**CONTRACT FOR A DELIVERY CENTRE TO SUPPORT THE BEHAVIOUR HUBS PROGRAMME**

**This contract is made on the first day of October 2020**

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

2 EDUCATION DEVELOPMENT TRUST (registered company number 867944, registered charity number 270901) whose registered office is at Highbridge House, 16-18 Duke Street, Reading, RG1 4RU (“EDT”); (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) (Terms and Conditions);

(b) schedule 1 (Specification);

(c) schedules 2 to 8; and

(d) schedule 9 (Contractor’s Solution).

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

**Terms and Conditions**

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**1. DEFINITIONS AND INTERPRETATION**

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

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

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

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

**“CCN”** means a Change Control Note in the form set out in schedule 5.

**“Charges”** means the fees subject to clause 8 payable to the Contractor for the provision of the Services calculated in accordance with schedule 2.

**“Commercially Sensitive Information”** means the information set out in schedule 9 comprising the information of a commercially sensitive nature relating to:

(a) the Price;

(b) details of the Contractor’s Intellectual Property Rights; and

(c) the Contractor’s business and investment plans

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

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

(a) was public knowledge at the time of disclosure;

(b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

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

**“Consortium”** means an [association](https://en.wikipedia.org/wiki/Voluntary_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.

**“Contract Period”** means the start and end date of the contract as set out in Clause 2 subject to any extensions.

**“Contractor’s Solution”** means the Contractor’s proposal submitted in response to the DFE’s invitation to tender attached at schedule 9.

**“Contracts Finder”** means the Government’s publishing portal for public sector procurement opportunities.

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

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

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

**“Deed of Adherence”** means a deed under which a new Consortium Member shall covenant with the other Consortium Members to adhere to the terms of the Consortium Agreement in either the form set out in schedule 9 or in any other form approved by DFE in writing.

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

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

**“DFE Security Standards”** means the security standards as set out in schedule 7.

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

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

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

**“DPA”** means the Data Protection Act 2018 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice published by the Information Commissioner or relevant government department in relation to such legislation.

**“Effective Date”** means 1 October 2020.

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

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

(a) the employment and dismissal of employees (including their health and safety at work); and

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

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

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

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

(a) any industrial action occurring within the Contractor’s or any of its Sub-Contractor’s organisation, or otherwise involving the Personnel; or

(b) the failure by any Sub-Contractor of the Contractor to perform its obligations under any sub-contract.

**“General Anti-Abuse Rule”** means:

(a) the legislation in Part 5 of the Finance Act 2013; and

(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

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

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

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

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

**“Implementation Plan”** means the plan and time schedule for the completion of the obligations of the Contractor under the Contract as set out in schedule 4 as the same may be replaced by any subsequent more detailed plan and time schedule as the Parties may agree in writing from time to time.

**“Initial Term”** means the period from the Effective Date to 31/12/2024.

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

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

**“KPIs”** means the key performance indicators in relation to the Services set out in schedule 3 which the Contractor shall comply with.

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

**“Key Sub-Contractor”** means any Sub-Contractor identified as such in schedule 6 or otherwise identified as such by DFE.

**“Material Breach”** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the DFE would otherwise derive from:

(a) a substantial portion of the Contract; or

(b) any of the obligations set out in clauses 9, 10, 12, 15, 17 and 33 and in schedule 7.

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

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

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

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

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

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

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

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

**“Prohibited Act”** means:

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

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

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

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

(c) an offence:

(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;

(ii) under legislation or common law concerning fraudulent acts; or

(iii) the defrauding, attempting to defraud or conspiring to defraud the DFE;

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

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

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

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

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

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

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

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

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

“**Restricted Country**” means:

a) any country outside the United Kingdom; and

b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC

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

**“Services”** means the services described in the Specification.

**“Services Commencement Date”** means 1 October 2020.

**“Service Credits”** means the service credits specified in schedule 3 which shall be payable to the DFE by the Contractor in the event that the Key Performance Indicators are not met in respect of Services.

**“Service Level”** means the levels of Service defined in schedule 3.

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

(a) the first Service Period of the Contract shall begin on the Services Commencement Date and shall expire at the end of the calendar month in which the Service Commencement Date falls; and

(b) after the first Service Period of the Contract a Service Period shall be a calendar month during the Contract save that the final Service Period of the Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract.

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

**“SME”** means an enterprise falling within the category of micro, small and medium-sized

enterprises defined by the Commission Recommendation of 6 May 2003 concerning the

definition of micro, small and medium-sized enterprises

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

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

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

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

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

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

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

**“Variation”** means any variation to the Contract requiring a Change Control Note to be completed in accordance with schedule 5.

**“VCSE”** means a non-governmental organisation that is value-driven and which principally

reinvests its surpluses to further social, environmental or cultural objectives.

* 1. The following notes of construction and interpretation apply to the Contract:
     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;
     2. the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
     3. the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
     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;
     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;
     6. the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
     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 extend the Initial Term for such further period as the DFE may choose by giving not less than 3 months’ written notice to the Contractor prior to the expiry of the Initial Term.

**3.** **THE SERVICES**

3.1 The Contractor shall provide the Services in the Area in accordance with the Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.

3.2 The DFE may appoint other Contractors for the Services in the Area.

* 1. The Contractor shall, in performing its obligations under the Contract:

3.3.1 conform to the requirements of the Specification and the Contractor’s Solution or as otherwise agreed in writing between the Parties;

3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time. Comply with the agreed roles, responsibilities and ways of working as set out in the memorandum of understanding with the Department and behaviour adviser team.

3.3.3 comply with Good Industry Practice;

3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;

3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;

3.3.6 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 3;

3.3.7 comply with the Implementation Plan;

3.3.8 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within 14 days of the same being brought to the attention of the Contractor by the DFE;

* + 1. comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
    2. comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE, the Service Users and all other persons including members of the public; and
    3. comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Personnel also comply.

3.4 The DFE may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.

* 1. 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.
  2. 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. 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.

**Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain**

5.9 The Contractor shall:

5.9.1 subject to clause 5.9.7, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Contract Period;

5.9.2 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;

5.9.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;

5.9.4 provide reports on the information at clause 5.9.3 to the DfE in the format and frequency as reasonably specified by the DfE;

5.9.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

5.9.6 Each advert referred to at clause 5.9.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.

5.9.7 The obligation at Clause 5.9.1 shall only apply in respect of subcontract opportunities arising after the contract award date.

5.9.8 Notwithstanding clause 5.9, the DfE may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

5.10 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, on request and at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the DfE including:

5.10.1 the total contract revenue received directly on a specific contract;

5.10.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and

5.10.3 the total value of sub-contracted revenues to SMEs and VCSEs.

**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.

6.5 For each of the Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.

6.6 The Contractor acknowledges that Key Personnel and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Personnel and Key Sub-Contractors listed in schedule 6 as at the Effective Date.

6.7 Key Personnel shall not be released from supplying the Services without the DFE’s consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.

6.8 Any replacements of Key Personnel shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.

6.10 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.

6.11 The DFE shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.

6.12 Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.

**7. TUPE**

7.1 No later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:

7.1.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;

7.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;

7.1.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;

7.1.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

7.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union

(together the **“TUPE Information”**).

7.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.

7.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.

7.4 The DFE may use TUPE Information for the purposes of any retendering process.

7.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:

7.5.1 the provision of TUPE Information;

7.5.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;

7.5.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;

7.5.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and

7.5.5 any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.

7.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.

7.7 This clause 7 applies during the Term and indefinitely thereafter.

7.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):

7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);

7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);

7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual’s career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or

7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

**8. CHARGES**

8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.

8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the schedule 2 subject to the receipt of correct invoices pursuant to clause 8.8 being issued by the Contractor.

8.3 The Department shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

8.4 Except where otherwise expressly stated in schedule 2 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 2 throughout the Term.

8.5 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.

8.6 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.

8.7 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.

8.8 Invoices shall be submitted to [**Behaviour.HUBS@education.gov.uk**](mailto:Behaviour.HUBS@education.gov.uk). An invoice is a **“Valid Invoice”** if it is legible and includes:

8.8.1 the date of the invoice;

8.8.2 Contractor’s full name and address;

8.8.3 Contract reference number;

8.8.4 Contract purchase order number

8.8.5 the charging period;

8.8.6 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);

8.8.7 days and times worked (if applicable);

8.8.8 Service Credits (if applicable); and

8.8.9 VAT if applicable.

8.9 The DFE shall not pay an invoice which is not a Valid Invoice.

8.10 The DFE intends to pay Valid Invoices within 5 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 8.10 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.

8.11 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.

8.12 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.

8.13 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service.

8.14 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.

8.15 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.

8.16 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

**9. TAX and VAT**

9.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

9.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.

9.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

9.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.

9.5 A request under clause 9.4 may specify the information which the Contractor must provide and the period within which that information must be provided.

9.6 The DFE may terminate this Contract if:

9.6.1 in the case of a request mentioned in clause 9.4 the Contractor:

(i) fails to provide information in response to the request within a reasonable time; or

(ii) provides information which does not demonstrate either how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it;

9.6.2 it receives information which demonstrates that, if clauses 9.1 to 9.3 apply, the Contractor is not complying with those clauses.

9.7 The DFE may supply any information which it receives under clause 9.4 to HMRC.

9.8 The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.

9.9 The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract. The Contractor shall indemnify DFE against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under the Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by DFE in connection with any such assessment or claim.

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

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

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

9.11.2 promptly give the DFE:

(i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the DFE may reasonably require.

**10. PREVENTION OF CORRUPTION**

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

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

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

10.2 The Contractor shall not:

10.2.1 commit a Prohibited Act; or

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

10.3 The Contractor shall:

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

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

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

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

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

10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE’s enquiries, co-operate with any investigation, and allow the DFE to audit any books, records and any other relevant documentation.

10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the DFE may by notice:

10.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or

10.6.2 immediately terminate the Contract.

10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

**11. DISCRIMINATION**

11.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable equality law.

11.2 The Contractor shall comply with DFE’s equality and diversity policy as given to the Contractor from time to time and any other requirements and instructions which the DFE reasonably imposes in connection with any equality obligations imposed on the DFE at any time under equality law.

11.3 The Contractor indemnifies the DFE in full from and against all Employment Liabilities that may arise as a result of any claims brought against the DFE by any of its employees, agents, consultants and contractors (**“DFE Personnel”**) and/or any of the Personnel where such claim arises from any act or omission of the Personnel in respect of anti-discrimination legislation. The Contractor will also provide all reasonable cooperation, assistance and information as the DFE may request in connection with any investigation by the DFE into any complaint or other grievance received by it from any of the DFE Personnel or Personnel in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any Personnel.

**12. INTELLECTUAL PROPERTY**

12.1 All Intellectual Property Rights in materials:

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

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

(together the **“IP Materials”**).

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

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

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

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

12.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 14, except to the extent that any such claim arises from:

12.6.1 items or materials supplied by the DFE; or

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

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

12.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the DFE, provided always that the Contractor shall:

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

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

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

12.9 Notwithstanding clause 12.8. the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.

12.10 The DFE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor’s obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

12.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:

12.11.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or

12.11.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.

12.12 If the Contractor is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Contractor’s notification the DFE may terminate the Contract with immediate effect by notice in writing.

