

This contract is made on this 19th day of April 2018

1 **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and

2 NATIONAL FOUNDATION FOR EDUCATIONAL RESEARCH IN ENGLAND & WALES registered in England and Wales under number 900899 whose registered office is The Mere, Upton Park, Slough, Berkshire. SL1 2DQ (the "**Contractor**")

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

It is agreed that:

1. this contract, together with the attached schedules and annexes, collectively form the "**Contract**"; and
2. if there is a conflict between the provisions of the clauses of the Contract and the provisions of the schedules, the following order of precedence shall apply:
 - (a) schedule 2 (Terms and Conditions);
 - (b) schedule 1 (Specification);
 - (c) schedules 3 to 9; and
 - (d) schedule 10 (Contractor's Solution).

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

SIGNED by the CONTRACTOR acting by:

Authorised Signatory: [REDACTED]

Print Name: [REDACTED]

In the presence of: [REDACTED]

Witness signature: [REDACTED]

Occupation: Legal and Contract Manager
Address: The Mere, Upton Park, Slough, SL1 2DQ

Date: 8th June 2018

SIGNED by DFE acting by: [REDACTED]

Print Name: [REDACTED]
Position: Deputy Director

In the presence of: [REDACTED]

Witness signature: [REDACTED]

Occupation: Business Manager
Address: Standards and Testing Agency, Sanctuary Buildings, Great Smith Street, SW1P 3BT
Date: 18/06/18

Table of Contents

Contract Schedules

Schedule 1	Specification
Schedule 2	Terms and Conditions
Schedule 3	Financials
Schedule 4	KPIs, Service Credits and Performance Measures
Schedule 5	Project Plan
Schedule 6	Change Control Procedure
Schedule 7	Key Personnel and Key Sub-Contractors
Schedule 8	Data, Systems Handling and Security
Schedule 9	Commercially Sensitive Information
Schedule 10	Contractor's Solution
Schedule 11	Contractor's Pre existing IP Materials (if any)
Schedule 12	Contract Management

Schedule 1

The Specification

STATEMENT OF REQUIREMENTS – Reception Baseline Assessment

Introduction

1. The Department for Education (DfE) is inviting suppliers to quote for the development and delivery of a reception baseline assessment (RBA) for all state-funded primary schools in England. Participation in the reception baseline will be mandatory for all English state-funded primary schools from September 2020¹.
2. The development model proposed includes opportunity for trialling in the academic year (AY) 2018/19, a RBA national pilot in the AY2019/20 for the September reception intake, as well as for schools that have intakes in January and April, and 2 years of statutory delivery of the assessment to all reception pupils in England in the AY2020/21 and AY2021/22. Up to 100% of schools may opt to participate in the pilot.
3. Suppliers may plan to adapt an existing assessment or develop an entirely new one as long as they can meet the delivery timeline requirements.

Background

4. New accountability measures in primary assessment were introduced in 2016 to recognise the progress that pupils make through primary school, alongside attainment measures. These measures place greater emphasis on progress as a fairer way of assessing school effectiveness, showing how much progress pupils in a school make compared to other pupils nationally with a similar starting point.
5. Progress measures needs a reliable baseline, a starting point from which progress will be calculated. In the government response to the 2017 primary assessment consultation², the Secretary of State has indicated that she intends to introduce a new assessment in reception to be used to establish pupils' prior attainment as the starting point for calculating progress measures in English reading, writing and mathematics when pupils reach the end of key stage 2 (KS2). The target date to introduce this new baseline as a statutory assessment is the AY2020/21.
6. This proposed RBA will follow a different model from the one previously piloted in schools in the AY2015/16. Then, the Department awarded a concession contract to multiple suppliers, giving schools the choice of which provider they wanted to use. After a comparability study was completed, this multiple supplier model was found to not provide sufficiently comparable assessment outcomes and so was discontinued. In this procurement activity, we are therefore awarding the contract to one single supplier or consortia.
7. For the data to be considered robust as a baseline for a progress measure, the assessment needs to be a reliable indicator of pupils' attainment and correlate with their attainment in statutory KS2 assessments in English reading, writing and mathematics.
8. In order for the RBA to be a valid assessment of pupils' attainment in the specified areas, it is important that it meets the technical requirements specified in this document. The RBA will also fall under Ofqual's regulatory framework for national assessments.
9. The RBA is not intended to provide on-going formative information for practitioners. The Secretary of State has announced that the early years foundation stage profile (EYFSP) will be revised and will continue to be used; the on-going completion of that assessment will serve this formative purpose. Nor will the assessment be used in any way to measure

¹ There are currently c.16,000 eligible schools (including academies and free schools) in England.

² Primary assessment in England: government response (DfE, September 2017):
<https://www.gov.uk/government/consultations/primary-assessment-in-england>

performance in the early years or hold early years practitioners to account. Furthermore, although it could be used to supplement schools' existing on-entry assessments, it is not intended to provide detailed diagnostic information about pupils' areas for development.

Scope of the Procurement

10. This document outlines the specification and requirements for developing, delivering and managing the RBA for schools in England.
11. This procurement seeks to award a contract to an organisation or consortia of organisations to develop and deliver the RBA from the start date of the contract. We intend to let a single contract for the development and on-going delivery (for AY2020/21 and AY2021/22) of the new RBA. For bids from consortia, one supplier must be the lead supplier and will be expected to undertake the overall management of the contract.
12. The contract will be structured in order to provide a number of gateways at which progress will be reviewed. This is in order to ensure that the final product is shaped by the evidence emerging from trialling. The contract will be managed by the Standards and Testing Agency (STA), and a steering group comprising of key stakeholders will meet at regular intervals in order to guide the development.
13. The assessment will be delivered under STA branding when administered to schools as part of this contract.
14. Please review the IPR provision in the terms and conditions. As part of the contract award, the successful supplier will be required to identify any background IPR that they will use in the RBA.
15. Any digital, public-facing component of the assessment must meet the government's Digital Service Standards as published on GOV.UK: <https://www.gov.uk/service-manual>. Tenderers are expected to have included all costs associated with compliance for meeting the Digital Service Standards as part of their tender.
16. During the contract, the supplier may be required to work with the STA to investigate whether use could be made when administering the assessment of the platform owned by the STA (and used for the multiplication tables check) for pupil registration and/or data storage. The scope of this activity is currently unknown and should not form part of the costings at this stage.
17. The anticipated contract period is 9 April 2018 to 31 August 2022, with the potential to extend for up to one (1) further year (until 31 August 2023).

Assessment design requirements

18. The RBA will be administered in the first 6 weeks of a child's entry to reception class (whether the child starts full- or part-time). For most children this is the first half of the autumn term. For those schools where there is also a January and April intake, the assessment should also be administered in the first 6 weeks of these children's entry into reception. For indicative annual pupil entry numbers to use for costing purposes for this tender, see tab 1 of the Excel cost sheet (attached in section I of the response template).
19. The assessment will need to be carried out by the pupils' regular teacher or teaching assistant, who will walk the pupils through the tasks. The assessment can be either paper-based or onscreen.
20. For a paper-based assessment, teachers would make binary decisions as to whether the pupil has successfully completed each question (i.e. yes/no, correct/incorrect), rather than completing a graduated rating. In the case of an onscreen assessment, the system would make these binary decisions.
21. We do not intend this to be an observational assessment that is carried out over a period of time as we do not believe this approach will be sufficiently rigorous to generate reliable data that will meet the stated purpose of the RBA. Ongoing assessment of pupils in reception will be captured through the EYFSP.

22. The manageability of the assessment is important in order to minimise teacher workload and ensure smooth delivery. Bidders must explain how their proposed solution uses digital technology in order to maximise the manageability and efficiency of the administrative activities related to the assessment, for example how pupil results transfer from schools to the supplier.
23. The complete assessment should take no longer than 20 minutes per pupil. We do not anticipate that assessment content will be refreshed during the life of the contract.

Content

24. The RBA must include an age-appropriate assessment of communication, language and literacy as well as mathematics and should be clearly linked to the learning and development requirements of the EYFS. See [early years foundation stage framework](#). The assessment is to be delivered in English.
25. We also wish to include an assessment of self-regulation. Self regulation is defined as the ability to monitor and control our own behaviour, emotions or thoughts, altering them in accordance with the demands of the situation. Items on self-regulation will be developed and trialled as part of the contract, with subsequent evaluation of their validity and reliability. Bidders must propose how they would approach assessing self-regulation.

Access arrangements

26. The assessment must be accessible for 99% of the cohort and guidance must be provided to ensure pupils with additional needs are able to access the assessment and their outcomes are valid. This assessment will be taken by all pupils in England in maintained schools except for those with such severe and complex needs that they cannot engage with the material or with the teacher administering it; this number of pupils will be less than 1% of the national cohort.
27. The successful bidder will be expected to consult experts in inclusion during the development phase in order to ensure that the assessment is fair for all pupils. They will also be expected to work with DfE special education needs and disabilities (SEND) and STA access arrangement specialists to identify appropriate access arrangements in order to maximise participation in the RBA without unfairly advantaging or disadvantaging any groups or individuals.
28. Access arrangements for the statutory assessment will be published on GOV.UK by the STA in the annual EYFS Assessment and Reporting Arrangements publication (ARA). The current ARA can be found at [EYFS Assessment and Reporting Arrangements](#).

