



Department for Education

CONTRACT FOR: UNDERSTANDING THE ABSOLUTE AND RELATIVE COST OF DIFFERENT MODES AND LEVELS OF HE PROVISION PROJECT REFERENCE NO: DFERPPU/2018/017

This Contract is dated 24 July 2018

Parties

- 1) The Secretary of State for Education whose Head Office is at Sanctuary Buildings, Great Smith Street, LONDON, SW1P 3BT (the "Department"); and
- 2) KPMG LLP whose registered office is 15 Canada Square, London, E14 5GL ("the Contractor").

(each a "Party" and collectively, the "Parties")

Recitals

The Contractor has agreed to undertake the Project on the terms and conditions set out in this Contract. The Department's reference number for this Contract is DFERPPU/2018/017

Commencement and Continuation

The Contractor shall commence the Project on the date the Contract was signed by the Department (as above) and, subject to Schedule Three, Clause 10.1 shall complete the Project on or before 31st December 2018

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1. Interpretation

1.1 In this Contract the following words shall mean:-

"the Project"	the project to be performed by the Contractor as described in Schedule One;
"the Project Manager"	[REDACTED] 2 St. Paul's Place, 125 Norfolk Street, Sheffield, [REDACTED] [REDACTED]
"the Contractor's Project Manager"	[REDACTED] St. Nicholas House, Park Row, Nottingham, [REDACTED] [REDACTED]
"the Act and the Regulations"	means the Copyright Designs and Patents Act 1988 and the Copyright and Rights in Databases Regulations 1997;
"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Commercially Sensitive Information"	information of a commercially sensitive nature relating to the Contractor, its IPR or its business or which the Contractor has indicated to the Department that, if disclosed by the Department, would cause the Contractor significant commercial disadvantage or material financial loss;
"Confidential Information"	means all 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 but not limited to information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, personnel, customers and suppliers of either party and commercially sensitive information which may be regarded as the confidential information of the disclosing party;
"Contracting Department"	any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Department;
"Contractor Personnel"	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor;
"Contractor Software"	software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services;
"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" shall be interpreted accordingly;
"Controller"	take the meaning given in the GDPR;
"Copyright"	means any and all copyright, design right (as defined by the Act) and all other rights of a like nature which may, during the course of this Contract, come into existence in or in relation to any Work (or any part thereof);
"Copyright Work"	means any Work in which any Copyright subsists;
"Data"	means all data, information, text, drawings, diagrams, images or sound embodied in any electronic or tangible medium, and which are supplied or in respect of which access is granted to the Contractor by the Department pursuant to this Contract, or which the Contractor is required to generate under this Contract;
"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 Protection Officer"	take the meaning given in the GDPR;
"Data Subject"	take 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;
"Deliverables"	means any materials, in any form or medium specified in the Project as materials provided by Contractor to Department, and may include Contractor IPR
"Department Confidential Information"	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

"Department's Data"	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</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 Controller;</p>
"DfE"	means the Department for Education;
"Department"	
"DPA 2018"	Data Protection Act 2018;
"Effective Date"	the date on which this Contract is signed by both parties;
"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
"FIPS 140-2"	this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled 'Security Requirements for Cryptographic Modules'. This document is the de facto security standard used for the accreditation of cryptographic modules;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
"Force Majeure Event"	means an event beyond the reasonable control of the affected party including: acts of God, natural disaster, actions or decrees of governmental bodies, civil disturbance, pandemic, acts of war or terrorism, but excluding strikes, lockouts or industrial disputes, or the failure of any subcontractor to perform (other than where the relevant subcontractor is also affected by analogous events beyond its reasonable control);
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"HMG"	means Her Majesty's Government;

"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Intellectual Property Rights" or "IPR"	means patents, trade marks, service marks, design (rights whether registerable or otherwise), applications for any of the foregoing, know-how, rights protecting databases, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom);
"ISO/IEC 27001" "ISO 27001"	is the International Standard describing the Code of Practice for Information Security Controls;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680);
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Personal Data"	take the meaning given in the GDPR;
"Processor"	take the meaning given in the GDPR;
"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;
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the Department and " Regulatory Body " shall be construed accordingly;
"Relief Event"	means any failure by the Department to comply with its obligations under the Contract
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Staff Vetting Procedures"	the Department's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;

- "Sub-Contractor"** the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents but excludes infrastructure, administrator and IT services which are generally provided;
- "Sub-processor"** any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract;
- "Third Party Software"** software which is proprietary to any third party [other than an Affiliate of the Contractor] which is or will be used by the Contractor for the purposes of providing the Services, and
- "Work"** means any and all works including but not limited to literary, dramatic, musical or artistic works, sound recordings, films, broadcasts or cable programmes, typographical arrangements and designs (as the same are defined in the Act) which are created from time to time during the course of this Contract by the Contractor or by or together with others at the Contractor's request or on its behalf and where such works directly relate to or are created in respect of the performance of this Contractor or any part of it;
- "Working Day"** any day other than a Saturday, Sunday or public holiday in England and Wales.
- 1.2 References to "Contract" mean this contract (and include the Schedules). References to "Clauses" and "Schedules" mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.
- 1.3 Reference to the singular include the plural and vice versa and references to any gender include both genders. References to a person include any individual, firm, unincorporated association or body corporate.

SCHEDULE ONE**1 BACKGROUND**

This analysis will inform the *Post-18 education and funding review* announced by the Prime Minister on 19th February 2018.

This major review, across post-18 education and funding, is being conducted to ensure a joined-up system that works for everyone. As significant reforms move into implementation, this review will look at how we can ensure that the education system for those aged 18 years and over is accessible to all, is supported by a funding system that provides value for money and works for students and taxpayers, incentivises choice and competition across the sector, and encourages the development of the skills that we need as a country.

2 AIM

This analysis will support the review by informing our understanding on how tuition fees and (institutional) funding compare to the real costs of subject provision; what variation exists across the sector and subjects; and how this influences institution decisions around pricing, teaching quality and course mix. It is part of a wider programme of evidence gathering across post-18 education to inform the review.

