paragraph 2.2 of this Schedule;
<b>"Replacement Goods"</b>	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of this Schedule;

<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
<b>"Transferable Assets"</b>	Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in Paragraph 8.2.3 of this Schedule.

## 2. Supplier must always be prepared for contract exit

- 2.1 The Supplier shall within 30 days from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2 During the Contract Period, the Supplier shall promptly:
  - 2.2.1 create and maintain a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables ("**Asset Register**") ; and
  - 2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables  
and the Asset Register and the configuration database are together known as the **Registers**.
- 2.3 The Supplier shall:
  - 2.3.1 issue the up-to-date Registers to the Buyer when requested;
  - 2.3.2 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
  - 2.3.3 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify



the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

- 2.4 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

### **3. Assisting re-competition for Deliverables**

- 3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement and the Buyer shall notify the Supplier before any disclosure, where possible or after the event if it was not possible to notify the Supplier before the disclosure.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

### **4. Exit Plan**

- 4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;

- 4.3.2 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
  - 4.3.3 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the End Date together with any reasonable costs required to effect such transfer;
  - 4.3.4 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the End Date;
  - 4.3.5 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
  - 4.3.6 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
  - 4.3.7 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
  - 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
  - 4.3.9 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
  - 4.3.10 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4 The Supplier shall:
- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
    - (a) every six (6) months throughout the Contract Period; and
    - (b) no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
    - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
    - (d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and
  - 4.4.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.6 A version of an Exit Plan agreed between the Parties shall not be superseded by any draft submitted by the Supplier.

## 5. Termination Assistance

- 5.1 The Buyer shall be entitled to require the provision of Termination Assistance by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the End Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 5.1.1 the nature of the Termination Assistance required; and
  - 5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than six (6) Months after the date that the Supplier ceases to provide the Deliverables.
- 5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.3 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## 6. Termination Assistance Period

- 6.1 Throughout the Termination Assistance Period the Supplier shall:
- 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
  - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
  - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
  - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Measures or Performance Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;

- 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;
- 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Performance Levels, the Parties shall vary the relevant Performance Levels and/or the applicable Service Credits accordingly.

## **7. Obligations when the contract is terminated**

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
  - 7.2.1 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
    - (a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
    - (b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## **8. Assets, Sub-contracts and Software**

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
  - 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or

- 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:
- 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier (**"Transferring Assets"**);
- 8.2.2 which, if any, of:
- a) the Exclusive Assets that are not Transferable Assets; and
  - b) the Non-Exclusive Assets,
- the Buyer and/or the Replacement Supplier requires the continued use of; and
- 8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the **"Transferring Contracts"**),
- in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.
- 8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.

**8.7 The Buyer shall:**

- 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

**8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.**

**8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.**

**9. No charges**

- 9.1 Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

**10. Dividing the bills**

- 10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement Supplier and the Supplier as follows:
  - 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
  - 10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - 10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

**Schedule 31: Buyer Specific Terms (Not Applicable)**

**Schedule 32: Background Checks (Not Applicable)**

**Schedule 33: Scottish Law (Not Applicable)**

**Schedule 34: Northern Ireland Law (Not Applicable)**

**Schedule 35: Lease Terms (Not Applicable)**

## Schedule 36: Intellectual Property Rights

### 1. Intellectual Property Rights

- 1.1 Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.
- 1.2 Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

### 1.3 Licences granted by the Supplier: Supplier Existing IPR

- 1.3.1 Where the Buyer orders Deliverables which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 1.3.2.
- 1.3.2 The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Buyer to enable it:
- (a) or any End User to use and receive the Deliverables; or
  - (b) to use, sub-license or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,
- for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

### 1.4 Licences granted by the Buyer and New IPR

- 1.4.1 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations during the Contract Period.
- 1.4.2 Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 1.4.3 Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the Asset Register and keep this updated throughout the Contract Period.



## **1.5 Open Licence Publication**

- 1.5.1 Subject to Paragraph 1.5.4, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items.
- 1.5.2 Subject to Paragraph 1.5.4, the Supplier hereby warrants that the New IPR Items are suitable for release under Open Licence.
- 1.5.3 The Supplier will supply any or all New IPR Items in a format suitable for publication under Open Licence ("the Open Licence Publication Material") within 30 days of written request from the Buyer ("Buyer Open Licence Request").
- 1.5.4 The Supplier may within 15 days of a Buyer Open Licence Request under Paragraph 1.5.3 request in writing that the Buyer excludes all or part of:
  - (a) the New IPR; or
  - (b) Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph 1.5.3from Open Licence publication.
- 1.5.5 Any decision to Approve any such request from the Supplier pursuant to Paragraph 1.5.4 shall be at the Buyer's sole discretion, not to be unreasonably withheld, delayed or conditioned.
- 1.5.6 Subject to Clause 15 of the Core Terms, the Buyer will not be liable in the event that any Supplier Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by the Buyer.

## **1.6 Third Party IPR**

- 1.6.1 The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless Approval is granted by the Buyer and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph 1.6.3. If the Supplier cannot obtain for the Buyer a licence on the terms set out in Paragraph 1.6.3 in respect of any Third Party IPR the Supplier shall:
  - (a) notify the Buyer in writing; and
  - (b) use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.

- 1.6.2 In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.
- 1.6.3 The Third Party IPR Licence granted to the Buyer shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.