12.13 The Contractor grants to the DFE and, if requested by DFE, to a Replacement Contractor, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights the Contractor owned or developed prior to the Effective Date or otherwise not in connection with the Contract (**“Contractor IP”**) and which the DFE (or a Replacement Contractor) reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided and the use and further development of the IP Materials.

12.14 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.

12.15 If the Contractor is not able to grant to the DFE a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:

12.15.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Contract grants to the DFE a licence on the terms set out in clause 12.13; or

12.15.2 if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the DFE a sub-licence on the terms set out in clause 12.13.

12.16 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the DFE IP Materials any act or thing which:

12.16.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or

12.16.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.

12.17 The Contractor shall comply with the DFE’s branding guidelines and shall not use any other branding, including its own, other than as set out in the DFE’s branding guidelines or as otherwise agreed with the DFE.

12.18 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:

12.18.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or

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

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

13.1 The Parties shall comply with the provisions of schedule 7.

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

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

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

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

15.5 Clause 15.1 shall not apply to the extent that:

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

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

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

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

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

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

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

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

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

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

15.7 Nothing in clauses 15.1 to 15.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party’s Confidential Information or an infringement of the other Party’s Intellectual Property Rights.

15.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the DFE's obligations of confidentiality.

15.9 If the Contractor does not comply with clauses 15.1 to 15.5 the DFE may terminate the Contract immediately on notice to the Contractor.

**16. FREEDOM OF INFORMATION**

16.1 The Contractor acknowledges that the DFE is subject to the requirements of the FOIA and the EIR.

16.2 The Contractor shall transfer to the DFE all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receipt:

16.2.1 give the DFE a copy of all Information in its possession or control in the form that the DFE requires within 5 Business Days (or such other period as the DFE may specify) of the DFE's request;

16.2.2 provide all necessary assistance as reasonably requested by the DFE to enable the DFE to comply with its obligations under the FOIA and EIR; and

16.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.

16.3 The DFE shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

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

17.1 The Contractor shall comply with the provisions of:

17.1.1 the Official Secrets Acts 1911 to 1989; and

17.1.2 section 182 of the Finance Act 1989.

**18. LIABILITY**

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

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

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

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

18.1.4 any breach of clause 15 or schedule 7;

18.1.5 for its own fraud; or

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

18.2 Subject to clauses 18.1 and 18.3, the Contractor shall indemnify the DFE and keep the DFE indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Personnel on the Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

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

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

18.4.1 for any losses of an indirect or consequential nature;

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

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

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

18.5.1 in respect of damage to property is limited to £5,000,000 in respect of any one incident or series of connected incidents; and

18.5.2 in respect of any claim not covered by clause 18.5.1, is limited in each calendar year in aggregate to 150% of the sum of the Charges payable in that year.

18.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:

18.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;

18.6.2 any wasted expenditure or charges;

18.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;

18.6.4 any compensation or interest paid to a third party by the DFE; and

18.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.

18.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

18.8 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.

18.9 The Contractor shall effect and maintain in force with a reputable insurance company employer’s liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.

18.10 The Contractor shall supply to the DFE on demand copies of the insurance policies maintained under clause 18.9.

18.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

18.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

**19. WARRANTIES AND REPRESENTATIONS**

19.1 The Contractor warrants and represents that:

19.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

19.1.2 in entering the Contract it has not committed any fraud;

19.1.3 as at the Effective Date, all information contained in the Contractor’s Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;

19.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;

19.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

19.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party’s work or materials provided that this clause 19.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and

19.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;

19.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:

(i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

19.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

19.1.10 it has notified the DFE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

**20. FORCE MAJEURE**

20.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 20.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

20.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

20.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

**21. MONITORING AND REMEDIATION**

21.1 The DFE or its authorised representatives may visit on reasonable notice to the Contractor any premises of the Contractor, any Consortium Member or any other premises at which the Services (or any part of them) are being or are to be performed to ascertain that the Contractor is conforming in all respects with its obligations arising under the Contract and otherwise to monitor and quality assure the provision of the Services.

21.2 During such visits, the DFE may inspect and take copies of such of the records of the Contractor and any Consortium Member as relate to the performance of their obligations under the Contract.

21.3 If the DFE reasonably considers that any provision of the Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:

21.3.1 require the Contractor to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the DFE (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and

21.3.2 monitor, supervise, direct and/or guide the Contractor’s provision of the Services until the DFE reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the DFE in this regard.

21.4 If the Contractor fails to comply with any provision of the Contract or fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the DFE may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the DFE may direct.

21.5 The DFE may review from time to time the progress of the Contractor against the Implementation Plan. The Contractor shall cooperate with the DFE in this regard and provide any information and evidence reasonably required by the DFE.

21.6 The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that the Implementation Plan is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

**22. STEP IN RIGHTS**

22.1 Without prejudice to DFE’s rights of termination under clause 23 the DFE may exercise one or more of the rights set out in this clause 22 (**“Step In Rights”**) if:

22.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;

22.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;

22.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 22 is necessary;

22.1.4 a serious risk exists to the health and safety of persons, property or the environment;

22.1.5 it is necessary to discharge a statutory duty; or

22.1.6 the Contractor becomes insolvent.

22.2 If the DFE has a Step In Right it may serve notice on the Supplier (a **“Step-In Notice”**) that it will take action under this clause 22 either itself or with the assistance of a third party.

22.3 The Step-In Notice shall set out:

22.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the **“Required Action”**);

22.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;

22.3.3 the date on which it wishes to commence the Required Action;

22.3.4 the time period which it believes will be necessary for the Required Action;

22.3.5 whether the DFE will require access to the Contractor's premises; and

22.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor’s obligations to provide the Services during the period that the Required Action is being taken.

22.4 Following service of a Step-In Notice, the DFE shall:

22.4.1 take the Required Action set out in the Step-In Notice and any consequential

additional action as it reasonably believes is necessary to achieve the Required Action;

22.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;

22.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and

22.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result

of the exercise of the Step In Rights.

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22.5 For as long as and to the extent that the Required Action continues:

22.5.1 the Contractor shall not be obliged to provide the Services to the extent that

they are the subject of the Required Action; and

22.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.

22.6 If the Contractor demonstrates to the DFE’s reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.

22.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a **“Step-Out Notice”**), specifying:

22.7.1 the Required Action it has taken; and

22.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 22.8.

22.8 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the date specified in clause 22.7.2, develop for the DFE's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.

22.9 If the DFE does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.

22.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 22, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE under clauses 22.1.2 to 22.1.5 (insofar as the primary cause of the DFE serving the Step In Notice is identified as not being the result of a Contractor’s Default).

**23. TERMINATION**

23.1 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

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

23.1.2 a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

23.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors’ meeting is convened pursuant to section 98 of the Insolvency Act 1986;

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

23.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

23.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

23.1.7 being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

23.1.8 any event similar to those listed in clauses 23.1.1 to 23.1.7 occurs under the law of any other jurisdiction.

23.2 The DFE may terminate the Contract with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:

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

23.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy;

23.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;

23.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;

23.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days;

23.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;

23.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

23.2.8 any event similar to those listed in clauses 23.2.1 to 23.2.7 occurs under the law of any other jurisdiction.

23.3 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“**Change of Control**”). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:

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

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

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

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

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

23.4.2 it is for any reason dissolved;

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

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

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

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

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

23.4.6.2 a petition is presented for his bankruptcy;

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

23.4.6.4. any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the law of any other jurisdiction.

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

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

23.5.2 it is for any reason dissolved;

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

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

23.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;

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

23.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

23.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

23.5.9 any event similar to those listed in clauses 23.5.1 to 23.5.8 occurs under the law of any other jurisdiction.

23.6 References to the Insolvency Act 1986 in clause 23.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

23.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:

23.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within 21 Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied

23.7.2 the Default is not, in the opinion of the DFE, capable of remedy; or

23.7.3 the Default is a Material Breach.

23.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:

23.8.1 the Contractor’s warranty in clause 19.1.10 is materially untrue;

23.8.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance;

23.8.3 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

23.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:

23.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

23.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or

23.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

23.10 If the DFE terminates the Contract under clauses 23.7, 23.8 or 23.9:

23.10.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and

23.10.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 23.

23.11 Either Party may terminate the Contract (or any part of it) at any time by giving at least [3] months' prior written notice to the other Party.

23.12 If the DFE terminates the Contract under clause 23.11 the DFE shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE.

23.13 If any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Contract cannot reasonably continue the DFE may terminate the Contract (or any part of it) by serving 3 months’ written notice on the Contractor.

23.14 If the DFE terminates the Contract under clause 23.13 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavoidability of such costs.

23.15 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

23.16 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 30 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 8.7 or to Force Majeure.

23.17 Save as otherwise expressly provided in the Contract:

23.17.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

23.17.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Payment), 9 (Tax and VAT), 10 (Prevention of Fraud), 12 (Intellectual Property Rights), 13 (Data), 15 (Confidentiality), 16 (Freedom of Information), 17 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 180 (Warranties and Representations), 19 (Liability), 23 (Termination) 24 (Retendering and Handover), 25 (Exit Management), 26 (Audit), and 37 (Governing Law and Jurisdiction).

23.18 Termination by DfE if monthly Performance Standards not met

23.18.1 If the Contractor fails to meet any of the monthly Performance Standards in any two consecutive months, at either party’s request to the other party, both parties must meet to work together in good faith to attempt to understand why the monthly Performance Standards have not been achieved and implement strategies jointly agreed between the parties to attempt to enable the Contractor to achieve the monthly Performance Standards.

23.18.2 If the parties agree on a strategy under clause 23.18.1 and, in the month following the implementation of the joint strategy under clause 23.18.1 the Contractor fails to achieve any of the monthly Performance Standards, DfE may terminate this agreement on 30 days’ notice to Contract.

23.18.3 If Contractor fails to meet any of the monthly Performance Standards in any three consecutive months, DfE may terminate this agreement on 30 Business Days’ notice to the Contractor.

**24. RETENDERING AND HANDOVER**

24.1 Within 30 days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the DFE to issue tender documents for the future provision of replacement services.

24.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 24.1 is given only to potential contractors who have qualified to tender for the future provision of the replacement services.

24.3 The DFE shall require that all potential Contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the DFE; and that they shall not use it for any other purpose.

24.4 The Contractor shall allow access to the Premises in the presence of DFE’s authorised representative, to any person representing any potential contractor whom the DFE has selected to tender for the future provision of the Services.

24.5 If access is required to the Contractor’s Premises for the purposes of clause 26.4, the DFE shall give the Contractor 7 days’ notice of a proposed visit together with the names of all persons who will be visiting.

24.6 The Contractor shall co-operate fully with the DFE during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

24.7 Within 10 Business Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the DFE.

**25. EXIT MANAGEMENT**

25.1 If the DFE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the DFE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

25.2 The Contractor will, within 3 months of the Effective Date, deliver to the DFE, a plan which sets out the Contractor’s proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its Replacement Contractor at the end of the Term (an **“Exit Plan”**).

25.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 36.

25.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the DFE for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 36.

25.5 If the Contractor:

25.5.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or

25.5.2 reasonably incurs additional costs

the Parties shall agree a variation of the Charges.

