

CONTRACT NUMBER NB/CB/ZD/DE-12345:

BREAKFAST CLUBS PROGRAMME

This contract is made on 9th day of March 2018

- 1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and
- 2 Family Action, registered in England and Wales under number 01068186 whose registered office is 24 Angel Gate, City Road, London, EC1V 2PT (the "**Contractor**") each a "**Party**" and together the "**Parties**".

It is agreed that:

1. this contract, together with the attached schedules and annexes, collectively form the "**Contract**"; and
2. if there is a conflict between the provisions of the clauses of the Contract and the provisions of the schedules, the following order of precedence shall apply:
 - (a) schedule 2 (Terms and Conditions);
 - (b) schedule 1 (Specification); with the exception of the milestone dates stated in paragraph 21, 22c, 41a (i), (ii), (iii), (iv), where the associated dates in the 'Implementation plan and payment schedule' at Schedule 3, Annex 1 will take precedence.
 - (c) schedules 3 to 9; and
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The Contract has been executed on the date stated at the beginning of this page.

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

As witness the hands of the parties

Authorised to sign for and on
behalf of the Secretary of

Signature 

Name in CAPITALS



Position in Organisation



Address in full



Date: 9th March 2018

Authorised to sign for and on
behalf of Family Action

Signature 

Name in CAPITALS



Position in Organisation



Address in full



Date: 9th March 2018

Schedule 1
The Specification

Introduction and background

1. In March 2016, the government committed £10m a year to support the expansion of breakfast clubs in schools using revenues from the soft drinks industry levy. This commitment was also outlined in the Childhood Obesity Plan in August 2016. The breakfast club programme will contribute to improvements in the health and education of children by encouraging innovation and supporting at least 1,500 state-funded primary, secondary and special schools and Pupil Referral Units (PRUs)¹ to deliver self-sustaining and accessible breakfast clubs.
2. The “Breakfast Club Services” will target the most “Disadvantaged Schools” without a breakfast club in “Opportunity Areas”² first (as defined in Paragraph 5) to ensure those most in need receive support. The programme will then look to provide support to pupils in “Disadvantaged Schools” in other areas. There will also be investment in developing sustainable support for schools in the longer-term, including through facilitating greater collaboration across schools and supporting organisations across the sector. The programme will also include “Innovation Projects” (as defined in Paragraph 5) to test solutions to delivery and access barriers, and approaches to enhancing the education, health and wider socioeconomic benefits.
3. The desire is for the breakfast club “Support Services” (as defined in Paragraph 5) to be launched in schools from the beginning of April 2018, with scoping and recruiting taking place from January 2018. Work on Innovation Projects should be completed by the end of March 2020. The Department will consider plans for phased delivery, as long as all work is completed to timelines and the requirements of the specification can be met.
4. The Department will award a single contract for the delivery of Breakfast Club Services and Innovation Projects that provides national coverage throughout England. To that end we welcome bids from consortia and/or a lead (prime) supplier with a supply chain of sub-contractors.
5. The following definitions are used in this Specification:
 - “Breakfast Club Services” means those services described in Paragraph 18a and 22 attracting up to £24 million;
 - “Innovation Projects” means those services described in Paragraph 18b and 23 attracting up to £2 million;
 - “Services” means the Breakfast Club Services and the Innovation Projects to be provided by the Supplier;

¹ Includes pupils who are sole or dual main registrations. Includes pupils in Alternative Provision academies and free schools, boarding pupils and pupils registered in other providers and further education colleges. Also includes 10,152 dual subsidiary registered pupils.

² <https://www.gov.uk/government/news/social-mobility-package-unveiled-by-education-secretary>; and <https://www.gov.uk/government/news/education-secretary-announces-6-new-opportunity-areas>

- “Just about managing” families are those that earn below the median household income;
- “Accessible” breakfast clubs means provision that can be accessed by disadvantaged pupils (pupils eligible for free school meals, pupils from “just about managing” families, and SEND pupils) by removing financial and physical barriers and reducing stigma that can be associated with provision. Before contracts are finalised, the Department will agree with the successful Supplier the evidence they must provide to demonstrate sufficient progress has been made by schools in terms of creating Accessible provision (as more specifically set out in Paragraph 36a);
- “Disadvantaged School” means a state-funded primary, secondary and special school or PRU in England which has 50% or more of its pupils in Income Deprivation Affecting Children Index (IDACI) Bands A to F, as more specifically described in Paragraph 29;
- “Eligible School” means a school which is either a state funded primary, secondary or special school or a PRU that meets the eligibility criteria for participating schools set out in Paragraph 27;
- “Priority Criteria” means criteria that should be used to prioritise Breakfast Club Services offered to Eligible Schools as set out in Paragraph 28;
- “Minimum Number of Eligible Schools” shall not be in any event less than 1500 Eligible Schools;
- “Agreed Target List” means the list agreed between the Department and the Supplier as described in Paragraph 22b, which shall not contain fewer schools than the Minimum Number of Eligible Schools;
- “Opportunity Areas” refers to the 12 Opportunity Areas which have been identified by the Department as social mobility ‘cold spots’. These are: Blackpool, Derby, Norwich, Oldham, Scarborough, West Somerset, Bradford, Doncaster, Fenland & East Cambridgeshire, Hastings, Ipswich, and Stoke on Trent. A map is set out in Annex A. These areas will be prioritised for funding (see Paragraph 28 for Priority Criteria);
- “Support Services” means the support provided by the Supplier to Eligible Schools as part of the Breakfast Club Services they deliver, as more particularly set out in Paragraph 31 and 32; and
- “Operational” breakfast clubs means fully functioning breakfast clubs in schools offering breakfast on a daily basis to all pupils throughout term time.

Rationale

6. Schools are a vital part of the government’s plan to improve social mobility and tackle childhood obesity. Accessible healthy breakfast clubs can play an important role in ensuring children from all backgrounds have a healthy start to their day so that they optimise their learning potential. Greater impact can be

made among disadvantaged pupils where education outcomes tend to be lower³ and deprived areas where obesity rates are higher⁴.

7. The evidence⁵ shows that good nutrition is important for children's health and cognition. ⁶ Furthermore, pupils who attend before school universal breakfast clubs were perceived by school staff to have improved levels of concentration, behaviour and better social skills as a result of attending breakfast club provision⁷. There is also evidence of benefits in terms of fewer late arrivals and half-days of absence, and that Year 2 children in breakfast club schools made around two months' additional progress in reading, writing and maths compared to Year 2 children in other schools. Year 6 children experienced two months' additional progress in writing and English where they attended schools with breakfast provisions compared to those in other schools.⁸
8. Skipping breakfast has also been shown to lead to poorer overall eating habits and is a recognised contributor to childhood obesity⁹. Eating a healthy breakfast can lead to a reduction in the percentage of calories consumed from fat, and can reduce the likelihood of vitamin deficiencies while helping to ensure children receive the recommended intakes of potassium and iron.¹⁰
9. Breakfast clubs can also provide children with the opportunity to be more active and develop their knowledge and skills through extra-curricular activities. Other socio-economic benefits include facilitating stronger relationships between staff and pupils¹¹ and supporting working parents through the extended care offer¹².
10. The Department has assessed the evidence of 'what works' and consulted with key stakeholders to determine the design objectives for this programme. Costs, staff capacity, and a lack of leadership or buy-in are common barriers in setting up or sustaining a breakfast club¹³. Initial start-up costs and legal bureaucracy, such as staff training, can discourage school investment. These pressures can disproportionately affect small or rural schools and risk the quality and

³ Table N8 of the statistical first release, National curriculum assessments key stage 2, 2016 at <https://www.gov.uk/government/statistics/national-curriculum-assessments-key-stage-2-2016-revised>; and characteristics tables of the Revised GCSE and equivalent results in England 2015-16 at <https://www.gov.uk/government/statistics/revised-gcse-and-equivalent-results-in-england-2015-to-2016>

⁴ National Child Measurement Programme, 2015/16

⁵ Louis Levy (Public Health England, 2013) *Breakfast and Cognition: Review of the Literature*

⁶ Sorhaindo & Feinstein (2006). *What is the relationship between child nutrition and school outcomes? Wider Benefits of Learning Research Report No. 18.*

⁷ Education Endowment Fund (2016) *Evaluation of the Magic Breakfast Scheme*; ICF (DfE Research Report, March 2017) *Breakfast Clubs in Schools with High Levels of Deprivation*

⁸ EEF, 2016

⁹ Smith et al, 2010 – *skipping breakfast: longitudinal associations with cardiometabolic risk factors in the Childhood Determinants of Adult Health Study*

¹⁰ Bhattacharya, J.; Currie, J. and Haider, S. J. (2006). *Breakfast of Champions? The School Breakfast Program and the Nutrition of Children and Families.*

¹¹ ICF, 2017; Wahlstrom & Begalle, 1999

¹² Oliver Diss and Megan Jarvie, 'Unfinished Business; where next for extended schools', Child Poverty Action Group, September 2016: http://cpag.org.uk/sites/default/files/Extended%20Schools_web.pdf, 2016; Harrop and Palmer (New Policy Institute, 2002) *Improving Breakfast Clubs: Lessons From The Best*; Shemilt et al (2003) *School breakfast clubs, children and family support.*

¹³ Welsh Assembly government, 2004; ICF, 2017.

accessibility of provision, for example, resulting in higher fees and reduced access for disadvantaged pupils.