## **1.7 Termination of licences**

- 1.7.1 The Supplier Existing IPR Licence granted pursuant to Paragraph 1.3 and the Third Party IPR Licence granted pursuant to Paragraph 1.6 shall survive the End Date and termination of this Contract.
- 1.7.2 The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 1.7.3 Any licence granted to the Supplier pursuant to Paragraph 1.4 (Licence granted by the Buyer) shall terminate automatically on the End Date and the Supplier shall:
- (a) immediately cease all use of the Buyer Existing IPR (including the Buyer Data within which the Buyer Existing IPR may subsist);
  - (b) at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data, provided that if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data (as the case may be); and
  - (c) ensure, so far as reasonably practicable, that any Buyer Existing IPR and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Buyer Existing IPR or Buyer Data.

## **Schedule 37: Corporate Resolution Planning (Not Applicable)**

## Special Term 1: Safeguarding Policy

### 1. DEFINITIONS AND INTERPRETATION

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

**“16–19 Academy”** has the meaning of section 1B of the Academies Act 2010.

**“Candidate”** means any individual who is currently under consideration by the Supplier for employment to perform its obligations under the Contract, or who is under consideration by the Supplier for any other form of direct engagement in connection with the Supplier’s performance of its services under the Contract. The term “Candidates” shall be construed accordingly.

**“Childcare”** takes the definition contained in section 18 of the Childcare Act 2006 and will include ‘relevant childcare’ as set out in the ‘staff covered section’ of Disqualification Under the Childcare Act 2006. In accordance with Disqualification Under the Childcare Act 2006, the meaning of relevant childcare includes education for a child who has not yet attained the age of six and any other supervised activity for such a child, but does not include education (or any other supervised activity) provided by a school during school hours for a registered pupil who is not a Young Child.

**“DBS ID Checking Guidelines”**<sup>12</sup> mean the guidelines issued by the Disclosure and Barring Service for the purpose of verifying the identification of applicants for criminal record checks, as amended from time to time.

**“Disclosure and Barring Service”** and **“DBS”** mean the non-departmental public body of that name, or such other successor body or organisation as may be appropriate.

**“Disclosure and Barring Service Certificate”** means a criminal record certificate issued by the Disclosure and Barring Service with respect to an individual.

**“Disqualification Criteria”** means the criteria for disqualification from registration contained within Part 2 of The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.<sup>13</sup>

**“Disqualification Under the Childcare Act 2006”**<sup>14</sup> means the statutory guidance published under that title by the Buyer, as amended from time to time.

**“Disqualification Waiver”** means a waiver issued by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills in exercise of his or her powers under:

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<sup>12</sup> <https://www.gov.uk/government/publications/dbs-identity-checking-guidelines>

<sup>13</sup> S.I. 2018/794. In interpreting the Disqualification Criteria, it may be helpful to refer to: the information contained within the sections ‘Disqualification criteria’ and ‘Relevant offences and orders’ contained within Disqualification Under the Childcare Act 2006; the list of offences contained within table A of the appendices to Disqualification Under the Childcare Act 2006; and the list of orders contained within table B of the appendices to Disqualification Under the Childcare Act 2006. It should be noted that this information is not exhaustive. A summary of additional offences that can lead to disqualification can be found on page 3 of the appendices to Disqualification Under the Childcare Act 2006.

<sup>14</sup> <https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006>

- (a) Regulation 10 of The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018;
- (b) Regulation 10 of The Childcare (Disqualification) Regulations 2009 (which is now revoked); or
- (c) any appropriate successor regulations made by the Secretary of State for Education in exercise of the powers conferred by section 75 of the Childcare Act 2006.

An individual is **“Disqualified from Registration”** if that individual meets the Disqualification Criteria, unless that individual has also been granted a Disqualification Waiver with respect to the information pertaining to him or her and which causes the Disqualification Criteria to be met.

**“Early Years Safeguarding and Welfare Requirements”** means the requirements contained in section 3 of the Statutory Framework for the Early Years Foundation Stage.

A person satisfies the **“Harm Test”** if that person may harm a child or vulnerable adult or put them at risk of harm. It is something a person may do to cause harm or pose a risk of harm to a child or vulnerable adult.

**“Keeping Children Safe in Education”** means the statutory guidance published under that title by the Buyer, as amended from time to time.

**“Independent School”** as defined in section 463 of the Education Act 1996, means any school at which full-time education is provided for:

- 3. five or more pupils of compulsory school age; or
- 4. at least one pupil of that age for whom an EHC plan is maintained or for whom a statement is maintained under section 324 or an individual development plan is maintained, or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989 or section 74 of the Social Services and Well-being (Wales) Act 2014;

and which is not a school maintained by a local authority non-maintained special school.

It shall specifically include Academy schools and alternative provision Academies as defined in accordance with the Academies Act 2010.

**“Institution within the Further Education Sector”** has the meaning in section 91(3) of the Further and Higher Education Act 1992.

**“Maintained School”** means a community, foundation or voluntary school or a community or foundation special school, or any other school maintained by a local authority.

**“Non-Maintained Special School”** means a school which is approved under section 342 (1) of the Education Act 1996 (as amended).