3 OBJECTIVES

The Contractor shall use all reasonable endeavours to achieve the following aims:

- 1) Understand what the real costs are of providing HE undergraduate and foundation courses and how these compare to tuition fees and other sources of institutional income
- 2) Understand the extent to which the cost of provision varies by subject groups and between institutions
- 3) Understand how the cost of provision influences institutional decisions around pricing, teaching quality and the diversity of subjects/courses offered

4 TASKS

Task	Output	Date Required
Develop data collection template, guidance and contextual questionnaire	Data collection template and guidance, questionnaire document	31 st July 2018
Complete pilot study	Interim report and revised collection template and guidance	30 th September 2018
Complete main stage fieldwork	Summary report	30 th November 2018
Deliver final report	Final report	31 st December 2018

5 METHODOLOGY

This study will combine the following methodological strands:

- A two-stage pilot study wherein 8 institutions will fill out the data collection template alongside a contextual survey
- Main fieldwork collecting data from 40 institutions alongside contextual survey
- Qualitative interviews with up to 25 finance directors
- Additional collection of intelligence for analysis

6. STAFFING

KPMG

- [REDACTED] Engagement leader
- [REDACTED] Delivery of engagement
- [REDACTED] Statistical advisor
- [REDACTED] Development of cost collection templates

DfE

- [REDACTED] Project manager
- [REDACTED] Head of HE Social Research
- [REDACTED] Liaison with post-18 review team

7 STEERING COMMITTEE

The Project Manager shall set up a Steering Committee for the Project, consisting of representatives from the Department, the Contractor, and any other key organisations whom the project will impact on, to be agreed between the parties. The function of the Steering Committee shall be to review the scope and direction of the Project against its aims and objectives, monitor progress and efficiency, and assess, manage and review expected impact and use of the findings from the Project against an agreed Project Communication Plan, through the standard Department Communication Plan Template. The Committee shall meet at times and dates agreed by the parties, or in the absence of agreement, specified by the Department. The Contractor's representatives on the Steering Committee shall report their views on the progress of the Project to the Steering Committee in writing if requested by the Department. The Contractor's representatives on the Steering Committee shall attend all meetings of the Steering Committee unless otherwise agreed by the Department.

8. RISK MANAGEMENT

Key risk	Likelihood	Possible impact	Impact rating	Mitigating actions/safeguards
Information not provided by HEIs within required timescales	High	Delay to the project and reduced understanding of cost of provision and reduced unit cost robustness	Medium	Positive and sustained HEI engagement Clear setting of expectations and training guidance Existing relationships with institutions
Insufficient HE providers	Medium	Insufficient responses leading to poorer	High	Positive and sustained HEI engagement

Key risk	Likelihood	Possible impact	Impact rating	Mitigating actions/safeguards
willing to participate		understanding of the cost of provision and reduced unit cost robustness		Widespread sector body engagement
Institutions submit partial and/or inaccurate information	Medium	Cost data is not reliable thereby affecting robustness of the unit costs	High	Design of the adapted TRAC(T) based model Clear setting of expectations and training guidance and support throughout the process A senior signoff process of submissions Statistical review of submissions
Different motivations from different types of HEI could create a bias towards under or overestimating the costs	Medium	Costs could be submitted that do not represent the actual full economic costs of delivery	Medium	Minimise capacity for this risk through the design of the adapted TRAC-based costing model Validation procedures
Reliability of the part-time course costing	High	As part-time study patterns and the time taken for students to complete these courses vary, staff time data is likely to be less robust. Less robust cost impacts as management judgement is used to compensate	Medium	Engagement with institutions and input from the technical panel Validation procedures, especially comparative and statistical measures
Institutions do not have the information required and/or sufficiently reliable information to meet the costing study requirements	High	Increased use of management judgements to enable the allocation of costs and completion of the templates	Medium	Design of the costing process Clarity over assumptions made in template Validation procedures FD meetings
Project timescales clashing with HE year-end	Medium	Staff availability to meet the data submission requests could risk timescales	High	Sector body engagement Knowledge of the academic cycle to inform project plan and scheduling

Key risk	Likelihood	Possible impact	Impact rating	Mitigating actions/safeguards
and summer holidays				
A conflict between the competitive interest of HEIs and the third question posed by the study on how the cost of provision influences institutional decisions	High	The full range of information will not be obtained from institutions to meet the scope of the study, and/or the full range of information will not be provided by every institution	Medium	Clear confidentiality assurances and high-level engagement with each institution to build trust Stakeholder engagement to build understanding of the study and encourage participation
Insufficient course or subject coverage from participants	Medium	This may severely impact the ability of DfE to have confidence in the unit cost result. At a subject level this could also lead to a unit cost predicated on a dominance of some courses over another.	High	Analytical work to establish likely coverage coupled with proactive management of registered institutions completing their cost returns and further recruitment where deemed necessary.

9 DATA COLLECTION

The Department seeks to minimise the burdens on Schools, Children's Services and Local Authorities (LAs) taking part in surveys.

When assessing the relative merits of data collection methods the following issues should be considered;

- only data essential to the project shall be collected;
- data should be collected electronically where appropriate/preferred;
- questionnaires should be pre-populated wherever possible and appropriate;

The Contractor shall clear any data collection tools with the Department before engaging in field work.

The Contractor shall check with the Department whether any of the information that they are requesting can be provided centrally from information already held.

10. CONSENT ARRANGEMENTS

The Department and the contractor shall agree in advance of any survey activity taking place the consent arrangements that shall apply for each of the participant groups. All participants should be informed of the purpose of the research, that the Contractor is acting on behalf of the Department and that they have the option to refuse to participate (opt out). Contact details should be provided including a contact person at the Department. Children who are 16 or over will usually be able to give their own consent but even where this is so, the

Contractor, in consultation with the Department, should consider whether it is also appropriate for parents, guardians or other appropriate gatekeepers (e.g. schools, Local Authorities) to be informed when a child has been invited to participate in research.

11. PROJECT COMMUNICATION PLAN

The Contractor shall work with the Project Manager and Steering Group to agree the content of the Project Communication Plan on the standard Department Communication Plan Template at the start of the Project, and to review and update at agreed key points in the Project and at the close of the Project. The Communication Plan shall set out the key audiences for the Project, all outputs intended for publication from the Project, the likely impact of each output, and dissemination plans to facilitate effective use by the key audiences.