11. Other key messages identified in terms of the design and delivery of breakfast clubs are as follows:

- There is no fixed model for school breakfast provision, and delivery models vary substantially across schools. However, evidence suggests that a healthy before-school breakfast club would meet school food standards, and is accessible to disadvantaged pupils, and leads to substantial gains in education outcomes¹⁴. School-led provision has also been shown to lead to sustained provision six months after funding is withdrawn.¹⁵
- Schools should be able to innovate and tailor provision to meet their local needs, while also being supported to overcome key challenges and optimise the benefits.
- Costs and funding arrangements vary too¹⁶. In some schools breakfast is given free to any child who wants it, elsewhere parents pay for the provision, sometimes with costs varied to suit parents' financial needs. Feedback suggests fees above 50p per pupil per day create access barriers for lower income families.
- Provision that is sustained is not the same as provision that is both sustained and accessible. It is important that provision remains affordable and accessible to disadvantaged pupils after the programme ends.

Vision and purpose

12. The vision for this programme is to kick-start or improve self-sustaining breakfast clubs in at least 1,500 Disadvantaged Schools with funding prioritised for schools in Opportunity Areas without a breakfast club. The new or enhanced breakfast clubs will contribute to improved education outcomes and ensure more children have a healthy start to their day. Schools will be trained and empowered to lead the delivery to ensure provision is sustained by them beyond once support has been withdrawn. Expert support will be tailored depending on a school's needs and the provision established will be Accessible to all disadvantaged children and 'Just about managing' families. Sustainable support (and incentives) for schools will also be developed in the longer term, including through facilitating greater collaboration across schools and supporting organisations across the sector.

13. Innovation Projects will seek to test out new approaches to enhancing the health, education or wider socioeconomic benefits and to overcoming delivery and access barriers.

Aims and objectives of all Services (workstrand a and b defined in Paragraph 18)

¹⁴ EEF, 2016

¹⁵ ICF, 2017

¹⁶ Kelloggs, 2014

14. The Services covered in this specification aim to:

- ensure more children have a healthy, nutritious start to the day;
- support schools and other partners to deliver improvements in children's attainment, attendance, punctuality, behaviour and concentration, with a particular focus on disadvantaged children in Opportunity Areas;
- improve collaboration and sharing of best practice across schools and supporting organisations to optimise delivery and the benefits of provision;
- build capacity and sustainability in schools and supporting organisations across the sector to sustain and expand Accessible breakfast clubs; and
- encourage innovation to test approaches to overcoming delivery, sustainability and access barriers, and to enhance the education, health and wider socioeconomic benefits.

15. Based on the evidence, the following design objectives have been identified for Breakfast Club Services to optimise impact, value for money and sustainability.

Impact	<ul style="list-style-type: none"> • Focus on disadvantage - targeting provision at those most in need, including Opportunity Areas and Disadvantaged Schools, • Provide expert support on the ground to ensure schools establish high quality sustainable breakfast clubs and are guided by research evidence to enhance the wider attainment, health and socio-economic benefits. • Promote inclusive and accessible provision to ensure disadvantaged groups can use this service – encourage a universal free/low cost offer. • Promote nutritious and before-school care provision to encourage healthier living and ensure we do not aggravate childhood obesity – food must meet the School Food Standards. Before school provision provides good attainment gains. • Enable innovation - avoid being overly prescriptive so schools can be innovative and tailor to local needs.
Value for money	<ul style="list-style-type: none"> • Seek additionality – avoid double funding schools for existing provision by targeting support at schools with no breakfast club (or provision that does not meet our quality standards). • Seek sponsors and partnership working – to maximise funding, share best practice and build a legacy of support to schools to meet pupil needs. • Monitoring and evaluation– collecting robust data to monitor delivery, success against KPIs and enable any evaluation.
Sustainability	<ul style="list-style-type: none"> • Promote school-led provision - to improve accessibility, whole-school benefits and sustainability. • Seek buy-in and commitment from senior leaders (a key indicator of sustainable provision) – by demonstrating the impact of provision on education outcomes and requiring

match-funding from schools (staff resource for period of programme).

- **Ensure an easy-to-adopt model** to improve sustainability – avoiding bureaucracy and making sure that evaluation and monitoring arrangements are proportionate.

16. The Department also expects that all Services will incorporate the following:

- targeting of disadvantaged pupils, especially pupils eligible for free school meals, pupils from “just about managing” families, and SEND pupils.
- using and building on the very best national and international practice to support schools;
- identifying and working with a wide range of stakeholders and the Opportunity Area delivery teams, and building a collaborative environment, especially within Opportunity Areas and across supporting organisations (including the third and private sector);
- providing consistent and robust data collection and quality assurance processes;
- geographical reach and capacity (built up within reasonable timelines) to support schools across the country and optimise school engagement, innovation and sharing of best practice.

Scope of the contract

17. The Department are seeking to procure a delivery partner to deliver:

- a. The Breakfast Club Services; and
- b. The Innovation Projects.

18. The funding available in this contract will deliver two strands of work:

- a. **Breakfast Club Services:** Up to £24 million to set-up or improve healthy, Accessible and sustainable breakfast clubs in at least 1,500 Eligible Schools. On average the target pupil attendance at breakfast clubs in primary and secondary schools should be approximately 25% of pupils on roll in a school (or, based on average 2017 school sizes, approximately 68 and 236 FTE pupils respectively); and in special schools and PRUs on average 60% of pupils on roll (or 67 and 27 FTE pupils respectively). Pupil attendance should also reflect the demographic spread of pupils on roll at a school. Funding should also be used to invest in a legacy of (sustainable) support for schools in the longer-term (as outlined in Paragraph 22h). .
- b. **Innovation Projects:** Up to £2 million. The Department wants to encourage innovation through the delivery of Innovation Projects which aim to test solutions to access and sustainability barriers and / or enhance the health, education and wider socioeconomic benefits of provision. This strand of work can be broader in scope than the Breakfast Club Services. Projects are not limited to delivery in schools, Opportunity Areas or

subject to Priority Criteria. However, projects must focus on supporting disadvantaged pupils (especially SEND pupils, pupils eligible for free school meals and from 'just about managing' families) and Eligible Schools where delivery is school-based. For example, breakfast clubs could be delivered from community based centres or vehicles; may test an approach that targets specific disadvantaged pupil groups; may focus on enhancing learning benefits, or may focus on wider activities to improve nutrition and healthy living among disadvantaged pupils.

19. This programme will cover England only. Bidders must ensure national geographical coverage, demonstrating they have the capacity to deliver Breakfast Club Services to Eligible Schools irrespective of their location and in priority order, established by application of the Priority Criteria..
20. The Breakfast Club Services will include state-funded primary, secondary, special schools and PRUs. All school-types should be included, although coverage of them does not need to be equal. However, the Department expects bidders to provide a rationale for coverage, for example, on the basis of demand, need and/or impact.
21. It is intended for the contract to be awarded in January 2018. The Supplier will carry out scoping and recruitment of Eligible Schools (in accordance with Paragraph 22 below) followed by the commencement of Support Services which are intended to be launched in schools from the beginning of April 2018. The Department will consider phased participation of schools to deliver Breakfast Club Services and longer timescales for commencement of Innovation Projects as long as all work is completed by the end of March 2020 and meets the specified work and other deadlines.

Specification requirements

22. The Supplier will deliver the following requirements for Breakfast Club Services:
 - a. The Supplier will provide a plan that sets out how they will identify and recruit Eligible Schools to participate in the programme within the agreed deadlines and in line with the Priority Criteria (as defined under the 'Eligible schools and priority criteria' section at Paragraph 27 and 28). This should include activities to ensure school leaders are committed to achieving healthy, Accessible and sustainable breakfast clubs in their schools.
 - b. The Supplier will provide a list of at least 1500 Eligible Schools they plan to target [or the number proposed by the Supplier] and an indicative timeframe for the launch of Support Services in these schools and when operational breakfast clubs will be in place. Deadlines for submission of a draft list for the Department's review will be agreed when contracts are finalised. This list shall become the Agreed Target List once signed off;
 - c. The Supplier will commence Support Services in at least 10% or 150 Eligible Schools on the Agreed Target List by the beginning of April 2018; 60% or 900 by the end of September 2018; and the remainder by the end of February 2019. These are the Department's preferred targets and deadlines, alternative proposals are welcome but bidders will receive higher scores where they meet or exceed these expectations (see Document 4,

Evaluation Criteria). Formal commencement of Support Services is described at Paragraph 32.