**“Non-Relevant Conviction”:**

- (a) in the case of an individual who is engaged:
- (i) in any office or employment which is concerned with the provision of care services to vulnerable adults and which is of such a kind as to enable that individual, in the course of his or her normal duties, to have access to vulnerable adults in receipt of such services.
  - (ii) in any work which is Regulated Activity relating to vulnerable adults, which for the purpose of this definition shall include regulated activity within the meaning of Part 2 of schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 66 of the Protection of Freedoms Act 2012;
  - (iii) in any work in an Institution within the Further Education Sector or 16–19 Academy where the normal duties of that work involve regular contact with persons aged under 18;
  - (iv) in any work which is Regulated Activity relating to children, which for the purpose of this definition shall include regulated activity within the meaning of Part 1 of schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012;
  - (v) in any work done infrequently which, if done frequently, would be Regulated Activity relating to children;
  - (vi) in any employment or other work that is carried out at a children’s home or residential family centre;
  - (vii) as a chartered or certified accountant; or
  - (viii) in any other employment or activity deemed to fall within the scope of schedule 1 to The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended);

means any conviction which is ‘protected’ as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended); and

- (b) in the case of an individual who is engaged in employment or activity which does not fall within the scope of points (a)(i)–(a)(viii) above, means any conviction which is ‘spent’ as defined in accordance with Section 1 of the Rehabilitation of Offenders Act 1974.

**“Pre-Appointment Checks”** means such checks and searches as are appropriate and necessary to assess an individual’s suitability for employment and to perform the duties of a particular role, as determined in accordance with clause 3.2.

**“Proprietor”** means the person or body of persons responsible for the management of a school, including (but not limited to):

- (a) in relation to a Maintained School, the governing body; and
- (b) in relation to an Academy, a qualifying Academy proprietor, as defined by section 12(2) of the Academies Act 2010.

**“Real-Time Online Tuition”** means any teaching provision for one or more Relevant Students which is delivered through the use of information and communications technology and during which the student and the teacher communicate in real time through the use of video, audio, text or any other electronic

medium, but excluding any provision for which the sole intended audience is one or more members of staff employed by a school, an Institution within the Further Education Sector or a 16–19 Academy.

**“Regulated Activity”:**

- (a) in relation to children, takes the definitions contained in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended) and in Part 1 of Schedule 2 to The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (as amended); and
- (b) in relation to vulnerable adults, takes the definitions contained in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended) and in Part 2 of Schedule 2 to The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (as amended).

**“Relevant Student”** means any person who is enrolled at a school, an Institution within the Further Education Sector or a 16–19 Academy, or who is otherwise deemed to be in receipt of education whether by virtue of provision made by a local authority or otherwise, and with whom Personnel are likely to directly interact, whether such interaction takes place in person or via such communication medium as may be appropriate to the nature of the Services.

**“Safeguarding”** takes the meaning given in “Keeping Children Safe in Education”. The term “safeguard” shall be construed accordingly.

**“Safeguarding Incident”** means any event which has:

- (c) caused harm or had the potential to cause harm to one or more Relevant Students, Young Children, children or vulnerable adults;
- (d) involved the abuse or maltreatment of one or more Relevant Students, Young Children, children or vulnerable adults;
- (e) involved a criminal offence being committed or potentially being committed against one or more Relevant Students, Young Children, children or vulnerable adults; or
- (f) resulted in a substantially elevated risk to the welfare of one or more Relevant Students, Young Children, children or vulnerable adults.

**“Statutory Framework for the Early Years Foundation Stage”<sup>15</sup>** means the statutory guidance published under that title by the Buyer, as amended from time to time.

**“Working Together to Safeguard Children”** means the Government interagency statutory guidance published under that title by the Buyer, as amended from time to time.

**“Young Child”** means a child during the period beginning with his/her birth and ending on 31 August next following the date on which he/she attains the age of five.  
**“Young Children”** shall be construed accordingly.

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<sup>15</sup> <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>

1.2 All other terms shall take the definitions contained in schedule 1.

## 2. SAFEGUARDING POLICY

2.1 The Supplier must ensure that it at all times has in place an effective and appropriate policy (“**Safeguarding Policy**”) in order to safeguard and promote the welfare of Relevant Students, Young Children, children and vulnerable adults with whom Personnel may come into contact or to whom Personnel may have access in the course of performance of the Contract. This shall specifically include provisions to:

- (a) promote a learning environment which is consistent with the provision of safe and effective care;
- (b) minimise the risk of harm to the welfare and development of Relevant Students, Young Children, children and vulnerable adults, including (but not limited to) their physical, emotional and psychological welfare and development;
- (c) ensure the suitability of Supplier Staff in accordance with paragraph 3 for the activities in which they are to be engaged, including provisions on when to obtain a criminal record certificate;
- (d) ensure the appropriate conduct of Supplier Staff;
- (e) ensure that in the event that concerns are raised in relation to the welfare of one or more Relevant Students, children or vulnerable adults, the school or college’s designated safeguarding lead is informed immediately in line with the organisation’s child protection policy, to investigate this to minimise any further risk of harm, and to ensure escalation procedures are in place should this not be done; and
- (f) ensure arrangements setting out processes for sharing information with practitioners and safeguarding partners. Provide information on the role of the contractor’s Designated Safeguarding Officer.
- (g) ensure adequate procedures are in place for recording and informing the school or college’s designated safeguarding lead, of any disclosure of abuse which may be made to a member of Supplier Staff by a Relevant Student or other child or vulnerable adult, but which does not relate to the conduct or behaviour of Supplier Staff; and
- (b) ensuring that any such disclosure is reported to the designated officer(s) at the relevant local authority, and such other body or authority as may be appropriate in the circumstances.