End of Schedule One

SCHEDULE TWO**1 Eligible expenditure**

1.1 The Department shall reimburse the Contractor for expenditure incurred for the purpose of the Project, provided that:-

- (a) the expenditure falls within the heading and limits in the Table below, and
- (b) the expenditure is incurred, and claims are made, in accordance with this Contract.

Table

Project Milestone	Payment Amount	Payment Date
Develop data collection template, guidance and contextual questionnaire		31st July 2018
Complete pilot study		30 th September 2018
Complete main stage fieldwork		30 th November 2018
Deliver final report		31 st December 2018

Expenditure for the financial year 2018-19 shall not exceed **£193,500**

- 2 The allocation of funds in the Table may not be altered except with the prior written consent of the Department.
- 3 The Contractor shall maintain full and accurate accounts for the Project against the expenditure headings in the Table. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract. Input and output VAT shall be included as separate items in such accounts.
- 4 The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the accounts if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Contractor has used the Department's resources in the performance of this Contract.
- 5 Invoices shall be submitted on the invoice dates specified in the Table, be detailed against the task headings set out in the Table and must quote the Department's Order Number. **The Purchase order reference number shall be provided by the department when both parties have signed the paperwork.** The Contractor or his or her nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the Contractor on the Projects in accordance with the Contract and that the invoice does not include any costs being claimed from any other body or individual or from the Department within the terms of another contract.
- 6 Invoices shall be sent to the **Department for Education, PO Box 407, SSCL, Phoenix House, Celtic Springs Business Park, Newport, NP10 8FZ** and/or by

email to **APinvoices-DFE-U@sscl.gse.gov.uk**. Invoices submitted by email must be in PDF format, with one PDF file per invoice including any supporting documentation in the same file. Multiple invoices may be submitted in a single email but each invoice must be in a separate PDF file. The Department undertakes to pay correctly submitted invoices within 10 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. Any correctly submitted invoices that are not paid within 30 days may be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that: is delivered in timing in accordance with the contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, supplier name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address. If any problems arise, contact the Department's Project Manager. The Department aims to reply to complaints within 10 working days. The Department shall not be responsible for any delay in payment caused by incomplete or illegible invoices.

- 7 The Contractor shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Contractor, would reasonably have been required for that purpose.
- 8 If this Contract is terminated by the Department due to the Contractor's insolvency or default at any time before completion of the Projects, the Department shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.
- 9 On completion of the Project or on termination of this Contract, the Contractor shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Project. The final invoice shall be submitted not later than 30 days after the date of completion of the Projects.
- 10 The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Projects specified as in Schedule 1.
- 11 It shall be the responsibility of the Contractor to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

End of Schedule Two

SCHEDULE THREE

1. Contractor's Obligations

1.1. Subject to the Department complying with its obligations under this Contract the Contractor shall meet any performance dates for the Project agreed by the Contractor in writing and complete the Project in accordance with the provisions as agreed between the parties in Schedule One.

1.2. The Contractor shall comply with the accounting and information provisions of as agreed between the Parties in Schedule Two.

1.3. The Contractor shall comply with all statutory provisions relevant to the Project and in force at the time of provision of the Project under this Contract.

1.4. Managing Delays

1.4.1 If a Party becomes aware that its obligations are not going to be met within any agreed timescale, it shall advise other Party of this as soon as reasonably possible in writing.

1.4.2 Each Party shall advise the other Party as soon as reasonably possible if it becomes aware that any failure by the other Party will prevent it from performing obligations, from fulfilling dependencies or meeting assumptions under the Contract.

1.4.3 Except in the circumstances referred to in clause 1.5.1, if the Contractor becomes aware that it will not meet timescale, the Contractor shall promptly provide the Department with details of its proposed mitigating actions and shall use its reasonable endeavours to reduce or mitigate the impact of the delay.

1.5. Relief Events

1.5.1 Subject to clause 1.4.2, if the Contractor fails to comply with any of its obligations under this Contract as a result of a Relief Event, then:

(a) the Contractor shall not be in breach of this Contract, and;

(b) If the Relief Event causes the Contractor to fail to meet any time for performance of its obligations under this Contract (including any agreed timescale) such timescale shall be postponed by the delay caused by that Relief Event and such additional time and reasonable to offset the impact of the Relief Event.

1.6. The Contractor shall receive information from the Department or from

other sources in the course of delivering the Project. To the fullest extent permitted by law, the Contractor shall not be liable to Department for any loss or damage suffered by the Department arising from fraud, misrepresentation, withholding of information material or relevant to the Project or required by the Contractor, or other default relating to such information, whether on the Department's part or that of the other information sources, unless such fraud, misrepresentation, withholding or such other default is evident to the Contractor without further enquiry.

- 1.7. Where the Contractor provides advice to Department, the Contractor may supply written advice or confirm oral advice in writing or deliver a final written report or make a final oral presentation. The Contractor may also supply oral, draft or interim advice or reports or presentations but in such circumstances the Contractor's written advice or the Contractor's final written report shall prevail. No reliance shall be placed by Department on anything draft or interim. Where the Department wishes to rely on oral advice or on an oral presentation provided during or on completion of the Project described above, Department shall inform the Contractor and the Contractor shall supply documentary confirmation of the advice concerned.
- 1.8. Once a Deliverable has been provided to the Department by the Contractor in its final form:
 - 1.8.1. The Contractor shall not be obliged to update any Deliverable for events occurring after the Deliverable concerned has been issued in final form; and
 - 1.8.2. Department will be responsible for any amendment or variation to that Deliverable.
- 1.9. Any report of advice or Deliverable shall be supplied for the Department's benefit and information only. Department shall not disclose any Deliverable with the Contractor's logo and branding to any third party without the Contractor's prior written consent. Department shall not quote the Contractor's name or reproduce the Contractor's logo in any form or medium without the Contractor's prior written consent. Department may disclose in whole any Deliverable to the Department's legal and other professional advisers if seeking advice in relation to the Project, provided that when doing so the Department informs them that (i) disclosure by them (save for their own internal purposes or where compelled) is not permitted without the Contractor's prior written consent, and that (ii) to the fullest extent permitted by law the Contractor accepts no responsibility or liability to them in connection with the Project.
- 1.10. Any advice, opinion, statement of expectation, forecast or recommendation supplied by the Contractor shall not amount to any form of guarantee that the Contractor has determined or predicted future events or circumstances.