- d. The Supplier will identify, assess and consider individual needs of Eligible Schools to determine the level of Support Services they offer to schools and to sign off an appropriate breakfast club delivery model for a school to use. For example, the Supplier should consider where schools lack robust leadership or buy in for setting up a breakfast club or where a school have specific challenges to overcome, such as a high proportion of SEND children.
- e. The Supplier will deliver support through a combination of funding, advice and practical support to schools during the life of the programme (as more specifically outlined under 'Support Services to schools' section below in Paragraph 31).
- f. In general schools will be expected to organise staffing, accommodation and marketing of their breakfast provision from their own resources rather than through the funding available in these contracts to demonstrate their commitment and as part of the strategy towards sustainability. Where schools have clear evidence of lacking initial capacity, the Supplier will provide an additional subsidy to cover some of these costs, for a maximum period of six months. The Supplier will ensure that any / all additional subsidies must be on the condition that there is a clear plan for sustainability with the school.
- g. The Supplier will establish and build local and national networks to improve partnership working across schools and supporting organisations across the sector, including local authorities, multi-academy trusts, experts, charities and private organisations. For example, creating school-to-school networks or expert working groups to improve sharing of resources and best practice.
- h. At least six months before the end of the contract, the Supplier will have developed a 'legacy of support': sustainable and accessible support for schools and/or supporting organisations to encourage the continuation and expansion of high quality inclusive provision. The Department is seeking proposals that are innovative, add value, and maximise the available budget; examples of innovation and added value may include (but are not restricted to) some of the below. Evidence of success (eg. the number of schools and organisations that access the support and their feedback) will be agreed with the Department when the contract is finalised.
 - maintaining nutritional or other delivery standards
 - building incentives for schools and supporting organisations
 - improving collaboration and sharing of best practice
 - raising the professionalism in the sector
 - taking advantage of economies of scale
 - area based targeting
 - match-funding or sponsorship
- i. The Supplier will provide evidence of sustainability, such as a written commitment from the Head teacher to sustain provision and a solid

financial / transition plan. Where Support Services in schools have been completed six months before the contract has ended, the Department will measure sustainability in terms of provision that is sustained until the end of programme (see Key Performance Indicators at Paragraph 36).

- j. The Supplier will provide monthly reports to the Department about the progress they have made on the above (including progress towards the development of local / national networks and legacy of support), and provide further information on the request of the Department to respond to queries (including accommodating school visits if appropriate);
- k. The Supplier will collect and provide the Department (or an appointed independent evaluator) with accurate and timely management information that can be validated regarding each element of this workstrand, including baseline information on existing provision and perceptions of quality, as agreed with the Department. Please see 'Performance indicators and management information';
- l. The Supplier will set out how their proposal adds value, maximises the available budget and is innovative; and

23. The Supplier will deliver the following requirements for Innovation Projects:

- a. The Supplier will deliver Innovation Project(s) up to a value of £2 million to test new approaches to achieving the programme's aims.
- b. The Supplier will identify and provide a clear vision and rationale for the innovation proposals and distribution of funds; restricting proposals to those which test approaches to delivery that aims to support disadvantaged pupils and which follows the below framework of aims and objectives, unless it can be demonstrated that further work is needed in other areas to support the programme's policy ambitions;
 - i. **Overcoming access barriers:** improving attendance across disadvantaged groups; engaging hardest to reach parents / pupils; or overcoming challenges in areas where there is a lack of provision or specific delivery challenges (eg. small, rural, special schools or PRUs);
 - ii. **Optimising attainment, health, and other socioeconomic benefits:** identifying optimum nutrition, opening hours, delivery models, or complementary activities; and / or
 - iii. **Optimising sustainability:** identifying ways to reduce costs; solutions to staff issues; or improving the sharing of resources in local areas or across schools.
- c. The Supplier should detail the specific aims and objectives of any / all innovation projects. The Supplier should also detail in their proposal what quantitative and qualitative data they will collect and how, at baseline and throughout the lifetime of the project. The proposed data collection will be reviewed and agreed by the Department (and any potential independent evaluator) prior to project commencement. All data must be made available to the Department and any appointed evaluator.
- d. Prior to delivery, the Supplier will assess proposals to ensure they provide a

strong chance of securing **value for money, additionality, scalability, sustainability** and enable a robust **evaluation**, and gain sign-off from the Department by presenting evidence these criteria have been met;

- e. The Supplier will report back regularly on progress; and present clear and accurate interim and final findings to the Department;
 - f. Where relevant, the Supplier will use outcomes of innovation work to strengthen the aims and deliverables of the Breakfast Clubs Services workstrand; and
 - g. The Supplier will deliver more breakfast clubs if less than £2 million is spent on innovation.
24. The Supplier will provide an end contract report for all Services (Breakfast Club Services and Innovation Projects) summarising activities undertaken, assessment of effectiveness of achieving the aims, objectives and project requirements, lessons learned and case studies where relevant.
25. The Supplier will cooperate fully with an evaluation of any Services if conducted by the Department or an independent evaluator appointed by the Department. This includes providing the evaluation supplier, or the Department, with any / all information they require to measure and report on the effectiveness of the delivery of breakfast clubs and innovation projects. For Breakfast Club Services, this is likely to include, but may expand upon the Manangement Information outlined in Paragraph 38c.
26. The Department wants to encourage bids that demonstrate value for money for the taxpayer across all services, for example bids that demonstrate an element of match-funding, sponsorship and/or a robust sustainability plan.

Eligible schools and priority criteria

27. Eligible Schools are those that meet all three eligibility criteria for participating schools as follows:

<i>Disadvantage</i>	<ul style="list-style-type: none"> Schools with 50% or more pupils in IDACI bands A-F. This will ensure funding has the greatest impact where it is needed most and also supports just about managing families.
<i>Additionality</i>	<ul style="list-style-type: none"> Schools without a breakfast club or with “<u>Scope for Improvement</u>” as defined by the criteria below. The Department will consider suggested amendments to these criteria where there is a robust rationale: <ul style="list-style-type: none"> <i>Not accessible to disadvantaged pupils:</i> Cost of provision (above 50p), physical and staffing barriers to providing inclusive provision for disadvantaged pupils (including FSM and SEN pupils), low attendance of disadvantaged pupils. <i>Parent demand not met or poor engagement:</i> Number of places available does not meet parent demand, lack of engagement from parents/carers/pupils. Indicators could include waiting lists, attendance, perceptions of clubs. <i>No childcare benefits:</i> Not open at 8.30am.
<i>Leadership and capacity</i>	<ul style="list-style-type: none"> Schools which can demonstrate sufficient leadership and capacity to sustain provision beyond the funded period. For example, match-funding from schools in terms of staff resource for the period of the programme and a nominated SLT member to be accountable for the delivery. The Department will agree final details with the successful contractor.

28. To ensure that the Department targets those schools and families most in need of support, the following Priority Criteria is to be applied for Breakfast Club Services (in order of priority):

		Provision	Location
Eligible Schools	1	No breakfast club	Opportunity Area
	2	No breakfast club	Outside Opportunity Area
	3	Scope for Improvement	Opportunity Area
	4	Scope for Improvement	Outside Opportunity Area

29. “Disadvantaged Schools” are state-funded primary, secondary and special schools or PRUs in England with 50% or more of their pupils in IDACI bands A-F. A pupil living in IDACI bands A-F means that at least 20% of the children in that area live in low income households. Further information on these schools

can be obtained on request. The Department does not collect data on school breakfast provision or its characteristics, nor does it have up to date information on a school's leadership and capacity (other than through Ofsted reports). Bidders will therefore need to demonstrate how they plan to identify schools with no current provision or provision with 'Scope for Improvement', and schools with sufficient leadership and capacity.

30. If the Suppliers have funds left over after offering their Breakfast Club Services to all Eligible Schools, the Department will work with the Supplier to agree amendments to the eligibility criteria for participating schools.

Support Services to schools

31. The Department expects the following Support Services outlined in the table to be provided to Eligible Schools participating in the Breakfast Club Services workstrand. This is not an exhaustive list so bidders are welcome to put forward additional proposals and finer details.