25.6 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.

25.7 Within one month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.

25.8 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE’s request for information no later than 15 Business Days from the date that that request was made.

**26. AUDIT**

26.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.

26.2 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services

26.3 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor’s records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

26.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

**27. ENTIRE AGREEMENT**

27.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.

27.2 Nothing in this clause 27 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

**28. PARTNERSHIP**

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

**29. WAIVER**

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

**30. CHANGE CONTROL**

30.1 Either Party may at any time request in writing a Variation in accordance with the change control procedure set out in schedule 5 (the **“Change Control Procedure”**). No Variation shall be effective unless made in accordance with the Change Control Procedure.

**31. COUNTERPARTS**

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

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

32.1 The provisions of clauses 7.5 and 12.6 confer benefits on a Replacement Contractor and are intended to be enforceable by a Replacement Contractor by virtue of the Contracts (Rights of Third Parties ) Act 1999 (“**CRTPA**”).

32.2 Subject to clause 32.1, a person who is not a Party has no right under CRTPA to enforce provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

32.3 A Replacement Contractor may not enforce or take steps to enforce the provisions of clauses 7.5 or 12.6 without DFE’s prior written consent.

32.4 The Parties may amend the Contract without the consent of any Replacement Contractor.

**33. CONFLICTS OF INTEREST**

33.1 The Contractor shall:

33.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and

33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 33 as a **“Conflict of Interest”**.

33.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 35 the Contractor shall forthwith provide full particulars to the DFE.

33.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.

33.4 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:

33.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and

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

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

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

**34. FURTHER ASSURANCE**

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

**35. NOTICES**

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

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

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

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

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

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

**36. DISPUTE RESOLUTION**

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

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

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

**37. GOVERNING LAW AND JURISDICTION**

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

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

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

|  |  |
| --- | --- |
| **Authorised to sign for and on behalf of the Education Development Trust**  **Signature:**  **Name:**  **Occupation:**  **Address:**  **Date:**  **Authorised to sign for and on behalf of the Secretary of State for Education**  **Signature:**  **Name:**  **Position:**  **Address:** **Date:** |  |

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**Schedule 1**

**The Specification**

## Background to the Behaviour Hubs Programme

* 1. All schools should be safe and disciplined environments in which pupils feel safe and are able to fulfil their potential. As well as delivering excellent teaching, schools must create positive environments where pupils are respectful of one another and are free from the disruption that can damage their education. Schools also need to be safe and respectful workplaces to attract and retain teachers.
  2. The £10m behaviour hubs programme will begin in Spring 2021 and will run for an initial period of three years. Behaviour hubs will enable exemplary schools (‘lead schools’) to work closely with schools that need and want to turn around their behaviour management culture and practices (‘partner schools’). The programme is centred around equipping senior leaders (school headteachers, deputy heads and executive teams at Multi-Academy Trusts) with the tools to improve their school’s approach to behaviour management through facilitated peer-training.
  3. The behaviour hubs programme will build on Tom Bennett’s review of behaviour in schools ‘[*Creating a Culture:* *how school leaders can optimise behaviour'*](https://www.gov.uk/government/publications/behaviour-in-schools) *(2017)*. The review identified a set of core principles which characterise the approach of successful school behaviour policies. These include:
* having a clear understanding of what the school culture is;
* high expectations of pupils and a belief that all pupils matter;
* consistency and attention to detail in the execution of school routines, norms and values.
  1. These principles can help support senior leaders to create calm and ordered environments and develop effective behaviour management systems, so that all pupils – including those who are vulnerable or have additional needs – benefit from a school culture where teachers can teach, and pupils can study.
  2. The department has appointed a team of behaviour advisers to work with our lead behaviour adviser Tom Bennett to develop and run the behaviour hubs programme.
  3. This contract concerns the appointment of a delivery centre to work alongside the behaviour adviser team and the department for the duration of the programme.

**Behaviour hubs programme structure**

* 1. The behaviour hubs programme will consist of the following key elements:

1. **Lead behaviour schools and lead multi-academy trusts.** These will be exemplars of behaviour best practice: responsible for supporting partner schools to improve, sharing their good practice, and supporting partner MATs to design and implement effective behaviour practices in their schools.
2. **Partner schools and partner MATs.** These schools or MATs will receive support, advice and guidance from lead schools or lead MATs and will share their own practice with others.
3. **Hubs**. Behaviour hubs will consist of clusters of lead and partner schools and MATs working together and sharing good practice.
4. **Behaviour advisers.** Led by Tom Bennett, our team of behaviour advisers will oversee and support the work of lead schools and MATs. Lead schools will support advisers to deliver central training for schools and MATs in the programme.
5. **Delivery Centre.** A central delivery organisation will provide logistics and administration, including making grant payments to schools, organising training, and acting as a central point of contact for enquiries.
6. **Evaluation.** An evaluation will consider the effectiveness of the programme and capture learning to aid programme improvement. ​

**Support Package**

* 1. Schools/MATs referred onto the programme will form a hub. Schools that receive an Ofsted Requires Improvement judgement, have adequate leadership, behaviour issues and are willing and ready to engage with the programme and make changes to their school will be eligible for support and will be referred onto the programme through National Leaders of Education via the Department’s Covid Recovery Offer and School Improvement offer where appropriate. Partner schools will be assessed based on need and will have access to the following package of support:

1. **Bespoke support and advice on behaviour management and culture**
2. **For partner schools -** Partner schools will have access to school-to-school support provided by a lead school depending on need – those facing greater challenges will receive ongoing one-to-one support, and others will have access to an action planning surgery service:

* **One-to-one** in-depth analysis and action planning support with a lead school including mentoring, training, advice and oversight of action planning implementation. This will be at least a year long close working relationship; *or*
* **An action planning surgery service** with a lead school to provide advice and challenge on the partner school’s behaviour management approach.

1. **For partner MATs -** MAT-to-MAT support to consider MAT wide approaches to behaviour management. Leaders from a lead MAT’s central executive team will work with their partner MAT’s central executive team to develop and implement an approach to behaviour management across schools within the Trust;
2. **Training events developed by behaviour adviser team**

Partner schools will have access to training sessions developed by the advisers focused on the principles and practice of effective behaviour management.

1. **Open days at lead schools to observe practice.**

Partner schools will be able to attend open days at lead schools to observe their good behaviour management in practice.

1. **Hub networking events**

Lead and partner schools in the programme will cluster to form hubs to network and share their experiences and practice.

1. **Online resources**

All schools in the country, including those in the programme, will have access to a free online repository of good practice resources curated and developed by the behaviour advisers. Resources may include good practice case studies and tools for schools to audit their own behaviour practice.

**School recruitment**

* 1. The following sets out the proposed process for recruiting lead and partner schools.

*Lead school/MAT selection*

* 1. Lead schools/MATs will be selected according to eligibility criteria, an application form and an interview/school visit from a member of the adviser team and the DfE, organised by the delivery centre. Applications for lead schools are invited from Primary, Secondary, Alternative Provision and Special schools from across the country. We anticipate that the first cohort of lead schools will have been recruited by the end of February 2021.
  2. Once recruited, lead schools and MATs will be inducted onto the programme and will be expected to attend a residential three day induction training event (subject to any Covid-19 (coronavirus) restrictions) delivered by the adviser team and organised by the delivery centre. Building on their own knowledge and experience, lead schools will consider effective approaches to improving whole-school behaviour and how they will go about supporting partner schools and MATs to make improvements. Both lead schools and MATs will be expected to be committed to self-improvement.
  3. Successful lead schools and MATs will be expected to attend a follow up training event later in the calendar year, and for the first cohort a second follow up training event in the following year.
  4. Lead schools and lead MATs appointed in Year 1 will be expected to remain on the programme supporting other schools for 3 academic years. There will be a further recruitment round for year 2, where we then expect these schools to stay on the programme till the end.

*Partner school/MAT selection*

* 1. The adviser team will work with the delivery centre and the DfE to select the partner schools and decide what support is offered to the school (one-to-one ongoing support or an action planning surgery service).
  2. There will be an initial cohort of schools ready to be inducted in April 2021, and then partner schools will be recruited in termly waves throughout the programme. The majority of support for each partner school will take place in their first year in the programme. However, further support may take place during their second year in the programme, subject to progress in implementing their action plans.
  3. There will be opportunities for MATs and other schools to be part of the programme through referrals by advisers and DfE following local intelligence gathering.

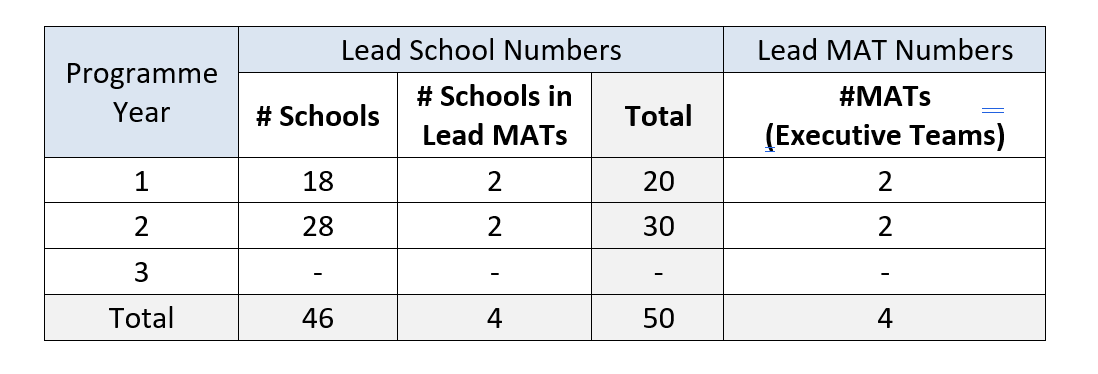
*Matching schools*

* 1. After selection, advisers and the Department, with support from the delivery centre, will match partner schools to appropriate lead schools on the basis of geography, context and similarity of pupil demographics and other relevant factors.

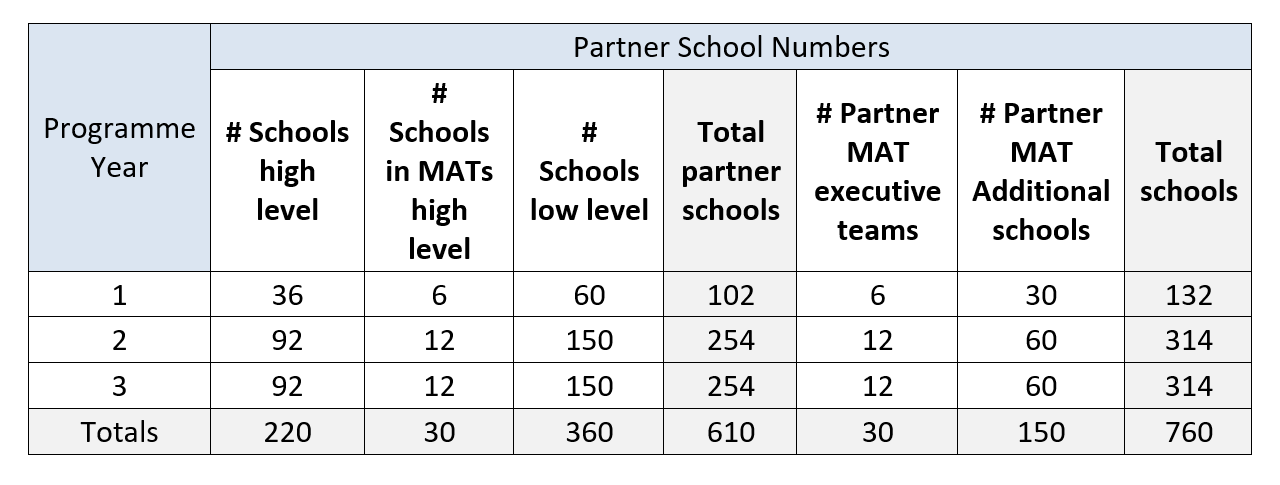
**Indicative Number of Schools Participating in the Programme**

* 1. The programme will begin with approximately 20 lead schools and 2 lead MATs. Once the capacity and capability of these schools and MATs are more fully understood, the programme will be refined and scaled up accordingly in the second and third years. We estimate that there will be 50 lead schools and 4 lead MATs in years 2 and in year 3.