Outcomes

29. We propose that the numerical data from the RBA is submitted by the supplier and stored by the DfE for the baseline for the measurement of progress when pupils reach the end of primary education.
30. The assessment must report a score for each child on a single scale and must not be age-standardised or have a pass mark/threshold.
31. The Department requires that the following is provided for each pupil who is assessed using the RBA:
 - i. *for the Department:* the supplier will be responsible for providing full, accurate data, including pupil details and assessment results, to the DfE. Schedule 1 Annex 1 provides details of our data requirements for the assessment. Aggregated data must be compatible with the National Pupil Database and the Common Transfer File. Where comparable item level data is available this should also be provided; and
 - ii. *for head teachers and other practitioners:* we intend the supplier to provide summary information of cohort performance, as well as to work with the DfE to explore including some brief commentary on pupils' relative strengths and

weaknesses. We will finalise the precise format of these outcomes in discussion with the successful bidder during the trialling phase, as the content will be determined based on the assessment.

Trialling

32. The successful bidder will be expected to undertake trialling of material under development during the AY2018-19. The size and scope of the trial will be proposed by the bidder along with rationale, and will depend upon such factors as whether some elements of the assessment need to be trialled in order to meet the DfE's requirements, because additional items are wanted, or to trial the items on self-regulation.
33. Any trials must be designed by the supplier to ensure that the data produced is valid and reliable to support test development. Each item trialled should be sat by 400 pupils. The sample of schools and pupils should be nationally representative by attainment and region and the supplier will be responsible for recruiting schools to participate.
34. The supplier must develop and submit a school recruitment and management strategy to DfE. This must include any mitigations and contingencies that will be enacted if schools prove difficult to recruit. Any required adjustments to the sample must be taken into account when specifying the sample: for example, if a larger sample is to be selected to account for the expected response rate and/or an additional sample is to be selected to function as a 'top-up' sample.
35. The supplier will be required to produce a sample specification document outlining the sampling methodology to be used, for sign-off by DfE. DfE will then draw the sample and provide to the supplier.
36. During the development and trialling phase, the supplier will convene practitioner panels to review any materials under development. The DfE will be invited to these meetings and notes of the meetings made available to the DfE and the stakeholder group.
37. Trial materials will be produced by the supplier and made available at the appropriate time to the participating schools, along with whatever administration guidance and support is necessary for the trial to produce valid and reliable assessment outcomes.
38. The supplier must ensure all schools included in a trial of new items sign a confidentiality agreement. This must be signed by all adults who are present during the administration, for example teachers, teaching assistants, or any other adults who may act as readers, amanuenses, translators or in any other capacity.
39. The supplier will be expected to provide a report to the DfE after the trial is complete, including but not limited to:
 - sample representativeness checks;
 - item functioning; and
 - quantitative and qualitative feedback.

The full content of the report will be finalised in discussion with the successful bidder as part of gateway 1 (paragraph 77).

40. The supplier will be expected to propose and implement any improvements necessary to the assessment in preparation for the pilot.

Pilot

41. A national pilot will take place in the AY2019/20, occurring in the first 6 weeks at all 3 entry points for reception intakes (September, January and April).
42. It is the intention that this will be a large-scale pilot, with no limit on the number of schools that can voluntarily opt to participate. The supplier will be responsible for signing-up schools, providing all guidance materials to schools along with any training required, as well

as producing and providing access to the assessment materials at the appropriate time. Support must be provided by the supplier to schools in order to ensure successful administration of the assessment, such as through a helpline and/or through an online contact point.

43. The supplier will be responsible for collecting the data from the assessment and providing it to the Department in the correct format required as specified in Schedule 1 Annex 1 (security information: paragraph 56).
44. During the piloting phase, the supplier will convene practitioner panels to review the delivery of the assessment. The Department will be invited to these meetings and notes of the meetings made available to DfE and the stakeholder group.
45. The successful supplier will be expected to monitor the pilot and to afterwards provide a report to the STA including but not limited to:
 - characteristics of the pilot sample;
 - item and test functioning; and
 - quantitative and qualitative feedback.

The full content of the report will be finalised in discussion with the successful bidder as part of gateway 3 (paragraph 77).

46. Lessons learnt should be recorded, along with proposed improvements to be implemented before statutory national delivery of the assessment.

Statutory delivery

47. The RBA will be mandatory for all schools in England with reception pupils from the AY2020/21. This contract will award the successful supplier with the role of managing and delivering the assessment in the first 2 years: AY2020/21 and AY2021/22.
48. The RBA will be administered in the first 6 weeks of a child's entry into reception (whether they start school full- or part-time). For most children this is the first half of the autumn term. For those schools who also allow children to join in January and April, the assessment should be administered within 6 weeks of a child's entry to reception.
49. The STA will provide the successful supplier with an up-to-date list of schools with reception classes that are expected to take part in the RBA, and an estimate of pupil numbers where available, by January 2020.
50. The supplier will be responsible for producing all assessment material and ensuring that it is made available to schools at the appropriate time for each of the 3 assessment windows throughout the academic year.
51. If the assessment is paper-based, then the supplier will be responsible for the printing and distribution of the assessment to schools, both for the pilot and for statutory delivery in AY2020-21 and AY2021-22.
52. The supplier will be responsible for ensuring that standardised administration of the assessment occurs nationally. As part of this, the supplier will produce assessment administration guidance and make it available to schools in advance of the assessment windows.
53. The supplier should provide a helpdesk which is available from 08:00-18:00hrs Monday to Friday from the start of the autumn term 2020, until the end of the summer term 2022. This helpdesk should be available during term time throughout the year, with the supplier planning sufficient staffing to cover expected call/email/live chat/communication volumes. We will develop service level agreements (SLAs) with the chosen supplier for this contract, looking at volume of contact during the pilot to guide a proportionate proposal. The below points are indicative of our requirements for the reception baseline assessment helpdesk, based upon the service level agreements for our national curriculum assessments helpline

which receives around 50,000 calls and emails per test cycle (we would expect the RBA helpdesk to receive a lower volume of contact as the national curriculum helpline covers a wider variety of assessments per academic year):

- i. at least 90% of inbound calls to the helpline, for any single Working Day, are answered by an operator within 15 seconds, provided that call volumes for the relevant day are no more than 10% greater than the day forecast set out in the forecast schedule for that month;
 - ii. abandoned calls, for any single Working Day, must not exceed 5% of calls (excluding calls which are abandoned within 15 seconds or less), provided that the volume of call for the relevant day is no more than 10% greater than the day forecast set out in the forecast schedule for that month;
 - iii. at least 85% of all calls received on any single Working Day to be resolved at first contact. 100% of enquiries received on any single Working Day resolved by first or second line support or escalated to third line support within two Working Days of receipt;
 - iv. 100% of enquiries received on any single Working Day resolved by first or second line support or escalated to third line support within two Working Days of receipt; and
 - v. 100% of all complaints received on any single working day to be escalated within one working day of receipt.
54. The supplier will be responsible for collecting the data from the assessment, and for securely transferring the quality assured data to the DfE in the format that the DfE prescribes as specified in Schedule 1 Annex 1 (security information: paragraph 56). Bidders should advise how they plan to collect the data from schools as part of their bid.
55. The supplier must ensure that all pupils sit the RBA upon their entry to reception within the specified 6 week assessment window, and that results are reported to them by schools. It will be the supplier's responsibility to contact any schools that have incomplete data so that action can be taken to ensure a complete data set for all pupils entering reception in AY2020/21 and AY2021/22. As part of their bid, suppliers must propose how they would manage pupil registration to ensure that all pupils entering reception in England take the assessment.

Security

56. The supplier will be responsible for collecting the data from the assessment and for securely transferring the quality assured data to the DfE in the format that the DfE prescribes (as set out in Schedule 1 Annex 1), both for all stages of the pilot and for statutory delivery. Handover will need to be carried out in compliance with DfE's Security Policy, the Data Protection Act and the requirements set out in the Cabinet Office Security Policy Framework (SPF). The SPF can be found at [security policy framework](#).
57. The supplier must ensure that all assessment materials are managed securely during the administration period for the pilot and for statutory delivery.
58. If the supplier is unable to comply with the full security requirements stipulated as part of this contract by the end of the trial period (gateway 2 in paragraph 77) then the Department reserves the right to terminate the contract.

Communication with schools

59. For the duration of the contract, the supplier will be responsible for producing the copy to send out electronically to schools so that relevant and appropriate information is provided to the sector in a timely fashion.
60. During both the trial and pilot years all proposed communications should be shared with the STA at least 5 working days in advance of publication, so that the STA can agree and sign them off before they are issued by the supplier. When communicating about the first and second years of statutory delivery, the assessment communications should be provided to

STA for sign-off and inclusion in wider STA communications to schools. This will ensure that clear and consistent messages are provided to schools.

61. The supplier must also provide a communication strategy outlining the approach they would take to communicating with schools and local authorities (LAs) during the trial and pilot years and of the communications to be provided to STA for dissemination following the statutory implementation of the assessment. This should include which channels the supplier will use for its communications (for example emails, websites, social media) and the rationale for using them, and an outline timeline for developing and issuing communications.
62. All supplier communications to schools and other stakeholders will adhere to the Department's overarching strategy and house style as specified at <https://www.gov.uk/guidance/style-guide/a-to-z-of-gov-uk-style>.
63. The supplier will also occasionally be asked to contribute to DfE communications around the RBA as well as signing off content for factual accuracy.
64. The STA will publish full details about the requirements for schools for the RBA a year in advance on GOV.UK and in the EYFS ARA (see paragraph 28). This will include access arrangements for the statutory assessment.

Stakeholder group

65. The DfE will organise and chair regular meetings of a stakeholder group convened specifically for the development of the RBA. This group, which will be separate from the panels organised by the supplier as part of the trial and pilot, will enable key stakeholders to be kept informed on the progress of the assessment and offer them the opportunity to contribute to its development and delivery. The supplier will be expected to attend these meetings, to prepare and circulate any necessary papers, and to work with the STA on responding to the advice of this group. For costing purposes, bidders should assume that these meetings will be held in London and occur quarterly for the first 2 years of the contract, and then at maximum twice annually for the final 2 years of the contract after statutory rollout.