<i>On-going tailored support</i>	<ul style="list-style-type: none"> • Provided to all schools for 12-18 months to establish, manage and sustain healthy and accessible provision, including support to: <ul style="list-style-type: none"> - adopt and tailor proven breakfast club models that will work effectively in their school and sign-off final delivery model; - overcome key delivery and access challenges; - identify and complete legal requirements for establishing a breakfast club; - reach pupils who need it most (and engage hard to reach parents and pupils); - enhance the wider education and health benefits - undertake financial planning, action plans and an exit / transition strategy to ensure sustainable; and Accessible provision. <p>The Supplier must ensure the maximum support is provided to schools with the highest need to ensure they develop self-sustaining provision. Therefore, the Supplier shall make every effort to identify and prioritise these schools within the Agreed Target List.</p>
<i>£500 universal start-up grant</i>	<ul style="list-style-type: none"> • Provided to all schools. There are no restrictions on spend but this is the maximum amount that schools can spend on facilities or equipment.
<i>Additional start-up funding</i>	<ul style="list-style-type: none"> • Provided to some schools to address initial capacity issues (for example, staffing and training costs). Allocation of funding must be based on a needs assessment and should be given for a restricted period. Schools must also demonstrate they can run and market provision beyond the 'initial' period as a condition of this funding.
<i>Food provision or subsidies</i>	<ul style="list-style-type: none"> • Provided to all schools to support the set up of healthy breakfast clubs (either the provision of food

or through funding for food to schools). The Department expects the contractor to be responsible for ensuring schools serve food that meets the School Food Standards.

32. Support Services in an Eligible School on the Agreed Target List will be deemed to have formally commenced when all of the below activities are completed.
- a. the Supplier has completed eligibility checks and conducted an initial assessment of the schools needs, including supplying an action plan agreed with the school which identifies key actions to be undertaken before a delivery model can be implemented (for example, legal administration, staff training, marketing and/or access issues to address);
 - b. the Supplier has determined if the school should receive 'Additional start-up funding' (as defined in table above); and
 - c. the Supplier has received a written commitment from the senior leadership team of the school to confirm they will provide the required resources for the duration of the project, along with contact details of a nominated delivery lead who will be accountable for the provision.

Performance indicators and management information

33. The Supplier will have sufficient systems and processes in place to deliver all Services, including throughout its delivery model / supply chain to monitor and record data on participation, activity and performance; and to have a clear audit trail of evidence which can be validated. The below provides our minimum requirements – please note that these may be renegotiated with the successful bidder.
34. Bidders are invited to suggest additional clear and unambiguous Key Performance Indicators (KPIs) and Management Information (MI) that is easily defined and measureable. MI should be provided at baseline and over the term of the contract to demonstrate successful delivery, and show that good progress is being made.
35. Contractors will be expected to participate in an evaluation for all Services if conducted and will be required to comply with the above and any other appropriate MI requirements. The Department will finalise and agree the KPIs and data to be captured by the successful bidder as part of the post contract award discussions.

MI and KPIs for Breakfast Club Services

36. KPIs for Breakfast Club Services will include (as a minimum, but not limited to) the following:
- a. The Minimum Number of Eligible Schools have had Operational Breakfast Clubs for a period of 12 months and sustained provision for six months after contractor support is withdrawn (or a written commitment from the Head teacher is provided that the relevant school will continue to operate provision where support has been withdrawn less than six months before the end of the contract); and

- b. Average pupil attendance at Operational Breakfast Clubs at the Minimum Number of Eligible Schools meets the target of 25% of pupils on roll in primary and secondary schools, and 60% of pupils on roll in special schools and PRUs; and reflects the demographic spread of pupils on roll at a school.
37. The Department also expects the contractor to provide evidence of the following to demonstrate quality standards have been successfully achieved which will be agreed with Supplier when contracts are finalised:
- Evidence Eligible Schools receiving Support Services have assessed access barriers for disadvantaged pupils (including SEND pupils) and taken steps to sufficiently address them in the duration of the programme;
 - Evidence that schools have realistic and firm plans for their financially self-sustaining breakfast club after this contract has finished;
 - Evidence the contractor has created local and national networks;
 - Evidence the contractor has created a legacy of support (as defined in paragraph 22h) and how this has been received by schools and other organisations supporting the aims of the programme;
 - Deadlines have been met for the completion of scoping, launch event, school recruitment and participation, and innovation projects that meet quality criteria; and
 - Establishment of governance arrangements and adoption of contract management processes.
38. We expect management information for Breakfast Clubs Services to include (as a minimum, but not limited to) the following:
- a. An initial collection from the Supplier about the schools they have contacted, including:
 - i. a list of the schools who were contacted, including their full school name, address and local authority area;
 - ii. a list of Eligible Schools and those who were not eligible to participate (with full school name, address and local authority area) and why they met or did not meet the eligibility criteria for participation (eg. because they do not have a breakfast club or have an existing breakfast club without “Scope for Improvement” (as defined under ‘*Eligible Schools and Priority Criteria*’ section above at Paragraph 27); and
 - ii. a list of the schools that declined to take part (with full school name, address and local authority area) and why (eg. lack of capacity)
 - b. A collection from the Supplier on all the schools that are participating, and some baseline information on whether those schools offer a breakfast club or not, if so the characteristics of provision, including:
 - i. the numbers and types of participating schools and pupils;
 - ii. pupil attendance (all and split by disadvantaged and non-disadvantaged pupils);
 - iii. quality of food (complying with school food standards or not); and
 - iv. other characteristics that illustrate why a breakfast club has “Scope for Improvement”, such as opening and closing times; fees; waiting

lists.

- c. A 10% sample collection of participating schools, at approximately four different time points, to collect more detailed information (that can be cross-referenced against the information in 38b above), including:
 - i. children's attendance at breakfast clubs for one full week during the first month, at six months, one year and eighteen months during the contract and six months after the contract has ended;
 - ii. the number of pupils attending breakfast clubs (number of pupils attending in a particular week and per day of that week);
 - iii. pupil demographic information, including gender, school year and eligibility for Free School Meals (or pupil premium status);
 - iv. the number of pupils attending on one, two, three, four and five days per week, plus number attending on an ad hoc basis;
 - v. the numbers of staff delivering provision and level to which they are qualified
 - vi. numbers of breakfast clubs that comply with the school food standards;
 - vii. Breakfast club fees, start and end times; and
 - viii. satisfaction survey data from schools, parents/carers and pupils
 - ix. range and extent of complementary activities alongside breakfast provision.

MI and KPIs for Innovation Projects

39. KPIs and MI for Innovation Projects will depend on the aims and objectives of proposals. We expect contractors to propose achievable and measurable KPIs and MI as part of their bids that will give the Department confidence that good progress is being made and aims and objectives have been delivered to a high quality. The proposed data collection will be reviewed and agreed by the Department (and any potential independent evaluator) prior to project commencement. All data must be made available to the Department and any appointed evaluator.

Project management

40. Please explain how you will manage service delivery, including (if relevant) a description of the legal and contractual relationship between the members of any proposed consortium and the lead tenderer and how you will report to and work with the Department. Please include a signed letter of support from each member of your consortium (if applicable).

41. Proposals should detail the following:

- a. An Implementation Plan outlining activities and milestones covering set-up and service delivery, including (but not limited to) the following key delivery Milestones [payment of the applicable charges will be linked to achievement of the relevant Milestones]:
 - (i) identification of Eligible Schools between January and the end of September 2018 to participate in the programme in line with the priority criteria with a view to agreeing the Agreed Target List no later than [X weeks] from the contract Commencement Date;

- (ii) Breakfast Club Support Services have commenced in at least [10% or 150] Eligible Schools on the Agreed Target List by the beginning of April 2018;
 - (iii) Breakfast Club Support Services have commenced in at least [60% or 900] of Eligible Schools on the Agreed Target List by the end of September 2018;
 - (iv) Breakfast Club Support Services have commenced in all Eligible Schools on the Agreed Target List by the end of February 2019;
 - (v) [X% or number] of Eligible Schools on the Agreed Target List have Operational Breakfast Clubs by [insert date]
 - (vi) [Y% or number] of Eligible Schools on the Agreed Target List have Operational Breakfast Clubs by [insert date];
 - (vii) Management Information provided at [time intervals for each set of MI] during the project;
 - (viii) Delivery of 12 to 18 months of on-going Support Services to Eligible Schools on the Agreed Target List through a combination of funding, advice and practical support;
 - (ix) Signed access and transition action plans for each school before Support Services are withdrawn;
 - (x) Six (6) months before the end of the contract, the establishment and building of local and national networks;
 - (xi) Six (6) months before the end of the contract, the development of a legacy of support which offers sustainable and accessible support for schools to encourage the continuation and expansion of high quality inclusive provision; and
 - (xii) identification, implementation and reporting of Innovation Projects by end of March 2020 [milestones depend on final design of Innovation Projects].
- b. Identification of the main operational and strategic posts from within your organisation or from within your consortium where applicable, the rationale for these posts and the skills required to undertake those functions.
- c. How many staff of what calibre and skills will be working within the organisational structure to deliver the services required under this contract. (Please include the names and short CVs of any individuals you have already identified to fill these posts.) In particular, we want to know about the leadership team that will oversee delivery, what percentage of their time they will work on this contract, and what skills and experience they have that means they are well placed to play their proposed role.
- d. Demonstrate the flexibility of your management structure and its ability to adapt over time, including how the programme will be effectively managed (financial and administrative management) and how performance will be monitored. The preferred contractor will be required as part of their contractual responsibilities to produce and agree with the Department a contract exit plan/strategy.