2.2 The Supplier must at all times ensure that it complies with the provisions of these special terms, with the provisions of Keeping Children Safe in Education, with the provisions of Working Together to Safeguard Children, with the provisions of Disqualification Under the Childcare Act 2006, with the provisions of the Early Years Safeguarding and Welfare Requirements and with such other legislative provisions and statutory guidance as may be deemed appropriate by:

- (a) the Contractor;



- (b) the Buyer; and/or
  - (c) Her Majesty's Chief Inspector of Education, Children's Services and Skills;
- in view of the functions to be performed under the Contract.
- 2.3 The Supplier must review and (if appropriate) update the Safeguarding Policy within the first month of each Contract Year of the Contract Period, and additionally:
- (a) whenever the Buyer publishes a revised version of Keeping Children Safe in Education, Working Together to Safeguard Children, Disqualification Under the Childcare Act 2006, or the Statutory Framework for the Early Years Foundation Stage;
  - (b) in the event of any change to the Deliverables provided which has a material impact on the nature of the risks to Relevant Students' welfare or to the welfare of Young Children or children or vulnerable adults;
  - (c) in the event that the Supplier is made aware of any concerns regarding the adequacy and effectiveness of the Safeguarding Policy in meeting the aims detailed in paragraph 2.1; and
  - (d) following any Safeguarding Incident or alleged Safeguarding Incident.
- 2.4 The Supplier must, if requested to do so by the Buyer, make available a copy of the Safeguarding Policy for inspection. If, following this, the Buyer raises concerns about the arrangements contained within the Safeguarding Policy, the Supplier shall review and update the relevant provisions and resubmit the Safeguarding Policy to the Buyer for approval within 14 days. The Buyer may request such further iterative amendments as it deems appropriate to ensure compliance with the Contract and the relevant statutory requirements. If, following this, the Parties remain unable to reach agreement on the provisions of the Safeguarding Policy, either Party may refer the dispute to the dispute resolution procedure in clause 34 of the Core Terms.
- 2.5 The Supplier must ensure that a copy of the Safeguarding Policy, Keeping Children Safe In Education and Working Together is made available upon request:
- (a) to Supplier Staff; and
  - (b) to the Proprietors of schools, the governing bodies of Institutions within the Further Education Sector, local authorities and such other individuals and organisations as may have legitimate professional grounds to see it for the purpose of ensuring the welfare of Relevant Students, Young Children, children and vulnerable adults.
- 2.6 The Supplier must satisfy itself that any Sub-Contractor or agent engaged by it in connection with the performance of services under the Contract has in place measures which are compliant with the requirements of this schedule 9 with respect to those individuals employed or otherwise engaged by that Sub-Contractor or agent for the purpose of performing obligations under the Contract.

- 2.7 The Supplier must at all times ensure that it has a Designated Safeguarding Officer. The Designated Safeguarding Officer shall be required to lead on implementing the Safeguarding Policy and act as the lead Safeguarding contact for the programme in all circumstances. The Supplier must ensure that an alternative reporting procedure is in place for any circumstances in which:
- (a) the Designated Safeguarding Officer is not available; or
  - (b) any Safeguarding concerns relate to the conduct or behaviour of the Designated Safeguarding Officer or those with management responsibility for the Designated Safeguarding Officer.

### **3. ENSURING THE SUITABILITY OF STAFF ON APPOINTMENT**

- 3.1 The Supplier shall have in place appropriate policies and procedures to establish safer recruitment practices, which minimise the risk of harm to Relevant Students and other children and vulnerable adults, and which ensure the suitability of Personnel who will administer and deliver the programme.
- 3.2 When appointing a Candidate to a post, the Supplier shall consider the range and nature of activities likely to be performed by the Candidate in the course of that Candidate's duties and shall ensure that it implements a system of Pre-Appointment Checks appropriate to that assessment. This shall, as a minimum, include:
- (a) in relation to any role in which an individual will be engaged in Regulated Activity or will be managing one or more other individuals who are engaged in Regulated Activity:
    - (i) establishing the Candidate's identity in accordance with the requirements of the DBS ID Checking Guidelines;
    - (ii) establishing the Candidate's legal entitlement to take up employment in the United Kingdom;
    - (iii) obtaining an enhanced criminal record certificate, which must have been issued by the Disclosure and Barring Service not more than three months before the Candidate is due to commence employment or other direct engagement in the role for which the Candidate is being considered; and, where that certificate contains information pertaining to the Candidate's history, consideration of the impact (if any) of that information on the suitability of the individual to carry out the responsibilities of the role for which that individual is under consideration;
    - (iv) establishing that the Candidate is not barred from engaging in Regulated Activity relating to children and/or vulnerable adults as appropriate to the role for which the Candidate is under consideration (i.e. subject to a "Disclosure and Barring Service Bar");
    - (v) establishing that:
      - (a) the Candidate is not subject to any direction, prohibition or restriction issued by the General Teaching Council for England

(prior to its abolition in 2012), the General Teaching Council for Scotland, the Education Workforce Council, the General Teaching Council for Northern Ireland or any predecessor body or successor that would prevent that Candidate from taking up the position for which that individual is being considered; and

- (b) for any Candidate to be employed in a teaching position, that the Candidate is not subject to a prohibition order or interim prohibition order issued by the Secretary of State for Education and which would prevent that Candidate from taking up the position for which that individual is being considered;
- (c) that the candidate is not subject to a section 128 direction made by the Secretary of State. A section 128 direction will be disclosed when an enhanced DBS check with children's barred list information is requested, provided that 'child workforce independent schools' is specified on the application form as the position applied for. Where a person is not eligible for a children's barred list check but will be working in a management position in an independent school.