Project Management

66. The supplier will also be expected to attend regular monthly project management meetings as agreed with the Department, providing regular management information, progress reports, risks and issue reports in advance of the meeting. These meetings can be by telephone or video conferencing (e.g. via Skype, Slack or other similar supported video conferencing applications).
67. Project management meetings will:
 - 67.1 identify new risks and issues, and routinely review live risk and issue management arrangements and (where required) contingency plans;
 - 67.2 highlight those risks and issues that have changed their Red/Amber/Green (RAG) status; and
 - 67.3 (where necessary) identify those risks and/or issues requiring escalation within the Department and/or the supplier's organisation.
68. The supplier must manage all aspects of the delivery of the contract in accordance with PRINCE2 and Management of Risk (MoR), or equivalent project and risk management methodologies.
69. The supplier must hold, and permit DfE open access to, detail relating to all activities undertaken in delivering the contract. The supplier must comply with any reasonable requests for information from DfE.
70. The supplier must recruit and retain in post for the duration of the contract suitably qualified and experienced staff (or develop and then deploy plans to secure these resources as and

when required).

71. Skills and qualifications of identified key personnel should cover all major aspects of the contract including commercial management, project management, specialist and other technical skills (including: relevant assessment design and development, also administration; digital system design development and testing as appropriate; also information assurance and security), and general management. The supplier must agree with DfE which posts are considered as key posts, where knowledge, skills or experience are deemed critical to success.
72. The supplier must develop and maintain suitable succession plans for key personnel within two months of contract award and must provide advance notification to DfE of any proposed changes in key personnel. Replacement personnel should have equivalent skills, experience and qualifications, and DfE reserves the right to refuse proposed replacements.
73. Bidders must ensure that no one working on the reception baseline assessment in any capacity is barred from working in teaching.
74. Lessons learnt meetings: during the various stages of contract and service delivery the supplier will attend joint lessons learnt review meetings, such to inform the next stages of delivery. These will occur annually. In addition, the supplier will also attend a lessons learnt meeting towards the end of the contract period, contribute to a constructive evaluation of the contract and identify areas for improvement and innovation in the future.

Exit Management

75. The supplier will provide and maintain a detailed, fully resourced and costed exit and transition plan to ensure a smooth transition at the expiry or termination of the contract. The supplier will provide a detailed statement in the exit and transition plan of all its requirements for the support it requires from DfE to ensure a smooth transition at the expiry or termination of the contract.
76. The supplier must provide, and maintain, a list of all assets, for example materials software, data, people, contracts and other agreements planned to be used in the delivery of the contract. The supplier must identify assets that it anticipates will be transferred to DfE on expiry or termination of the contract. The supplier must also document the arrangements for and handing over such materials to DfE.

Gateways

77. The introduction of the RBA is a key development in the government's approach to primary assessment. In order to benefit from the involvement of the stakeholder group and the emerging evidence, a series of delivery stage gateways are planned. At each stage gateway, the progress to date and the forthcoming activities will be reviewed in order to confirm the ongoing development.

Stages and main activities	Timing (tbc)	Deliverables
1. Sign-off to trial for the AY2018/19	To be proposed by the supplier but should take place no later than August 2018	<ul style="list-style-type: none"> Assessment framework Trialling items Trial plan including analysis plan Assessment resources including training and guidance materials Strategy for obtaining feedback
2. Evaluation of trial and presentation of proposed pilot delivery plan	To be proposed by the supplier but to take place before April 2019	<ul style="list-style-type: none"> Report on completed trial including analysis of outcomes and recommendations for changes Pilot delivery plan including proposed strategy for communication with stakeholders

Stages and main activities	Timing (tbc)	Deliverables
		<ul style="list-style-type: none"> School recruitment strategy for pilot Evidence of security requirements all being met
3. Sign-off to pilot	June 2019	<ul style="list-style-type: none"> Assessment materials and resources, including administration guidance Training plan Strategy for obtaining feedback Analysis plan
4. Evaluation of first assessment window of pilot. Delivery and training plan for national rollout	December 2019	<ul style="list-style-type: none"> Report on pilot for first assessment window including analysis of outcomes and recommendations for changes Delivery plan for national rollout including proposed strategy for communication with stakeholders and training plan for schools
5. Sign-off to national rollout	February 2020	<ul style="list-style-type: none"> Assessment materials and resources, including administration guidance Training plan Data delivery timeline Delivery assurance plan Evidence of security requirements all being met Strategy for obtaining feedback
6. Evaluation of second assessment window of pilot	March 2020	<ul style="list-style-type: none"> Report on pilot for second assessment window including analysis of outcomes
7. Evaluation of third assessment window of pilot	June 2020	<ul style="list-style-type: none"> Report on pilot for third assessment window including analysis of outcomes

Key Performance Indicators (KPIs)

78. Managing KPIs is essential to delivering this project on time and in full. KPIs will be monitored throughout the life of the contract and form part of the contractual relationship. Schedule 4 to this Contract provides details of the KPIs applicable to this contract and of the corresponding system for monitoring them. Any further KPIs will be agreed in the first two months of the contract for the trial year (and then annually after that); these additional KPIs will be dependent upon the delivery mechanism for the assessment (whether it is paper-based or onscreen) and established to ensure efficiency of this delivery method.

Management reporting

79. The successful bidder must provide DfE with the following management information (MI). Bidders should propose what other MI they will be able to provide as relevant to their assessment solution. DfE reserves the right to add to the MI requirements during the life of the contract.

MI	Frequency	Unit	Duration
DEVELOPMENT			
1. project status report; risk and issues report	fortnightly	progress against project plan	for duration of development
TRIALLING			
2. schools recruited for trialling	weekly	number + proportion of target	from dispatch of invitation letters to close of trial
3. trial data uploaded	weekly	pupil + school	for duration of trial
4. project status report; risk and issues report	fortnightly	progress against project plan	for duration of trial
PILOT			
5. schools participating in pilot	weekly	number + proportion of target	from dispatch of invitation letters to close of pilot
6. pilot data uploaded	weekly	pupil + school	for duration of pilot
7. project status report; risk and issues report	fortnightly	progress against project plan	for duration of pilot
DELIVERY			
8. project status report; risk and issues report	fortnightly	progress against project plan	for duration of delivery
9. assessments made available to schools	weekly	school	assessment window
10. data uploaded	weekly	pupil + school	for duration of delivery

Data Protection

80. The Contractor will be the data processor of any personal data relating to pupils or school staff and will act in accordance with the instructions of the DfE (being the data controller) in respect of such personal data.

Arrangements if the one year extension is agreed

81. The Parties may agree to extend the contract for one further academic year until 31 August 2023, in accordance with the provisions of Clause 2.2 of this Contract.

Schedule 2

Terms and Conditions

CONTENTS

CLAUSE

1	DEFINITIONS AND INTERPRETATION
2	TERM
3	THE SERVICES
4	CONSORTIA
5	TRANSFER AND SUB-CONTRACTING
6	PERSONNEL
7	TUPE
8	CHARGES
9	TAX AND VAT
10	PREVENTION OF CORRUPTION
11	DISCRIMINATION
12	INTELLECTUAL PROPERTY
13	DATA, SYSTEMS HANDLING, SECURITY AND DATA PROTECTION
14	PUBLICITY AND PROMOTION
15	CONFIDENTIALITY
16	FREEDOM OF INFORMATION
17	OFFICIAL SECRETS ACT AND FINANCE ACT
18	LIABILITY
19	WARRANTIES AND REPRESENTATIONS
20	FORCE MAJEURE
21	MONITORING AND REMEDIATION
22	STEP IN RIGHTS
23	TERMINATION
24	RETENDERING AND HANDOVER
25	EXIT MANAGEMENT
26	AUDIT
27	ENTIRE AGREEMENT
28	PARTNERSHIP
29	WAIVER
30	CHANGE CONTROL

31	COUNTERPARTS
32	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
33	CONFLICTS OF INTEREST
34	FURTHER ASSURANCE
35	NOTICES
36	DISPUTE RESOLUTION
37	GOVERNING LAW AND JURISDICTION

1. DEFINITIONS AND INTERPRETATION

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

“Area” means all of England.

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

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

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

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

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

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

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

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(d) is independently developed without access to the Confidential Information.

For the avoidance of doubt the Confidential Information includes all results of the RBA.

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

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

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

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

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

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

“Contractor Pre-Existing IP Materials” means any materials containing Intellectual Property Rights used or developed by or on behalf of the Contractor prior to the Effective Date and which are listed by the Contractor in Schedule 11.

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

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** are interpreted accordingly.

“Controller” shall have the meaning given in the GDPR.

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

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **“Crown Body”** is an emanation of the foregoing.

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

“Data Loss Event” any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

“Data Protection Impact Assessment” an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

“Data Subject” shall have the meaning given in the GDPR.

“Data Protection Officer” shall have the meaning given in the GDPR.

“Data Subject Access Request” a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

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

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

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

“DFE IP Materials” means any IP Materials furnished to or made available to the Contractor by or on behalf of the DFE under or in connection with this Contract.

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

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

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

“Delivery ICT” means the software and hardware used by the Contractor (if any) for the purposes of delivering the RBA to schools and collating the results.

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

“DPA” means the Data Protection Act 2018.

“Effective Date” means 19th April 2018.

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

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

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

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

“FOIA” means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to it.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take reasonable preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor's or any of its Sub-Contractor's organisation, or otherwise involving the Personnel; or
- (b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any sub-contract.