Risks and Issues

42. The tender should consider the specific risks and issues that are foreseen in

delivering the solution and provide a draft risk register detailing as a minimum contingencies and countermeasures to mitigate the risks. Typical areas of risk for this type of programme might include (but are not limited to) staffing, resource constraints, data access, timing, management, communications and operational issues.

Communications and marketing

43. Bidders should be aware that, in line with the government's commitment to efficiency controls, there are restrictions on paid-for communications and marketing activities funded by the Department either delivered directly or indirectly via partner organisations in receipt of funding. The controls apply to most communications activity including printing and publications, events, PR and digital communications activity.
44. In line with government-wide restrictions on any spend related to communications, we will be looking for no cost and low cost approaches to encourage schools to participate in the scheme. Bidders should therefore place an emphasis on utilising existing communications channels. Any paid-for activity, will be subject to further approval via the marketing and advertising efficiency controls exemptions process. In setting out communications plans, bidders should indicate where paid-for activity has been proposed.
45. Exemptions may be granted for essential activities where cost effectiveness and return on investment can be evidenced and where all other no cost or low cost options have been exhausted. Bidders should consider proposed marketing and communications activity in this context and outline their communications plans fully.

Child Sex Abuse

46. The Internet Watch Foundation (IWF) was established in 1996 by the UK internet industry to provide the UK internet Hotline for public and IT professionals to report potentially illegal online content and to be the 'notice and take-down' body for this content. IWF works in partnership with the online industry, law enforcement, Government, the education sector, charities, international partners and the public to minimise the availability of this content, specifically, child sexual abuse content hosted anywhere in the world.
47. Access to the IWF URL list is available to ISPs, mobile operators, search providers and filtering companies only. All organisations that require access must sign a licence which sets out how the data can be used.
48. It is a contract condition that the successful supplier must block access to those Uniform Resource Locators (URLs) specified on the IWF's list.

Schedule 2
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.

“Breakfast Club Services” means those services attracting up to £24 million described in paragraph 18a and 22 in Schedule 1 (Specification).

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

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

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

“Commercially Sensitive Information” means the information set out in schedule 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 or the Contractor significant commercial disadvantage or material financial loss.

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

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

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

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

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

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

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

“Contract” means this contract.

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

“Contractor Personnel” means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract.

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer” take the meaning given in the GDPR.

“Contractor’s Solution” means the Contractor’s proposal submitted in response to the DFE’s invitation to tender attached at schedule 10 including Annex 3 Clarification of Contractor Solution and Appendices A-O.

“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.

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

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

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

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

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

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

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

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

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

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

“Disadvantaged School” means a state-funded primary, secondary and special school or PRU in England which has 50% or more of its pupils in Income Deprivation Affecting Children Index (IDACI) Bands A to F, as more specifically described in paragraph 29 in Schedule 1 (Specification).

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

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

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice published by the Information Commissioner or relevant government department in relation to such legislation.

“DPA 2018” means Data Protection Act 2018.

“Effective Date” means the contract start date.

“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.

“Eligible School” means a school which is either a state funded primary, secondary or special school or a PRU that meets the eligibility criteria for participating schools set out in paragraph 27 of Schedule 1 (Specification).

“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.

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679)

“General Anti-Abuse Rule” means:

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

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

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

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

“ICT” means information and communications technology.

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

“Initial Term” means the period from the Effective Date to 31 March 2020.

“Innovation Projects” means those services attracting up to £2 million described in paragraph 18b and 23 of Schedule 1 (Specification).

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

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

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

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

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

“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 Contractor is bound to comply;

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

“Material Breach” means:

- (a) 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:
 - (i) a substantial portion of the Contract; or

- (ii) any of the obligations set out in clauses 9 (Tax and VAT), 10 (Prevention of Corruption), 11 (Discrimination), 15 (Confidentiality), 17 (Official Secrets Act and Finance Act) and 33 (Conflicts of Interest) and in schedules 4 (KPI Performance Standards) and 8 (Security Standards); or
- (b) A failure to achieve a Milestone as specified in Schedule 5 (Implementation Plan) which is unremedied 14 days after service of notice by the DfE to remedy the relevant failure; AND/OR three or more failures to achieve Milestone within any 6 month period ; or
- (c) a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Service Users would otherwise derive from a substantial portion of the Contract.

“Milestone” means a milestone in the Implementation Plan as specified in Schedule 5;

“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.

“Opportunity Areas” refers to the 12 Opportunity Areas which have been identified by DfE as social mobility ‘cold spots’. These are: Blackpool, Derby, Norwich, Oldham, Scarborough, West Somerset, Bradford, Doncaster, Fenland & East Cambridgeshire, Hastings, Ipswich, and Stoke on Trent. These areas will be prioritised for funding (see Paragraph 28 of Schedule 1 (Specification) in accordance with Priority Criteria).

“Party” means a Party to this Contract.

“Performance Measures/Standards” means the standards which the Contractor will be measured against in respect of the delivery of the Services aligned to defined Key Performance Indicators (KPIs) in Schedule 4.

“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.

“Priority Criteria” means criteria that should be used to prioritise Breakfast Club Services offered to Eligible Schools as set out in Paragraph 28 of Schedule 1 (Specification);

“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.

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

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

“Regulations” means the Public Contract Regulations 2015.

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

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

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

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

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

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

“Restricted Country” means:

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

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

“Services” means the Breakfast Club Services and the Innovation Projects to be provided by the Contractor as more particularly described in Schedule 1 (Specification).

“Services Commencement Date” means date the services commence.

“Service Users” means Eligible Schools receiving the Breakfast Club Services.

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

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

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

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

“Supplier” means the Contractor.

“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.

“The Supplier” means the Contractor.

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

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

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

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

- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;
- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;
- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract;

- 1.2.7 the schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules; and

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 Subject to satisfactory performance by the Contractor, Ministerial decisions and budget availability, DFE may extend the Initial Term for a further period of two years 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 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.
- 3.3 The Contractor shall, in performing its obligations under the Contract:
- 3.3.1 Comply to the requirements of the Specification and the Contractor's Solution or as otherwise agreed in writing between the Parties;
 - 3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;
 - 3.3.3 comply with Good Industry Practice;
 - 3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;
 - 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - 3.3.6 comply with the KPIs set out in schedule 4
 - 3.3.7 comply with the Implementation Plan set out in schedule 5;
 - 3.3.8 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within 14 days of the same being brought to the attention of the Contractor by the DFE;
 - 3.3.9 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
 - 3.3.10 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE, the Service Users and all other persons including members of the public; and
 - 3.3.11 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Personnel also comply.
 - Comply with requirements for evidence set out in Schedule 4, Schedule 5, Schedule 10 Annex 3 Appendix J. Evidence that the Eligible Schools receiving Support Services have assessed access barriers for disadvantaged pupils (including SEND pupils) and taken steps to sufficiently address them in the duration of the programme;
 - Evidence that schools have realistic and firm plans for their financially self-sustaining breakfast club after this contract has finished;
 - Evidence the contractor has created local and national networks set out in Schedule 5

and Schedule 10 Annex 3 Appendix B. Evidence the contractor has created a Legacy of Support (as defined in Schedule 1 (Specification) at paragraph 22h and how this has been received by schools and other organisations supporting the aims of the programme;

- Deadlines have been met for the completion of scoping, launch event, school recruitment and participation, and innovation projects that meet quality criteria; and
- Establishment of governance arrangements and adoption of contract management processes.

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

4. CONSORTIA

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

5. TRANSFER AND SUB-CONTRACTING

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

of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.

- 5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE's prior written consent.
- 5.6 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE's right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the DFE's satisfaction within 21 days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.8 If the DfE believes there are:
 - 5.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
 - 5.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.
- 5.9 The Contractor shall appoint Magic Breakfast to act as subcontractor in respect of the provision of assistance, advice and expertise with respect to the supply of breakfast clubs in schools for the duration of this Contract. Subject to Clause 5.10, the DFE shall have the right to terminate this Contract in whole or in part in the event that Magic Breakfast ceases to act as a subcontractor to the Contractor, (which for the avoidance of doubt shall constitute a Material Breach).
- 5.10 If Magic Breakfast ceases to be a subcontractor to the Contractor because the Contractor (acting reasonably) has terminated the subcontract with Magic Breakfast (the "Subcontract") as a direct result of a material breach by Magic Breakfast of the Subcontract, the DfE shall not be entitled to exercise its right to terminate the Contract in accordance with Clause 5.9 above for a period of 4 weeks from the date of termination of the Subcontract to allow the Contractor time to find a replacement subcontractor which is acceptable to the DfE. The Contractor shall inform the DfE in writing as soon as it becomes aware of any breach by Magic Breakfast of the Subcontract which would entitle the Contractor to terminate the Subcontract.