**Total indicative lead school and MAT numbers**



**Total indicative partner school and MAT numbers**



* 1. We expect each lead school will provide one to one (higher level) support to 2 partner schools for each year of the programme and will run termly action planning surgeries (supporting 3 additional lower level support schools) each year alongside termly open days and regular networking events.
  2. Lead MATs and schools will support up to 3 partner MATs and schools in each year of the programme, in addition to the termly action planning surgeries, open days and networking events
  3. **The delivery of the programme is subject to policy changes determined by the Department.**

## Delivery Centre Objectives

* 1. The functions of the delivery centre will include the following areas.

***Objective 1: Support the onboarding of participant schools***

***Objective 2: Develop and deliver the packages of support created by the advisers***

***Objective 3: Provide a quality customer service***

***Objective 4: Project and contract management, monitoring and reporting***

***Objective 5: Manage programme finances***

**Schedule 2**

**Financials**

1. The DFE shall pay the Contractor the Charges in accordance with the Contract, subject to successful delivery of the Services against the KPIs or Service Levels set out in schedule 2. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise between the Contractor and the DFE, the Contractor shall not be entitled to claim any expenses in addition to the Charges.

2. The DFE may review the detailed costs set out in the Implementation Plan and Payment Schedule to ensure that the Contract is value for money.

3. Indexation shall not apply to the Charges.

4. The Contractor shall be entitled to invoice the Charges following acceptance by the DFE of satisfactory completion of the Services or, where performance of the Services will continue, either monthly in arrears or on satisfactory completion of milestones as set out in the delivery milestones, outputs or outcomes (as set out in the tables below and the implementation plan).

5. Funds allocated to a particular expenditure heading in Table 2 are available for that expenditure heading only. Funds allocated to a particular accounting year are available for that accounting year only. The allocation of funds in the Table may not be altered except with the prior written consent of the Department.

6. Separate to managing the value of the contract, the contractor will also be responsible for managing a grant of several million pounds in order to administer payments to participating schools. When managing this grant, the contractor shall fully comply with the Terms & Conditions set out in the grant agreement with the Department. The grant agreement documentation will be shared and signed with the contractor and the exact process for allocating grant funding will be agreed following signing of the contract.

**Table 1: Payment Schedule**

Please see attached Schedule 2 Table 1. **[redacted]**

**Table 2 [Redacted]**

**Schedule 3**

**KPIs, Service Levels and Service Credits**

This schedule sets out the Service Levels and Key Performance Indicators (KPIs) against which the Parties shall measure the Contractor’s performance.

1. The objectives of the Service Levels are to:

1.1 ensure that the Services are of a consistently high quality and meet the requirements of the DFE;

1.2 provide a mechanism whereby the DFE can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Services; and

1.3 incentivise the Contractor to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

Service levels and KPIs will be reviewed periodically to ensure they are appropriate and fulfil the objectives above.

**KEY PERFORMANCE INDICATORS (KPIs) AND SERVICE LEVELS (SLs)**

1. This schedule 3 sets out the KPIs and Service Levels against which the Contractor shall measure its performance. The Contractor shall ensure compliance with the Service Levels listed in Table 2 (Service Levels) and KPIs in table 1.
2. The Contractor shall monitor its performance against each of the KPIs and Service Levels and send the DFE a monthly report detailing the KPIs and Service Levels which were achieved in accordance with the provisions of this schedule 3.

**PERFORMANCE STANDARDS/MEASURES**

1. The Contractor must meet the Performance Measure for each identified KPI as set out in table 1 below.
2. If during a Service period the Contractor achieves a KPI/Service Level, no KPI Credit or Service Credit (“reduction in total amount of charges payable to the Contractor”) will accrue to the Contractor in respect of that KPI/Service Level.
3. Both Parties agree that the Performance Measures and KPI/ Service Credits are a reasonable method of adjusting the Charges to reflect poor Contractor performance. The Contractor confirms that it will take Performance Measures and KPI/ Service Credits into account when calculating the Charges.
4. The Contractor will be expected to meet/comply with all Service Levels as set out within table 2 and all KPIs within table 1 below.

**Table 1 KPIs [Redacted]**

**Table 2: Service Levels [Redacted]**

**CONSEQUENCES OF FAILURE TO MEET KPIS**

1. A failure to meet at least the required performance level will be considered a “Service Failure” in respect of the KPIs set out in Table 1 above.
2. If at the end of each academic year, the Contractor:
   1. achieves the KPIs, no financial penalty will accrue;
   2. does not achieve the KPIs, KPI Credits will be applied in accordance with Table 1 (Financial consequences).
   3. The Department shall have the right to exercise (in its absolute and sole discretion) relaxation of the financial consequences relating to the KPIs in Table 1.
3. In this Agreement, “Academic Year” means the period from 1 September to 31 August.

**CONSEQUENCES OF FAILURE TO MEET SERVICE LEVELS**

1. If during a service period (a calendar month), the Contractor:
   1. Achieves a Service Level, no Service Credits will accrue in respect of that Service Level;
   2. Fails to achieve a Service Level, the appropriate number of Service Credits will accrue in respect of that Service Level ; or
   3. fails to meet four (4) or more Service Levels in any consecutive three (3) months, the Department may terminate the Contract and/or seek damages.
2. One (1) Service Credit will be applied for every one (1) failure to achieve any of the Service Levels during a Service Period. All Service Credits will be applied at the discretion of the DFE, and the DFE may choose not to apply a Service Credit for any particular Service Period, and instead rate the Service Level as Amber in anticipation of remedial action or where further information may mitigate the failure. An Amber rating will become a Red rating if a Service Level has not been achieved and if the issue is not resolved to the DFE’s satisfaction by the next monthly performance meeting. RAG ratings and the application of Service Credits are at the discretion of the DFE.
3. The Contractor agrees that the Charges for that academic year in relation to Service Levels will be reduced by up to four per cent (4%) in accordance with Table 3 (Financial consequences of missed Service Levels). The Service Credits mechanism will be cumulative for the academic year. Table 3 below provides a breakdown of the financial consequences which will apply in the event of failure to achieve the Service Levels.
4. The DFE shall offset the value of any Service Credits against the appropriate invoice in accordance with this schedule.
5. A failure to meet the required performance level for service levels in table 3 will not be considered a Service Failure in the context of paragraph 7 but DFE expects the contractor to meet the required performance levels and will consider repeated failures as breaches of this contract.
6. In addition to its rights under paragraph 7, if there are one or more Service Failures in **3 (three)** consecutive Service Periods/calendar months, the DfE will be entitled, at its sole discretion, to terminate this contract on 30 days written notice.

**Table 3: Financial consequences of missed Service Levels [Redacted]**

**Schedule 4**

**Implementation Plan**

1. The Contractor shall provide the Services in accordance with the Contractor’s Solution in Schedule 9 and the Implementation Plan.
2. The Contractor’s Solution and Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
3. The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Service Commencement Date the Contractor is able to provide the Services:

3.1 in accordance with the provisions of the Contract; and

3.2 in a manner that maintains the continuity of Services to the DFE.

1. The Contractor shall monitor its performance against the Services and the Implementation Plan and report to the DFE monthly (or more frequently if so required by the DFE) on its performance.
2. **Please find the implementation plan attached.**

**Schedule 5**

**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**  Contractor  |
| **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**  **For the Contractor: For the DFE:**  **Signature……………………………….. Signature………………………………………..**  **Full Name………………………………. Full Name………………………………………**  **Title……………………………………… Title…………………………………………….**  **Date……………………………………… Date……………………………………………** | |

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

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

**Schedule 6**

**Key Personnel and Key Sub Contractors**

**Key Personnel [Redacted]**

The individuals listed in the table below are Key Personnel:

|  |  |  |
| --- | --- | --- |
| **Name** | **Role** | **Period of Involvement** |
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**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** |
| --- | --- | --- | --- | --- |
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**Schedule 7**

**Data, Systems Handling and Security**

**Definitions**

|  |  |
| --- | --- |
| **"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; |
| **“Data Loss Event”** | any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach. |
| **“DPA”** | Data Protection Act 2018 |
| **“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; (iiii) all applicable Law about the processing of personal data and privacy; |
| **“Data Subject 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. |
| **“Controller”, “Processor,” “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”** | shall have the meanings given in the GDPR; |
| **“GDPR”** | the General Data Protection Regulation (Regulation (EU) 2016/679) |
| **“Law”** | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply; |
| **“LED”** | Law Enforcement Directive (Directive (EU) 2016/680) |
| **“Processor Personnel”** | employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract. |
| **“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 including those set out in the Contract. |
| **“Sub-processor”** | any third Party appointed to process Personal Data on behalf of the Processor related to this Contract |

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 7 Annex 2. The only processing that the Processor is authorised to do is listed in Schedule 7 Annex 2 by the Controller and may not be determined by the Processor

1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

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

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

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

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

(a) process that Personal Data only in accordance with Schedule 7 Annex 2 , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that :

(i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 3a);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Processor’s duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

(iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

(e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

1.6 The Processor’s obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.

1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

(a) the Controller with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Controller following any Data Loss Event;

(e) assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.

1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

(a) the Controller determines that the processing is not occasional;

(b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.