“General Anti-Abuse Rule” means:

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

“Good Industry Practice” means the standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

“HMRC” means Her Majesty's Revenue and Customs.

“ICT” means information and communications technology.

“Initial Term” means the period from the Effective Date to 31 August 2022.

“Intellectual Property Rights” means patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade and/or business names, rights in confidential information and know how, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“IP Materials” means any materials containing Intellectual Property Rights including without limitation any test scripts, software, programme materials, guidance, papers and research data, results, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

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

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

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

“Law” means any and all statutes and statutory provisions and any legislation made under them from time to time in force.

“LED” Law Enforcement Directive (Directive (EU) 2016/680).

“Material Breach” means any material breach of this Contract which (without limitation) includes either:

- (a) any breach (including an anticipatory breach) that is serious in the widest sense of having a

serious effect on the benefit which the DFE would otherwise derive from either (i) a substantial portion of the Contract; or (ii) any of the obligations set out in clauses 9, 10, 12, 15, 17 and 33 and in schedule 8; or

(b) any failure:

(i) to achieve 3 consecutive Milestones; or

(ii) to achieve the KPIs as specified in Schedule 4 more than twice in any six month period.

“Milestones” means the date by which certain deliverables shall be provided by the Contractor, as listed in Table 2 of schedule 3 of this Contract.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

(b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Party” means a party to this Agreement.

“Performance Measures” has the meaning set out in Schedule 4.

“Personal Data” shall have the meaning given in the GDPR.

“Personal Data Breach” shall have the meaning given in the GDPR.

“Personnel” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Prohibited Act” means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the DFE a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

(c) an offence:

- (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) the defrauding, attempting to defraud or conspiring to defraud the DFE;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

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

“Protective Measures” appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

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

“RBA” means the Reception Baseline Assessment test which is developed by the Contractor pursuant to this Contract.

“Regulations” means the Public Contract Regulations 2015.

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the DFE.

“Relevant Conviction” means a conviction for an offence involving violence or dishonesty, of a sexual nature or against minors, or for any other offence that is relevant to the nature of the Services.

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

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

“Replacement Contractor” means any third party supplier appointed by the DFE to supply any services which are substantially similar to any of the Services in substitution for the Contractor following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

“Restricted Country” means:

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

“Returning Employees” means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Term.

“Self Regulation Test” means the test developed by the Contractor pursuant to this Contract for the purposes of assessing a pupil’s ability to monitor or control his or her own behaviour, emotions and thoughts, and to alter them in accordance with the demands of the situation in which they find themselves.

“Services” means the services to develop, trial, pilot and operate the RBA, as more particularly described in the Specification.

“Services Commencement Date” means 19th April 2018.

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

“Service Period” (in relation to achievement of a KPI) has the meaning set out in Schedule 4.

“Service Specific IP Materials” means any IP Materials used or developed by or on behalf of the Contractor for the purposes of the Contract including for the avoidance of doubt the IP Materials in the Self Regulation Test but excluding the Contractor’s Pre-existing IP Materials and the Delivery ICT.

“Service Users” means the school staff who are using the Delivery ICT for the purposes of (for example but without limitation) downloading the RBA and uploading individual pupil results.

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

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

“Sub-processor” any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract.

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

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

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

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

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

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

- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;
- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;

- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;
- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
- 1.2.7 the schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.

2. TERM

- 2.1 The Contract commences on the Effective Date and, subject to any provision of this Contract for earlier termination, or extension set out in this clause 2, will terminate at the end of the Initial Term.
- 2.2 DFE may, subject to the written agreement of the Contractor, extend the Initial Term for a further period of 12 months by giving written notice no later than 30 September 2021 to the Contractor, such notice to expire on or before the expiry of the Initial Term. If extended, this Contract will finally expire on 31 August 2023.

3. THE SERVICES

- 3.1 The Contractor shall provide the Services in the Area in accordance with the Specification and the KPIs and undertake and be responsible for all obligations of the Contractor in respect of the Services.
- 3.2 The Contractor shall, in performing its obligations under the Contract:
 - 3.2.1 conform to the requirements of the Specification and the Contractor's Solution (but in the event of any conflict between the Specification and the Contractor's Solution the former shall prevail to the extent of the inconsistency) or as otherwise agreed in writing between the Parties;
 - 3.2.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;
 - 3.2.3 comply with Good Industry Practice;
 - 3.2.4 ensure that the Services are provided by competent and appropriately trained personnel;
 - 3.2.5 comply with the Quality Standards and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body;
 - 3.2.6 comply with the KPIs, and Service Credit requirements set out in schedule 4;
 - 3.2.7 comply with the Project Plan;
 - 3.2.8 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within 14 days of the same being brought to the attention of the Contractor by the DFE;
 - 3.2.9 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
 - 3.2.10 comply with all health and safety legislation, adopt and maintain safe operating

systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE, the Service Users and all other persons including members of the public;

- 3.2.11 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Personnel also comply; and
- 3.2.12 provide to the DFE the Management Information listed in Schedule 12 in accordance with the frequency specified in Schedule 12.
- 3.4 The DFE may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
- 3.5 All equipment and other property brought onto DFE Premises shall be at the Contractor's own risk and the DFE shall have no liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the DFE.
- 3.6 Any land or DFE Premises made available from time to time to the Contractor by the DFE in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or DFE Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or DFE Premises was made available.
- 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the DFE retains the right at any time to use any DFE Premises in any manner.

4. CONSORTIA

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

5. TRANSFER AND SUB-CONTRACTING

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

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

6. PERSONNEL

- 6.1 The DFE may refuse admission to DFE Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the DFE believes is a security risk.
- 6.2 If the DFE require the removal of any Personnel pursuant to clause 6.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.
- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the DFE's prior written consent. Furthermore, the Contractor shall ensure that no person who has been barred from teaching by the National College of Teaching and Leadership is employed or engaged in providing any aspect of the Services.
- 6.5 For each of the Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate police record.
- 6.6 The Contractor acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Personnel and Key Sub-Contractors listed in schedule 7 as at the Effective Date.
- 6.7 Key Personnel shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Personnel shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the

responsibilities of that person in relation to the Services.

- 6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
- 6.10 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.
- 6.11 The DFE shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.
- 6.12 Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.

7. TUPE

- 7.1 No later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Personnel including the following:
 - 7.1.1 the total number of Personnel whose employment/engagement shall terminate at the end of the Term;
 - 7.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Personnel referred to in clause 7.1.1;
 - 7.1.3 the terms and conditions of employment/engagement of the Personnel referred to in clause 7.1.1, their job titles and qualifications;
 - 7.1.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - 7.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union(together the “**TUPE Information**”).
- 7.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.
- 7.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.4 The DFE may use TUPE Information for the purposes of any retendering process.
- 7.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
 - 7.5.1 the provision of TUPE Information;

- 7.5.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
 - 7.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - 7.5.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - 7.5.5 any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 7.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.
- 7.7 This clause 7 applies during the Term and indefinitely thereafter.
- 7.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
- 7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
 - 7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - 7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
 - 7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.7 being issued by the Contractor.

- 8.3 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 8.4 The Charges are exclusive of Value Added Tax (“**VAT**”) and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 8.5 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 8.6 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.7 Invoices shall be sent, within 30 days of the end of the relevant invoicing date, to Department for Education (STA) PO Box 407, SSCL, Phoenix House, Celtic Springs Business Park, Newport, NP10 8FZ. An invoice is a “**Valid Invoice**” if it is legible and includes:
- 8.7.1 the date of the invoice;
 - 8.7.2 Contractor’s full name and address;
 - 8.7.3 Contract reference number;
 - 8.7.4 the charging period;
 - 8.7.5 a detailed breakdown of the appropriate Charges including deliverables and Milestones achieved (if applicable);
 - 8.7.6 days and times worked (if applicable);
 - 8.7.7 Service Credits (if applicable); and
 - 8.7.8 VAT if applicable.
- 8.8 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.9 The DFE intends to pay Valid Invoices within 10 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 8.9 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.10 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.11 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE. The final invoice shall be submitted not later than 30 days after the end of the Term.
- 8.12 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service to the reasonable satisfaction of the DFE.

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

9. TAX and VAT

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

any such assessment or claim.

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

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

9.11.1 notify the DFE in writing of such fact within 5 Business Days of its occurrence; and

9.11.2 promptly give the DFE:

- (i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the DFE may reasonably require.

10. PREVENTION OF CORRUPTION

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

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

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

10.2 The Contractor shall not:

10.2.1 commit a Prohibited Act; or

10.2.2 do or suffer anything to be done which would cause the DFE or any of its employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

10.3 The Contractor shall:

10.3.1 and procure that its Sub-Contractors shall, establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.2 and make such records available to the DFE on request.

10.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Personnel have:

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

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

- 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE's enquiries, co-operate with any investigation, and allow the DFE to audit any books, records and any other relevant documentation.
- 10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the DFE may by notice:
 - 10.6.1 require the Contractor to remove from performance of the Contract any Personnel whose acts or omissions have caused the Default; or
 - 10.6.2 immediately terminate the Contract.
- 10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

11. DISCRIMINATION

- 11.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable equality and discrimination Law.
- 11.2 The Contractor shall comply with requirements and instructions which the DFE reasonably imposes in connection with any equality obligations imposed on the DFE at any time under equality and discrimination Law.
- 11.3 The Contractor indemnifies the DFE in full from and against all Employment Liabilities that may arise as a result of any claims brought against the DFE by any of its employees, agents, consultants and contractors ("**DFE Personnel**") and/or any of the Personnel where such claim arises from any act or omission of the Personnel in respect of anti-discrimination legislation. The Contractor will also provide all reasonable cooperation, assistance and information as the DFE may request in connection with any investigation by the DFE into any complaint or other grievance received by it from any of the DFE Personnel or Personnel in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any Personnel.