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 7 as at the Effective Date.
- 6.7 Key Personnel shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Personnel shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Personnel or Key Sub-Contractors.
- 6.10 DFE may require the Contractor to remove any Key Personnel who the DFE considers in any respect unsatisfactory.
- 6.11 The DFE shall not be liable for the cost of replacing any Key Personnel and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.
- 6.12 Except in respect of any transfer of staff under TUPE, for the Term and for 12 months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.

7. TUPE

- 7.1 No later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:
- 7.1.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;
 - 7.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;
 - 7.1.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;
 - 7.1.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - 7.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union
- (together the **"TUPE Information"**).
- 7.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.
- 7.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.4 The DFE may use TUPE Information for the purposes of any retendering process. The Contractor will co-operate with the re-tendering of the Contract by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.

- 7.5 The Contractor agrees to indemnify the Department fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of TUPE Information under Clause 7.1.
- 7.6 The Contractor agrees to indemnify the Department from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- 7.7 In the event that the information provided by the Contractor in accordance with Clause 7.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall promptly notify the Department of the inaccuracies and provide the amended information.
- 7.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
- 7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
 - 7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - 7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
 - 7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.7 being issued by the Contractor.
- 8.3 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 8.4 The Charges are inclusive of Value Added Tax ("**VAT**") and all other taxes, duties and levies, and inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT

charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.

- 8.5 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 8.6 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.7 Invoices shall be submitted to and sent, within 30 days of the end of the relevant invoicing date, to SSCL Accounts Payable Team, Room 6124, Tomlinson House, Norcross, Blackpool, FY5 3TA. An invoice is a “**Valid Invoice**” if it is legible and includes:
 - 8.7.1 the date of the invoice;
 - 8.7.2 Contractor's full name and address;
 - 8.7.3 Contract reference number;
 - 8.7.4 the charging period;
 - 8.7.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
 - 8.7.6 days and times worked (if applicable);
 - 8.7.7 Service Credits (if applicable); and
 - 8.7.8 VAT if applicable.
- 8.8 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.9 The DFE intends to pay Valid Invoices within 10 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 8.9 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.10 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.11 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE. The final invoice shall be submitted not later than 30 days after the end of the Term.
- 8.12 The 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.
- 8.13 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.
- 8.14 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 requirements and instructions which the DFE reasonably imposes in connection with any equality obligations imposed on the DFE at any time under equality law.
- 11.3 The Contractor indemnifies the DFE in full from and against all Employment Liabilities that may arise as a result of any claims brought against the DFE by any of its employees, agents, consultants and contractors ("**DFE Personnel**") and/or any of the Personnel where such claim arises from any act or omission of the Personnel in respect of anti-discrimination legislation. The Contractor will also provide all reasonable cooperation, assistance and information as the DFE may request in connection with any investigation by the DFE into any complaint or other grievance received by it from any of the DFE Personnel or Personnel in respect of anti-discrimination legislation which may have arisen from, or been contributed to by, any act or omission of the Contractor or any Personnel.

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights in materials:
- 12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the "**DFE IP Materials**") shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown); and
- 12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with the Contract (the "**Service Specific IP Materials**") shall vest in the DFE (save for Copyright and Database Rights which shall vest in the Crown)
- (together the "**IP Materials**").
- 12.2 The Contractor shall not, and shall ensure that Personnel shall not, use or disclose IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.
- 12.3 The Contractor hereby assigns to the DFE or undertakes to procure the assignment to the DFE of all Intellectual Property Rights which may subsist in the Service Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials and shall include, without limitation, an assignment to the DFE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by the DFE and necessary to execute and perfect these assignments and to otherwise evidence the DFE's or the Crown's ownership of such rights.
- 12.4 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Contract or the performance of the Contract.
- 12.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the DFE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the DFE an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the DFE to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify the DFE of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service Specific IP Materials.
- 12.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing

its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 14, except to the extent that any such claim arises from:

- 12.6.1 items or materials supplied by the DFE; or
- 12.6.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.
- 12.7 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.
- 12.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the DFE, provided always that the Contractor shall:
 - 12.8.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 12.8.2 take due and proper account of the interests and concerns of the DFE; and
 - 12.8.3 not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).
- 12.9 Notwithstanding clause 12.8. the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.
- 12.10 The DFE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 12.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:
 - 12.11.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
 - 12.11.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.
- 12.12 If the Contractor is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.
- 12.13 The Contractor grants to the DFE and, if requested by DFE, to a Replacement Contractor, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use

any Intellectual Property Rights the Contractor owned or developed prior to the Effective Date or otherwise not in connection with the Contract ("**Contractor IP**") and which the DFE (or a Replacement Contractor) reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided and the use and further development of the IP Materials.

- 12.14 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
- 12.15 If the Contractor is not able to grant to the DFE a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:
- 12.15.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Contract grants to the DFE a licence on the terms set out in clause 12.13; or
- 12.15.2 if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the DFE a sub-licence on the terms set out in clause 12.13.
- 12.16 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the DFE IP Materials any act or thing which:
- 12.16.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or
- 12.16.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.
- 12.17 The Contractor shall comply with the DFE's branding guidelines and shall not use any other branding, including its own, other than as set out in the DFE's branding guidelines or as otherwise agreed with the DFE.
- 12.18 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:
- 12.18.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or
- 12.18.2 apply anywhere in the world to register any trade marks identical to or so nearly resembling any DFE Trade Mark as to be likely to deceive or cause confusion.

13. DATA, SYSTEMS HANDLING AND SECURITY

- 13.1 The Parties shall comply with the provisions of schedule 8.

14. PUBLICITY AND PROMOTION

- 14.1 Subject to clause 15.2, without prejudice to the DFE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- 14.2 The Contractor shall use reasonable endeavours to ensure its Personnel comply with clause 14.1
- 14.3 Without prejudice to the generality of clauses 12.18 and 14.1, the Contractor shall not itself, and shall procure that Consortium Members and Sub-Contractors shall not, use the DFE's name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.

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

15. CONFIDENTIALITY

- 15.1 Except to the extent set out in this clause 15 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- 15.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract.
- 15.3 The Contractor may only disclose the DFE's Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Personnel are aware of and shall comply with these obligations as to confidentiality.
- 15.4 The Contractor shall not, and shall procure that Personnel do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 15.5 Clause 15.1 shall not apply to the extent that:
- 15.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - 15.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 15.5.3 such information was obtained from a third party without obligation of confidentiality;
 - 15.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 15.5.5 it is independently developed without access to the other Party's Confidential Information.
- 15.6 Nothing in clause 15 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
- 15.6.1 for the purpose of the examination and certification of the DFE's accounts;
 - 15.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;
 - 15.6.3 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
 - 15.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 15.8.3 and 15.8.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 15.7 Nothing in clauses 15.1 to 15.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

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

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

16. FREEDOM OF INFORMATION

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

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

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

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

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

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

17. OFFICIAL SECRETS ACTS AND FINANCE ACT

17.1 The Contractor shall comply with the provisions of:

17.1.1 the Official Secrets Acts 1911 to 1989; and

17.1.2 section 182 of the Finance Act 1989.

18. LIABILITY

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

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

18.1.2 for personal injury or death resulting from its negligence;

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

18.1.4 any breach of clause 15 or schedule 8;

18.1.5 for its own fraud, or fraudulent misrepresentation or fraudulent concealment; 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 in full on demand and shall keep the DFE indemnified fully on demand from and against:

18.2.1 all losses, costs, expenses, charges;

18.2.2 all fines, compensation and penalties; and

- 18.2.3 all claims, proceedings, demands, , actions, damages, , breach of statutory duty, and liabilities
- howsoever caused which are suffered or incurred by the DFE under or in connection with this Agreement..
- 18.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and 9 (Tax).
- 18.4 Subject to clauses 18.1, 18.3 and 18.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort, under statute or otherwise (including in each case negligence):
- 18.4.1 for any losses of an indirect or consequential nature;
- 18.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
- 18.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 18.5 Subject to clauses 18.1 and 18.3, the maximum aggregate liability of either Party to the other under the Contract, whether in contract, under statute, in tort or otherwise (including in each case negligence):
- 18.5.1 in respect of damage to property is limited to £5,000,000.00 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 100% of the sum of the Charges paid or due to be payable in that calendar year.
- 18.6 Notwithstanding clause 18.4, 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, fraudulent misrepresentation or fraudulent concealment;
- 19.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;
- 19.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;
- 19.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 19.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 19.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 19.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 19.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern

or its ability to fulfil its obligations under the Contract;

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

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

20. FORCE MAJEURE

- 20.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 20.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 20.2 If either Party is prevented from performance of its obligations for a continuous period in excess of 3 months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 20.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

21. MONITORING AND REMEDIATION

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

reasonably considers that the Implementation Plan is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

22. STEP IN RIGHTS

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

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

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

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

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

22.1.5 it is necessary to discharge a statutory duty; or

22.1.6 the Contractor becomes insolvent.

