

# Order Form

**Project\_5228**

THE BUYER: **Department for Education**

BUYER ADDRESS Department for Education, Sanctuary Buildings  
Great Smith Street, London, SW1P 3BT

THE SUPPLIER: **The Education and Training Foundation**

SUPPLIER ADDRESS: 157-197 Buckingham Palace Road, London  
SW1W 9SZ

REGISTRATION NUMBER: Company Registration Number: 08540597  
Charity Number: 1153859

DUNS NUMBER: 219436779

This Order Form, when completed and executed by both Parties, forms an Order Contract. This Order Form is for the provision of the Deliverables and dated **1<sup>st</sup> March 2022**. It's issued under the DPS Contract with the reference number RM6172 for the provision of Grant Administration Services.

DPS FILTER CATEGORY(IES): LOT 6 – Full Programme Management

## ORDER INCORPORATED TERMS

1. This Order Form including the Order Special Terms and Order Special Schedules.
2. Joint Schedule 1 (Definitions and Interpretation) **RM6172**
3. The following Schedules in equal order of precedence:

### Joint Schedules for **RM6172**

- Joint Schedule 1 (Definitions)
- Joint Schedule 2 (Variation Form)
- Joint Schedule 3 (Insurance Requirements)
- Joint Schedule 4 (Commercially Sensitive Information)
- Joint Schedule 10 (Rectification Plan)
- Joint Schedule 11 (Processing Data)

### Order Schedules for **RM6172**

- Order Schedule 1 (Transparency Reports)
- Order Schedule 2 (Staff Transfer)

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- Order Schedule 3 (Continuous Improvement)
- Order Schedule 4 (Order Tender)
- Order Schedule 5 (Pricing Details)
- Annex 1** (Grant Funding Agreement)
- Order Schedule 6 (ICT Services)
- Order Schedule 7 (Key Supplier Staff)
- Order Schedule 8 (Business Continuity and Disaster Recovery)
- Order Schedule 9 (Security)
- Order Schedule 10 (Exit Management)
- Order Schedule 13 (Implementation Plan and Testing)
- Order Schedule 14 (Service Levels)
- Order Schedule 15 (Order Contract Management)
- Order Schedule 16 (Benchmarking)

#### 4. CCS Core Terms (DPS version) v1.0.1

No other Supplier terms are part of the Order Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

ORDER START DATE: **1<sup>st</sup> March 2022**

ORDER EXPIRY DATE: **28<sup>th</sup> February 2023**

ORDER INITIAL PERIOD: **1 Year**

The contract is for a period of up to 3 years, based on an 1+1+1 contracting arrangement with an option to extend for a further period of 2 years.

Minimum written notice to supplier in respect of extension: 1 month.

#### DELIVERABLES

See details in Order Schedule 4 (Order Tender) and Order Schedule 14 (Service Levels).

#### MAXIMUM LIABILITY

The limitation of liability for this Order Contract is stated in Clause 11.2 of the Core Terms.

The Maximum Estimated Year 1 Charges used to calculate liability in the first Contract Year is £343,764.13.

#### ORDER CHARGES

See details in Order Schedule 5 (Pricing Details)

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The administrative cost of the programme will be governed by this call off contract. The transfer of the Taking Teaching Further Funds will be governed by an independent Grant Funding Agreement that will be signed between the parties and the JAGGAER project reference linked as an Annex to this contract.

The Charges will not be impacted by any change to the DPS Pricing. The Charges can only be changed by agreement in writing between the Buyer and the Supplier because of:

- Indexation
- Specific Change in Law
- Benchmarking using Order Schedule 16 (Benchmarking)

#### REIMBURSABLE EXPENSES

None

#### PAYMENT METHOD

BACS

See Detail in Order Schedule 5 (Pricing Details) regarding frequency of payments.

#### BUYER'S INVOICE ADDRESS:

Redacted

#### BUYER'S AUTHORISED REPRESENTATIVE

Redacted

#### BUYER'S SECURITY POLICY

**Security Policy Framework** May 2018 available online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/710816/HMG-Security-Policy-Framework-v1.1.doc.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/710816/HMG-Security-Policy-Framework-v1.1.doc.pdf)

#### SUPPLIER'S AUTHORISED REPRESENTATIVE

Redacted

#### SUPPLIER'S CONTRACT MANAGER

Redacted

#### PROGRESS MEETING FREQUENCY

**Mobilisation Period:** Weekly, to be held, where possible, on the first Working Day of each week

**Post Mobilisation Period:** Fortnightly, to be held, where possible, on the first Working Day of each relevant fortnight

#### PROGRESS REPORT FREQUENCY

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Quarterly on the first Working Day of each quarter

#### KEY STAFF

Department for Education

**Redacted**

#### KEY SUBCONTRACTOR(S)

Not Applicable

#### E-AUCTIONS

Not applicable

#### COMMERCIALLY SENSITIVE INFORMATION

See details in Joint Schedule 4 (Commercially Sensitive Information).

#### SERVICE CREDITS

Not applicable

#### ADDITIONAL INSURANCES

Not applicable

#### GUARANTEE











Not applicable

#### SOCIAL VALUE COMMITMENT

The Supplier agrees, in providing the Deliverables and performing its obligations under the Order Contract, that it will comply with the social value commitments in Order Schedule 4 (Order Tender)]

#### CONTRACT SCHEDULES

##### Invitation to Tender Pack

 01. Invitation to Tender - Taking Teach	 02. Annex 1 - Award Criteria .docx	 03. Annex 2 - Pricing Schedule (Document	 04. Annex 3 - Award Questions (Document	 05. Annex 4 - Key Performance Indicato	 06. Annex 5 - Payment Plan Guidan
 07. Annex 6 - Terms of Participation (Docu	 08. Annex 7 - Declaration of Confid	 09. Annex 8 - Financial Viability Risk	 10. Annex 9 - TTF FE provider process fl		

#### CCS CORE TERMS (DPS VERSION) V1.0.1

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DPS Core Terms  
v1.0.1.pdf

For and on behalf of the Supplier:		For and on behalf of the Buyer:	
Signature:	Redacted	Signature:	
Name:		Name:	
Role:		Role:	
Date:	21 <sup>st</sup> March 2022	Date:	

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## Joint Schedule 1 (Definitions)

1.1 In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.

1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.3 In each Contract, unless the context otherwise requires:

1.3.1 the singular includes the plural and vice versa; 1.3.2 reference to a gender includes the other gender and the neuter; 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";

1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references

to present and future facts and to "**undertakings**" as references to obligations under the Contract;

1.3.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;

1.3.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;

1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;

1.3.11 the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract; and 1.3.12 where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole.