2. Department's Obligations

- 2.1. The Department will comply with the payment provisions of Schedule Two provided that the Department has received full and accurate information and documentation as required by Schedule Two to be submitted by the Contractor for work completed to the reasonable satisfaction of the Department.
- 2.2. To enable the Contractor to perform the Project, the Department shall promptly provide all information and assistance to the Contractor where required by the Contractor. The Department shall inform the Contractor of any information or developments which may come to the Department's notice which may have a bearing on the Project.
- 2.3. Where the Department is dependent on the performance of the Department's third-party suppliers in order to perform its obligations under this Contract and the Department obligations, the Department shall procure that those the Department third party suppliers provide all necessary information and assistance to the Contractor.
- 2.4. Notwithstanding the Contractor's obligations and responsibilities in relation to the Project, the Department shall retain responsibility and accountability for managing the Department's affairs, deciding on what to do after receiving any product of the Project, implementing any advice or recommendations provided by the Contractor, and realising any benefits activity by the Department.
- 2.5. The Department shall have the following general responsibilities:
 - 2.5.1 to give prompt attention to any matter raised by the Contractor to the Department's obligations and the performance of the Project;
 - 2.5.2 to provide adequate resources for the projects to which the Project relate;
 - 2.5.3 to review and either sign off or reject deliverables in accordance with the provisions of this Contract, on a timely basis;
 - 2.5.4 to enter any necessary third party licences (which may include third party software) or permissions as are required to enable the Department to receive or make use of the Project;
 - 2.5.5 where the Department requires the Contractor or the nature of the Project is such that it is likely to be more efficient for the Contractor to perform Project at Department premises or using Department computer systems or telephone networks, Department shall ensure that all necessary arrangements are made for access, security procedures, virus checks, facilities, licences or consents (without cost to Contractor);
 - 2.5.6 Performance of the Department's obligations and

responsibilities shall be at the cost of the Department.

2.6 The Department shall be responsible for making any notifications, registrations and disclosures required by law or regulation.

3. Changes to the Department's Requirements

- 3.1. The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.
- 3.2. Subject always to clause 17.1, the Contractor shall use its reasonable commercial endeavours to accommodate any changes to the needs and requirements of the Department and the Contractor shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs to be agreed between the parties in writing.
- 3.3. The Department and Contractor acknowledge and agree that the scope of the Project is dependent on the Contractor (i) obtaining a sufficient quantity of relevant data sets from third parties, including but not limited to Higher Education Institutions and Office For Students (the "Relevant Datasets") and (ii) obtaining permission from those third parties to refer to the Relevant Datasets in the Deliverables. If the Contractor is unable to obtain the Relevant Datasets in accordance with 3.3(i) and (ii) above, the Contractor and the Department agree to revise the scope of the Project accordingly.
- 3.4. The Department acknowledges and agrees that although the Contractor may refer to the Relevant Datasets in the Deliverables, the Relevant Datasets remain the property of the third parties and shall not constitute Department Data.
- 3.5. Subject to clause 3.6 below, the Contractor may provide the Department with anonymised copies of the Relevant Datasets that are referred to in the Deliverables.
- 3.6. The Department acknowledges and agrees that where the Relevant Data contains data obtained from the Office For Students, the Contractor will not provide the Department with a copy of that data.

4. Management

- 4.1. The Contractor shall promptly comply with all reasonable requests or directions of the Project Manager in respect of the Project.
- 4.2. The Contractor shall address any enquiries about procedural or contractual matters in writing to the Project Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.

5. Contractor's Employees and Sub-Contractors

5.1 Where the Contractor enters into a contract with a supplier or contractor for the purpose of performing its obligations under the Contract (the "Sub-contractor") it shall ensure prompt payment in accordance with this clause 5.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-contractor shall provide for undisputed sums due to the Sub-contractor to be made within a specified period from the receipt of a valid invoice not exceeding:

5.1.1 10 days, where the Sub-contractor is an SME; or

5.1.2 30 days either, where the sub-contractor is not an SME, or both the Contractor and the Sub-contractor are SMEs,

The Contractor shall comply with such terms and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.

- 5.2 The Department shall be entitled to withhold payment due under clause 5.1 for so long as the Contractor, in the Department's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with clause 5.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment.
- 5.3 The Contractor shall promptly notify the Department if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.
- 5.4 The Contractor, its partners, employees and sub-contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time provided that the Contractor is notified in writing, in advance, of any such rules, regulations and requirements.
- 5.5 The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Project, in accordance with the Department's reasonable security requirements as required from time to time and provided that such requirements are communicated to the Contractor in writing.
- 5.6 If the Department acting reasonably and lawfully notifies the Contractor that it has reasonable grounds for believing that an employee or sub-contractor is not appropriately qualified or trained to perform the Project or otherwise is not performing the Project in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if so required by the Department, shall remove the said

employee or sub-contractor from performing the Project and shall provide a suitable replacement (at no cost to the Department).

- 5.7. The Contractor shall take all reasonable steps to avoid changes of employees or sub-contractors assigned to and accepted to perform the Project under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give reasonable notice to the Project Manager of proposals to change key employees or sub-contractors

6. Ownership of Intellectual Property Rights and Copyright

- 6.1. Ownership of Intellectual Property Rights including Copyright, in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other materials prepared by or for the Contractor on behalf of the Department for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Contractor. On payment of the Contractors charges as detailed in Schedule Two, the Department will own any Deliverable in its tangible form.
- 6.2. If any Contractor IPR is contained in any of the Deliverables, the Contractor hereby grants to the Department a non-exclusive licence without payment of royalty or other sum by the Department to use such Contractor IPR, excluding any third party intellectual property contained therein, in connection with the Department's use of the Deliverables for the purposes stated in the Project. The Department is responsible for obtaining the right to use any third party products necessary to use or operate Deliverables in draft or final form.
- 6.3. The Department agrees that the Deliverables are provided for the Department's internal use only and that the Deliverables may not be disclosed to any other Party without the prior written consent of the Contractor, except as required by law or by a competent regulatory authority (in which case the Department shall, if permitted by law or regulation, promptly inform the Contractor).
- 6.3. Each Party will at the request and reasonable expense of the other execute all such documents and do all such acts as may be reasonably necessary in order to vest in the other the rights granted to the other under this Clause 6.