1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

(a) notify the Controller in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Controller;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and

(d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

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

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

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

**SCHEDULE 7 – ANNEX 1**

**DFE SECURITY STANDARDS**

|  |  |
| --- | --- |
| “BPSS”  “Baseline Personnel Security Standard” | a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at: <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard> |
| “CCSC”  “Certified Cyber Security Consultancy” | 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> |
| “CCP”  “Certified Professional” | 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> |
| “CC”  “Common Criteria” | 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. |
| “CPA”  “Commercial Product Assurance”  [formerly called “CESG Product Assurance”] | is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website: <https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa> |
| “Cyber Essentials”  “Cyber Essentials Plus” | Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.  There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: <https://www.iasme.co.uk/apply-for-self-assessment/> |
| "Department’s Data"  “Department’s Information” | is any data or information owned or retained in order to meet departmental business objectives and tasks, including:  (a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:  (i) supplied to the Contractor by or on behalf of the Department; or  (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or  (b) any Personal Data for which the Department is the Data Controller; |
| “DfE”  “Department” | means the Department for Education |
| “Departmental Security Standards” | means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver. |
| “Digital Marketplace / GCloud” | the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework. |
| “FIPS 140-2” | this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules. |
| “Good Industry Practice”  “Industry Good Practice” | means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| “Good Industry Standard”  “Industry Good Standard” | means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| “GSC”  “GSCP” | means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <https://www.gov.uk/government/publications/government-security-classifications> |
| “HMG” | means Her Majesty’s Government |
| “ICT” | means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution |
| “ISO/IEC 27001” “ISO 27001” | is the International Standard for Information Security Management Systems Requirements |
| “ISO/IEC 27002” “ISO 27002” | is the International Standard describing the Code of Practice for Information Security Controls. |
| “ISO 22301” | is the International Standard describing for Business Continuity |
| “IT Security Health Check (ITSHC)”  “IT Health Check (ITHC)”  “Penetration Testing” | 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. |
| “Need-to-Know” | 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. |
| “NCSC” | The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <https://www.ncsc.gov.uk> |
| “OFFICIAL”  “OFFICIAL-SENSITIVE” | the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.  the ‘OFFICIAL–SENSITIVE’ caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy. |
| “Secure Sanitisation” | 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>  The disposal of physical documents and hardcopy materials advice can be found at: <https://www.cpni.gov.uk/secure-destruction> |
| “Security and Information Risk Advisor”  “CCP SIRA”  “SIRA” | 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> |
| “SPF”  “HMG Security Policy Framework” | This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. <https://www.gov.uk/government/publications/security-policy-framework> |
| ”Tailored Assurance”  [formerly called “CTAS”, or,  ”CESG Tailored Assurance”] | is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks. <https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology> |

* 1. 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](https://www.gov.uk/government/publications/procurement-policy-note-0914-cyber-essentials-scheme-certification) 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 be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
  4. The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
  5. Departmental Data being handled in the course of providing an ICT solution or service must be segregated from all other data on the Contractor’s or sub-contractor’s own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 1.14.
  6. The Contractor shall have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas
  7. The Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
  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 data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
  10. Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 1.11 and 1.12 below.
  11. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
  12. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
  13. Whilst in the Contractor’s care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
  14. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
  15. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor’s ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department’s information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
  16. Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a “need-to-know” in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor staff must complete this process before access to Departmental Data is permitted.
  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 Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
  19. Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
  20. The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
  21. The Contractor or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
  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 and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. Contractor and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the DfE Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Contractor’s and sub-contractor’s security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA)

**SCHEDULE 7 ANNEX 2**

**Processing, Personal Data and Data Subjects**

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

1. The contact details of the Controller’s Data Protection Officer are: **[redacted]**
2. The contact details of the Processor’s Data Protection Officer are: **[redacted]**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| Description | Details |
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the DFE is the Controller and the Contractor is the Processor in accordance with Schedule 7 Clause 1.1. |
| Subject matter of the processing | The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to schools participating in the behaviour hubs programme. |
| Duration of the processing | Processing of this information will begin upon appointment and conclude as the contract ends on 31 December 2024. |
| Nature and purposes of the processing | The nature of the processing will be collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data.  The purpose includes recruitment assessment, grant management, programme management and training. |
| Type of Personal Data | Information may include names, job role, work email addresses, telephone numbers, name of workplace, workplace address, work history, and any other information they choose to disclose at application and throughout the programme. |
| Categories of Data Subject | School senior leaders. |
| 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 | Participant Schools’ data will be kept indefinitely for the provision of services as per the contract, complaints handling, the handling of future school application rounds and internal reporting processes. Any personal contact information will be retained for five years and then securely destroyed.  Data pertaining to withdrawn applications will be kept indefinitely for the handling of any future re-applications, complaints and provision of data for internal reporting processes. Any personal contact information will be retained for five years and then securely destroyed.  Unsuccessful applicants’ data will be kept indefinitely for the handling of any future re-applications, complaints and provision of data for internal reporting processes. Any personal contact information will be retained for three years and then securely destroyed. |

**Schedule 8**

**Commercially Sensitive Information**

We consider the below information to be commercially sensitive beyond the period 12 months post the Contract Award.

|  |  |
| --- | --- |
| **Commercially Sensitive Information** | **Duration of Confidentiality** |
| Business or financial reports of the company highlighted in yellow in Schedule 9 | 6 years |
| Techniques, management designs, plans highlighted in yellow in Schedule 9 | 2 years |
| Information concerning Education Development Trust’s clients,  previous work and clients or potential clients (and their businesses) highlighted in yellow in Schedule 9 | 4 years |

We would consider the disclosure of the above a risk to our business in terms of loss of the

value of any pre-existing intellectual property, loss of competitive advantage and the risk of breaching confidentiality provisions. The information highlighted in Schedule 9 will be redacted upon publishing the contract.

**Schedule 9**

**The Contractor’s Solution**

**Background**

EDT has over 10 years of experience delivering school-led programmes, including pioneering expertise building hub networks across England, where lead schools/MATs (‘leads’), collaborate with partner schools/MATs (‘partners’). In-line with our mission, we have conducted research to identify five key components which make this approach effective (below), examining our own and others’ programmes. An EDT-run Delivery Centre (DC) will provide each necessary component to facilitate a lead-school led model, giving DfE assurance that as a result, teachers and school leaders will be engaged/retained, school improvement achieved through collaborative structures and Behaviour Advisers’ expertise leads to improved learner outcomes.

***Below figure (2.1)* [redacted]**

Our delivery strategy is based on this model: our initial focus (October 2020- March 2021) is onboarding - to embed vision and purpose for the programme **[redacted]** and set clear expectations for schools’ performance under grant agreements **[redacted]**. By April 2021 triage will be completed, and schools matched, with collaborative hub structures (and national network) established **[redacted]**. By then (and ongoing), the DC will offer training and support, with content developed and delivered by the behaviour advisers – to build the skills and capacity required for effective collaborative partner leadership **[redacted]**. Throughout, we will provide quality customer service, with customer feedback/insights used to disseminate learning and enable continuous improvement **[redacted]**. Ultimately partners will experience a supportive school journey, as outlined below and further explained (2A-C):

***Below figure (2.2)* [redacted]**

***Objective 1: Support the onboarding of participant schools***

***EDT Responsibilities/ Deliverables:***

*Advisers’ responsibilities will include interviewing prospective lead schools; selecting partner schools; matching lead and partner schools and training programme schools.*

**Lead schools/MATs**

*Please see Schedule 1 for more information about lead school/MAT recruitment.*

* 1. By Spring 2021, the delivery centre will be responsible for organising induction training for approximately 20 new lead schools and 2 lead MATs, with content from the behaviour advisers and DfE. This will introduce them to the programme and support them to train other schools. A further training day will follow later in the year, and one more the following year. For year 2, the delivery centre will run this training for the additional 30 new lead schools and 2 new lead MATs. The delivery centre will cover the costs of this induction as part of the contract cost, with travel, subsistence and accommodation costs for schools and advisers covered by the school grant and DfE.
  2. The delivery centre will also be responsible for working with the DfE and behaviour advisers to manage the selection of lead schools, including promotion of the programme, checking eligibility, providing an initial long list sift, and organising visits/interviews. Final decisions as to which schools to appoint sits with DfE.

**Partner schools/MATs**

*Please see schedule 1 for more information on partner school/ MAT recruitment. The delivery centre will be responsible for:*

* 1. Communicating with stakeholders, including National Leaders of Education and Regional Delivery Directorate, to elicit and manage referrals.
  2. Supporting the process of recruiting and onboarding partner schools, including sending and evaluating self-evaluation forms to those referred into the programme, confirming eligibility of partner schools/MATs by referring to the DfE prescribed criteria, carrying out necessary checks and using this information to triage schools, following up as necessary to ensure all schools are onboarded within agreed timeframes.
  3. Supporting advisers and DfE to select and triage suitable partner schools for the different elements of the programme by providing an initial sift and long list.
  4. Supporting advisers to match partner schools to lead schools including by undertaking desk-based research to collect relevant information e.g. pupil demographics, school type etc.
  5. Liaising with the school on behalf of the Department.

**Onboarding of participant schools**

**Objectives**

Support attraction and selection of lead schools: Y1 – 22, Y2 – 32 (54 overall).

Support attraction and selection of lead MATs: Y1 – 2. Y2 – 2 (4 overall)

Support recruitment of partner schools: Y1 – 102, Y2 – 254, Y3 – 254 (610 overall).

* Set performance expectations with leads/partners, with grant agreements in place.
* Support partners’ triage to determine support needs (e.g. 1-2-1 or surgery pathways) and appropriate lead matching.
* Support induction of lead schools and MATs working with behaviour advisers and DfE, ensuring skills development to lead partners’ self-improvement and learning.
* Establish lead-partner hubs and initial programme momentum.
* Support programme launch to secure buy-in, including training for initial programme activities (Self-Evaluation, Action Plan - AP) developed by the adviser team.

**Features of our approach**

Use of EDT’s **extensive school networks** to achieve recruitment targets.

Triage using a **‘needs diagnostic’** informed by multiple data sources.

**Lead School Co-construction of training materials, reviewing the content created by advisers** to ensure lead ownership (e.g. consultation event - January 2021).

Rigorously **building lead capacity** – focussed on Adviser-led induction event.

Recognising competing priorities of leads/partners – making onboarding **simple, compelling, with clear expectations** (e.g. launch event: led by Advisers to inspire; providing tools for easy management; setting programme expectations on reporting requirements).

**Key Activities**

Four key processes prior to induction and initial training (below, figure 2.3) are informed by our deep expertise recruiting, selecting and managing schools for national DfE funded programmes

**School attraction and selection - key activities:**

***Below figure (2.3)* [redacted]**

1. Clear eligibility and selection criteria for leads, working in partnership with DfE and Adviser team, including: demonstrated excellence in behaviour management, experience in leading other schools through change (also basis for ‘needs diagnostic’ - below).

Figure 2.3

1. Recruitment/promotion programme to attract leads, including use of informal networks, NLE referrals, email campaigns through EDT’s school database and targeted outreach to eligible schools (analysing school data against criteria), particularly if shortages of applicants vs. partner needs emerge. Promotion including success stories from other DfE programmes - highlighting professional benefits.
2. Shortlisting and selection with DfE and Adviser team – collating applications, eligibility screening, shortlist recommendations, managing interview logistics, providing analytics and interview packs, managing recruitment communications.
3. Support partner recruitment using a similar process, including initial (brief) Self-Evaluation with content developed by the behaviour advisers (draft version Y1, refined for subsequent years). Also working with leads and relevant stakeholders (including NLEs) to proactively reach-out to eligible partners.

DfE will: agree criteria, share referrals for partners, deliver interviews with leads (with advisers), make final decisions on lead and partner school applicants.

Eligibility criteria for lead schools and MATs is as follows, behaviour practice and experience is tested at application and interview stage.

# Behaviour Hubs Lead School Minimum Eligibility Criteria

In order to submit an application to become a lead school in the behaviour hubs programme, schools must meet the following minimum eligibility criteria. We are looking for schools not only with exemplary behaviour management practices and culture, but who achieve well academically for their pupils.