1.4 In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

" <b>Achieve</b> "	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " <b>Achieved</b> ", " <b>Achieving</b> " and " <b>Achievement</b> " shall be construed accordingly;
" <b>Additional Insurances</b> "	insurance requirements relating to an Order Contract specified in the Order Form additional to those outlined in Joint Schedule 3 (Insurance Requirements);
" <b>Admin Fee</b> "	means the costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the CCS on: <a href="http://CCS.cabinetoffice.gov.uk/i-amsupplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-amsupplier/management-information/admin-fees</a> ;
" <b>Affected Party</b> "	the party seeking to claim relief in respect of a Force Majeure Event;

<b>"Affiliates"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Annex"</b>	extra information which supports a Schedule;
<b>"Approval"</b>	the prior written consent of the Buyer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Audit"</b>	<p>the Relevant Authority's right to:</p> <ul style="list-style-type: none"> <li>a) verify the accuracy of the Charges and any other amounts payable by a Buyer under an Order Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;</li> <li>c) verify the Open Book Data;</li> <li>d) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</li> <li>e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Joint Schedule 5 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> </ul>
	<ul style="list-style-type: none"> <li>f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>g) obtain such information as is necessary to fulfil the Relevant Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract;</li> <li>i) carry out the Relevant Authority's internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts;</li> <li>j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Relevant</li> </ul>



	<p>Authority has used its resources;</p> <p>k) verify the accuracy and completeness of any Management Information delivered or required by the DPS Contract;</p>
<b>"Auditor"</b>	<p>a) the Buyer's internal and external auditors;</p> <p>b) the Buyer's statutory or regulatory auditors;</p> <p>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>d) HM Treasury or the Cabinet Office;</p> <p>e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> <p>f) successors or assigns of any of the above;</p>
<b>"Authority"</b>	CCS and each Buyer;
<b>"Authority Cause"</b>	any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier;
<b>"BACS"</b>	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"/ "Department"</b>	the relevant public sector purchaser identified as such in the Order Form;
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Order Contract initially identified in the Order Form;
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);

<b>"CCS"</b>	the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"CCS Authorised Representative"</b>	the representative appointed by CCS from time to time in relation to the DPS Contract initially identified in the DPS Appointment Form and subsequently on the Platform;
<b>"Central Government Body"</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:  Government Department;  Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);  Non-Ministerial Department; or  Executive Agency;
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Order Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Order Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in the DPS Appointment Form or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are  the same or similar to the Deliverables;

<b>"Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<b>"Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of CCS, the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as <b>"confidential"</b> ) or which ought reasonably to be considered to be confidential;
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to CCS or any Buyer under a Contract, in the reasonable opinion of the Buyer or CCS;
<b>"Contract"</b>	either the DPS Contract or the Order Contract, as the context requires;
<b>"Contracts Finder"</b>	the Government's publishing portal for public sector procurement opportunities;
<b>"Contract Period"</b>	the term of either a DPS Contract or Order Contract from the earlier of the: a) applicable Start Date; or b) the Effective Date until the applicable End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under a Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
<b>"Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;
<b>"Controller"</b>	has the meaning given to it in the GDPR;
<b>"Core Terms"</b>	CCS' standard terms and conditions for common goods and services which govern how Supplier must interact with CCS and Buyers under DPS Contracts and Order Contracts;
<b>"Costs"</b>	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables: a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Man Day, of engaging the Supplier Staff, including:

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	<p>i) base salary paid to the Supplier Staff; ii) employer's National Insurance contributions; iii) pension contributions; iv) car allowances;</p> <p>v) any other contractual employment benefits;</p> <p>vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</p> <p>ix) reasonable recruitment costs, as agreed with the Buyer;</p> <p>b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables;</p> <p>d) Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any Deliverables;</p> <p>but excluding:</p> <p>a) Overhead;</p> <p>b) financing or similar costs;</p> <p>c) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Order Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>d) taxation;</p> <p>e) fines and penalties;</p> <p>f) amounts payable under Order Schedule 16 (Benchmarking) where such Schedule is used; and</p> <p>g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
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<b>"Crown Body"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers and government departments
	and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>"Data Protection Legislation"</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 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;
<b>"Data Protection Officer"</b>	has the meaning given to it in the GDPR;
<b>"Data Subject"</b>	has the meaning given to it in the GDPR;
<b>"Data Subject Access Request"</b>	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;
<b>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under an Order Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority;
<b>"Default Management Levy"</b>	has the meaning given to it in Paragraph 8.1.1 of DPS Schedule 5 (Management Levy and Information);
<b>"Delay Payments"</b>	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Mobilisation Plan;

<b>"Deliverables"</b>	Goods and/or Services that may be ordered under the Contract including the Documentation;
<b>"Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of an Order Contract as confirmed and accepted by the Buyer by either (a) confirmation in writing to the Supplier; or (b) where Order Schedule 13 (Implementation Plan and Testing) is used, issue by the Buyer of a Satisfaction Certificate. <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Disaster"</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Order Form (for the purposes of this definition the <b>"Disaster Period"</b> );
<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 34 (Resolving disputes);
<b>"Documentation"</b>	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under a Contract as:</p> <ul style="list-style-type: none"> <li>a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables;</li> <li>b) is required by the Supplier in order to provide the Deliverables; and/or</li> </ul> <p>has been or shall be generated for the purpose of providing the Deliverables;</p>

<b>"DOTAS"</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter 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;
<b>"DPA 2018"</b>	a) the Data Protection Act 2018;
<b>"DPS"</b>	the dynamic purchasing system operated by CCS in accordance with Regulation 34 that this DPS Contract governs access to;
<b>"DPS Application"</b>	the application submitted by the Supplier to CCS and annexed to or referred to in DPS Schedule 2 (DPS Application);
<b>"DPS Appointment Form"</b>	the document outlining the DPS Incorporated Terms and crucial information required for the DPS Contract, to be executed by the Supplier and CCS and subsequently held on the Platform;
<b>"DPS Contract"</b>	the dynamic purchasing system access agreement established between CCS and the Supplier in accordance with Regulation 34 by the DPS Appointment Form for the provision of the Deliverables to Buyers by the Supplier pursuant to the OJEU Notice;
<b>"DPS Contract Period"</b>	the period from the DPS Start Date until the End Date or earlier termination of the DPS Contract;
<b>"DPS Expiry Date"</b>	the date of the end of the DPS Contract as stated in the DPS Appointment Form;
<b>"DPS Incorporated Terms"</b>	the contractual terms applicable to the DPS Contract specified in the DPS Appointment Form;
<b>"DPS Initial Period"</b>	the initial term of the DPS Contract as specified in the DPS Appointment Form;
<b>"DPS Optional Extension Period"</b>	such period or periods beyond which the DPS Initial Period may be extended up to a maximum of the number of years in total specified in the DPS Appointment Form;
<b>"DPS Pricing"</b>	the maximum price(s) applicable to the provision of the Deliverables set out in DPS Schedule 3 (DPS Pricing);
<b>"DPS Registration"</b>	the registration process a Supplier undertakes when submitting its details onto the Platform;
<b>"DPS SQ Submission"</b>	the Supplier's selection questionnaire response;

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<b>"DPS Special Terms"</b>	any additional terms and conditions specified in the DPS Appointment Form incorporated into the DPS Contract;
<b>"DPS Start Date"</b>	the date of start of the DPS Contract as stated in the DPS Appointment Form;
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Authority prior to the Start Date;
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract;
<b>"EIR"</b>	the Environmental Information Regulations 2004;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;
<b>"End Date"</b>	the earlier of: a) the Expiry Date (as extended by any Extension Period exercised by the Authority under Clause 10.2); or if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract;
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and
	minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
<b>"Estimated Year 1 Contract Charges"</b>	the anticipated total charges payable by the Supplier in the first Contract Year specified in the Order Form; a)
<b>"Estimated Yearly Charges"</b>	means for the purposes of calculating each Party's annual liability under clause 11.2 : i) in the first Contract Year, the Estimated Year 1 Contract Charges; or ii) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or  iii) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;

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<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
<b>"Expiry Date"</b>	the DPS Expiry Date or the Order Expiry Date (as the context dictates);
<b>"Extension Period"</b>	the DPS Optional Extension Period or the Order Optional Extension Period as the context dictates;
<b>"Filter Categories"</b>	the number of categories specified in DPS Schedule 1 (Specification), if applicable;
<b>"FOIA"</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	<p>any event, occurrence, circumstance, matter or cause affecting the performance by either the Relevant Authority or the Supplier of its obligations arising from:</p> <p>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;</p> <p>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p>
	<p>c) acts of a Crown Body, local government or regulatory bodies;</p> <p>d) fire, flood or any disaster; or</p> <p>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <p>i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</p> <p>any failure of delay caused by a lack of funds;</p>