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights:
 - 12.1.1 in the DFE IP Materials shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown); and
 - 12.1.2 in the Service Specific IP Materials shall vest in the DFE (save for Copyright and Database Rights which shall vest in the Crown).
- 12.2 The Contractor shall not, and shall ensure that Personnel shall not, use or disclose either the DfE IP Materials or the Service Specific IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.
- 12.3 The Contractor hereby assigns to the DFE (or (in the case of Copyright and Database Rights the Crown) or undertakes to procure the assignment to the DFE / the Crown (as the case may be) of:
 - 12.3.1 the Copyright and the Database Rights in the results of the RBA (which for the avoidance of doubt are Confidential Information and Personal Data); and
 - 12.3.2 all Intellectual Property Rights which may subsist in the Service Specific IP Materials.

- 12.4 The assignments specified in Clause 12.3 shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights and shall include, without limitation, an assignment to the DFE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by the DFE / the Crown (as the case may be) as are necessary to execute and perfect these assignments and to otherwise evidence the DFE's or the Crown's ownership of such rights.
- 12.5 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in Copyright within the Service Specific IP Materials.
- 12.6 The Contractor hereby grants to the DFE (or shall procure the grant of) a non-exclusive, worldwide, royalty free, perpetual and irrevocable licence to use, develop, reproduce, modify and sub-licence the Contractor Pre-existing IP Materials. Such licence may also be freely assigned and/or novated to any third party including a Replacement Contractor. The Authority shall ensure that Information released to any third party under this Condition is limited to that necessary for the task on which the third party is engaged and that any such information is ultimately returned or destroyed by the third party.
- 12.7 The Contractor hereby grants to the DFE (or shall procure the grant of) a non-exclusive right for the DFE and the Service Users to use any IP Materials contained in the Delivery ICT for the duration of this Contract.
- 12.8 The Contractor shall notify the DFE of any Third Party IP Materials which it proposes to use in connection with the supply of the Services or in order to develop the Service Specific IP Materials, and shall seek the written consent of the DFE prior to doing so. In the event that the Contractor incorporates Third Party IP Materials within any Service Specific IP Materials, the Contractor shall grant to the DFE (or shall procure the grant of) a non-exclusive, worldwide, royalty free, perpetual and irrevocable licence to use, develop, reproduce, modify and sub-licence the Third Party IP Materials. Such licence may also be freely assigned and/or novated to any third party including a Replacement Contractor.
- 12.9 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 14, except to the extent that any such claim arises from:
- 12.9.1 items or materials supplied by the DFE; or
- 12.9.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract nor any use or amendment of the IPR not originally envisaged under this Contract.
- 12.10 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.
- 12.11 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the DFE, provided always that the Contractor shall:
- 12.11.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
- 12.11.2 take due and proper account of the interests and concerns of the DFE; and
- 12.11.3 not settle or compromise any claim without the DFE's prior written consent (not to be

unreasonably withheld or delayed).

- 12.12 Notwithstanding clause 12.11 the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.
- 12.13 The DFE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 12.14 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:
- 12.14.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
- 12.14.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.
- 12.15 If the Contractor is unable to comply with clauses 12.14.1 and 12.14.2 within 20 Business Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.
- 12.16 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights in the DFE IP Materials or the Services Specific IP Materials any act or thing which:
- 12.16.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or
- 12.16.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.
- 12.17 The Contractor shall comply with the DFE's branding guidelines and shall not use any other branding, including its own, other than as set out in the DFE's branding guidelines or as otherwise agreed with the DFE.
- 12.18 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:
- 12.18.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or
- 12.18.2 apply anywhere in the world to register any trade marks identical to or so nearly resembling any DFE Trade Mark as to be likely to deceive or cause confusion.

13. DATA, SYSTEMS HANDLING, SECURITY AND DATA PROTECTION

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

13.2 For the purposes of this clause 13:

“Data Controller” and **“Data Processor”** and **“Data Subject”** have the meanings assigned to them in the DPA; and

“DPA” means the Data Protection Act 2018, and

“Personal Data” means the personal data gathered with respect to pupils who participate in the RBA, including their name, Unique Pupil Number (UPN) and their date of birth (which is required to assist in matching any data discrepancies), together with their scores in the RBA, which will be added to the National Pupil Database maintained by the DFE.

13.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 8 Annex 1 by the Department and may not be determined by the Contractor.

13.4 The Contractor shall notify the Department immediately if it considers that any of the Department's instructions infringe the Data Protection Legislation.

13.5 The Contractor shall provide all reasonable assistance to the Department in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Department, include:

13.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;

13.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

13.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

13.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

13.6 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

13.6.1 process that Personal Data only in accordance with Schedule 8 Annex 1, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Department before processing the Personal Data unless prohibited by Law;

13.6.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Department as appropriate to protect against a Data Loss Event having taken account of the:

13.6.2.1 nature of the data to be protected;

13.6.2.2 harm that might result from a Data Loss Event;

13.6.2.3 state of technological development; and

13.6.2.4 cost of implementing any measures;

13.6.3 ensure that:

- 13.6.3.1 the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 8 Annex 1);
- 13.6.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - 13.6.3.2.1 are aware of and comply with the Contractor's duties under this clause;
 - 13.6.3.2.2 are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - 13.6.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Department or as otherwise permitted by this Contract; and
 - 13.6.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 13.6.4 not transfer Personal Data outside of the EU unless the prior written consent of the Department has been obtained and the following conditions are fulfilled:
 - 13.6.4.1 the Department or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Department;
 - 13.6.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 13.6.4.3 the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Department in meeting its obligations); and
 - 13.6.4.4 the Contractor complies with any reasonable instructions notified to it in advance by the Department with respect to the processing of the Personal Data;
- 13.6.5 at the written direction of the Department, delete or return Personal Data (and any copies of it) to the Department on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
- 13.7 Subject to clause 13.8, the Contractor shall notify the Department immediately if it:
 - 13.7.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 13.7.2 receives a request to rectify, block or erase any Personal Data;
 - 13.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 13.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 13.7.5 becomes aware of a Data Loss Event; or

- 13.7.6 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law. Subject to clause 13.8 the Department shall likewise notify the Contractor immediately in the circumstances described in this Clause 13.7.4.
- 13.8 The Contractor's obligation to notify under clause 13.7 shall include the provision of further information to the Department in phases, as details become available.
- 13.9 Taking into account the nature of the processing, the Contractor shall provide the Department with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 13.7 (and insofar as possible within the timescales reasonably required by the Department) including by promptly providing:
 - 13.9.1 the Department with full details and copies of the complaint, communication or request;
 - 13.9.2 such assistance as is reasonably requested by the Department to enable the Department to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 13.9.3 the Department, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 13.9.4 assistance as requested by the Department following any Data Loss Event;
 - 13.9.5 assistance as requested by the Department with respect to any request from the Information Commissioner's Office, or any consultation by the Department with the Information Commissioner's Office. The Department shall likewise provide assistance to the Contractor in the circumstances described under this clause 13.9.5.
- 13.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
 - 13.10.1 the Department determines that the processing is not occasional;
 - 13.10.2 the Department determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 13.10.3 the Department determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.11 The Contractor shall allow for audits of its Data Processing activity by the Department or the Department's designated auditor.
- 13.12 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 13.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
 - 13.13.1 notify the Department in writing of the intended Sub-processor and processing;
 - 13.13.2 obtain the written consent of the Department;
 - 13.13.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and

13.13.4 provide the Department with such information regarding the Sub-processor as the Department may reasonably require.

13.14 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

13.15 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

13.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Department may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

14. PUBLICITY AND PROMOTION

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

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

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

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

15. CONFIDENTIALITY

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

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

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

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

15.5 Clause 15.1 shall not apply to the extent that:

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

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

- 15.5.3 such information was obtained from a third party without obligation of confidentiality;
 - 15.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 15.5.5 it is independently developed without access to the other Party's Confidential Information.
- 15.6 Nothing in clause 15 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
- 15.6.1 for the purpose of the examination and certification of the DFE's accounts;
 - 15.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;
 - 15.6.3 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
 - 15.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 15.8.3 and 15.8.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 15.7 Nothing in clauses 15.1 to 15.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 15.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the DFE's obligations of confidentiality.
- 15.9 If the Contractor does not comply with clauses 15.1 to 15.5 the DFE may terminate the Contract immediately on notice to the Contractor.

16. FREEDOM OF INFORMATION

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

any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

17. OFFICIAL SECRETS ACTS AND FINANCE ACT

17.1 The Contractor shall comply with the provisions of:

17.1.1 the Official Secrets Acts 1911 to 1989; and

17.1.2 section 182 of the Finance Act 1989.

18. LIABILITY

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

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

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

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

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

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

18.2 Subject to clauses 18.1 and 18.3, the Contractor shall indemnify the DFE in full on demand and shall keep the DFE fully indemnified on demand from and against all:

18.2.1 losses, costs, expenses, demands and charges (including legal expenses); and

18.2.2 claims, proceedings, actions, damages, and any other liabilities (including for breach of statutory duty)

which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Personnel on the Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

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

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

18.4.1 for any losses of an indirect or consequential nature;

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

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

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

18.5.1 in respect of damage to property shall not exceed GBP 1 million in respect of any one event or series of events arising from the same incident;

- 18.5.2 in respect of breaches of Clause 15 or Schedule 8 shall not exceed GBP 5 million in respect of any one event or series of events arising from the same incident; and
- 18.5.3 in respect of any claim not covered by clause 18.5.1 or 18.5.2 in each calendar year in aggregate shall not exceed the sum of the Charges paid or payable in that calendar year.
- 18.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:
 - 18.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
 - 18.6.2 any wasted expenditure or charges;
 - 18.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and/or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
 - 18.6.4 any compensation or interest paid to a third party by the DFE; and
 - 18.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 18.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.8 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 18.9 The Contractor shall effect and maintain in force with a reputable insurance company:
 - 18.9.1 employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one event or series of events arising from the one occurrence;
 - 18.9.2 professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £1,000,000 for any one event or series of events arising from the one occurrence; and
 - 18.9.3 insurance to cover the liability of the Contractor under the Contract.

Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.
- 18.10 The Contractor shall supply to the DFE on demand copies of the insurance policies maintained under clause 18.9.
- 18.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 18.12 Notwithstanding the terms of clause 18.9, it shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

19. WARRANTIES AND REPRESENTATIONS

19.1 The Contractor warrants and represents that:

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

20. FORCE MAJEURE

- 20.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 20.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during

the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

- 20.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 20.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

21. MONITORING AND REMEDIATION

- 21.1 The DFE or its authorised representatives may visit on reasonable notice to the Contractor any premises of the Contractor, any Consortium Member or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Services.
- 21.2 During such visits, the DFE may inspect and take copies of such of the records of the Contractor and any Consortium Member as relate to the performance of their obligations under the Contract.
- 21.3 If the DFE reasonably considers that any provision of the Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:
- 21.3.1 require the Contractor to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the DFE (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and
- 21.3.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the DFE reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the DFE in this regard.
- 21.4 If the Contractor fails to comply with any provision of the Contract or fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the DFE may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the DFE may direct.
- 21.5 The DFE may review from time to time the progress of the Contractor against the Project Plan. The Contractor shall cooperate with the DFE in this regard and provide any information and evidence reasonably required by the DFE.
- 21.6 The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that the Project Plan is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

22. STEP IN RIGHTS

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

- 22.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
- 22.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 22 is necessary;
- 22.1.4 a serious risk exists to the health and safety of persons, property or the environment;
- 22.1.5 it is necessary to discharge a statutory duty; or
- 22.1.6 the Contractor becomes insolvent.
- 22.2 If the DFE has a Step In Right it may serve notice on the Contractor (a **“Step-In Notice”**) that it will take action under this clause 22 either itself or with the assistance of a third party.
- 22.3 The Step-In Notice shall set out:
 - 22.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);
 - 22.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;
 - 22.3.3 the date on which it wishes to commence the Required Action;
 - 22.3.4 the time period which it believes will be necessary for the Required Action;
 - 22.3.5 whether the DFE will require access to the Contractor's premises; and
 - 22.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.
- 22.4 Following service of a Step-In Notice, the DFE shall:
 - 22.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 22.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
 - 22.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and
 - 22.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 22.5 For as long as and to the extent that the Required Action continues:
 - 22.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
 - 22.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.
- 22.6 If the Contractor demonstrates to the DFE's reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.

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

23. TERMINATION

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

including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:

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

23.2.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control

but shall not be permitted to terminate where approval was granted prior to the Change of Control.

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

23.3.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

23.3.2 it is for any reason dissolved;

23.3.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;

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

23.3.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

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

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

23.3.6.2 a petition is presented for his bankruptcy;

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

23.3.6.4. any event similar to those listed in clauses 23.3.1 to 23.3.6 occurs under the law of any other jurisdiction.

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

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

23.4.2 it is for any reason dissolved;

23.4.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;

23.4.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

- 23.4.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
 - 23.4.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - 23.4.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 23.4.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 23.4.9 any event similar to those listed in clauses 23.4.1 to 23.4.8 occurs under the law of any other jurisdiction.
- 23.5 References to the Insolvency Act 1986 in clause 23.4.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 23.6 The DfE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 23.6.1 the Contractor has not remedied the Default to the satisfaction of the DfE within 21 Business Days or such other period as may be specified by the DfE, after issue of a notice specifying the Default and requesting it to be remedied
 - 23.6.2 the Default is not, in the opinion of the DfE, capable of remedy; or
 - 23.6.3 the Default is a Material Breach.
- 23.7 The DfE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.7.1 the Contractor's warranty in clause 19.1.10 is materially untrue;
 - 23.7.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance;
 - 23.7.3 the Contractor fails to provide details of proposed mitigating factors which, in the DfE's reasonable opinion are acceptable; or
 - 23.7.4 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 23.8 The DfE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.8.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
 - 23.8.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
 - 23.8.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
- 23.9 If the DfE terminates the Contract under clauses 23.6, 23.7 or 23.8:

- 23.9.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
- 23.9.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 23.
- 23.10 If there is a change in policy (either due to a change in government or due to a change in Minister) such that a decision is reached to abandon the use of the RBA, the DFE may terminate the Contract (or any part of it) by serving 3 months' written notice on the Contractor.
- 23.11 If the DFE terminates the Contract under clause 23.10 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs [to be discussed whether this is fair and reasonable]), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavailability of such costs.
- 23.12 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 23.13 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 90 Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clause 8.6 or to Force Majeure.
- 23.14 Save as otherwise expressly provided in the Contract:
- 23.14.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 23.14.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Payment), 9 (Tax and VAT), 10 (Prevention of Fraud), 12 (Intellectual Property Rights), 13 (Data), 15 (Confidentiality), 16 (Freedom of Information), 17 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 180 (Warranties and Representations), 19 (Liability), 23 (Termination) 24 (Retendering and Handover), 25 (Exit Management), 26 (Audit), and 37 (Governing Law and Jurisdiction).

24. RETENDERING AND HANDOVER

- 24.1 Within 30 days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the DFE to issue tender documents for the future provision of replacement services.
- 24.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 24.1 is given only to potential contractors who have qualified to tender for the future provision of the replacement services.
- 24.3 The DFE shall require that all potential Contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such

extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the DFE; and that they shall not use it for any other purpose.

- 24.4 The Contractor shall allow access to the Premises in the presence of DFE's authorised representative, to any person representing any potential contractor whom the DFE has selected to tender for the future provision of the Services.
- 24.5 If access is required to the Contractor's Premises for the purposes of clause 26.4, the DFE shall give the Contractor 7 days' notice of a proposed visit together with the names of all persons who will be visiting.
- 24.6 The Contractor shall co-operate fully with the DFE during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 24.7 Within 10 Business Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the DFE.

25. EXIT MANAGEMENT

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

summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Business Days from the date that that request was made.

26. AUDIT

- 26.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.
- 26.2 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.
- 26.3 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- 26.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

27. ENTIRE AGREEMENT

- 27.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 27.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.
- 27.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 27.4 Nothing in this clause 27 shall exclude any liability which one Party would otherwise have to the other Party in respect of any fraud, fraudulent misrepresentation or fraudulent concealment.

28. PARTNERSHIP

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

29. WAIVER

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

30. CHANGE CONTROL

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

31. COUNTERPARTS

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

32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

33. CONFLICTS OF INTEREST

- 33.1 The Contractor shall:
- 33.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and
 - 33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 33 as a “**Conflict of Interest**”.
- 33.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 35 the Contractor shall forthwith provide full particulars to the DFE.
- 33.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.
- 33.4 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:
- 33.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and
 - 33.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.
- 33.5 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).
- 33.6 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing breach by

the Contractor of the provisions of this clause 33.

34. FURTHER ASSURANCE

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

35. NOTICES

- 35.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, facsimile or e-mail, addressed to the recipient at its registered office or its address (or such other address, facsimile number or e-mail address as may be notified in writing from time to time).
- 35.2 The notice, demand or communication shall be deemed to have been duly served:
- 35.2.1 if delivered by hand, when left at the proper address for service;
- 35.2.2 if given or made by prepaid first class registered or recorded post 48 hours after being posted or in the case of airmail 14 days after being posted;
- 35.2.3 if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
- 35.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

36. DISPUTE RESOLUTION

- 36.1 Any Dispute shall be dealt with in accordance with this clause 36.
- 36.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
- 36.3 If a Dispute cannot be resolved by negotiation as referred to in clause 36.2 within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

37. GOVERNING LAW AND JURISDICTION

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

Schedule 3

Financials

1. The DFE shall pay the Contractor the Charges in accordance with the Contract, subject to successful delivery of the Services as evidenced by (either) achievement of the Milestones specified in Table 2 below or achievement of the KPIs set out in Schedule 4. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise between the Contractor and the DFE, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
2. The DFE may review the detailed costs set out in the Project Plan to ensure that the Contract is value for money.
3. Indexation shall not apply to the Charges.
4. The Contractor shall be entitled to invoice the Charges as calculated in accordance with the spreadsheet set out at Table 1 below. The Contractor may not issue any invoice for any payment until the relevant Milestone set out in Table 2 below has been met, and that the work comprised within the relevant Milestone has been Accepted by the DFE in accordance with the process set out in Paragraph 5 below.
5. Acceptance Procedure.

The Contractor shall provide each Deliverable listed in Table 2 below in draft form to the DFE in accordance with the Project Plan. The DFE shall be entitled to review and provide comments on each such Deliverable, and such process shall continue until such time as the DFE (acting reasonably) has confirmed in writing that the relevant Deliverable has been accepted. Until each Deliverable is accepted in accordance with this paragraph 5, the Contractor may not issue an invoice in respect of the relevant Deliverable.