7 Data Protection

- 7.1. The Parties recognise that they shall each Process Personal Data in connection with the performance of their obligations and/or exercise of their rights under this Contract and that the factual arrangement between them shall dictate the role of each Party (as to Controller or Processor) in respect of the Data Protection Laws. Unless the parties agree otherwise in a Work

Order, the parties agree that the Contractor is acting as a Data Controller in relation to the Project and Personal Data that may be processed under this Contract.

- 7.2 To the extent that the nature of this Contract means that the parties are acting both as Controllers, each Party undertakes to comply at all times with its obligations under the Data Protection Legislation and this clause 7. The Contractor shall:
- a. process or arrange for the processing of the Personal Data only (i) in order to provide, manage and facilitate the provision of the Project; (ii) for applicable legal professional or regulatory requirements; and (iii) to facilitate the Contractor's business and support its infrastructure
 - b. take appropriate technical and organisational steps to protect against unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data.
 - c. process the Personal Data as reasonably required (i) to provide the Project; (ii) for our reasonable business purposes including facilitation and support of our business and quality control; and (iii) to meet our legal and regulatory obligations. Contractor may share Personal Data with Other KPMG Persons or other parties who facilitate or support our business. Contractor will only make such a disclosure where it is required in connection with such purposes and in compliance with applicable Data Protection Legislation.
 - d. notify the Department promptly: (i) upon receiving a request for Personal Data or other request from a data subject, or if Contractor receive any claim, complaint or allegation relating to the processing of the Personal Data; (ii) upon becoming aware of any breach of security leading to the destruction, loss or unlawful disclosure of the Personal Data in the Contractor's possession or control.
 - e. upon request, each Party shall provide the other with information relating to its processing of Personal Data as reasonably required for the other to satisfy its obligations under Data Protection Legislation.
- 7.3 Where the Parties agree that for the purposes of the Data Protection Legislation, the Department is the Controller and the Contractor is the Processor, the following terms shall apply and clauses 7.1 and 7.2 above shall not apply.
- 7.4 The Contractor shall notify the Department immediately if it considers in its opinion that any of the Department's instructions infringe the Data Protection Legislation.
- 7.5 The Contractor shall provide all reasonable assistance to the Department the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Department, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;

- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Project;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

- (a) process that Personal Data only in accordance with the Department's documented instructions as set out in the form or substantially the form of Schedule 4 , unless the Contractor is required to do otherwise by Law or regulatory obligation. If it is so required the Contractor shall promptly notify the Department before processing the Personal Data unless prohibited by Law or regulatory obligation;
- (b) 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:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Contractor Personnel do not process Personal Data except as authorised by the Contractor and as required to deliver the Project in accordance with this Contract (and in particular Schedule 4);
 - (ii) 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:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and are subject to binding obligations to maintain the confidentiality of the Personal Data; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Department has been obtained and the following conditions are fulfilled:

- (i) 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;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Department in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Department with respect to the processing of the Personal Data;
- (e) to the extent technically possible using reasonable efforts, at the written direction of the Department, delete or return Personal Data (and any copies of it) in the Contractor's control or possession to the Department on termination of the Contract unless the Contractor is required by Law or professional obligation to retain all or part of the Personal Data.
- 7.7 Subject to clause 17.6, the Contractor shall notify the Department without undue delay if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 7.8 The Contractor's obligation to notify under clause 17.5 shall include the provision of further information to the Department in phases, as details become available.
- 7.9 Taking into account the nature of the processing, the Contractor shall provide the Department with reasonable assistance in relation to the Department's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Department) as it relates to the Contractor's processing of Personal Data under this Contract, including by promptly providing:
- (a) the Department with full details and copies of the complaint, communication or request;
 - (b) 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;

- (c) the Department, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as reasonably requested by the Department following any Data Loss Event;
 - (e) assistance as reasonably 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.
- 7.10 The Contractor shall maintain complete and accurate records and information of any processing of Personal Data under this Contract as necessary to demonstrate its compliance with this clause.
- 7.11 The Contractor shall (upon reasonable notice and subject to the confidentiality of the Contractor's internal measures, policies and practices and the Contractor's right to supervise) allow for audits of its Data Processing activity by the Department or the Department's designated auditor.
- 7.12 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 7.13 The Contractor shall not disclose Personal Data to any Sub-processor unless they are approved by the Department Where the Contractor appoints a Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Department in writing of the intended Sub-processor and processing; and
 - (b) enter into a written agreement with the Sub-processor which give effect to terms that are no less onerous than those set out in this clause [X] such that they apply to the Sub-processor,
- 7.14 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 7.15 Where reasonably required as a result of any change in Data Protection Legislation, or any guidance issued by the Information Commissioner's Office, the Department 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 (which shall apply when incorporated by attachment to this Contract).

8. Department's Data

- 8.1 The Contractor shall employ appropriate organisational, operational and technological processes and procedures to keep the Department's Data safe from unauthorised use or access, loss, destruction, theft or disclosure. The organisational, operational and technological processes and procedures adopted are required to comply with the requirements of ISO/IEC 27001 as appropriate to the services being provided to the Department.
- 8.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Department's Data.
- 8.3.1 The Contractor shall not store, copy, disclose, or use the Department's Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Department.
- 8.3.2 Notwithstanding any other provision in this Contract, the Contractor may retain one copy of the Deliverables and any working papers (which may include Department Confidential Information and Department Data) for compliance, legal and regulatory purposes subject always to the confidentiality provisions contained within this Contract.
- 8.4 To the extent that the Department's Data is held and/or processed by the Contractor, the Contractor shall supply that the Department's Data to the Department as requested by the Department in the format specified by the Department.
- 8.5 The Contractor shall take responsibility for preserving the integrity of the Department's Data and preventing the corruption or loss of the Department's Data.
- 8.6 The Contractor shall ensure that any files containing the Department's Data are stored on the Contractor's secure servers and/or secured IT equipment. The Contractor shall ensure that the Department's Data relating to the project is segregated from other data on their IT systems.
- 8.7 The Contractor shall not keep the Department's Data on any laptop or other removable drive or device unless that laptop, other removable drive or device is protected by being fully encrypted and password protected, and the use of the device or laptop is necessary for the provision of the services set out in the Contract. Laptops should have full disk encryption using either a CESSG (Communications Electronic Security Group) CAPS approved product or alternatively a product that complies with the FIPS 140-2 Standard. USB devices used for transferring the Department's Data should be encrypted to the FIPS 140-2 Standard.