The checks a – c above can be carried out using the Teaching Regulation Agency's Employer Access service.

- (vi) verifying that the Candidate has the appropriate qualification(s) the Contractor considers are necessary for the position for which that individual is under consideration;
- (vii) obtaining at least two references, one of which should be from the Candidate's most recent employment. Where the Candidate has worked in more than two employments in the preceding two years, such additional references should be sought as are necessary to cover the whole of that period. References must be obtained directly from the referee, expected to be a senior person with appropriate authority. Open references should only be accepted where the full content of the reference can be verified by the referee. References obtained via email must be sent from a verifiable email address. Any issues of concern arising from references should be explored further with the referee and, where necessary, discussed with the Candidate;
- (viii) scrutinising the Candidate's employment history in the ten years preceding the application and investigating any inconsistencies or unexplained gaps. To help identify any non-disclosed employment, the Supplier should seek to verify from the Candidate's most recent employer the Candidate's reason for leaving that employment;
- (ix) where the Candidate has previously been resident outside the United Kingdom, applying for, and obtaining, criminal records checks or 'Certificates of Good Character' to enable any non-UK criminal

record-related information to be identified.<sup>16</sup> Where it proves impossible to obtain this information (for example, in cases where the person must be resident in a country at the time of application), the Supplier must obtain at least two references from verifiable sources, ideally senior individuals with appropriate authority at a previous employer;

- (x) where the Candidate will be deployed in the provision of Childcare, or will be directly concerned in the management of such provision, establishing that the Candidate is not Disqualified from Registration; and
  - (xi) carrying out such additional searches as the Supplier considers appropriate in order to help assess the suitability of the person to work with Relevant Students, Young Children, children and/or vulnerable adults;
- (b) in relation to any role in which an individual will have access to the Personal Data of one or more Relevant Students, Young Children, children or vulnerable adults or will be managing one or more other individuals who have access to such Personal Data:
- (i) establishing the Candidate's identity in accordance with the requirements of the DBS ID Checking Guidelines;
  - (ii) establishing the Candidate's legal entitlement to take up employment in the United Kingdom;
  - (iii) obtaining a basic criminal record certificate; and, where that certificate contains information pertaining to the Candidate's history, consideration of the impact (if any) of that information on the suitability of the individual to carry out the responsibilities of the role for which that individual is under consideration;
  - (iv) establishing whether the Candidate is:
    - (a) subject to any direction, prohibition or restriction issued by the General Teaching Council for England (prior to its abolition in 2012, the General Teaching Council for Scotland, the Education Workforce Council, the General Teaching Council for Northern Ireland or any predecessor or successor body; or
    - (b) prohibited (by prohibition order or interim prohibition order) from teaching by the Secretary of State for Education.

Whilst these sanctions will not themselves prevent the person from being appointed, the Supplier will need to determine whether the circumstances that led to the 'sanction' are relevant to the Candidate's suitability for the role for which that individual is under consideration;

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<sup>16</sup> The Home Office's application process guidance provides advice on the processes to be followed to obtain such information. This can be found online at <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>.

- (v) verifying that the Candidate has the appropriate qualification(s) the Supplier considers are necessary for the position for which that individual is under consideration;
  - (vi) obtaining at least two references, one of which should be from the Candidate's most recent employment. References must be obtained directly from the referee, expected to be a senior person with appropriate authority. Open references should only be accepted where the full content of the reference can be verified by the referee. References obtained via email must be sent from a verifiable email address. Any issues of concern arising from references should be explored further with the referee and, where necessary, discussed with the Candidate;
  - (vii) scrutinising the Candidate's employment history and investigating any inconsistencies or unexplained gaps. To help identify any non-disclosed employment, the Supplier should seek to verify from the Candidate's most recent employer the Candidate's reason for leaving that employment;
  - (viii) where the Candidate has previously been resident outside the United Kingdom, applying for, and obtaining, criminal records checks or 'Certificates of Good Character' to enable any non-UK criminal record-related information to be identified.<sup>17</sup> Where it proves impossible to obtain this information (for example, in cases where the person must be resident in a country at the time of application), the Contractor must obtain at least two references from verifiable sources, ideally senior individuals with appropriate authority at a previous employer; and
  - (ix) carrying out such additional searches as the Supplier considers appropriate in order to help assess the suitability of the person to undertake the duties of the role;
- (c) in relation to any role which falls outside the scope of subclauses 3.2(a) and 3.2(b):
- (i) establishing the Candidate's identity in accordance with the requirements of the DBS ID Checking Guidelines;
  - (ii) establishing the Candidate's legal entitlement to take up employment in the United Kingdom;
  - (iii) verifying that the Candidate has the appropriate qualification(s) the Supplier considers are necessary for the position for which that individual is under consideration;
  - (iv) carrying out such additional searches as the Supplier considers appropriate in order to help assess the suitability of the Candidate to undertake the duties of the role.

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<sup>17</sup> The Home Office's application process guidance provides advice on the processes to be followed to obtain such information. This can be found online at <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>.