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

22.3 The Step-In Notice shall set out:

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

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

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

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

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

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

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

22.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

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

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

22.4.5 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.

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

22.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and

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

23. TERMINATION

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

- 23.1.8 any event similar to those listed in clauses 23.1.1 to 23.1.7 occurs under the law of any other jurisdiction.
- 23.2 The DFE may terminate the Contract with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:
- 23.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
 - 23.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
 - 23.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
 - 23.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
 - 23.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
 - 23.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
 - 23.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
 - 23.2.8 any event similar to those listed in clauses 23.2.1 to 23.2.7 occurs under the law of any other jurisdiction.
- 23.3 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:
- 23.3.1 being notified that a Change of Control has occurred; or
 - 23.3.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control
- but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 23.4 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:
- 23.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
 - 23.4.2 it is for any reason dissolved;
 - 23.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
 - 23.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;

- 23.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- 23.4.6 any of the following occurs in relation to any of its partners:
 - 23.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - 23.4.6.2 a petition is presented for his bankruptcy;
 - 23.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or
 - 23.4.6.4 any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the law of any other jurisdiction.
- 23.5 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:
 - 23.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
 - 23.5.2 it is for any reason dissolved;
 - 23.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
 - 23.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
 - 23.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
 - 23.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - 23.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 23.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 23.5.9 any event similar to those listed in clauses 23.5.1 to 23.5.8 occurs under the law of any other jurisdiction.
- 23.6 References to the Insolvency Act 1986 in clause 23.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 23.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
 - 23.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within 21 Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
 - 23.7.2 the Default is not, in the opinion of the DFE, capable of remedy; or

- 23.7.3 the Default is a Material Breach.
- 23.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.8.1 the Contractor's warranty in clause 19.1.10 is materially untrue;
 - 23.8.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance;
 - 23.8.3 the Contractor fails to provide details of proposed mitigating factors which, in the DfE's reasonable opinion are acceptable; or
 - 23.8.4 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 23.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
 - 23.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
 - 23.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
- 23.10 If the DFE terminates the Contract under clauses 23.7, 23.8 or 23.9:
- 23.10.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred of making those other arrangements; and
 - 23.10.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 23.
- 23.12 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.
- 23.13 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 unavailability of such costs.
- 23.14 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.
- 23.15 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 90 Business Days of the date of such notice, the Contractor may terminate the Contract in writing with

immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clause 8.6 or to Force Majeure.

23.16 Save as otherwise expressly provided in the Contract:

23.16.1 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

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

24. RETENDERING AND HANDOVER

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

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

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

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

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

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

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

25. EXIT MANAGEMENT

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

25.2 The Contractor will, within 3 months of the Effective Date, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor

to the DFE and/or its Replacement Contractor at the end of the Term (an “Exit Plan”).

- 25.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan .If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the DFE for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.5 If, in performing its obligations under this Clause, the Contractor:
 - 25.5.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or
 - 25.5.2 reasonably incurs additional costs the Parties shall agree a variation of the Charges.
- 25.6 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.
- 25.7 Within one month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 25.8 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Business Days from the date that that request was made.

26. AUDIT

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

27. ENTIRE AGREEMENT

- 27.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.
- 27.2 Nothing in this clause 27 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

28. PARTNERSHIP

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

29. WAIVER

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

30. CHANGE CONTROL

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

31. COUNTERPARTS

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

32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

33. CONFLICTS OF INTEREST

- 33.1 The Contractor shall:
- 33.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and
- 33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 33 as a **"Conflict of Interest"**.
- 33.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 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.

38. DATA PROTECTION

38.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the DFE is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 11 by the DFE and may not be determined by the Contractor.

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

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

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

(a) process that Personal Data only in accordance with Schedule 11, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the DFE before processing the Personal Data unless prohibited by Law;

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

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensure that:

- (v) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 11);
- (vi) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

- a. are aware of and comply with the Contractor's duties under this clause;

- b. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
- c. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the DFE or as otherwise permitted by this Contract; and
- d. have undergone adequate training in the use, care, protection and handling of Personal Data

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

- (i) the DFE or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the DFE;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the DFE in meeting its obligations); and
- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the DFE with respect to the processing of the Personal Data;

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

38.5 Subject to clause 1.6, the Contractor shall notify the DFE immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

38.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the DFE in phases, as details become available.

38.7 Taking into account the nature of the processing, the Contractor shall provide the DFE 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 DFE) including by promptly providing:

- (a) the DFE with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the DFE to enable the DFE to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the DFE, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the DFE following any Data Loss Event;
- (e) assistance as requested by the DFE with respect to any request from the Information Commissioner's Office, or any consultation by the DFE with the Information Commissioner's Office.

38.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than

250 staff, unless:

- (a) the DFE determines that the processing is not occasional;
- (b) the DFE 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 DFE determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

38.9 The Contractor shall allow for audits of its Data Processing activity by the DFE or the DFE's designated auditor.

38.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

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

- (a) notify the DFE in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the DFE;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 38 such that they apply to the Sub-processor; and
- (d) provide the DFE with such information regarding the Sub-processor as the DFE may reasonably require.

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

38.13 The DFE 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).

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

Schedule 3

Financials

1. The DfE shall pay the Contractor the Charges in accordance with the Contract . 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. Indexation shall not apply to the Charges.
3. The Contractor shall be entitled to invoice monthly in arrears for the Charges following the submission of the required monthly Management Information demonstrating the completion of the required milestones for that period for Breakfast Clubs at Annex 1 (Implementation plan and payment schedule) or the milestones for Innovation Projects in the payment schedule to be agreed pursuant to paragraph 5.
4. For the delivery of Breakfast Club Services, the DfE shall pay the Contractor monthly in arrears in accordance with the payment schedule linked to milestones for the delivery of Breakfast Club Services at Annex 1 (Implementation plan and payment schedule).
5. the DfE will pay the Contractor in accordance with the payment schedule for the delivery of Innovation Projects to be agreed through the Programme Steering Board outlined in the Terms of Reference in the appendices at Annex 3.
6. The Contractor shall during the term of the Contract co-operate with the DfE to provide complete and accurate open book financial and non-financial information which is sufficient to enable the DfE to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract, including details and all assumptions relating to, but not limited to:
 - (a) the Contractor's Costs and operating expenditure relating to the provision of the Services;
 - (b) any overhead related costs;
 - (c) the level of profit achieved over the Contract; and
 - (d) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency.

ANNEX 1

Implementation Plan and Payment Schedule

The Contractor shall provide the Services in accordance with the Implementation Plan and Payment Schedule document.

<redacted>

Schedule 4

KPI Performance Standards

- 1 The objectives of the KPI Performance Standards are to:
 - 1.1 ensure that the Services are of a consistently high quality and meet the requirements of the DFE;
 - 1.2 incentivise the Contractor to meet the KPI Performance Standards and to remedy any failure to meet them expeditiously.

KEY PERFORMANCE INDICATOR (KPI) PERFORMANCE STANDARDS

- 2 This schedule 4 sets out the KPI Performance Standards against which the Contractor shall measure its performance.
- 3 The Contractor shall monitor its performance against each of the KPI Performance Standards in Table 1 and send the DFE a report detailing the KPI Performance Standards which were achieved in accordance with the provisions of this schedule 4 in advance of each service review meeting. The Contractor shall also notify the DFE of any failure to comply with the KPI Performance Standards as soon as it becomes aware of the failure and what remedial action it has taken.
- 4 The Contractor must meet the KPI Performance Standards as set out in table 1 below.
- 5 The Contractor confirms that it has taken the KPI Performance Standards into account in calculating the Charges.

Table 1 KPI Performance Standards

KPIs for **Breakfast Club Services** will include the following:

- a. The Minimum Number of Eligible Schools have had Operational Breakfast Clubs for a period of 12 months and sustained provision for six months after contractor support is withdrawn (or a written commitment from the Head teacher that the relevant school will continue to operate provision where support has been withdrawn less than six months before the end of the contract); and
- b. Average pupil attendance at Operational Breakfast Clubs at the Minimum Number of Eligible Schools meets the target of 25% of pupils on roll in primary and secondary schools, and 60% of pupils on roll in special schools and PRUs; and reflects the demographic spread of pupils on roll at a school.

Note: In the event that the Contractor fails to achieve average pupil attendance at 5b above measured at four agreed intervals, DFE may withhold up to 10% of the supplier's charges per school type ie primary/secondary, special schools and PRUs as set out in Annex 2 the Financial Model Template until the attendance levels are achieved.