<b>"Force Majeure Notice"</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>"GDPR"</b>	i) the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"General Anti-Abuse Rule"</b>	b) the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;
<b>"General Change in Law"</b>	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Goods"</b>	a) goods made available by the Supplier as specified in DPS Schedule 1 (Specification) and in relation to an Order Contract as specified in the Order Form;
<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector;
<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Data"</b>	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority's Confidential Information, and which:  i) are supplied to the Supplier by or on behalf of the Authority; or
	the Supplier is required to generate, process, store or transmit pursuant to a Contract;
<b>"Government Procurement Card"</b>	the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/governmentprocurement-card--2">https://www.gov.uk/government/publications/governmentprocurement-card--2</a> ;
<b>"Guarantor"</b>	i) the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (Guarantee) in relation to this Contract;

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<b>"Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	Her Majesty's Revenue and Customs;
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Order Form, which is in force as at the Order Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>"Impact Assessment"</b>	<p>an assessment of the impact of a Variation request by the Relevant Authority completed in good faith, including:</p> <ul style="list-style-type: none"> <li>a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</li> <li>b) details of the cost of implementing the proposed Variation;</li> <li>c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the DPS Pricing/Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> </ul> <p>such other information as the Relevant Authority may reasonably request in (or in response to) the Variation request;</p>
<b>"Implementation Plan"</b>	the plan for provision of the Deliverables set out in Order Schedule 13 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
<b>"Indemnifier"</b>	a) a Party from whom an indemnity is sought under this Contract;
<b>"Independent Control"</b>	<p>where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and</p> <p><b>"Independent Controller"</b> shall be construed accordingly;</p>
<b>"Indexation"</b>	the adjustment of an amount or sum in accordance with DPS Schedule 3 (DPS Pricing) and the relevant Order Form;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;

<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>"Initial Period"</b>	the initial term of a Contract specified on the Platform or the Order Form, as the context requires;
<b>"Insolvency Event"</b>	<p>in respect of a person:</p> <p>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; or c) 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); or</p> <p>d) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working 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; or</p> <p>e) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>f) 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; or</p> <p>g) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>h) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>i) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>

<b>"Installation Works"</b>	all works which the Supplier is to carry out at the beginning of the Order Contract Period to install the Goods in accordance with the Order Contract;
<b>"Intellectual Property Rights" or "IPR"</b>	a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or

	business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights having equivalent or similar effect in any country or jurisdiction;
<b>"Invoicing Address"</b>	the address to which the Supplier shall Invoice the Buyer as specified in the Order Form;
<b>"IPR Claim"</b>	a) any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract;
<b>"IR35"</b>	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Relevant Authority and the Supplier substantially in the form set out in Annex 2 of Joint Schedule 11 ( <i>Processing Data</i> );
<b>"Joint Controllers"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Key Personnel"</b>	the individuals (if any) identified as such in the Order Form;
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;

<b>"Key Subcontractor"</b>	<p>any Subcontractor:</p> <ul style="list-style-type: none"> <li>which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</li> <li>which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</li> <li>with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Order</li> </ul> <p>Contract, and the Supplier shall list all such Key Subcontractors on the Platform and in the Key Subcontractor Section in the Order Form;</p>
<b>"Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;
<b>"Law"</b>	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 relevant Party is bound to comply;
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680);
<b>"Losses"</b>	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and " <b>Loss</b> " shall be interpreted accordingly;
<b>"Man Day"</b>	7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Man Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Management Information"</b>	the management information specified in DPS Schedule 5 (Management Levy and Information);

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<b>"Management Levy"</b>	the sum specified on the Platform payable by the Supplier to CCS in accordance with DPS Schedule 5 (Management Levy and Information);
<b>"Marketing Contact"</b>	shall be the person identified in the DPS Appointment Form;
<b>"MI Default"</b>	means when two (2) MI Reports are not provided in any rolling six (6) month period;
<b>"MI Failure"</b>	means when an MI report: <ul style="list-style-type: none"> <li>a) contains any material errors or material omissions or a missing mandatory field; or</li> <li>b) is submitted using an incorrect MI reporting Template; or</li> </ul> is not submitted by the reporting date (including where a declaration of no business should have been filed);
<b>"MI Report"</b>	means a report containing Management Information submitted to the Authority in accordance with DPS Schedule 5 (Management Levy and Information);
<b>"MI Reporting Template"</b>	a) means the form of report set out in the Annex to DPS Schedule 5 (Management Levy and Information) setting out the information the Supplier is required to supply to the Authority;
<b>"Milestone"</b>	an event or task described in the Mobilisation Plan;
<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Mobilisation Plan by which the Milestone must be Achieved;
<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"National Insurance"</b>	contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

<b>"New IPR"</b>	<p>IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same; but shall not include the Supplier's Existing IPR;</p>
<b>"Occasion of Tax Non – Compliance"</b>	<p>where:</p> <ul style="list-style-type: none"> <li>a) any tax return of the Supplier 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: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction 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 Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> </ul> <p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which 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 Start Date or to a civil penalty for fraud or evasion;</p>
<b>"Open Book Data"</b>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Order Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;</li> <li>operating expenditure relating to the provision of the Deliverables including an analysis showing: <ul style="list-style-type: none"> <li>i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>ii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency)</li> </ul> </li> </ul>

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	<p>together with a list of agreed rates against each manpower grade;</p> <p>ii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</p> <p>v) Reimbursable Expenses, if allowed under the Order Form;</p> <p>c) Overheads;</p> <p>all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</p> <p>the Supplier Profit achieved over the DPS Contract Period and on an annual basis;</p> <p>confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</p> <p>the actual Costs profile for each Service Period;</p>
<b>"Order"</b>	a) means an order for the provision of the Deliverables placed by a Buyer with the Supplier under a Contract;
<b>"Order Contract"</b>	b) the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the DPS Contract), which consists of the terms set out and referred to in the Order Form;
<b>"Order Contract Period"</b>	the Contract Period in respect of the Order Contract;
<b>"Order Expiry Date"</b>	the date of the end of an Order Contract as stated in the Order Form;
<b>"Order Form"</b>	a completed Order Form Template (or equivalent information issued by the Buyer) used to create an Order Contract;
<b>"Order Form Template"</b>	the template in DPS Schedule 6 (Order Form Template and Order Schedules);
<b>"Order Incorporated Terms"</b>	the contractual terms applicable to the Order Contract specified under the relevant heading in the Order Form;
<b>"Order Initial Period"</b>	the Initial Period of an Order Contract specified in the Order Form;

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<b>"Order Optional Extension Period"</b>	such period or periods beyond which the Order Initial Period may be extended up to a maximum of the number of years in total specified in the Order Form;
<b>"Order Procedure"</b>	the process for awarding an Order Contract pursuant to Clause 2 (How the contract works) and DPS Schedule 7 (Order Procedure);
<b>"Order Special Terms"</b>	any additional terms and conditions specified in the Order Form incorporated into the applicable Order Contract;
<b>"Order Start Date"</b>	the date of start of an Order Contract as stated in the Order Form;
<b>"Order Tender"</b>	the tender submitted by the Supplier in response to the Buyer's Statement of Requirements following an Order Procedure and set out at Order Schedule 4 (Order Tender);
<b>"Other Contracting Authority"</b>	any actual or potential Buyer under the DPS Contract;
<b>"Overhead"</b>	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
<b>"Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>"Party"</b>	in the context of the DPS Contract, CCS or the Supplier, and in the in the context of an Order Contract the Buyer or the Supplier. "Parties" shall mean both of them where the context permits;
<b>"Performance Indicators" or "PIs"</b>	the performance measurements and targets in respect of the Supplier's performance of the DPS Contract set out in DPS Schedule 4 (DPS Management);
<b>"Personal Data"</b>	has the meaning given to it in the GDPR;
<b>"Personal Data Breach"</b>	has the meaning given to it in the GDPR;
<b>"Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of a Party and/or of any Subcontractor and/or Subprocessor engaged in the performance of its obligations under a Contract;