## All schools

* Overall Outstanding judgement from Ofsted

### For Primary schools

* Progress for Reading, Writing and Maths is above average (as defined in the DfE performance tables) for 2 of the past 3 years for either All Pupils *OR* Disadvantaged pupils
* Phonics results for 2018/19 are at or above 90%
* Percentage pupils meeting the expected standard in reading, writing and maths is above the national average for 2 of the past 3 years.

### For Secondary schools

* Progress 8 score is above average (as defined in the DfE performance tables) for 2 of the last 3 years for either All Pupils *OR* Disadvantaged pupils
* Attainment 8 score is above the national average for 2 of the past 3 years.
* Ebacc entries for 2018/19 are at or above 45%

### For special and alternative provision

* Special and alternative provision settings will need an overall judgement of Outstanding to submit an application to become a lead school.

# **Lead Multi-Academy Trust Eligibility Criteria**

For MATs, one or more individual schools in the MAT must meet the minimum eligibility criteria set out above. In addition, the MAT must meet the following criteria:

|  |  |
| --- | --- |
| **Metric** | **Criteria** |
| FNtI metric | No current published financial notices to improve |
| Trust size | 5 or more schools |
|  | **Phonics criteria must be met and 2 out of the School Improvement, Progress, Ebacc criteria met.** |
| School improvement metric (Ofsted overall effectiveness) | Directive Academy Order (dAO) academies: 94% or more improved at first inspection with the trust  and  Other academies: 80% or more remain stable or improve with the trust  **OR**  as a Trust: have improved 4 or more dAO academies from inadequate to good or outstanding |
| Progress metric   (School performance tables bandings) | per academy:  On average all schools remain in the same progress band or improve  and   any sponsored academies that are below average must have improved over the last three years.  **OR**  as a Trust:  Published MAT progress is above average for Progress 8 and/or Progress in reading writing and maths. |
| Phonics attainment metric (where applicable) | per academy:  Either 75% converter academies or 50% of converter & sponsored academies at or above national average. |
| Ebacc entries metric   (where applicable) | per academy:  Either 75% converter academies OR 50% of converter & sponsored academies are above national average OR above 34.7% (5% below national average) and on an increasing trend for the last three years  **OR**  As a trust:  Published Ebacc entries for the trust are above the national average |

**Triage and contracting - key activities:**

1. Triage incoming partner schools with Advisers. Partners’ application, school data, initial Self-Evaluation and NLE referral form to feed ‘needs diagnostic’ tool, used to determine partner following either in-depth (1-2-1 support) or lighter touch (surgery) pathway.
2. Match partners to leads, optimising configuration of schools based on:

* Supply vs. demand – lead strengths vs. partner needs.
* Existing relationships e.g. school improvement partnerships, TSAs.
* School characteristics e.g. pupil demographics, school type, phase.

1. Lead/partners sign grant agreements.
2. Setting performance expectations, envisaging 3-month intensive effort to build lead capacity: including introductory emails and 1:1 induction call with each school, with communications script to set performance expectations, alongside the wider purpose and mission of being a lead, focussed on securing headteacher buy-in from the outset.

DfE will: provide grant agreement template and sign off, sign off triage decisions

**Induction and initial training key activities:**

1. Support delivery of overall programme framework and initial programme materials with Advisers by January 2021 - through remote support and workshops according to Advisers’ needs. Initial programme materials with content from the behaviour advisers will include:

* Partner school self-evaluation
* Behaviour audit tool
* Action planning template
* Lead school handbook
* Partner school handbook
* Support for schools to deliver whole school training
* Behaviour strategies

1. Run virtual consultation event with group of leads (January 2021) to test draft programme framework/materials, and feedback on Advisers’ recommended partner interventions, so building lead programme ownership.
2. Ensure first introductory call takes places between leads and partners, ahead of induction event.
3. Deliver 3-day residential induction event for all leads and 1-day launch induction event for high level support partners by May 2021 (subsequent years run for all leads/new partner-joiners): content developed and delivered by adviser team, focus on establishing strong cross-hub relationships (mini-sessions in hub groups) alongside building sense of ‘national’ network.

DfE and the Adviser team will: provide technical leadership and content for behaviour materials, attend and co-facilitate events and deliver the training.

The following events will be organised and run on the day by EDT with Advisers presenting (Venue, materials, lunch and refreshments will be provided by the Delivery Centre, with any travel, accommodation and subsistence for the schools and advisers being funded separately):

**Lead School Induction Training**

* 3 day residential, training taking place in a conference centre/hotel
* 3 attendees from each Lead School and MAT (approx 66 in year 1, 96 in year 2)
* Takes place in (estimated) April 2021 and April 2022

**Further Training (Lead schools)**

* One Day Further Training session for all lead schools in year 1 and year 2
* 3 attendees from each Lead School and MAT in their first year (66 in year 1 (estimated Sept 2021), 96 in year 2 (estimated Sept 2022)
* Additional session in estimated October 2022 for participants from first cohort (66)
* Full day session taking place in a school
* 3 sessions in year 1 and 6 sessions in year 2

***Objective 2: Develop and deliver the packages of support created by the advisers***

***EDT Responsibilities/ Deliverables:***

*Advisers’ responsibilities will include overseeing lead schools’ delivery of support; leading training sessions on behaviour management and developing content for programme resources.*

* 1. Working with the advisers, the delivery centre will deliver the following five elements of the support package:

**Bespoke support and advice on behaviour management and culture:**

* 1. Facilitating lead schools/MATs to support partner schools/MATs by providing any logistical support necessary for one-to-one support, including producing and disseminating the training materials developed by the advisers (e.g. action plan templates), communications, organising meetings between lead and partner schools/MATs where necessary, including diagnostic, action planning and support meetings and school visits.
  2. Commissioning and assessing action plan update returns from schools, reporting these regularly and escalating issues where necessary to the DfE and advisers.
  3. Assessing funding requests and releasing this funding to partner schools/MATs for action plan implementation related activity, following sign-off by the adviser team and the DfE.
  4. Providing administrative and logistical support to lead schools when preparing and running action planning surgeries.
  5. Collecting feedback from programme schools/MATs and using this to inform programme development.
  6. Maintaining a positive relationship with schools and MATs and being a point of contact for any logistical queries.

**Training events:**

* 1. Promoting the training offer (including partner school induction training, core, specialist and optional modules) to relevant target audiences, gauging interest, reporting to advisers and the DfE and using feedback/evidence to adapt any communications activity to increase take-up.
  2. Organising and facilitating all logistical components of the training sessions (Lead School Induction, Partner School induction, Lead School Further Training and Bespoke Webinars) including e-registration of attendees, coordinating speakers, venue hire and catering where necessary, IT and communications, hosting any online sessions, working closely with a range of stakeholders including the advisers and lead schools and facilitating the training on the day. The Delivery Centre will be responsible for paying these costs as part of this contract. School and adviser travel, accommodation and subsistence will be covered by the grant agreement and DfE
  3. Seeking direction from the adviser team and DfE on the objectives, format and content of each training session and working closely with them to oversee development.
  4. Formatting, producing and reviewing training materials, using content created by the adviser team.
  5. Collecting feedback from attendees and using this to inform planning and delivery of subsequent training events.

**Open days:**

* 1. Advertising and promoting open days to eligible schools working with lead schools.
  2. Where necessary, providing administrative and logistical support to lead schools when preparing and running their open days. This may involve assisting the lead schools, advisers and the DfE with selecting eligible schools who can attend the open days and supporting action planning surgeries.

**Hub networking:**

* 1. Supporting lead and partner schools to form hubs to share best practice.
  2. Providing logistical support to facilitate hub networking between schools, including organising networking events.
  3. Supporting schools to spread expertise across Primary, Secondary, AP and Special schools.

**Resources:**

* 1. With content developed by the advisers and DfE and in line with any design requirements from the Department and advisers:
  2. Design user-friendly programme resources. These may include videos, publications, case studies, interactive tools.
  3. Work closely with the advisers and DfE during every stage of the process. All programme resources produced by the delivery centre will be quality-assured and subject to official sign-off from the DfE and advisers.
  4. Turn programme resources into web-based resources and work with the department to ensure the resources meet gov.uk standards and the new legal minimum standard on web accessibility.

**Website**

* 1. The behaviour hubs website for external information about the programme is [www.gov.uk/guidance/behaviour-hubs](http://www.gov.uk/guidance/behaviour-hubs) and the website that will host the online resources is [www.gov.uk/government/publications/behaviour-and-discipline-in-schools](http://www.gov.uk/government/publications/behaviour-and-discipline-in-schools).
  2. The delivery centre will host a closed online area for programme schools (more detail below).

**Develop and deliver support packages created by the Advisers**

**Objectives**

* Manage AP process so partners have agreed support plan within 3 months of their induction event.
* Deliver and disseminate full package of support resources for leads/partners.
* Establish strong working relationships with Advisers, leads and effective collaboration across hubs/wider network.
* Manage delivery of training events to leads/ partners using Adviser-developed support packages.
* Ensure Open Days and range of events for Hub networking are delivered.
* Promote resources and events using combined face-to-face/digital methods to ensure take-up.
* Manage performance and periodically report to DfE and Advisers on progress and improvements.

**Features of our approach**

* **Scaffolding for leads**, e.g. providing Open Day programme package, codified resource menu tagged against Behaviour Audit/ Action Plan.
* Ensuring **close working between leads-partners**, including monthly 1:1 contact augmented by termly hub/regional events.
* **Blended delivery model** with online training and networking sessions.
* Ensuring **relevance of training/Open Days** using data and feedback to tailor to partner requirements.
* Creating **relevant Communities of Practice** **(CoPs)** for leads/partners using national network to set up regional lead CoPs and identify appropriate virtual thematic groups – based on demand and need.
* Efficient delivery systems – e.g **[redacted]** and **online forms** for tools/management information – keeping user experience simple.

**Key Activities**

**Bespoke support, including ongoing communication and monitoring progress/action planning – key activities:**

1. Provide logistical support after April launch, ensuring full Self-Audits and diagnostic visits are completed (potentially using online forms; follow up via email/calls by DC). Tracking and collation centrally and sharing with Advisers/leads to agree support packages.
2. Ensure partners co-create APs with leads and submit by 3 months following their induction event (potentially online), based on pathway (either in-depth 1:1 sessions or lighter touch surgery), by providing guidance, focussed on performance and improvement needs, including:

* Differentiated template for AP process (e.g. surgery v/s in-depth sessions).
* Guidance and framing to structure feedback discussions, including support for having difficult discussions e.g. templates and conversation guide.
* Guide to plan resourcing support for partners across Hub

1. Regular calls between leads and partners (individual/group) tracked by **[redacted]**.
2. Regular reviewing of activity: tracking form completion/calls centrally, with regular DC-lead calls (from April 2021) to monitor progress, trouble-shoot (including Adviser support-brokering) and motivate, using EDT framework to review/guide discussions.
3. Collate APs for sign off by Advisers at the start of the Partner Schools time on the programme and annually in subsequent years they are on the programme and co-ordinate Adviser feedback to schools – 1:1 phone calls or emails, centrally consolidating lessons-learned from feedback to improve future planning (disseminated to leads).
4. From May 2021, track and co-ordinate the ongoing implementation of APs through activity tracking and regular DC-lead performance management discussions. Key AP outputs recorded through updates to AP form; progress reviewed termly by DC (dashboard to track progress and identify/address emerging issues). Provide funding to lead schools and High Level Support Partner schools as set out in their AP and signed-off by the adviser team and DfE.