KPIs for **Innovation Projects** will be agreed with the contractor through the Programme Steering Board (terms of reference in appendices at Annex 3) depending on the final design of the proposals.

Schedule 5

Implementation Plan

1. The Contractor shall provide the Services in accordance with the Implementation Plan set out below.
2. The Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
3. The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Effective Date the Contractor is able to provide the Services:
 - 3.1 in accordance with the provisions of the Contract; and
 - 1.2 in a manner that maintains the continuity of Services to the DFE.
4. The Contractor shall monitor its performance against the Implementation Plan (at Annex 1) and report to the DFE monthly on its performance.
5. The Contractor shall meet the Milestones and activities outlined in the implementation Plan and payment schedule (at Annex 1) in the supply of the Breakfast Club Services.
6. DfE and the contractor will agree milestones and activities for Innovation Projects through the Programme Steering Board (terms of references in appendices at Annex 3)

Schedule 6
Change Control Procedure

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

Change Control Note

:

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

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

Impact on original contract (if applicable)	
Supporting Information (please attach all supporting documentation for this Change Control)	
Terms and Conditions	Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect.
Variation Agreed <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> For the Contractor: Signature..... Full Name..... Title..... Date..... </div> <div style="width: 45%;"> For the DFE: Signature..... Full Name..... Title..... Date..... </div> </div>	

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

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

Schedule 7

Key Personnel and Key Sub Contractors

Key Personnel

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement
██████████	██████████	Contract Term unless otherwise notified to DfE
██████████	██████████	Contract Term unless otherwise notified to DfE

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
Magic Breakfast	Company number 04977015 Charity number 1102510 Registered Address 190 High Holborn, London, WC1V 7BH	Charity providing Breakfast Club services	██████████	Day to day delivery of Breakfast Club Programme in schools

Schedule 8

Security Standards

1. Departmental Security Standards

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

<p>“Data”</p> <p>“Data Controller”</p> <p>“Data Processor”</p> <p>“Personal Data”</p> <p>“Sensitive Personal Data”</p> <p>“Data Subject”, “Process” and “Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Act 1998</p>
<p>“Department’s Data”</p> <p>“Departmental Data”</p> <p>“Department’s Information”</p>	<p>is any data or information owned or retained or provided by Ofsted in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>“DfE”</p> <p>“Department”</p>	<p>means the Department for Education</p>
<p>“Departmental Security Standards”</p>	<p>means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.</p>
<p>“Digital Marketplace / GCloud”</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.</p>
<p>“FIPS 140-2”</p>	<p>this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.</p>
<p>“Good Industry Practice”</p> <p>“Industry Good Practice”</p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>

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

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

- 1.1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2. 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](#) 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.
- 1.3. 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).
- 1.4. 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).
- 1.5. Departmental Data being handled in the course of providing the ICT solution or service must be segregated from other data on the Contractor’s or sub-contractor’s own IT equipment to both protect the Departmental Data and enable it to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 2.14.
- 1.6. 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.
- 1.7. Any electronic transfer methods across public space or cyberspace, including third party provider networks must be protected via encryption which has been certified to a minimum of FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 1.8. 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 2.10 and 2.11 below.

- 1.9. Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- 1.10. All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to a minimum of FIPS140-2 standard or use another encryption standard that is acceptable to the Department.
- 1.11. Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure waste paper organisation.
- 1.12. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.13. At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- 1.14. Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a "need-to-know" and the appropriate level of security clearance, as required by the Department for those individuals whose access is essential for the purpose of their duties. All employees with direct or indirect access to Departmental Data must be subject to pre-employment checks equivalent to or higher than the HMG Baseline Personnel Security Standard (BPSS)
- 1.15. All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.

- 1.16. The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might be, or could lead to, a disruption, loss, emergency or crisis. The Contractor shall verify the ongoing effectiveness of their Business Continuity arrangements and processes including IT disaster recovery plans and procedures, to the extent that the Contractor must have tested/exercised these plans within the last 12 months and produced a written report of the test/exercise, outcome and feedback, including required actions.
- 1.17. Any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, or any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.18. The Contractor shall ensure that any IT systems and hosting environments that are used to hold Departmental Data being handled, stored or processed in the course of providing this service shall be subject to an independent IT Health Check (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.19. The Contractor or sub-contractors providing the service will provide the Department with full details of any actual storage outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management or support function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 1.20. 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.
- 1.21. 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.

Schedule 9

Commercially Sensitive Information

1. All price and budgetary information (for the avoidance of doubt, to include data set out at Schedule 3, budgetary information submitted at bid and clarification stage and in the Contract).
2. All information referring to the Contractor and / or Magic Breakfast's defined model of delivery as detailed within Appendices A, B, D, E and F and the Implementation Plan and supporting Milestones and Payments at Schedule 5.
3. Information comprising the Contractor's and Magic Breakfast's Intellectual Property;
4. The Contractor's business and investment plans as referred to within the Contract, its Schedules and Appendices.
5. Annex 1 Implementation Plan and Payment Schedule.
6. Schedule 10 The Contractors Solution.
7. Annex 3 Clarification of the Contractors Solution and Appendices A-O.

Schedule 10
The Contractor's Solution

<redacted>

ANNEX 2

FINANCIAL MODEL TEMPLATE (COMPLETED BY CONTRACTOR)

The Contractor shall provide the Services in accordance with the costs outlined in the Financial Model Template document (completed by the contractor) and submitted as part of their tender.

<redacted>

ANNEX 3

CLARIFICATION OF CONTRACTOR SOLUTION

<redacted>

APPENDIX A: SCHOOL JOURNEY AND SCHOOL PARTNER VISITS OUTLINE

<redacted>

APPENDIX B: LEGACY AND SUSTAINABILITY PLAN

<redacted>

APPENDIX C: PARTNERSHIP AGREEMENT

<redacted>

APPENDIX D: RECRUITMENT VISIT FORM

<redacted>

APPENDIX E: ADDITIONAL GRANTS DECISION TREE AND NOTES

<redacted>

APPENDIX F: SCHOOL EXPRESSION OF INTEREST FORM

<redacted>

APPENDIX G: BREAKFAST FOOD NUTRITIONAL INFORMATION

<redacted>

APPENDIX H: QUICK GUIDE TO HEALTHY BREAKFASTS AND SCHOOL FOOD STANDARDS

<redacted>

APPENDIX I: FURTHER DETAIL ON INNOVATION PROJECTS

<redacted>

APPENDIX J: MANAGEMENT INFORMATION

<redacted>

**APPENDIX K: INDICATIVE TERMS OF REFERENCE FOR BREAKFAST CLUB
PROGRAMME STEERING BOARD**

<redacted>

APPENDIX L: RECRUITMENT AND NEEDS ASSESSMENT OF SCHOOLS

<redacted>

APPENDIX M: SCHOOL ACTION PLAN TEMPLATE

<redacted>

APPENDIX N: FURTHER BREAKDOWN OF COSTS

<redacted>

APPENDIX O – OUTCOMES FRAMEWORK

The Contractor shall provide the Services in accordance with the Outcomes Framework document.

<redacted>

Schedule 11

Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions with respect to processing by the DfE.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Breakfast club services at a school
Duration of the processing	The Term of the Contract
Nature and purposes of the processing	<p>Family Action may undertake processing of the following nature:</p> <p>Collection, recording, analysing, organising, structuring, storing, adapting and altering, retrieving, consulting, using, disclosing by transmission, dissemination or otherwise making available, restricting, erasing or destroying (whether or not by automated means) the data set out herein.</p> <p>The purpose of processing will be:</p> <ul style="list-style-type: none">• employment processing• recruitment assessment• statutory obligation• contractual obligation• safeguarding• internal reporting within Family Action• reporting to Key Subcontractors• compliance with reporting obligations to the DfE under the terms of this Contract• evaluation of Breakfast Clubs and Innovation Project• day to day operation and administration of Breakfast Clubs and Innovation Project.
Type of Personal Data	<ul style="list-style-type: none">• Employment and payroll data• Data required for DBS checks

	<p>where appropriate</p> <ul style="list-style-type: none"> • Pupil and school case studies. May include reference to information concerning individual's and family physical and mental health, family make-up and family life. • School point of contact details, name, job title, email address, contact number • Surveys to schools (either Headteacher, named Breakfast Club coordinator, Teacher) to capture perceived impact of the provision (telephone number and email address of that contact). • Names of Attendees at regional and best practice events, school, email address and telephone number, feedback survey. • satisfaction survey data from schools, parents/carers and pupils. • Anonymised pupil information (age, gender, Free School Meal eligibility, school, address, unique reference number, attendance at breakfast clubs).
Categories of Data Subject	Contractor Staff (including volunteers, agents, and temporary workers), school staff, pupils, parents/ carers.
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	Family Action will / will ensure the secure destruction or storage of any data that is no longer required once the processing is complete, subject to any statutory, regulatory or contractual requirements.