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<b>“Platform”</b>	the online application operated on behalf of CCS to facilitate the technical operation of the DPS;
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistleblower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-listof-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-listof-prescribed-people-and-bodies</a> ;
<b>“Processing”</b>	has the meaning given to it in the GDPR;
<b>“Processor”</b>	has the meaning given to it in the GDPR;
<b>“Processor Personnel”</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Meeting Frequency"</b>	the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Order Form;
<b>“Progress Report”</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>“Progress Report Frequency”</b>	the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Order Form;

<b>“Prohibited Acts”</b>	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <p>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 each Contract; or</p> <p>c) committing any offence:</p> <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</li> </ul>
<b>“Protective Measures”</b>	appropriate technical and organisational measures which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in DPS Schedule 9 (Cyber Essentials), if applicable, in the case of the DPS Contract or Order Schedule 9 (Security), if applicable, in the case of an Order Contract;
<b>“Recall”</b>	a) a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the right IPR rights) that might endanger health or hinder performance;
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>“Recruit”</b>	Trainee who is in post as reported by the FE Provider;

<b>"Rectification Plan"</b>	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Joint Schedule 10 (Rectification Plan Template) which shall include:</p> <ul style="list-style-type: none"> <li>a) full details of the Default that has occurred, including a root cause analysis;</li> <li>b) the actual or anticipated effect of the Default; and</li> </ul> <p>the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);</p>
<b>"Rectification Plan Process"</b>	the process set out in Clause 10.4.3 to 10.4.5 (Rectification Plan Process);
<b>"Regulations"</b>	a) the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
<b>"Reimbursable Expenses"</b>	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> <li>a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</li> </ul>
<b>"Relevant Authority"</b>	the Authority which is party to the Contract to which a right or obligation is owed, as the context requires;
<b>"Relevant Authority's Confidential Information"</b>	<ul style="list-style-type: none"> <li>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR);</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority's attention or into the Relevant Authority's possession in connection with a Contract; and</li> <li>c) information derived from any of the above;</li> </ul>

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<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Reminder Notice"</b>	a notice sent in accordance with Clause 10.6 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables following the Order Expiry Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Subcontractor"</b>	a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
<b>"Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>"Request For Information"</b>	a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Insurances"</b>	the insurances required by Joint Schedule 3 (Insurance Requirements) or any additional insurances specified in the Order Form;
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in Part B of Order Schedule 13 (Implementation Plan and Testing) or as agreed by the Parties where Order Schedule 13 is not used in this Contract) granted by the Buyer when the Supplier has met all of the requirements of an Order, Achieved a Milestone or a Test;
<b>"Schedules"</b>	any attachment to a DPS or Order Contract which contains important information specific to each aspect of buying and selling;
<b>"Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to Order Schedule 9 (Security) (if applicable);

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<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Order Form, in force as at the Order Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Self Audit Certificate"</b>	means the certificate in the form as set out in DPS Schedule 8 (Self Audit Certificate);
<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under the Order Contract (which, where Order Schedule 14 (Service Credits) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>"Service Period"</b>	has the meaning given to it in the Order Form;
<b>"Services"</b>	services made available by the Supplier as specified in DPS Schedule 1 (Specification) and in relation to an Order Contract as specified in the Order Form;
<b>"Service Transfer"</b>	any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer;
<b>"Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: a) the Deliverables are (or are to be) provided; or the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
<b>"Special Terms"</b>	a) any additional Clauses set out in the DPS Appointment Form or Order Form which shall form part of the respective Contract;
<b>"Specific Change in Law"</b>	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;

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<b>"Specification"</b>	the specification set out in DPS Schedule 1 (Specification), as may, in relation to an Order Contract, be supplemented by the Order Form;
<b>"Standards"</b>	any: standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; standards detailed in the specification in DPS Schedule 1 (Specification);
	c) standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time; relevant Government codes of practice and guidance applicable from time to time;
<b>"Start Date"</b>	in the case of the DPS Contract, the date specified on the DPS Appointment Form, and in the case of an Order Contract, the date specified in the Order Form;
<b>"Statement of Requirements"</b>	a) a statement issued by the Buyer detailing its requirements in respect of Deliverables issued in accordance with the Order Procedure;
<b>"Storage Media"</b>	the part of any device that is capable of storing and retrieving data;
<b>"Sub-Contract"</b>	any contract or agreement (or proposed contract or agreement), other than an Order Contract or the DPS Contract, pursuant to which a third party: provides the Deliverables (or any part of them); provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
<b>"Subcontractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Subprocessor"</b>	a) any third party appointed to process Personal Data on behalf of that Processor related to a Contract;



<b>"Supplier"</b>	the person, firm or company identified in the DPS Appointment Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Order Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the DPS Appointment Form, or later defined in an Order Contract;
<b>"Supplier's Confidential Information"</b>	<p>any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</p> <p>any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with a Contract;</p> <p>Information derived from any of (a) and (b) above;</p>
<b>"Supplier's Contract Manager"</b>	the person identified in the Order Form appointed by the Supplier to oversee the operation of the Order Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
<b>"Supplier Equipment"</b>	a) the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Order Contract;
<b>"Supplier Non-Performance"</b>	<p>where the Supplier has failed to:</p> <ul style="list-style-type: none"> <li>· Achieve a Milestone by its Milestone Date;</li> <li>· provide the Goods and/or Services in accordance with the Service Levels ; and/or comply with an obligation under a Contract;</li> </ul>
<b>"Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of an Order Contract for the relevant period;

<b>"Supplier Profit Margin"</b>	a) in relation to a period or a Milestone (as the context requires), the  Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of Joint Schedule 12 (Supply Chain Visibility);
<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Order Contract detailed in the information are properly payable;
<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in an Order Contract;
<b>"Test Plan"</b>	a plan: a) for the Testing of the Deliverables; and setting out other agreed criteria related to the achievement of Milestones;
<b>"Tests and Testing"</b>	any tests required to be carried out pursuant to an Order Contract as set out in the Test Plan or elsewhere in an Order Contract and <b>"Tested"</b> shall be construed accordingly;
<b>"Third Party IPR"</b>	a) Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>"Transferring Supplier Employees"</b>	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;

<b>"Transparency Information"</b>	the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for –  (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Relevant Authority; and  (ii) Commercially Sensitive Information;
<b>"Transparency Reports"</b>	the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Order Schedule 1 (Transparency Reports);
<b>"Variation"</b>	has the meaning given to it in Clause 24 (Changing the contract);
<b>"Variation Form"</b>	the form set out in Joint Schedule 2 (Variation Form);
<b>"Variation Procedure"</b>	the procedure set out in Clause 24 (Changing the contract);
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Worker"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables; and
<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Order Form.