Table 1: Spreadsheet of costs at Schedule 3 Annex 1

Table 2: Payment Schedule - payment will follow the completion of the milestones listed below:

	Deliverables	Timing	Payment
1a.	Sign-off to trial for the AY2018/19, with deliverables as listed in Schedule 1 paragraph 77 gateway 1.	July 2018	
1b.		November 2018	
2.	Evaluation of trial and presentation of proposed pilot delivery plan, with deliverables as listed in Schedule 1 paragraph 77 gateway 2.	April 2019	
3.	Sign-off to pilot, with deliverables as listed in Schedule 1 paragraph 77 gateway 3.	June 2019	
4.	Data feed for the autumn term assessment window of the pilot 2019.	11 December 2019	Based on volumes received x per pupil cost.
5.	Sign-off to national rollout, with deliverables as listed in Schedule 1 paragraph 77	February 2020	

	Deliverables	Timing	Payment
	gateway 5.		
6.	Data feed for the spring term assessment window of the pilot 2020.	15 April 2020	Based on volumes received x [REDACTED] per pupil cost.
7.	Data feed for the summer term assessment window of the pilot 2020.	15 July 2020	Based on volumes received x [REDACTED] per pupil cost.
8.	Data feed for the autumn term assessment window 2020.	16 December 2020	Based on volumes received x [REDACTED] per pupil cost.
9.	Data feed for the spring term assessment window 2021.	14 April 2021	Based on volumes received x [REDACTED] per pupil cost.
10.	Data feed for the summer term assessment window 2021.	14 July 2021	Based on volumes received x [REDACTED] per pupil cost.
11.	Data feed for the autumn term assessment window 2021.	15 December 2021	Based on volumes received x [REDACTED] per pupil cost.
12.	Data feed for the spring term assessment window 2022.	13 April 2022	Based on volumes received x [REDACTED] per pupil cost.
13.	Data feed for the summer term assessment window 2022.	13 July 2022	Based on volumes received x [REDACTED] per pupil cost.

Schedule 4

KPIs and Service Credits

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

KEY PERFORMANCE INDICATORS (KPIs)

- 2 This schedule 4 sets out the KPIs against which the Contractor shall measure its performance.
- 3 The Contractor shall monitor its performance against each of the KPIs and send the DFE a report detailing the KPIs which were achieved in accordance with the provisions of this schedule 4.
- 4 The DFE reserves the right (acting reasonably) to add further KPI's which relate specifically to the manner in which the Contractor has agreed to deliver the RBA to schools in accordance with this Contract.
- 5 The Contractor shall not be held liable for failure to meet these KPIs to the extent that the Contractor is able to show that any such failure was not caused or contributed to by any circumstances within their reasonable control.

PERFORMANCE STANDARDS/MEASURES

- 6 The Contractor must meet the Performance Measure for each identified KPI as set out in Table 1 below within the agreed Service Period as defined below.

KPI	Requirement	Performance Measure	Service Period	Service Credit
1.	Data Accuracy	The scores of the RBA must be 100% accurate for each pupil	Assessed for each cohort in September, January and April, but the majority of children will be assessed in September.	<p>Subject to the proviso below, in the event that the scores of the RBA are inaccurate for 0.3% or more of pupils within a September cohort, the Contractor shall pay to the DFE a Service Credit equal to 5% of the aggregate Per Pupil Charges paid or payable for the relevant September cohort.</p> <p>Subject to the proviso below, in the event that the scores of the RBA are inaccurate for up to 0.3% of pupils within a September cohort, the Contractor shall refund to the DFE the Per Pupil Charge for each pupil in respect of which an inaccurate result has been submitted. Any such refund shall be up to a maximum of [REDACTED] per school year.</p> <p>No Service Credit shall apply in respect of data inaccuracies in relation to the January and April cohorts because it is anticipated that these will be very small. However, if data inaccuracies are identified, then subject to the proviso below, these will constitute a breach of this KPI and thus count towards the calculation of Material Breach set out in Paragraph 10 below.</p> <p>Provided always that if in relation to a particular school or series of schools, the Contractor can establish to the reasonable satisfaction of the DFE that there are inaccuracies in the scores which indicate that the relevant school or schools have not complied with the statutory or procedural requirements of the DFE with respect to the RBA, then the Contractor shall not be liable for that portion of any Service Credit or refund of Per Pupil Charges which are attributable to the school or schools in question (such reduction in Service Credit to be agreed between the DFE and the Contractor, each acting reasonably and in good faith).</p>
2.	Service Availability	The Delivery ICT	This should be	No Service Credit applies because this is addressed in KPI 4 below.

		shall be available to 99.8% of schools from 0800 until 1700 Monday to Friday during school Term Time and that any downtime has occurred solely outside these working hours. For these purposes Term Times means (in relation to each term) the period starting with the earliest start date for any school in England for that term and ending on the latest end date for any school in England for that term.	measured per calendar month during term time.	
3.	Timeliness	All management information specified in Schedule 12 (MI) to be delivered on time and be 100%	Monthly	No Service Credit applies

		accurate		
4.	Customer Satisfaction	Less than 5% of all participating schools make complaints directly to the Contractor concerning the Services provided.	Per 6 week assessment window: Sept, Jan and April in each year starting with the Pilot.	In the event that 5% or more of participating schools make complaints directly to the Contractor concerning Contractor's provision of the Services provided during any Service Period, the Contractor shall pay to the DFE by way of a Service Credit a sum equal to 5% of the aggregate Per Pupil Charges for the Service Period in which the performance failure occurred.
5	Delivery of assessment resources to schools	An assessment ordering system will be available for schools to place orders for assessment resources in February and March of each year. 100% of orders placed within the ordering window will be fulfilled by the beginning of July each year – i.e. before the end of the Summer term.	February to July starting with pilot year	No Service Credit applies because this is addressed in KPI 4 above.

6	Provision of training	Access to training modules on administration of the Reception Baseline Assessment will be available from a published date at the beginning of July in each academic year so that practitioners are familiar with the materials and administration requirements prior to the assessment windows.	Online training available July to June starting with pilot year	No Service Credit applies because this is addressed in KPI 4 above.
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- 7 The Contractor confirms that it has taken KPIs, Performance Measures and Service Credits into account in calculating the Charges. Both Parties agree that the KPIs, Performance Measures and Service Credits are a reasonable and proportionate method of adjusting the Charges to reflect poor Contractor performance and to protect the DFE's interests in receiving proper performance of the Contract.

CONSEQUENCES OF FAILURE TO MEET KPIs

- 8 A failure to achieve a KPI during a Service Period (a "Service Failure") may attract a Service Credit where specified in the table above.
- 9 The amount of a Service Credit for a Service Period shall be calculated in accordance with the table set out above.
- 10 For the avoidance of doubt, a failure to meet the required performance level for the other KPIs to which no Service Credits are attached will be considered to be a breach of this Contract.
- 11 In addition to its rights under this Schedule, if there are one or more Service Failures in 3 (three) consecutive calendar months, the Contractor will be considered to be in Material Breach of this Contract entitling the DFE to terminate in accordance with Clause 23. For the avoidance of doubt, payment of any Service Credits under this Schedule shall not limit the remedies of the DFE for the breach or breaches in question.

Schedule 5

Project Plan

1. The Contractor shall provide the Services in accordance with the Project Plan set out as Schedule 5 Annex 1 and Annex 2.
2. The Project Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure. To avoid burdensome levels of Contract Changes the version of the Project Plan used at Checkpoint Meetings shall be considered the current version. Incremental changes shall be captured via a Change Control Procedure at times to be agreed by both parties.
3. The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Service Commencement Date the Contractor is able to provide the Services:
 - 3.1 in accordance with the provisions of the Contract; and
 - 3.2 in a manner that maintains the continuity of Services to the DFE.
4. The Contractor shall monitor its performance against the Project Plan and report to the DFE monthly (or more frequently if so required by the DFE) on its performance.

Schedule 6

Change Control Procedure

- 1 The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Parties' respective contract managers.
- 2 The Contractor shall use reasonable endeavours to incorporate minor changes requested by the DFE within the current Charges and shall not serve a Contractor Notice of Change unless the change involves a demonstrable material increase to its costs or requires a material change to the Contract.
- 3 Either Party may request a Variation provided that such Variation does not amount to a material change.
- 4 The DFE may request a Variation by completing the Change Control Note and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Charges are required in order to implement the Variation within a reasonable time limit specified by the DFE. If the Contractor accepts the Variation it shall confirm it in writing within 21 days of receiving the Change Control Note.
- 5 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Charges, the DFE may allow the Contractor to fulfil its obligations under the Contract without Variation or if the Parties cannot agree to the Variation the Dispute will be determined in accordance with clause 36.
- 6 If the Contractor wishes to introduce a change to the Contract it may request a Variation by serving the Change Control Note on DFE.
- 7 The DFE shall evaluate the Contractor's proposed Variation in good faith, taking into account all relevant issues.
- 8 The DFE shall confirm in writing within 21 days of receiving the Change Control Note if it accepts or rejects the Variation.
- 9 The DFE may at its absolute discretion reject any request for a Variation proposed by the Contractor.

Change Control Note

Contract Number		DFE Contract / Programme Manager
Contractor		Original Contract Value (£)
Contract Start Date		Contract Expiry Date

Variation Requested	
Originator of Variation (tick as appropriate)	DFE <input type="checkbox"/> Contractor <input type="checkbox"/>
Date	
Reason for Variation	
Summary of Variation (e.g. specification, finances, contract period)	
Date of Variation commencement	
Date of Variation expiry (if applicable)	
Total Value of Variation £ (if applicable)	
Payment Profile (if applicable) e.g. milestone payments	

Revised daily rate (if applicable)			
Impact on original contract (if applicable)			
Supporting Information (please attach all supporting documentation for this Change Control)			
Terms and Conditions	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.		
Variation Agreed <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> For the Contractor: Signature..... Full Name..... Title..... Date..... </td> <td style="width: 50%; vertical-align: top;"> For the DFE: Signature..... Full Name..... Title..... Date..... </td> </tr> </table>		For the Contractor: Signature..... Full Name..... Title..... Date.....	For the DFE: Signature..... Full Name..... Title..... Date.....
For the Contractor: Signature..... Full Name..... Title..... Date.....	For the DFE: Signature..... Full Name..... Title..... Date.....		