**Working with Advisers to develop high-quality programme resources – key activities:**

1. Produce a live product schedule (initial draft by November 2020) for resource sign off by Advisers, outlining format and production requirements. To include:

* Behaviour cultures and policies and behaviour strategies, with practical examples of improving behaviour in schools e.g. in the classroom via senior leaders.
* Knowledge products e.g. best practice case studies.
* Key tools e.g. behaviour audit tool and action planning template.
* Training slides and handbooks for schools/MATs.
* Communications materials e.g. newsletters.
* Adviser videos

Schedule includes workshops (virtual where possible) to deliver materials with Advisers, in order to establish principles of approach and co-ordinate adviser’s work. Advisers will provide the content to all the programme resources.

1. Facilitate design, copy-editing, print and production of resources as required providing clear in-advance schedule to Advisers for key input/review phases.
2. Present package in accessible menu form to leads/partners, codifying against key criteria in behaviour audit/ action plan to steer schools in choosing resources/activities relevant to needs identified in action plan.

The following materials will be produced by EDT (following the content creation by the advisers):

* Programme Resources

Include documents that will end up forming part of the online offer available to all schools, such as good practice case studies and behaviour self-assessments. EDT will produce a maximum of 5 programme resources (like the examples listed above) during the set-up period, by September 2021.

* Programme Tools

Separately, the "**programme tools**" refer to materials that will be provided to schools as part of the programme and used to train schools. These include a diagnostic tool, behaviour framework, action planning templates and training materials, including slides and handouts. These tools will be produced in time for when schools will be inducted, trained and start working together. EDT will produce a maximum of 9 programme tools (like the examples listed above).  
  
The advisers and the DfE will provide the content for these documents and EDT will make these accessible to schools by designing and formatting the documents. EDT will work closely with the adviser team to interpret the brief, expectations, and requirements for producing each programme tool as set out above.

Note that the slides for the Partner Launch Event, Lead School Induction, Lead School Further Training and Bespoke Modules (Webinars) does not count as one of the 9 Programme Tools named above but will be produced by EDT.

**[IN ADDITION TO ORIGINAL TENDER VALUE but included in this contract price]** Education Development Trust will produce the branding and identity (including logo and potential tagline) of the programme, which will be applied to all of the materials. This will include:

* Concept and Visualisation of brand design
* Production of logo and/or strapline
* Production of brand templates and art working so they are ready to be applied to the

different product types.

**[IN ADDITION TO ORIGINAL TENDER VALUE but included in this contract price]** Filming and Production of Videos

In addition to the resources set out above, EDT will produce the following videos:

* 12 x videos of 10-15 mins each, filming advisers as talking heads and talking over a slide pack. Completed in a single day with interviewees in the same location. Cost includes interview setup, post-production editing, addition of subtitles and final deliverables. Location is within London
* 5 x videos of 10 mins long max for gov.uk page, fully accessible with subtitles and a transcript – filming the advisers on location at a school and at DfE buildings. 5 different locations. Include interview setup, post-production editing, addition of subtitles and final deliverables.
* 1 x additional video on how all schools can benefit from tools such as audit tool on gov.uk – max 10 mins long, advisers talking over slides of the tools. Fully accessible with transcript and subtitles too. A half day/full day on-site. Include interview setup, post-production editing, addition of subtitles and final deliverables.
* Case study videos of lead schools – 5 x videos of max 10 mins (1 x video on location at the 5 lead schools). A full day on-site per video. To include interview setup, post-production editing, addition of subtitles and final deliverables.

For each of the videos the advisers will provide the script.

These videos will include 5 minutes (in total) of animation, which will be edited into the videos described above.

The costs include travel for the videographer but no overnight stay or subsistence.

**Training– key activities:**

1. Agree an overall events calendar with the DfE by November 2020 and review in July 2021 using AP analysis and Adviser view to agree key priorities/schedule.
2. Development of materials/guides (with input and sign off from Advisers/DfE) for the training events for partners (including induction events and online modules as set out below), using Adviser resource packages with full menu of differentiated (editable) materials, tailoring to specific attendee requirements as needed.
3. Plan delivery schedule (liaising with leads/Advisers), to encourage attendance (through proximity/accessibility), examining best value-for-money of different configurations – e.g. best locations to minimise travel, online options and considering the optimal timing of events.

The following events will be organised and run on the day by EDT with Advisers presenting (Venue, materials and refreshments will be provided by the Delivery Centre, with any travel, accommodation and subsistence for the schools and advisers being funded separately):

**Partner School Induction Training (High level support)**

* 1 day termly session for high level support partner schools and MATs (42 in year 1, 104 in year 2 and year 3) at the start of their time on programme
* 2 participants from each school
* Two sessions each term in April and September (estimated), one Session in January (estimated)
* Taking place in a conference centre/hotel or similar venue.

**Partner school Induction Training (Low level Support)**

* Half Day Virtual Event for Low Level Support Partner Schools and MATs when they join the programme, run once a term

**Bespoke Online Modules**

* Each term there will be 4 Mandatory, 8 Optional and 4 Specialist online Sessions (3 a year from Sept 2021 to Aug 2024):
* Advisers will create the content for the webinars, the Delivery Centre will produce the final slides.

Open days – key activities:

1. Coordinate schedule of lead Open Days using open centralised rota (thematically categorised) to widen choice for partners depending on need, reducing hosting burden.
2. Provide promotion and communications support for Open Days – Eventbrite allowing response tracking, automatic reminders and online registration. Prospective partner schools invited for Y2-3 to assist recruitment.
3. Providing ‘How to Guide’ on running Open Days - e.g. suggested itineraries/activities, communications and session guidelines to assist school-improvement focussed conversations (Adviser input and approval).

Termly Open Days will be organised by EDT but will be held and run by lead schools on the day. The adviser and schools will agree and produce the content and any training material for the open day. The Delivery Centre will provide logistic support.

All cost associated with this (venue, printing, catering) will be funded through the schools grant agreement

EDT will attend 25% (5) in the first year of the programme to provide quality assurance and then attend an additional 10 Open Days over the course of the programme targeting schools that may need some additional support.

**Networking Events**

The following networking events will run through the programme:

**Termly Networking Events (Lead)**

* Three each year, one in person (as part of further training session in year 1 and 2), two others will be virtual
* Topics may include:
  + Emerging good practice/exemplar materials
  + Strength of hub collaboration
  + AP progression
  + Common challenges/support needs

**Termly Networking Events (Partner)**

* One face to face session each term per hub/hub cluster
* Held at Partner schools
* All costs associated with this (venue, printing, catering, travel) will be funded through the schools grant agreement
* EDT will attend 10 of these to provide quality assurance over the course of the programme, targeting ones where they may need more support

There will also be CoP forums setup based on school demographics via an Online Platform. EDT will review APs to cluster leads/partners across national network based on emerging needs supporting Advisers to address specific AP requirements.

The networking events will be organised by EDT but will be run by schools on the day. EDT will schedule these sessions with the school, provide an online platform and provide support before and after each event. The session will be facilitated on the day by the school.

EDT will coordinate a centralised ‘hub’ networking calendar and provide training for leads on running virtual meetings.

[**IN ADDITION TO ORIGINAL TENDER VALUE but included in this contract price]** Implementing, hosting and supporting a digital platform for all programme schools. The platform will have the following features:

* Closed online platform which schools log onto view, which includes:
* Programme Wide forum
* Hub/Cluster specific forums (closed forums)
* Ability to anonymise names/personal data of users and schools
* Programme Resource Library that is able to store pdfs, slide decks, videos (note these would be programme wide ones rather than ones which individual schools upload)
* Event/training booking system for schools and advisers

The platform will be operated as a blend of Department for Education and Education

Development Trust inputting into the forums to get things moving.

Support would be provided by Education Development Trust working with the platform supplier.

A log in will be provided to three participants from each lead school for their time on the

programme (2 to 3 years) and two participants from each partner school for their time on the

programme (1-2 years).

It will be operated by:

* A blend of EDT, DfE and the advisers inputting into forums to get things moving and EDT providing moderation as agreed between DfE and Ed Dev Trust
* Support to users will be provided by Ed Dev Trust in partnership with the supplier
* Ed Dev Trust will manage the site and upload content in partnership with the supplier.

The cost included in this contract include the implementation, hosting and support of the platform and assumes that the platform will be live from March 2021 to December 2024.

***Objective 3: Provide a quality customer service***

***EDT Responsibilities:***

* 1. Establishing a means of responding to practical queries about the programme (e.g. mailbox and helpline) both from current and prospective lead schools and partner schools.
  2. Communicate regularly with programme participants.
  3. Providing logistical support to the adviser team and lead schools, including through the organisation of meetings.
  4. Building positive professional relationships with all stakeholders involved in the programme, e.g. school governors, MAT trustees etc.
  5. Working alongside, and engaging fully with the requests of, any DfE appointed evaluation contractor.
  6. Gathering feedback on the delivery centre’s approach in providing logistical support to participant schools and the adviser team and being responsive to suggested improvements.

**Provide a quality customer service**

**Objectives**

* Deliver a customer service to respond quickly to practical queries from schools.
* Collect ongoing feedback from schools and Advisers on activity and performance, including events, to drive learning.
* Deliver comprehensive communications to share key logistical and motivational messages with schools.

**Features of our approach**

* Clear **communications plan, mapping school user journey, key channels** and other stakeholders’ needs, with dedicated project resource allocated.
* **Adaptive management**, using partner/lead/Adviser feedback for continuous improvement, identifying emerging needs, challenges and good practices to scale-up.
* **Online feedback forms** for simple, cost effective and rapid data analysis
* Ongoing **knowledge product** development, including best-practice case studies from hub meetings/ training, to guide practice and build momentum.
* Innovative mechanisms, to provide Advisers and DC **ongoing intelligence on hub health**.

**Key activities**

1. Establish **helpdesk** (dedicated Coordinator/Administrator, mailbox and helpline) to rapidly respond to practical queries from current/prospective leads and partners – with internal RAG escalation process.
2. Create/sign-off (with DfE) communications plan, outlining key stakeholders, message and channels for communication, including:

* Termly newsletter.
* Bright spots sharing in sector-press.
* Social media (led by UK Marketing Manager).
* Leads communication guide (for partners/hub).
* Working alongside DfE appointed evaluation contractor.

1. Setup online forms or other feedback mechanism for each key programme tool/resources or events to understand:

* User experience: e.g. online feedback surveys to track quality and impact of events.
* Engagement: e.g. activity levels from AP completion
* Hub health: e.g. RAG scoring (from lead-CoPs)
* Best practice: e.g. from Adviser feedback on national CoP events or DC-lead calls

1. Ongoing feedback analysis to tailor our approach and continuously improve our approach (including communications plan/engagement strategy). Reviewed monthly, identifying key continuous improvement actions / sharing insight highlights with Advisers (e.g. improving events management) for regular review with the DfE/Advisers.
2. Provide monthly reports to DfE which include key risks, challenges, insights and lessons, such as schools at risk of drop out, or best practices.
3. Annual review meeting with DfE/Advisers to review lessons learnt and improvement actions.