## Joint Schedule 2 (Variation Form)

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

Contract Details		
This variation is between:	<b>Buyer ("the Buyer")</b> And <b>[insert name of Supplier] ("the Supplier")</b>	
Contract name:	<b>[insert name of contract to be changed] ("the Contract")</b>	
Contract reference number:	<b>[insert contract reference number]</b>	
Details of Proposed Variation		
Variation initiated by:	<b>[delete as applicable: Buyer/Supplier]</b>	
Variation number:	<b>[insert variation number]</b>	
Date variation is raised:	<b>[insert date]</b>	
Proposed variation		
Reason for the variation:	<b>[insert reason]</b>	
An Impact Assessment shall be provided within:	<b>[insert number] days</b>	
Impact of Variation		
Likely impact of the proposed variation:	<b>[Supplier to insert assessment of impact]</b>	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> <li>• <b>[Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]</b></li> </ul>	
Financial variation:	Original Contract Value:	£ <b>[insert amount]</b>
	Additional cost due to variation:	£ <b>[insert amount]</b>
	New Contract value:	£ <b>[insert amount]</b>

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1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[Buyer]**
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation. Signed by an authorised signatory for and on behalf of the **[Buyer]**

Signature

Date

Name (in  
Capitals)

Address

---

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

Signature

Date

Name (in  
Capitals)

Address

# Joint Schedule 3 (Insurance Requirements)

## 1. The insurance you need to have

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

## 2. How to manage the insurance

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

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

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Relevant Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

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

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

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

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

### **6. Cancelled Insurance**

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

### **7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables,

the Supplier shall cooperate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 7.2 Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX: REQUIRED INSURANCES**

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



## Joint Schedule 4 (Commercially Sensitive Information)

### 1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1	01/03/2022	All names of Supplier's Staff and Personnel	No end date
2	01/03/2022	All job titles and descriptions of Supplier's Staff and Personnel	No end date
3	01/03/2022	All references to current or past work experience of Supplier's Staff and Personnel which could potentially enable to identification of individuals	No end date
4	01/03/2022	All pricing and financial information	No end date

## Joint Schedule 10 (Rectification Plan)

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

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

# Joint Schedule 11 (Processing Data)

## Status of the Controller

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA. A Party may act as:
  - (a) “Controller” in respect of the other Party who is “Processor”
  - (b) “Processor” in respect of the other Party who is “Controller”
  - (c) “Joint Controller” with the other Party
  - (d) “Independent Controller” of the Personal Data where their other Party is also “Controller”

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

## Where one Party is Controller and the other Party its Processor

2. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
3. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
4. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged Processing and the purpose of the Processing
  - (b) an assessment of the necessity and proportionality of the Processing 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
5. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:

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- (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*) unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law
- (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
  - (i) nature of the data to be protected
  - (ii) harm that might result from a Personal Data Breach
  - (iii) state of technological development, and
  - (iv) cost of implementing any measures
- (c) ensure that:
  - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*))
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*)
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub processor
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the 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 Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller
  - (ii) the Data Subject has enforceable rights and effective legal remedies

- (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations), and
    - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data, and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
6. Subject to paragraph 7 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract 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 the 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 Personal Data Breach
7. The Processor's obligation to notify under paragraph 6 of this Joint Schedule 11 shall include the provision of further information to the Controller, as details become available.
8. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- (a) the Controller with full details and copies of the complaint, communication or request
  - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation

- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject
  - (d) assistance as requested by the Controller following any Personal Data Breach and/or
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional
  - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR, or
  - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
10. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
11. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
12. Before allowing any Sub processor to Process any Personal Data related to the Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub processor and Processing
  - (b) obtain the written consent of the Controller
  - (c) enter into a written agreement with the Sub processor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Sub processor, and
  - (d) provide the Controller with such information regarding the Sub processor as the Controller may reasonably require.
13. The Processor shall remain fully liable for all acts or omissions of any of its Sub processors.
14. The Relevant Authority may, at any time on not less than 30 Working Days' notice, revise this Joint Schedule 11 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 the Contract).

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

### Annex 1 - Processing Personal Data

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

- 1.1.1.1. The contact details of the Relevant Authority's Data Protection Officer are: **Redacted**
- 1.1.1.2. The contact details of the Supplier's Data Protection Officer are: **Redacted**
- 1.1.1.3. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.1.1.4. Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor.
Duration of the Processing	The data to be processed is regarding FE Providers wishing to receive funding from the Taking Teaching Further Programme.
Nature and purposes of the Processing	Duration of processing between 01.03.2022 to 30.08.2024
Type of Personal Data	These are FE Providers: <ul style="list-style-type: none"><li>• Name of grant contact/ authorised representative</li><li>• Email addresses for grant contact/ authorised representative</li><li>• New teacher Applicant Name</li></ul>
Categories of Data Subject	The categories of data subject will include:  FE Provider employees.

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<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Union or Member State law to preserve that type of data</p>	<p>The data will be retained until August 2024. At this time it will be returned in whole to the Department and any copies of it securely destroyed.</p>
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## Order Schedule 1 (Transparency Reports)

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the DPS Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

## Annex A: List of Transparency Reports

Title	Content	Format	Frequency
[Performance]	[ ]	[ ]	[ ]
[Order Contract Charges]	[ ]	[ ]	[ ]
[Key Subcontractors]	[ ]	[ ]	[ ]
[Technical]	[ ]	[ ]	[ ]
[Performance management]	[ ]	[ ]	[ ]

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# Order Schedule 2 (Staff Transfer)

## 1. Definitions

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

- "Employee Liability"** 1 all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:
- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
  - b) unfair, wrongful or constructive dismissal compensation;
  - c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
  - d) compensation for less favourable treatment of part-time workers or fixed term employees;
  - e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;
  - f) claims whether in tort, contract or statute or otherwise;
- any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

<b>"Former Supplier"</b>	a supplier supplying the Deliverables to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Deliverables (or any part of the Deliverables) and shall include any Sub-contractor of such supplier (or any Sub-contractor of any such Sub-contractor);
<b>"Partial Termination"</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When CCS or the Buyer can end this contract ) or 10.6 (When the Supplier can end the contract);
<b>"Relevant Transfer"</b>	a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D: Pensions, shall include the Commencement Date, where appropriate;
<b>"Supplier's Final Supplier Personnel List"</b>	a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;
<b>"Supplier's Provisional Supplier Personnel List"</b>	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
<b>"Staffing Information"</b>	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:</p> <p>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</p> <p>(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</p> <p>(c) the identity of the employer or relevant contracting Party;</p>

- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit-sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long-term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

<b>"Term"</b>	the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;
<b>"Transferring Buyer Employees"</b>	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;
<b>"Transferring Former Supplier Employees"</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date.

## **2. INTERPRETATION**

Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be and where the Sub-contractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

## **3. Which parts of this Schedule apply**

Only the following parts of this Schedule shall apply to this Order Contract:

- Part C (No Staff Transfer On Start Date)
- Part E (Staff Transfer on Exit)

## Part C: No Staff Transfer on the Start Date

### 1. What happens if there is a staff transfer

1.1. The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.

1.2. Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claim, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:

1.2.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;

1.2.2 the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;

1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;

1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4:

1.2.4.1 the Buyer will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2; and

1.2.4.2 the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.

1.3. The indemnities in Paragraph 1.2 shall not apply to any claim:

1.3.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-contractor; or

1.3.2 any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure

1.4. The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date.

1.5. If the Supplier and/or the Sub-contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

## **2. Limits on the Former Supplier's obligations**

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.



## Part E: Staff Transfer on Exit

### 1. Obligations before a Staff Transfer

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
  - 1.1.3 the date which is 12 Months before the end of the Term; and
  - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),
- it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-contractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):
- not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces
- not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits

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(including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

1.5.1 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

1.5.2 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

1.5.3 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);

1.5.4 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;

1.5.5 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Sub-contractor;

1.5.6 give the Buyer and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;

1.5.7 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;

1.5.8 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;

1.5.9 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));

1.5.10 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;

1.5.11 fully fund any Broadly Comparable pension schemes set up by the Supplier;

1.5.12 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);

1.5.13 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and

1.5.14 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract.