- 3.3 In determining the suitability of an individual to carry out a role, the Supplier shall ensure that it does not take into consideration any conviction which is a Non-Relevant Conviction, including any conviction which does not appear on any Disclosure and Barring Service Certificate obtained by the Supplier in accordance with subclause 3.2(a)(iii) or 3.2(b)(iii) as appropriate to the role for which the individual's suitability is being considered.
- 3.4 The Supplier shall ensure that, before carrying out the Pre-Appointment Checks, it makes clear to the Candidate the range and nature of the Pre-Appointment Checks which it intends to carry out.
- 3.5 The Supplier shall ensure that no Candidate is engaged in duties which fall within the scope of subclauses 3.2(a) and 3.2(b) unless and until all relevant Pre-Appointment Checks have been completed and the suitability of the Candidate to undertake such duties has been assured.
- 3.6 In the event that:
- (a) a Candidate has previously been resident outside the United Kingdom; and
  - (b) in the case of a role which falls within the scope of subclause 3.2(a), all relevant Pre-Appointment Checks with the exception of those for which provision is made under subclause 3.2(a)(ix) have been completed to the Supplier's satisfaction and have not given rise to concerns about the Candidate's suitability for employment or to undertake the duties of the role for which the Candidate is being considered; or
  - (c) in the case of a role which falls within the scope of subclause 3.2(b), all relevant Pre-Appointment Checks with the exception of those for which provision is made under subclause 3.2(b)(viii) have been completed to the Supplier's satisfaction and have not given rise to concerns about the Candidate's suitability for employment or to undertake the duties of the role for which the Candidate is being considered; and
  - (d) the Supplier has made all reasonable endeavours to obtain the information specified under subclause 3.2(a)(ix) or 3.2(b)(viii), but has been unable to do so prior to the commencement of the Candidate's employment; and
  - (e) the Contractor has undertaken an assessment of the risks which the Candidate could present to Relevant Students, children and vulnerable adults in the course of that Candidate's duties and considered any additional safeguards which may be appropriate in order to mitigate those risks;

the Supplier may, at its discretion, choose to disapply clause 3.5 with respect to that Candidate until such time as the checks for which provision is made under subclause 3.2(a)(ix) or subclause 3.2(b)(viii) have been completed, subject to any additional safeguards identified under sub-paragraph 3.6(e) having been implemented for the period during which paragraph 3.5 is disappplied.

- 3.7 The Supplier shall require all Supplier Staff employed or directly engaged by it and who are to be engaged in duties falling within the scope of sub-paragraphs

3.2(a) or 3.2(b) to register with the Disclosure and Barring Service Update Service upon appointment. Except in the circumstances for which provision is made in paragraph 4.2, this requirement shall not apply to any Supplier Staff already employed or otherwise directly engaged by the Contractor prior to the Start Date for so long as that employment or other direct engagement continues without interruption.

3.8 The Supplier shall ensure that it informs all Supplier Staff employed or directly engaged by it and who:

(a) are deployed, or are likely to be deployed, in the provision of Childcare; or

(b) are directly concerned with, or are likely to be directly concerned with, the management of the provision of Childcare;

that they will be committing an offence if they do so and they are disqualified from registration under The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, and that they must immediately inform the Supplier in the event that their circumstances change in such a way as would result in them being disqualified from registration under those regulations.

3.9 Subject to the requirements of the DPA and the UK GDPR, the Supplier shall keep written records:

(a) confirming which Pre-Appointment Checks have been undertaken in relation to which Personnel and the date on which those checks were carried out;

(b) of all decisions made on the suitability of Supplier Staff for employment or to undertake the duties of the role for which those Supplier Staff were Candidates, including the names and positions of those by whom the decisions were made and approved;

(c) of all instances where in accordance with paragraph 3.6, it is determined that a Candidate previously resident outside the United Kingdom may commence duties within the scope of paragraph 3.2(a) or 3.2(b) prior to completion of the checks provided for in subclause 3.2(a)(ix) or 3.2(b)(viii); and

(d) confirming in relation to which Supplier Staff it has issued information in accordance with paragraph 3.8, and the date on which that information was issued.

3.10 If requested to do so by the Buyer, the Supplier shall submit copies of records retained in accordance with paragraph 3.9 to the Buyer for inspection within a period not exceeding 5 Working Days following receipt of such a request.

3.11 The Buyer undertakes that any information disclosed to it following a request under paragraph 3.10:

(a) shall be used solely for the purpose of ensuring the Supplier's compliance with relevant legal requirements and with the provisions of the Contract; and

- (b) shall be handled securely whilst in the Buyer's possession and disclosed only to those employees of the Buyer who have a legitimate need to inspect the information for the purpose of undertaking the duties outlined in sub-paragraph 3.11(a); and
- (c) shall be returned to the Supplier or securely destroyed when no longer required.