- 8.8 The Contractor shall keep an audit trail of where the Department's Data is held, including hardware, laptops, drives and devices.
- 8.9 The Contractor shall ensure that the Department's Data is stored in locked cabinets.
- 8.10 Except for anything that may be stored in back up media or other electronic data storage systems, latent data and metadata copies retained in work paper files or records, the Contractor shall ensure that the Department's Data is securely removed from their systems and any printed copies securely destroyed at the end of this work, or on termination of the contract. In complying with this clause, electronic copies of the Department's Data shall be securely destroyed by either physical destruction of the storage media or secure deletion using appropriate electronic shredding software, using a minimum setting of US DOD overwriting standard (7 passes)". Any hard copy shall be destroyed by cross-cut shredding and secure re-cycling of the resulting paper waste.
Any of the Department's Data retained under this clause 8.10 shall remain subject to the confidentiality obligations contained in this Contract.
- 8.11 Where agreed by the parties in the Project, the Contractor shall perform secure back-ups of all the Department's Data and shall ensure that up-to-date back-ups are stored off-site. The Contractor shall ensure that such back-ups are available to the Department at all times upon request.
- 8.12 Where agreed by the parties in the Project, the Contractor shall ensure that any of the Department's Data to be sent between the Contractor's offices/staff, and/or the sub-contractors, and/or any other third party are sent by CD or DVD and are fully encrypted and password protected. The Contractor shall ensure that the password for files is sent separately from the data to the named recipient of the data. The Department's Data shall be transferred by a secure courier or registered postal service (special delivery) and not by e-mail or on USB pens.
- 8.13 [Not Used]

9. Warranty and Limitation of Liability

- 9.1. As at the Effective Date the Contractor warrants to the Department that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to standards that would be applied by a skilled and experienced supplier of business consultancy of like, skill and standing to the Contractor in the provision of similar services to persons similar to the Department.
- 9.2. Without prejudice to any other remedy, if any part of the Project is not performed in accordance with this Contract then the Department shall serve written notice on the Contractor identifying the defects in the Project and/or Deliverables, and

the Contractor shall have ten (10) Working Days (or such other time period as the parties may agree) to rectify the relevant defects at the Contractor's own cost. If the Contractor has not been able to rectify the defect to the Department's reasonable satisfaction, the Department may be entitled, where appropriate to:

- 9.2.1. require the Contractor promptly to re-perform or replace the relevant part of the Project without additional charge to the Department; or
 - 9.2.2. where the Department has paid in advance for the Project that have not been provided by the Contractor, to have such sums refunded by the Contractor.
 - 9.2.3. The Contractor shall be excused any failure to perform to the extent they are caused by any breaches, omissions, delays of the Department or Department's agents or Department's other suppliers on which the Contractor's performance of its obligations may be dependent. Any agreed timescales detailed in Project shall be extended by the delays caused by the Department.
- 9.3. Nothing in this Contract shall limit or exclude the liability of either Party in respect of personal injury (resulting from negligence) or death of any person or for any other liability that may not be excluded or limited by law.
- 9.4. Without prejudice to any other exclusion or limitation of liability in this Contract and subject always to clause 9.3, the liability of the Contractor and that of any Contractor Person for any claim or claims losses or damages, whether arising from tort (including negligence), breach of statutory duty, restitution, breach of contract or otherwise under or in connection with this Contract shall be limited to three times the charges paid or payable under this Contract.

For the purposes of this Contract, (a) "Contractor Persons" means (i) Contractor, each and all of its partners, principals, members, directors and employees, together with (ii) any other body or entity associated with it as a Member Firm or any other body or entity controlled by it or owned by it and each and all of that other body or entity's partners, principals, members, directors and employees, and (iii) any other persons (including any sub-contractors) engaged by Contractor for the purpose of providing the Project; and (b) "Member Firm" means any separate legal entity associated with KPMG International Cooperative, through membership in the network of independent member firms to which the Contractor belongs, and entities controlled by, or under the common control with, one or more such member firms.

- 9.5. Department shall not bring any claim against any Contractor Person other than Contractor, in respect of loss or damage suffered by the Department arising out of or in connection with the Project.

- 9.6. In the event Contractor and Department agree in the Project that there is to be more than one beneficiary of the Project including a non-party recipient of a Deliverable (each a "**Beneficiary**"), the limitation on Contractor's liability agreed under this clause 9 to each Beneficiary, shall be apportioned by them amongst them. No Beneficiary shall dispute or challenge the validity, enforceability or operation of clause 9.4 on the ground that no such apportionment has been so agreed or on the ground that the agreed share of the limitation amount apportioned to any Beneficiary is unreasonably low.
- 9.7. All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.
- 9.8. The Contractor shall ensure that it has adequate insurance cover with an insurer of good financial standing to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. The Contractor shall upon request produce to the Department a broker's confirmation letter to evidence that the policy or policies are properly maintained.
- 9.9. Subject to clause 9.3, the Contractor (including any Contractor Persons) shall not be liable for any indirect or consequential loss or liability for loss of profits, goodwill, anticipated savings or wasted time.
- 9.10. Subject always to the aggregate limitation on Contractor's liability in clause 9.4 above, Contractor's liability shall in aggregate be limited to that proportion of the total loss or damage, after taking into account contributory negligence (if any), which is just and equitable having regard to the extent of Contractor's responsibility for the loss or damage concerned, and the extent of responsibility of any other person also responsible or potentially responsible ("Other Person"). In order to calculate the proportionate share of Contractor's liability, no account shall be taken of any matter affecting the possibility of recovering compensation from any Other Person, including the Other Person having ceased to exist, having ceased to be liable, having an agreed limit on its liability or being impecunious or for other reasons unable to pay, and full account shall be taken of the responsibility to be attributed to any Other Person whether or not it is before the competent court as a party to the proceedings or as a witness.