1.6 On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:

1.6.1 the numbers of employees engaged in providing the Services;

1.6.2 the percentage of time spent by each employee engaged in providing the Services;

1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and

1.6.4 a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

1.7.1 the most recent month's copy pays slip data;

1.7.2 details of cumulative pay for tax and pension purposes;

1.7.3 details of cumulative tax paid;

1.7.4 tax code;

1.7.5 details of any voluntary deductions from pay; and

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1.7.6 bank/building society account details for payroll purposes.

## **2. Staff Transfer when the contract ends**

2.1 A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disappplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.

2.4 The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date.

2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations then.

2.5.1 the Replacement Supplier and/or Replacement Sub-contractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;

2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-contractor;

2.5.3 if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-contractor shall immediately release the person from its employment;

2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-contractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Sub-contractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5.

2.6 The indemnity in Paragraph 2.5 shall not apply to:

2.6.1 (a) any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, or

2.6.2 (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure.

2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.

2.8 If at any point the Replacement Supplier and/or Replacement Sub-contractor accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.

2.9 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.10 Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its Sub-contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or

after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

2.11 The indemnity in Paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

## Order Schedule 3 (Continuous Improvement)

### 1. Buyer's Rights

1. The Buyer and the Supplier recognise that, where specified in DPS Schedule 4 (DPS Management), the Buyer may give CCS the right to enforce the Buyer's rights under this Schedule.

### 2. Supplier's Obligations

- 2.1. The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 2.2. The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 2.3. In addition to Paragraph 2.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
  - 2.3.1 Identifying the emergence of relevant new and evolving technologies;
  - 2.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 2.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 2.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 2.4. The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within

- one hundred (100) Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier.
- 2.5. The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once approved, it becomes the Continuous Improvement Plan for the purpose of this Contract.
- 2.6. The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 2.7. If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer or CCS.
- 2.8. Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
- 2.9. the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
- 2.10. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 2.11. The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.12. All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 2.13. Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 2.14. At any time during the Contract Period of the Order Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.



# Order Schedule 4 (Order Tender)

## Specification

9.1 The Supplier shall grow and develop the piloted Taking Teaching Further (TTF) programme. They will support further education (FE) providers to recruit and train professionals from business and industry to become teachers in the FE sector.

9.2 The Supplier shall deliver the following activities:

9.3 **Preparation – implementation & resourcing**

9.4 **Marketing Activity**

9.5 **Grant management**

9.5.1 **Early engagement**

9.5.2 **Process definition**

9.5.3 **Registration of FE providers**

9.5.4 **Funding awarded to grant recipients**

9.5.5 **Data risk and reporting**

9.5.6 **Project support and retention**

9.5.7 **Quality assurance**

9.6 **Exploration, data collection and continuous development**

9.7 **Exit strategy**

9.3 **Preparation – implementation & resourcing**, the Supplier shall:

9.3.1 Review existing Taking Teaching Further (TTF) pilot rounds, guidance, and programme content; To note: The current application guidance can be seen via links provided on the [Taking Teaching Further information](#) page on gov.uk

9.3.2 Produce user centric programme guidance, which builds on the TTF online brand identity that clearly details participant eligibility, promotes the spread/awareness of TTF throughout the various departments in FE provider settings e.g., none-subject specific.

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9.3.3 Build a robust knowledge and understanding of the requirements to support FE providers.

9.3.4 Develop an Implementation Plan (IP) covering the entire initial contract period including the mobilisation period. The IP shall show key milestones, a critical path and critical dependencies and contingency arrangements. The plan will be updated weekly during the mobilisation period and at least quarterly from the contract commencement date. The Implementation Plan should also include the proposed financial arrangements in place for the grant funding of providers and a clear payment plan.

9.3.5 Develop a resource plan, maintaining an organisation chart detailing the personnel to be deployed to ensure sound governance, strong leadership, and effective operational management of the contract. The plan will be updated at least quarterly and submitted to the Department upon request.

9.3.6 Marketing and Brand Awareness, the Supplier shall:

9.3.7 Work collaboratively with the Department in the continued development, of branding for TTF and any major strategic developments or shifts in the marketing of the programme.

9.3.8 Ensure the marketing, communications and engagement activity undertaken, compliments and does not contradict or duplicate with the Department's wider activities, in increasing the overall appeal of FE teaching.

9.3.9 Develop, implement, and present to the Department for sign off, a communications and marketing strategy to promote the TTF programme in England, to attract interest from suitable FE providers. Using various marketing methods e.g., social media, e-marketing campaigns etc..

9.4.4 Utilise digital platforms e.g., using Department and sector digital communication platforms to promote the programme and as required, work with the Department to create material required for the planned Teach in FE online platform and associated FE teacher recruitment campaigns.

9.3.10 Identify suitable times to approach and engage with FE providers for their recruitment e.g., academic calendar and when usual recruitment takes place.

9.3.11 Highlight to FE providers the benefits for the economy, of building a professional workforce and engaging with industry.

**9.4 Grant management – the Supplier shall:**

**9.4.1 Early engagement:**

**9.4.1.1 Provide wider stakeholder support – to note in 2021 c 260 colleges and c 7000 ITPs were contacted.**

**9.4.1.2 Support FE provider recruitment and relationship management.**

**9.4.1.3** Support queries regarding participation on the programme and eligibility.

**9.4.2 Process definition:** the Supplier shall work alongside the Department to:

**9.4.2.1** Produce application guidance and promote the Taking Teaching Further (TTF) programme – this will include defining the eligibility criteria of FE providers for example, that they are an ESFA funded organisations. To note: The current application guidance can be seen via links provided on the [Taking Teaching Further information](#) page on gov.uk.

**9.4.2.2** Develop, publish, and manage an approved grant funding agreement for FE providers, awarding Taking Teaching Further (TTF) funds in line with the Department's standard [Terms and Conditions](#) with clear expectations and deliverables.

**9.4.2.3** Work alongside the Department ahead of each grant year to define the grant funding profile per recruit, and where required implement changes (e.g., DET qualification, reduced workload and mentoring).

**9.4.2.4** Define the grant management process and internal systems used to ensure successful delivery of TTF.

**9.4.3 Registration of FE providers**, there are a number of places allocated to each of the strands for recruitment:

**9.4.3.1 Strand 1 – Colleges.** For instance, in round 4 of the programme the Supplier will inform colleges of their allocation of 3 initial places. Colleges will determine if these can be filled or if more would be required if available.

9.4.3.2 **Strand 2 - Other FE Providers.** These include independent training providers (ITP), employer led providers, third sector training providers, local authority providers, adult, and community learning providers, 16-19 academy converters and university technical colleges. Places will be allocated on a first come first serve basis.

9.4.3.3 **Strand 3 – FE providers of English, maths, special educational needs, and disabilities (SEND).** All FE providers should be made aware that these places are available on a first come first serve basis.

9.4.3.4 The Department will work with the Supplier to produce communications to send to stakeholders for wider communication, stakeholders including but not limited to: Education & Skills Funding Agency (ESFA), Association of Colleges (AoC), HOLEX & Association of Employment Learning Providers (AELP).