***Objective 4: Project and contract management, monitoring and reporting***

***EDT Responsibilities/ Deliverables:***

* 1. Project management and planning programme implementation.
  2. Ensuring the programme is run in accordance with good industry practices including value for money, risk management and data protection.
  3. Identifying and managing risk and escalating risks as appropriate to the Department and advisers.
  4. Commissioning, analysing and reporting high-quality management information from lead and partner schools. The Department and Advisers will use this information to monitor progress of the programme.
  5. Ensuring that the collection, transfer and storage of this information complies with relevant statutory requirements, including the General Data Protection Regulation (GDPR) and the DfE’s data protection policies. The delivery centre will be required to submit a data security plan that explains how it will ensure that any DfE and personal data will be protected.
  6. Retaining management information documents aligned with the data security plan.
  7. The Department’s contract manager and the supplier’s contract manager shall maintain regular contact to ensure that day-to-day issues and ad hoc requests are addressed as necessary.
  8. The Delivery Centre will be expected to sign a memorandum of understanding with the Department and behaviour adviser team to agree roles/responsibilities and ways of working.
  9. Be responsive to ad hoc queries posed by the adviser team and department.
  10. Engaging in contract management meetings held with the Department at least once a month to report on the following:
* Financial spend
* Progress against delivery centre KPIs and service levels
* Progress against broader programme milestones
* Managing and reporting on key issues and risks to programme delivery
  1. Regular meetings with the Department and the advisers when scheduled to report on:
* Key emerging issues
* Training events, networks and conference uptake
* Progress against partner schools’ action plan delivery

***Objective 5: Manage programme finances***

***EDT responsibilities/ Deliverables:***

***Manage internal finances***

* 1. Account for all spend associated with the value of the contract and ensure value for money in all activities.
  2. Financial monitoring and reporting of all spend to the Department.

***Manage grants to schools***

The delivery centre will be responsible for managing a grant of several million pounds and administering payments to participating schools.

**N.B. this funding is outside of the delivery centre’s contract amount and will be set up through a separate grant agreement with the Department.**

The delivery centre will be expected to carry out the following responsibilities:

* 1. Leading on issuing grant agreements to grant recipients (lead and partner schools’ governing bodies) NB the grant offer letter and general grant T&Cs will be provided by the Department.
  2. Acting as the main point of contact for grant recipients. This includes managing relationships with all grant recipients and relevant stakeholders by providing advice or addressing queries about the grant payments process, as necessary.
  3. Ensuring all schools are reimbursed for the support activities they deliver and/or receive as part of the programme, where this has been agreed with the Department.

* 1. Establishing and maintaining an efficient grant payments system to administer the grant funding in arrears to the schools’ governing bodies lawfully and in accordance with the Department’s policies and agreed approach.
  2. Establishing and managing a process of collecting evidence and assessing verifiable claims in order to release funding to grant recipients. Types of evidence will be agreed with the Department. Claiming the funding from the Department in line with the agreed funding agreement, providing evidence for Departmental checks.
  3. Providing full accountability for the use of funds to the Department through providing management and financial information reports against agreed timeframes.
  4. Complying with the security of data plan when recording and sharing all financial information to ensure the Department has all the necessary information to process any checks.
  5. Establishing a fraud plan and an investigations process; monitoring and actively managing any risks of fraudulent activity.
  6. Monitor how the grant is being spent against action plan progress and track if the lead or partner school is underperforming in any way, as defined by the Department. The delivery centre will escalate underperformance issues early-on to the behaviour adviser team and Department.
  7. If a lead or partner school is underperforming or voluntarily wishes to leave the programme early, the delivery centre will implement an exit strategy following direction from the Department.

***Governance***

**[redacted]**

As the DC provider, EDT will be accountable for the successful achievement of the Behaviour Hubs Programme (BHP) objectives. Based on our extensive experience, we have developed a suite of planning and implementation processes for successful large-scale education project delivery, that we tailor to new programmes. This gives confidence we will meet delivery obligations each and every time and provide the bedrock for our project governance approach.

Our PPM methodology, founded in PRINCE2, **[redacted]** required throughout the project lifecycle to achieve high delivery standards. Our programmes are monitored and managed against these elements – detailed at Fig 3.1.

Figure 3.1

This methodology will be applied in all DC operations, providing DfE with assurance that we will be following best-practice reporting, change management and quality processes. This includes: **[redacted]**

***Above figure (3.1)* [redacted]**

Our **project governance structures** ensure effective programme control with clear lines of accountability, aligned against DfE requirements. Reporting to the UK Head of Delivery (HoD), day-to-day responsibility for managing the programme delivery resides with the DC Manager, **[redacted]**

Mobilisation Board (Months 1- 4): responsible for overseeing and directing the mobilisation phase, including: DC Manager, UK HoD and UK Regional Director (RD).

Internal: Governance weekly team Keep in Touch (KIT) calls, monthly stocktake with UK HoD and UK RD.

External Governance: monthly report and meeting with DfE, monthly meetings with Advisers, bi-annual governance review with DfE.

Impact and progress will also be scrutinised by our internal corporate governing mechanisms overseeing all our projects:

* Monthly stock take meetings across all our UK programmes, led by our UK HoD, with escalation to UK ED for issue resolution
* Triannual Business Review (BR) process led by EDT CEO - a critical part in how we measure, monitor and address and any issues in across our entire portfolio.

***Below figure (3.2)* [redacted]**

Figure 3.2

All DC governance structures and systems will be in place by the end of month 1 to drive BHP delivery from the outset, with preparation for and attendance at contract management meetings with the DfE, once scheduled.

**Management information: Milestone tracking and delivery planning systems**

Following our PPM protocol for delivery excellence, **a detailed project workplan** is the key control document in every programme. This presents a complete overview of how the programme will be delivered, enabling the DC team to maintain a planned and controlled workflow. Managed (and adapted) through **[redacted]**, it includes key outputs, outcomes and milestones (to be reviewed/agreed with DfE in inception) enabling easy RAG tracking of progress and a forward look on potential scheduling/other challenges.

‘Project Health Checks’ are regularly applied, assessing project processes/progress against our PPM, using project team self-assessment, with oversight from PMO member independent of the project providing objective review/challenge.

**Management information: Risk and issue management systems**

EDT has proven mechanisms in place for effective programme risk management and a specific understanding of key delivery risks using a school-led model – e.g. the importance of headteacher buy-in. We will now also be paying close attention to risks presented by Covid19.

At contract start, we will clearly articulate roles and responsibilities for managing individual and project level risks and escalation. Our proposed DC Manager **[redacted]** (highly experienced in risk identification and escalation) will be responsible for maintaining the Programme Risk and Issues Log (PRIL) from project start-up, identifying/ recording/tracking risks and issues with mitigating actions and agreed resolution or contingency action, if necessary.

This will ensure proactive management and fast mitigation according to the following process:

* **Identification**: all risks identified with the DfE and recorded on the PRIL.
* **Analysis**: likelihood and impact analysis conducted to fully understand each risk and allow effective risk prioritisation.
* **Evaluation**: project based on a Results Based Management approach, using rigorous data systems to continually evaluate and course correct. SMART indicators set at all levels for outcome, output and activity levels.
* **Management:** mitigation strategy/actions implemented and monitoring/reporting of progress.
* **Review:** regularly review of mitigating actions, impact and any change in the risk.

Our UK Senior Management Team - highly experienced in managing risks on DfE-funded and other programmes - will be actively engaged with this process.

Monthly reporting to DfE will ensure we address issues as they arise. Our pre-agreed report structure will ensure the DfE receives consistent, detailed, accessible information e.g. RAG risk rating by performance measure. We will gather MI from schools in a range of formats **[redacted]**

**Management information: Finance tracking and management systems**

**[redacted]**

**Management information: KPI and output tracking**

Under our PRINCE2-based Quality Management System (QMS) we will define precise indicators for KPIs and proposed VfM areas at programme start. Once finalised, we will track KPIs through our tracking tools (MS-Project based), providing DfE with monthly MI reports against KPIs to support contract monitoring, formative quarterly and bi-annual performance reports.

VfM is a core part of our programming and reporting; an evaluative judgement on both the way in which resources are used and how well they are used to achieve their intended purpose. **[redacted]**

This data, captured through a **[redacted]** dashboard, will provide the MI basis for ongoing performance review and management, enabling key personnel to access data analytics, and quickly identify/resolve quality control issues. It provides rapid and responsive feedback to DfE reporting requirements. It will drive our adaptive programme management approach, allowing the Delivery Centre team to take remedial action quickly where any measure deviates from the expected trajectory.

The DC Manager will maintain the communications protocol as DfE’s main contact, quickly responding to requests, facilitating analysis & formative evaluation, and ensuring lessons learned feed into ongoing improvements. They will regularly meet and report to DfE.

**Grant payments process and system**

As the DC provider, EDT will be accountable for efficient and accurate allocation of grant funding to lead/ High Level partner schools/MATs, drawing on our significant experience of UK government-funded grant management.

The ***Grants Coordinator is a key role*** in the day-to-day processing of the grants. They will liaise with schools to collect data, enabling spending tracking with regular reports on progress. They will verify data and carry out checks to ensure compliance; before issuing a claim to the DfE and before grant payments are released, they will be signed off by our UK HoD who has delegated authority from EDT’s CEO to perform this function. Importantly, this role sits outside the DC team and will provide an additional***, robust layer of financial control and fraud prevention***. Our ***corporate fraud policy*** supports our zero-tolerance approach, aiming to limit the possibility of fraud and ensure constant vigilance, with a clear fraud investigations process.

We will implement a ***rigorous grant management process*** which will integrate effective PPM principles with ***robust fiduciary risk management*** controls to support effective ***decision-making***, as shown below.

***Below figure (3.3)* [redacted]**

Once grants have been agreed and signed between the grantee and EDT and between EDT and DfE, the grant management cycle commences with a detailed planning phase. This will enable EDT and the grantee to forecast spending, mitigate risks, and agree key milestones. Once agreement on the plan has been reached, we will set up the grantee as a supplier account on **[redacted]**system we will use to issue and track payments. This is aligned with our ***Security of Data plan*** (sets our compliance with GDPR and data security, including financial information).

Figure 3.3

For the delivery phase of the grant management cycle, EDT will release funds on a quarterly basis provided evidence is supplied by grantees to support their claims. EDT will not process claims which do not meet the DfE’s criteria of expenditure e.g. backfilling costs, travel expenses, Open Day renumeration (Lead Schools only). For each type of expenditure, appropriate evidence will be required such as contracts with and invoices from supply agencies for the costs of backfilling teachers, as well as evidence of bank transfers that match the costs claimed. EDT will require travel claims and Open Day expenses to be supported by receipts and will verify these by checking they match with evidential data e.g. attendance at events via electronic registration. These requirements will be laid out clearly and simply to ensure participants understand the claims process from the outset.

At each cycle stage, EDT will conduct ***fiduciary management control actions***, combining them with grant management data analysis to inform decision making. Using a stage gate approach will provide assurance that the grant is being effectively managed and will enable rapid identification and escalation of any issues.