#### **4. ONGOING DUE DILIGENCE**

4.1 Where an individual is registered with the Disclosure and Barring Service Update Service in accordance with clause 3.7, the Supplier shall:

- (a) seek that individual's permission to utilise the Disclosure and Barring Service Update Service to regularly check that individual's Disclosure and Barring Service record for details of convictions;
- (b) agree with that individual the frequency with which such checks shall be carried out;
- (c) implement procedures to ensure that it conducts such checks according to the frequency agreed with the individual in accordance with sub-paragraph 4.1(b);
- (d) in the event that the individual is to resume Regulated Activity or the management of one or more other individuals engaged in Regulated Activity following a period in excess of three Months during which that individual has not been engaged in such activity or the management of such activity, seek that individual's consent for and conduct an additional check of that individual's Disclosure and Barring Service record regardless of whether or not such a check is foreseen under the schedule agreed in accordance with sub-paragraph 4.1(b), prior to the resumption of the individual's engagement in Regulated Activity or the management thereof; and

4.2 In the event that:

- (a) the Supplier becomes aware or reasonably believes that the circumstances of an individual who is employed or otherwise directly engaged by it have changed in such a way as could affect that individual's suitability to perform the duties for which that individual is engaged;
- (b) the Supplier becomes aware or reasonably believes that the circumstances of an individual who is employed or otherwise directly engaged by it are substantially different from what it previously understood that individual's circumstances to be, and that that individual's circumstances differ from its previous understanding in such a way as might have affected its decision regarding the individual's suitability to perform the duties for which that individual is engaged;
- (c) an individual employed or otherwise directly engaged by the Supplier but who is not currently engaged in Regulated Activity or the management of other individuals who are engaged in Regulated Activity, is to transfer to a



role in which that individual is to undertake Regulated Activity or the management of other individuals who are engaged in Regulated Activity;

- (d) an individual employed or otherwise directly engaged by the Supplier but who is not currently deployed in the provision of Childcare or directly concerned with the management of Childcare, is to transfer to a role in which that individual is to be deployed in the provision of Childcare or directly concerned with the management of Childcare;
- (e) an individual employed or otherwise directly engaged by the Supplier but who is not currently engaged in Regulated Activity or the management of others who are engaged in Regulated Activity and does not currently have access to the Personal Data of one or more Relevant Students, children or vulnerable adults or manage others who have access to such Personal Data, is to transfer to a role in which that individual will have access to the Personal Data of one or more Relevant Students, children or vulnerable adults or will be engaged in the management of one or more individuals with access to such Personal Data;
- (f) an individual who is not registered with the Disclosure and Barring Service Update Service is to resume Regulated Activity or the management of one or more other individuals engaged in Regulated Activity following a period in excess of three months during which that individual has not been engaged in such activity or the management of such activity; or
- (g) an individual who is not registered with the Disclosure and Barring Service Update Service is to resume duties in which he or she will have access to the Personal Data of one or more Relevant Students, children or vulnerable adults or will manage others who have access to such Personal Data following a period in excess of three Months during which that individual has not been engaged in such duties or the management of individuals engaged in such duties;

the Supplier shall perform or repeat such Pre-Appointment Checks as may be necessary to enable it to reach a decision regarding the suitability of the individual to perform the duties of that individual's role or intended role; and shall ensure that the individual is not engaged in the performance of the duties for which it is necessary to reassess that individual's suitability unless and until the Supplier has satisfied itself of the individual's suitability to perform those duties.

- 4.3 The Supplier undertakes that, where an individual employed or otherwise directly engaged by it is required to visit the premises of a school, an Institution within the Further Education Sector or a 16–19 Academy in the course of that individual's duties, and it is likely that that individual will during the course of that visit come into direct contact with one or more Relevant Students, children or vulnerable adults, it shall:

- (a) provide in writing to the school, Institution within the Further Education Sector or 16–19 Academy:

- (i) confirmation of whether the Pre-Appointment Checks in subparagraphs 3.2(a)(i)–3.2(a)(xi) have been carried out with respect to that individual; and
  - (ii) confirmation that the information returned by the Pre-Appointment Checks has been considered and that the individual has been judged to be suitable to work with children or vulnerable adults (as the case may be); and
  - (iii) the name and contact details of the Designated Safeguarding Officer; and
  - (iv) in the event that the individual will, whilst on the premises of the school, Institution within the Further Education Sector or 16–19 Academy, be employed or otherwise engaged in the provision of Childcare or directly concerned with the management of such provision:
    - (a) confirmation that the individual is not Disqualified from Registration; and
    - (b) confirmation that the individual has been informed that:
      - (i) if he or she is disqualified from registration under The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, he or she will be committing an offence if he or she is deployed to work in Childcare or directly concerned with the management of such provision; and
      - (ii) he or she must immediately inform the Contractor in the event that his or her circumstances change in such a way as would result in him or her being disqualified from registration under The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.
- (b) arrange for the individual to provide to the school, Institution within the Further Education Sector or 16–19 Academy:
- (i) adequate proof of that individual's identity; and
  - (ii) where the individual is to visit the premises of a Maintained School and the individual's Disclosure and Barring Service Certificate contains information pertaining to that individual's history, a copy of that certificate; or
  - (iii) where the individual is to visit the premises of an Independent School, a Non-Maintained Special School, or a 16–19 Academy, a copy of the individual's Disclosure and Barring Service Certificate, regardless of whether that certificate contains information pertaining to the individual's history; or