#### 9.4.4 Funding Awarded to FE Providers

9.4.4.1 Funding for new trainees across the 4 rounds to date, has been:

- For Round 1 – 50 places available
- For Round 2 – 100 places available
- For Round 3 – 550 places available
- For Round 4 – 550 places available

**9.5.4.2** Indicative Grant Funding Values, the funds support providers in the recruitment of individuals and offsets the costly induction activity. Below is an indicative example of how the current £18,200 per applicant is calculated, the below table highlights the breakdown for the programme across 2 years.

	<b>ITE cost</b>	<b>Work shadow &amp; mentoring:</b>	<b>Reduced timetable</b>	<b>Total costs for each year</b>
	Level 5 diploma in education & training (DET)	£50 per hour teacher costs an optional level 3 accredited award in education & training (AET)	£50 per hour teacher cost	
	DET over two years	18 hrs per week for the first 8 weeks	5 hrs per week for next 28 weeks	
Year 1	£2,000	£7, 200	£7,000	£16,200
Year 2	£2,000			£2,000
<b>Total</b>	£4,000	£7,200	£7,000	£18,200

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9.5.4.3 Below are the scenarios from 100 to 500 places and total investment for the cohort. To note: the Department will release funding on the actual uptake of places, rather than the forecasted numbers provided.

Total cost			
	22/23	23/24 Year 2 Payments	Cohort 22/23 Full Payments
100 Places	£1,620,000	£200,000	£1,820,000
200 Places	£3,240,000	£400,000	£3,640,000
300 Places	£4,860,000	£600,000	£5,460,000
400 Places	£6,480,000	£800,000	£7,280,000
500 Places	£8,100,000	£1,000,000	£9,100,000

#### 9.5.5. Grant Management Process, the Supplier shall:

9.5.5.1 Produce and provide a welcome pack to bidders outlining the programme and expectations.

9.5.5.2 Conduct initial calls (as appropriate) to discuss obligations and expectations.

9.5.5.3 Produce the Grant Funding Agreement (GFA), award decision letters and feedback (where required). The **Supplier** should ensure their Grant Funding terms and conditions align with the Department's [standard grant funding terms](#) to ensure that public funds are disseminated appropriately.

9.5.5.4 Ensure due diligence to the grant funding process e.g., not exceeding the allocated places and funding.

9.5.5.5 Clarify payment methods with grant recipients and pay on receipt of a valid claim form.

#### 9.5.6 Data Risk and Reporting, the Supplier shall:

9.5.6.1. Report to the Department, including (and not limited to) forecast and actual recruitment data/against the performance indicators using templates agreed with Department.

**9.5.6.2** The Department's Performance Management Regime (PMR) will centre on monthly Contract Performance Review meetings (CPRs) as set out in Order Schedule 15 (Contract Management). These will be the key vehicles through which the Authority will manage the delivery of the Service. CPRs will focus on reviewing the **Supplier's** PMR and their delivery of services against the contractual KPIs.

9.5.6.3 All grant management activity will be managed against KPI's set out in Annex 4.

Reporting		
Description	Action	Frequency
Mobilisation checkpoint calls – to discuss progress, action points, risks, mitigations and sharing good practice	The Department set up with the Supplier	Weekly
Post mobilisation checkpoint calls – to discuss progress, action points, risks, mitigations and sharing good practice. Addressing FE provider feedback. Provide MI updates re number of providers participating, places requested and then places recruited to	The Department set up with the Supplier	Fortnightly
<p>Reports – The Supplier to gather FE provider activity through a department agreed report. To note: for round 3 this was c.100 individual reports</p> <p>The Supplier collates and analyses the information, incorporating into a findings report, including recommendations, to be submitted to The Department, may request sight of individual FE provider reports if required</p> <p>Reports should include qualitative and quantitative data. For example, in round 4 the Supplier calls the providers to gather qualitative feedback about the programme</p>	Managed by the Supplier	Quarterly
Report – The Supplier produces a summary of progress, including qualitative and quantitative data.	Managed by the Supplier	Annually

9.5.6.3 Provide information to the Department as reasonably required, to assist the Department in monitoring and evaluation of the likely effect of any proposed policy development on the services, to support business continuity and contingency planning.

9.5.6.4 Amend/supplement the information it gathers in response to the Department's requests, at any time including but not limited to amendments to cover the Supplier's organisational structures/mechanisms for delivery of the services. The Department reserves the right to validate MI, reports or claims made in reports, in whole or in part, independently or directly with FE providers, participants and/or partners.

9.5.6.5 Risk and issues management - the Supplier shall identify and monitor the key risks to TTF, their impact and proposed mitigations via a risks and issues log. Risks and issues logs will be shared with the Department on a regular and agreed basis as set out in **Order Schedule 15 (Contract Management)**.

9.5.6.6 Understand the wider political and economic landscape and how it impacts on FE providers, to shape the policy, continuously improving the programme and plan for contingencies for example, pandemic impact on teacher training and new trainees leaving the profession.

**9.5.7 Project support and retention**, the Supplier shall:

9.5.7.1 Provide on-going support to the FE Providers through one-to-one contact, dedicated account management, dedicated e-mail inbox and online support.

9.5.7.2 Continuously review and improve guidance for example, for future participation, webinars, resources, gathering best practice, information sharing, peer to peer support and case studies.

**9.5.7.3 Ensure that FE providers provide:**

- 144 hours of intensive support to new teachers (for example through team teaching/ work shadowing arrangements).
- Provide 140 hours reduced teaching workload/timetable from the start date to the end of March (following the period of intensive support). This will allow the participants to spend time with their studies for a level 5 diploma in education and training (DET), or equivalent/higher teaching

qualification and an optional level 3 accredited award in education & training (AET) qualification.

- To note: the **Department** expects the Supplier to verify the above activity has been completed through requesting evidence from the Providers.

9.5.7.4 Provide opportunities for FE providers to share learning and best practice from the TTF programme, with participants, teachers, industry, business and beyond where applicable.

9.5.7.5 Maximise support by monitoring progress, implementing measures to identify and remedy the causes of non-completion.

9.5.7.6 Undertake satisfaction surveys with all FE providers and where necessary individual recruits at the end of each programme year.

#### 9.5.8 **Quality Assurance**, the Supplier shall:

9.5.8.1 Put procedures in place to assure the quality and due diligence of the TTF offer.

9.5.8.2 Have a process in place to gather and action feedback.

9.5.8.3 Monitor and manage its own and/or its supply chain's performance to ensure successful achievement of the KPIs set out in Annex 4.

9.5.8.4 Have financial management processes and governance arrangements in place to ensure that costs and financial transactions demonstrate best value and use of public funds and demonstrate robust financial forecasting. The Department reserves the right to verify the financial processes in place throughout the contract period.

9.5.8.5 Secure best value for money with reference to the requirements of the contract.

9.5.8.6 Provide the Department with assurance that systems of internal control are robust, the Department will undertake contract assurance reviews (CARs) to test systems/processes where appropriate, to establish how effective they are at managing risk to the Department in relation to expenditure and service delivery. This may involve reviewing these key areas:



- 9.5.8.6.1 Governance arrangements – includes systems for tracking and reporting performance and anti-fraud measures. The Department expects the Supplier to implement adequate controls and processes to limit provider fraudulent activity and where required escalate any perceived instances. The Department should be notified in a timely manner of all planned action and mitigation.
- 9.5.8.6.2 Service delivery – includes the Supplier's systems for starting, ending, and ongoing delivery of the programme. This also covers management of the supply chain.
- 9.5.8.6.3 Procedures and payments – ensuring effective systems in place to dispense grant payments and internal controls in place to safeguard public funds.