10. Termination

- 10.1. The Contract shall be effective from the Effective Date and shall terminate on [date] unless terminated earlier in accordance with the terms of this Clause 10.

10.2. This Contract may be terminated by either Party giving to the other Party at least 30 days notice in writing.

10.3. In the event of any material breach of this Contract by either Party, the other Party may serve a notice on the Party in writing requiring the breach to be remedied within ten (10) Working Days. If the breach has not been remedied by the expiry of this period, the Party not in breach may terminate this Contract with immediate effect by notice in writing.

10.4. [Not Used] .

10.5. This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:-

10.5.1 the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or the Contractor applies to enter into a voluntary arrangement with its creditors; or

10.5.2 a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor's property, assets or any part thereof; or

10.5.3 the court orders that the Contractor be wound-up or a receiver of all or any part of the Contractor's assets be appointed; or

10.5.4 the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986.

10.5.5 there is a change in the legal or beneficial ownership of 50% or more of the Contractor's share capital issued at the date of this Contract or there is a change in the control of the Contractor, unless the Contractor has previously notified the Department in writing. For the purpose of this Sub-Clause 10.4.5 "control" means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power.

10.5.6 the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct

10.5.7 the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;

10.5.8 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to the payment of Social Security contributions;

10.5.9 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/their obligations relating to payment of taxes;

10.5.10 [Not Used]

10.6 The Contractor may terminate the Contract immediately if there is a change of law, rule, regulation or professional standard, or circumstances arise that the Contractor reasonably believes would cause the relationship between the Department and Contractor to violate such law, rule, regulation or professional standard or would prejudice any Contractor Person's ability to comply with applicable auditor independence requirements.

10.7 Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

11. Status of Contractor

11.1 In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the agent of the Department.

11.2 The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Department.

12. Freedom of information

12.1 The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department and ensure that it shall not knowingly do or omit to do anything that will render the Department non-compliant with its information disclosure obligations.

12.2 The Contractor shall and shall procure that its Sub-contractors shall:

12.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

12.2.2 provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five (5) Working Days of the Department's request; and

12.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information

Regulations.

- 12.3 The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 12.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.
- 12.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:
 - 12.5.1 in certain circumstances without consulting the Contractor; or
 - 12.5.2 following consultation with the Contractor and having taken their views into account;
 - 12.5.3 provided always that where 12.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 12.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time, provided that the Department's rights under this clause are subject to conditions set out in clause 14.

13. CONFIDENTIALITY

- 13.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - 13.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 13.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 13.2 Clause 13 shall not apply to the extent that:
 - 13.2.1 such disclosure is a requirement of Law or at the direction of request of Regulatory Body placed upon the Party making the

disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 12 (Freedom of Information);

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

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

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

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

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

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

13.5 [Not used]

13.6 Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:

13.6.1 to any Crown Body or any other Contracting Department. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Department;

13.6.2 [Not Used];

13.6.3 for the purpose of the examination and certification of the Department's accounts; or

13.6.4 [Not Used] .

13.7 The Department shall be liable for any breach by any government department, Contracting Department, employee, third party or Sub-

contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 13 above.

13.8 Nothing in this clause 13 shall prevent either Party from:

(a) using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

(b) Disclosing the other Party's Confidential Information to its agents, insurers, sub-contractors, and legal advisers provided that those recipients are subject to those set out in this clause 13.

13.9 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

13.10 Subject to Clause 13.9, the Contractor hereby gives his consent for the Department to publish the Contract excluding all commercially sensitive information.

13.11 The Department may consult with the Contractor to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.

13.12 The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.

14. Access and Information

14.1 Subject to 14.2 below, the Contractor shall provide access at all reasonable times to the Department's internal auditors or other duly authorised staff or agents to inspect such documents as the Department considers necessary in connection with this Contract and where appropriate speak to the Contractor's employees.

14.2 The Department's rights under this clause are subject to: (i) the nature, scope and duration of the inspection being agreed by the Contractor in writing in advance; (ii) the inspection being carried out by individuals pre-approved by the Contractor; (iii) the Contractor not being compelled to disclose information in relation to which it owes an obligation of confidentiality obligation to any third party; (iv) the cost of each inspection being borne by the Department; (v) the individuals conducting the

inspection complying with the Contractor's reasonable confidentiality and security requirements and maintaining the confidentiality of all information which they obtain access to during the course of each inspection; and (v) no more than one inspection taking place in any 12 month period.

15. Transfer of Responsibility on Expiry or Termination

- 15.1 Where agreed between the Department and the Contractor in writing, the Contractor may provide such assistance as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract.
- 15.2 Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.
- 15.3 The Contractor undertakes that it shall not knowingly do or omit to do anything that may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.

16. Tax indemnity

- 16.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 16.2 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 16.3 The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.
- 16.4 A request under Clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 16.5 The Department may terminate this contract if-
 - (a) in the case of a request mentioned in Clause 16.3 above if the Contractor:
 - (i) fails to provide information in response to the request within a

reasonable time, or

(ii) provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;

(b) in the case of a request mentioned in Clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or

(c) it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Contractor is not complying with those Clauses.

16.6 The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

16.7 The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.

16.8 The Contractor will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under this Contract or in relation to any payments made by the Contractor to its officers or employees in connection with this Contract.

16.9 The Contractor shall indemnify Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by Department in connection with any such assessment or claim.

16.10 The Contractor authorises the Department to provide the HM Revenue and Customs 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 this Contract whether or not Department is obliged as a matter of law to comply with such request.

17. Amendment and variation

17.1 No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto.

- 17.2 The Contractor shall comply with any formal procedures for amending or varying contracts that the Department may have in place from time to time provided that the Contractor is provided with a copy of any such policy in advance, for review and acceptance.

18. Assignment and Sub-contracting

- 18.1 The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld. The Department may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing in advance to the Contractor.

19. The Contract (Rights of Third Parties) Act 1999

- 19.1 This Contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a Party to the Contract.

20. Waiver

- 20.1 No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

21. Notices

- 21.1 Any notices to be given under this Contract shall be delivered personally or sent by post or by email to the Project Manager (in the case of the Department) or to the address set out in this Contract (in the case of the Contractor). Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, forty-eight hours after posting or, if sent by email, twelve hours after proper transmission.