- (iv) where the individual is to visit the premises of an Institution within the Further Education Sector and that individual will be regularly caring for, training, supervising or being solely in charge of persons aged under 18, a copy of the individual's Disclosure and Barring Service Certificate, regardless of whether that certificate contains information pertaining to the individual's history; and
  - (c) in the event that the school, Institution within the Further Education Sector or 16–19 Academy has concerns about the suitability of the individual to perform the duties for which that individual is to be engaged whilst on the premises of that school, Institution within the Further Education Sector or 16–19 Academy, use all reasonable endeavours to make provision for those duties to be performed by another individual to whom the school, Institution within the Further Education Sector or 16–19 Academy does not so object.
- 4.4 The Supplier undertakes that, where an individual employed or otherwise directly engaged by it is required to provide Real-Time Online Tuition in the course of that individual's duties, it shall:
- (a) ensure that the individual's consent is obtained to monitor and record that individual's direct interaction with Relevant Students where this interaction takes place remotely;
  - (b) implement arrangements to ensure that real-time direct interaction between the individual and Relevant Students and which takes place remotely is monitored in a way which is suitable for identifying Safeguarding Incidents, including random sampling of not less than one session of Real-Time Online Tuition for every 14 such sessions delivered as part of the Deliverables;
  - (c) implement arrangements to ensure that any real-time direct interaction between the individual and Relevant Students is recorded and that these records are retained for a minimum of 90 days, or longer if required for the purpose of investigating a Safeguarding Incident or alleged Safeguarding Incident; and
  - (d) where Real-Time Online Tuition is provided for or on behalf of a school, an Institution within the Further Education Sector or a 16–19 Academy:
    - (i) provide in writing to the school or Institution within the Further Education Sector or 16–19 Academy:
      - (a) a list of the Pre-Appointment Checks which have been carried out with respect to that individual; and
      - (b) confirmation that the information returned by the Pre-Appointment Checks has been considered and that the individual has been judged to be suitable to work with children or vulnerable adults (as the case may be); and
    - (ii) arrange for the individual to provide to the school, an Institution within the Further Education Sector or 16–19 Academy:
      - (a) adequate proof of that individual's identity; and

- (b) where the individual is to provide Real-Time Online Tuition on behalf of a Maintained School and the individual's Disclosure and Barring Service Certificate contains information pertaining to that individual's history, a copy of that certificate; or
  - (c) where the individual is to provide Real-Time Online Tuition on behalf of an Independent School or a Non-Maintained Special School or a 16–19 Academy, a copy of the individual's Disclosure and Barring Service Certificate;
  - (d) where the individual is to provide Real-Time Online Tuition on behalf of an Institution within the Further Education Sector and that individual will be regularly caring for, training, supervising or being solely in charge of persons aged under 18, a copy of the individual's Disclosure and Barring Service Certificate, regardless of whether that certificate contains information pertaining to the individual's history; and
- (iii) in the event that the school, Institution within the Further Education Sector or 16–19 Academy has concerns about the suitability of the individual to deliver Real-Time Online Tuition to students enrolled at that school, Institution within the Further Education Sector or 16–19 Academy, use all reasonable endeavours to make provision for those duties to be performed with respect to those students by another individual to whom the school, Institution within the Further Education Sector or 16–19 Academy does not so object.

## **5. ADDRESSING SAFEGUARDING CONCERNS/ALLEGATIONS REGARDING EMPLOYEES**

- 5.1 The Supplier shall have in place procedures for managing allegations that might indicate an individual employed or otherwise directly engaged by it would pose a risk of harm if that individual continued to work in regular contact with Relevant Students, children and/or vulnerable adults.
- 5.2 Where an allegation indicates an individual employed or otherwise directly engaged by the Supplier might pose a risk of harm if that individual continues to work in regular or close contact with children or vulnerable adults, the Supplier must immediately inform:
- (a) the schools, Institutions within the Further Education Sector and 16–19 Academies at which any Relevant Students, children or vulnerable adults who may have been harmed by that individual are enrolled, in order that appropriate support for those Relevant Students, children or vulnerable adults can be implemented in a timely manner; and
  - (b) the designated officer(s) at the relevant local authority, so that the designated officer can consult police and children's social care services as appropriate.

The Supplier shall afford to the designated officer(s) all reasonable assistance in considering the nature, content and context of the allegation and agreeing a course of action and shall undertake to comply with any direction issued by the designated officer(s).

- 5.3 The Supplier should also have policies and processes to deal with concerns (including allegations) which do not meet the harms threshold, as described above. Concerns may arise in several ways and from a number of sources. For example: suspicion; complaint; or disclosure made by a child, parent or other adult within or outside of the organisation. It is important that the contractor has appropriate policies and processes in place to manage and record any such concerns and take appropriate action to safeguard children. Further information on the importance of dealing with concerns such as these can be found in Part 4, Section two of Keeping children safe in education.
- 5.4 Where the Supplier dismisses or ceases to use the services of an individual who has been engaging in teaching work, because of serious misconduct, or might have dismissed that individual or ceased to use that individual's services had that individual not left first, it must consider whether to refer the case to the Secretary of State for Education, as required by section 141E of the Education Act 2002.
- 5.5 The Supplier must refer to the Disclosure and Barring Service any individual:
- (a) who is or has recently been employed or otherwise directly engaged by the Supplier; and
    - (i) who has harmed, or poses a risk of harm, to a child or vulnerable adult;
    - (ii) who satisfies the Harm Test;
    - (iii) who has received a caution or conviction for a relevant offence; or
    - (iv) who there is reason to believe has been cautioned for or convicted of a relevant barred-list offence;
  - (b) if that individual:
    - (i) has been removed from engaging in Regulated Activity or has been moved to another area of work that is not Regulated Activity; or
    - (ii) would have been removed from engaging in Regulated Activity had they not, for example, been re-deployed, resigned, retired or left.

**Signature:** 

**Email:** mark.pickett@tribalgroup.com

**Signature:** 

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# NCETM\_Contract\_Final\_29.06.2022 (2 of 2)

Final Audit Report

2022-07-01

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