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

To be entered by the Commercial department:			
Commercial Contact		Reference Number	
Date received		EC Reference	

Schedule 7**Key Personnel and Key Sub Contractors****Key Personnel**

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement
██████████	Programme Manager/Assessment Development Director/Service Owner	██████████
██████████	Assessment Development Manager/Content Designer	██████████
██████████	Product Manager Assessment Development	██████████
██████████	Psychometrics Manager	██████████
██████████	System Design/Service owner	██████████
██████████	Project Director Operations	██████████
██████████	Technical Architect	██████████
██████████	Stakeholder Communications Lead	██████████

Key Sub-Contractors

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

Key Sub-Contractor Name and Address (if not the same as the registered office)	Registered Office and Company Number	Related Product/ Service Description	Sub-contract Price expressed as a percentage of total projected Charges over Term	Role in delivery of the Services
[REDACTED]	Registered Office: [REDACTED]	[REDACTED]	[REDACTED]	Period of involvement: Entire project May 2018 – August 2022
[REDACTED]	Registered Office: [REDACTED]	[REDACTED]	[REDACTED]	Period of involvement: Assessment periods across the entire project (e.g. Sept 2018, Jan 2019, Ongoing Sept 2019-July 2020; Sept 2020-July 2021; Sept 2021-July 2022)
[REDACTED]	Registered Office: [REDACTED]	[REDACTED]	[REDACTED]	Period of involvement: Assessment periods across the entire project
[REDACTED]	Registered Office: [REDACTED]	[REDACTED]	[REDACTED]	Period of involvement: Pilot and Live phases only

<div></div>	Registered Office: <div></div>	<div></div>	<div></div>	<div></div> <div>Period of involvement: Trialling / development phase with additional input over remainder of project if required</div>
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Schedule 8**Data, Systems Handling and Security****Departmental Security Standards**

<p>“BPSS”</p> <p>“Baseline Personnel Security Standard”</p>	<p>a level of security clearance described as pre-employment checks in the National Vetting Policy.</p>
<p>“CCSC”</p> <p>“Certified Cyber Security Consultancy”</p>	<p>is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website: https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</p>
<p>“CCP”</p> <p>“Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website: https://www.ncsc.gov.uk/scheme/certified-professional</p>
<p>“CC”</p> <p>“Common Criteria”</p>	<p>the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.</p>
<p>“CPA”</p> <p>“Commercial Product Assurance”</p> <p>[formerly called “CESG Product Assurance”]</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website: https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</p>
<p>“Cyber Essentials”</p> <p>“Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p>

<p>"Data"</p> <p>"Data Controller"</p> <p>"Data Processor"</p> <p>"Personal Data"</p> <p>"Sensitive Personal Data"</p> <p>"Data Subject", "Process" and</p> <p>"Processing"</p>	<p>shall have the meanings given to those terms by the Data Protection Act 2018.</p>
<p>"Department's Data"</p> <p>"Department's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <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>
<p>"DfE"</p> <p>"Department"</p>	<p>means the Department for Education.</p>
<p>"Departmental Security Standards"</p>	<p>means the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>
<p>"Digital Marketplace / GCloud"</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.</p>
<p>"FIPS 140-2"</p>	<p>this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled 'Security Requirements for Cryptographic Modules'. This document is the de facto security standard used for the accreditation of cryptographic modules.</p>
<p>"Good Industry Practice"</p> <p>"Industry Good Practice"</p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>

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

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

	software components to national infrastructure networks.
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1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
2. Where the Contractor will provide ICT products or Services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) (updated 25 May 2016), or any subsequent updated document, are mandated; that “*contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme*”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
3. The Contractor shall have achieved, and be able to maintain, independent certification of Cyber Essentials Plus certification.
4. The Cyber Essentials Plus certification must have a scope relevant to the services supplied to, or on behalf of, the Department.
5. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data.)
6. Departmental Data being handled in the course of providing the ICT solution or service must be segregated from other data on the Contractor's or sub-contractor's own IT equipment to both protect the Departmental Data and enable it to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 12.15.
7. The Contractor shall have in place and maintain physical security and entry control mechanisms (e.g. door access) to premises and sensitive areas and separate logical access controls (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
8. The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
9. Any electronic transfer methods across public space or cyberspace, including third party provider networks must be protected via encryption which has been certified to a minimum of FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
10. Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 12.11 and 12.12 below.
11. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
12. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be

necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.

13. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure waste paper organisation.
14. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has 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.
15. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
16. Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" and the appropriate level of security clearance, as required by the Department for those individuals whose access is essential for the purpose of their duties. All employees with direct or indirect access to Departmental Data must be subject to pre-employment checks equivalent to or higher than the HMG Baseline Personnel Security Standard (BPSS).
17. All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
18. The Contractor shall, as a minimum, have in place robust and ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might be, or could lead to, a disruption, loss, emergency or crisis. When a certificate is not available it shall be necessary to verify the ongoing effectiveness of the ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures, to the extent that the Contractor must have tested/exercised these plans within the last 12 months and produced a written report of the test/exercise, outcome and feedback, including required actions.
19. Any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, or any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
20. The Contractor shall ensure that any IT systems and hosting environments that are used to hold Departmental Data being handled, stored or processed in the course of providing this service shall be subject to an independent IT Health Check (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with 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.
21. The Contractor or sub-contractors providing the service will provide the Department with full details of any actual storage outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management or support function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.

22. The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-contractors, compliance with the clauses contained in this Section.
23. The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.
24. The Contractor shall deliver ICT solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Policy Portfolio and Departmental Policy. The Contractor will provide the Department with evidence of compliance for the solutions and services to be delivered. The Department's expectation is that the Contractor shall provide written evidence of:
 - Existing security assurance for the services to be delivered, such as: PSN Compliance as a PSN Customer and/or as a PSN Service; NCSC (formerly CESG) Tailored Assurance (CTAS); inclusion in the Common Criteria (CC) or Commercial Product Assurance Schemes (CPA); Cyber Essentials Plus or an equivalent industry level certification. Documented evidence of any existing security assurance or certification shall be required.
 - Existing HMG security accreditations that are still valid including: details of the body awarding the accreditation; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement. Documented evidence of any existing security accreditation shall be required.
 - Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Contractor shall provide details of who the awarding body or organisation will be and date expected.
25. If no current security accreditation or assurance is held the Contractor and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. Contractor and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation. This will include obtaining any necessary professional security resources required to support the Contractor's and sub-contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA).

Schedule 9

Commercially Sensitive Information

NFER considers their bid proposal to be commercially sensitive and does not wish the following to be disclosed:

- Staff information (including organisation structure and solution team structure)
- Details of daily rates and other charges
- Spreadsheet of costs (schedule 3)
- The implementation methodology and sample materials are NFER's Intellectual Property Right, and cannot be disclosed without a potential impact on the outcome of future tenders and significant prejudice to NFER's commercial and financial interests

Schedule 10

The Contractor's Solution

Included as:

Annex 1 – proposal

Annex 2 – assessment framework

Annex 3 – modified admin guide

Annex 4 – exit management plan

Annex 5 – risk register

Annex 6 – system diagram

Annex 7 – online guide

Annex 8 – teacher guide

Annex 9 – organisational chart

Annex 10 – CVs

Schedule 11

Contractor’s Pre Existing IP Materials

If the Contractor is using a pre existing test (or test materials) for the RBA then this will need to be identified here.

Name/Title	Description	System/Type/ Format	Comment)
██████████	██████████	██████████	██████████
██████████	██████████	██████████	

Schedule 12**Management Information / Contract Management**

The Contractor shall comply with the following Contract Management requirements:

Requirement	Measure
Administration/Communication	In delivering the Services offer a responsive and supportive service to participants and their facilitators. Respond to 100% of queries and correspondence within 3 Business Days of receipt.
Finance	Ensure that invoices are submitted to DFE within 10 Business Days of the end of the relevant charging period/completion of the activity.
Commercial Management	Ensure that Change Control Notes are signed by both Parties prior to any additional work being undertaken (DFE or Contractor to ensure paperwork is issued in a timely fashion when change required).
Complaints	Ensure that all administrative Personnel are aware of and abide by relevant complaints procedures. Main management contact to report all complaints orally and in writing to DFE within 3 Business Days.

The Contractor shall provide the following reports:

Management Information	Frequency	Unit	Duration
DEVELOPMENT			
11. Project status report; risk and issues report	fortnightly	progress against project plan	for duration of development
TRIALLING			
12. Schools recruited for trialling	weekly	number + proportion of target	from dispatch of invitation letters to close of trial
13. Trial data uploaded	weekly	pupil + school	for duration of trial
14. Project status report; risk and issues report	fortnightly	progress against project plan	for duration of trial
PILOT			
15. Schools participating in pilot	weekly	number + proportion of target	from dispatch of invitation letters to close of pilot
16. Pilot data uploaded	weekly	pupil + school	for duration of pilot
17. Project status report; risk and issues report	fortnightly	progress against project plan	for duration of pilot
DELIVERY			
18. Project status report; risk and issues report	fortnightly	progress against project plan	for duration of

Management Information	Frequency	Unit	Duration
		project plan	delivery
19. Assessments made available to schools	weekly	school	assessment window
20. Data uploaded	weekly	pupil + school	for duration of delivery