22. Dispute resolution

- 22.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.
- 22.2 Any dispute not capable of resolution by the parties in accordance with the terms of Clause 21 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. If the parties reach agreement resolving the dispute, the agreement shall be put in writing and shall bind the parties

once it is signed by or on behalf of the parties. Failing agreement, either Party may invite the mediator to provide a non-binding but informative opinion in writing.

- 22.3 Any litigation in relation to the dispute may be commenced or continued notwithstanding the mediation unless the parties agree otherwise or a court so orders.
- 22.4 Referral of a dispute to mediation shall not prevent any Party from seeking an injunction or other equitable remedy.

23. Law and Jurisdiction

- 23.1 This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the exclusive jurisdiction of the English courts.

24. Discrimination

- 24.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 24.2 The Contractor shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

25. Safeguarding children who participate in research

- 25.1 The Contractor will put in place safeguards to protect children from a risk of significant harm which could arise from them taking part in the Project. The Contractor will agree these safeguards with the Department before commencing work on the Project.
- 25.2 In addition, the Contractor will carry out checks with the Disclosure and Barring Service (DBS checks) on all staff employed on the Project in a Regulated Activity. Contractors must have a DBS check done every three years for each relevant member of staff for as long as this contract applies. The DBS check must be completed before any of the Contractor's employees work with children in Regulated Activity. Please see <https://www.gov.uk/crb-criminal-records-bureau-check> for further guidance.

26. Project outputs

- 26.1 The Department wishes to publish the final Deliverables from the Project on the Department's research website. The Contractor anticipates that it will be able to consent to such disclosure provided that the Contractor is

able to approve the form of any such publication in writing in advance, and that the Department will take reasonable endeavours to share accompanying narrative prior to publication.

- 26.2 The Contractor shall ensure that all Deliverables for publication by the Department adhere to the Department's Style Guide and MS Word Template, available to download from: <https://www.gov.uk/government/publications/eoi-guide>
- 26.3 Where agreed between the Contractor and Project Manager in the Project, the Contractor shall supply the Project Manager with a draft for comment at least eight weeks before the intended publication date, for interim reports, and eight weeks before the contracted end date, for final reports.
- 26.4 The Contractor shall consider revisions to the drafts with the Project Manager in the light of the Department's comments. The Contractor shall provide final, signed off interim reports and other outputs planned within the lifetime of the Project to the Department by no later than four weeks before the intended publication date, and final, signed off reports and other outputs at the end of the Project to the Department by no later than the contracted end date for the Project.
- 26.5 Until the date of publication, findings from all Project outputs shall be treated as confidential, as set out in the Clause 13 above. The Contractor shall not release findings to the press or disseminate them in any way or at any time prior to publication without approval of the Department.
- 26.6 Where the Contractor wishes to issue a Press Notice or other publicity material containing findings from the Project, notification of plans, including timing and drafts of planned releases shall be submitted by the Contractor to the Project Manager at least three weeks before the intended date of release and before any agreement is made with press or other external audiences, to allow the Department time to comment. All Press Notices released by the Department or the Contractor shall state the full title of the research report, and include a hyperlink to the Department's research web pages, and any other web pages as relevant, to access the publication/s. This clause applies at all times prior to publication of the final report.
- 26.7 Where the Contractor wishes to present findings from the Project in the public domain, for example at conferences, seminars, or in journal articles, the Contractor shall notify the Project Manager before any agreement is made with external audiences, to allow the Department time to consider the request. The Contractor shall only present findings that will already be in the public domain at the time of presentation, unless otherwise agreed with the Department. This clause applies at all times prior to publication of the final report.

27. Entire Agreement

- 27.1 This Contract sets out the entire agreement and understanding between the parties in connection with the Project and extinguishes all previous agreements, promises, representations and understandings between the parties, whether written or oral, to the extent only they relate to its subject matter.
- 27.2 In entering into this Contract, neither Party has relied on any statement, representation, assurance or warranty (made innocently or negligently) that is not set out in this Contract.

28. Force Majeure

- 28.1 Neither Party shall be in breach of their obligations under this Contract or incur any liability to the other if that Party is unable to comply with this Contract because of any cause beyond the reasonable control of the Party owing that obligation.
- 28.1 If such an event occurs, the affected Party shall, as soon as reasonably practical, notify the other, who may suspend or terminate this Contract by giving seven days written notice, taking effect if the affected party has not recommenced the performance of its obligations in that period.

29. Competing Interests

- 29.1 Department acknowledges and agrees that Contractor is (and other Contractor Persons are) entitled to deliver services to a "Competing Party" (one with interests which compete or conflict with Department's) but if the Competing Party's interests conflict with Department's specifically and directly in relation to the Project provided to Department under a particular Schedule 1 then (i) individuals delivering the Project to Department shall not deliver such services to the Competing Party; and (ii) Contractor Persons, other than the individuals delivering the Project, may only deliver services to the Competing Party if appropriate ethical dividers are put in place. In these circumstances, the effective operation of those ethical dividers shall constitute sufficient steps to avoid any real risk of a breach of Contractor's duty of confidence to Department.

End of Schedule Three

Schedule Four Processing, Personal Data and Data Subjects

The Contractor shall comply with any further written instructions with respect to processing by the Department.

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	The Collection of contact details (Business email and phone number) for the HE Providers participating in the study
Duration of the processing	For the period of this contract.
Nature and purposes of the processing	To enable contact to be made with HE Providers that have agreed to participate in the costing study, HE Providers will provide names, job titles, business email addresses and business phone numbers. These will be used to contact HE Providers and arranged their participation in the study.
Type of Personal Data	Names, job titles, business email address, business telephone number
Categories of Data Subject	HE Providers and a small number of their staff that are relevant to this project.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Data will be deleted six months after project completion.

Authorised to sign for and on behalf of the
Secretary of State for Education

Authorised to sign for and on behalf of
the Contractor

Signature

Signature

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Name in CAPITALS

[Redacted Name]

Position and Address

Head of HE Analysis
Department for Education
Ground Floor, Sanctuary Buildings
Westminster, London

Date 10th August 2018

Name in CAPITALS

[Redacted Name]

Position and Address

Director
KPMG LLP
One Snowhill, Snow Hill Queensway,
Birmingham, B4 6GH

Date 10th August 2018