9.5.9 **Exploration and continuous development**, the Supplier shall work with FE providers to:

- 9.5.9.1 Undertake regular reviews of each element of the service and record and act on lessons learned.
- 9.5.9.2 Identify and capture best practice, emerging trends, and insights from stakeholders during the contract term.
- 9.5.9.3 Identify, as TTF is rolled out, which elements of the programme work well and why, and conversely those that do not work well and why.
- 9.5.9.4 Utilise findings from any independent evaluations, identifying opportunities and/or barriers, suggesting proposals to address.
- 9.5.9.5 Abide by the requirement to identify new or potential improvements to the services with a view to:
  - reducing the cost to the Department
  - improving the quality and efficiency of the services
- 9.5.9.6 The initial Continuous Improvement Plan shall be submitted by the Supplier to the Buyer for Approval within one hundred (100) Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier. The Supplier shall update the CIP on a quarterly basis.

## 9.6 Social Value

9.6.1 The Supplier must be committed to delivering Social Value during the Contract Period with a specific focus on:

- 9.6.1.1 tackling economic inequality by creating new jobs and skills; and
- 9.6.1.2 improving health and wellbeing.

9.6.2 The Supplier must meet the objectives set out in **Annex 3: Award Questions** by making commitments in its Social Value Plan to undertake activities, implement policies and develop initiatives that:

- 9.6.2.1 create employment and training opportunities, particularly for those who face barriers to employment and/or are in deprived areas; and
- 9.6.2.2 seek to improve the health and wellbeing (including physical and mental health) of the Supplier's personnel and influence, sub- Supplier s, participants, customers, and communities to do the same.

9.6.3 The Supplier must:

- 9.6.3.1 Implement robust recruitment practices and employment conditions, such as the five foundational principles of quality work set out in the Good Work Plan<sup>1</sup>. For example, fair pay, participation and progression, voice, and autonomy to attract good candidates from all backgrounds, minimise turnover of staff and improve productivity.
- 9.6.3.2 Promote careers and recruitment opportunities relating to known skills shortages or in high-growth sectors relating to the contract subject matter.
- 9.6.3.3 Support their personnel by providing career advice, and providing opportunities in-work progression and career development.
- 9.6.3.4 Offer opportunities for work experience or similar activities.
- 9.6.3.5 Support educational attainment, including training schemes that address skills gaps and result in recognised qualifications.

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<sup>1</sup> <https://www.gov.uk/government/publications/good-work-plan>  
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9.6.3.6 Take measures to ensure equality and accessibility, without discrimination, to employment and workforce and promote them to be fully accessible.

9.6.3.7 Demonstrate an understanding of issues relating to health and wellbeing, including physical and mental health, sustainable workloads and maintaining good work-life balance in the Supplier's Personnel.

9.6.3.8 Implement inclusive and accessible recruitment practices, including for those who work flexibly, e.g., part-time, development practices and retention-focussed activities.

9.6.3.9 Invest in the physical and mental health and wellbeing of their personnel. For example, implementing the 6 standards in the Mental Health at Work Commitment<sup>2</sup> and, where appropriate, the mental health enhanced standards for companies with more than 500 employees in Thriving at Work<sup>3</sup>.

9.6.3.10 demonstrate plans for flexible working approaches; and

9.6.3.11 implement methods to measure employee engagement over time and adapt to any changes in the results

9.6.4 The Supplier must develop, implement, and maintain a Social Value Plan that sets out, but is not limited to:

9.6.4.1 A timed project plan detailing their intended Social Value Proposals.

9.6.4.2 Detailing monitoring and reporting arrangements.

9.6.4.3 Detailing records and activities undertaken in respect of social value and any information to enable reporting of performance against the social value related KPIs.

9.6.4.4

9.6.5 Submitting and updating the Social Value Plan

9.6.5.1 The Supplier shall deliver to the Department, within three (3) Months of the Contract Date, its Social Value Plan.

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<sup>2</sup> <https://www.mentalhealthatwork.org.uk/commitment/>

<sup>3</sup> <https://www.mentalhealthatwork.org.uk/resource/thriving-at-work-the-stevenson-farmer-review-of-mental-health-and-employers/>

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9.6.5.2 The Department shall notify the Supplier of its approval or rejection of the proposed Social Value Plan (or any updates to it) within twenty (20) Working Days of receipt.

9.6.5.3 Within ten (10) Working Days of receipt of the Department's notice of rejection and of the deficiencies of the proposed Social Value Plan, the Supplier shall submit to the Department a revised Social Value Plan reflecting the changes required.

9.6.5.4 Following the approval of the submission of the first Social Value Plan the Supplier shall regularly review, maintain, and provide the Department with an updated version of the Social Value Plan on at least a quarterly basis thereafter.

9.6.5.5 The Supplier shall ensure that the information that it provides to the Department within the Social Value Plan is sufficient for the Department to be able to measure the Supplier's performance against the social value KPIs.

9.7 **Exit strategy**, the delivery partner shall:

9.7.1 Submit an exit plan that is to be agreed with the Department within 3 months of the effective date; this will be reviewed regularly thereafter to ensure it remains fit for purpose. The exit plan must be in accordance with **Order Schedule 10 – (Exit Management)**, please ensure that you review the requirements.

## Supplier's Solution

Question		Description
2.1.1	<b>AQ1 - Delivery (30%)</b>	<p>Set out a full description of your strategy and approach to delivering the Taking Teaching Further programme. Your response should include your proposals on how the overarching delivery will meet the service requirements and the rationale for that chosen delivery method. It should address the following requirements (but not be limited to):</p> <ul style="list-style-type: none"><li>• A clear account of the delivery strategy to be used to deliver the programme i.e., through direct delivery by the potential supplier and/or using sub-contractors, and/or supply partners.</li><li>• Explanation of capability and capacity to successfully deliver the programme</li><li>• Experience and knowledge of the FE Sector and recruitment challenges</li><li>• Explanation of internal systems and processes that will be utilised</li></ul>

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		<ul style="list-style-type: none"> <li>• Grant Administration processes to maximise the reach of public funds and minimise potential fraud risks</li> <li>• Your approach to identifying, generating, and managing sufficient demand for providers in hard-to-reach areas, strategies for maximising take up, contingency plans in the event of low interest with supporting evidence and rationale.</li> <li>• Your contingency arrangements in the event of any issues with providers</li> </ul>
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**Redacted**

Question		Description
2.2.1	<b>AQ2 - Implementation (20%)</b>	<p>Provide your implementation plan, your approach to risk management, risk, and assumptions log (Risk Management Plan) for the programme. Your response should include:</p> <ul style="list-style-type: none"> <li>• An implementation plan for the programme describing key milestones, the critical path, key risks, assumptions including critical dependencies, and any contingency arrangements.</li> <li>• A complete description of the provider journey throughout the recruitment period and the two-year programme (including a process map).</li> <li>• Include supporting evidence and rationale to provide the Department with assurance that the programme will be delivered in line with the timescales and requirements in the specification.</li> <li>• A description of your risk management approach. Your risk/assumptions log with likelihood/impact of risk materialisation along with counter measures and contingency activity included (Risk Management Plan).</li> </ul> <p><b>To note: all the plans submitted should be in a word format and are inclusive of the word count.</b></p>

### **IMPLEMENTATION PLAN**

**Redacted**

Question		Description
2.3.1	<b>AQ3 - Resourcing (5%)</b>	<p>Detail the resources required to support your delivery model. Your response should include a resource plan addressing the following points:</p>

		<ul style="list-style-type: none"> <li>• Your organisational structure and management hierarchy for delivering the TTF Programme and oversight of the wider organisational structure</li> <li>• Details of the leadership and senior management team (including their relevant skills and experience) who will be responsible for the effective management and delivery of the services.</li> <li>• Details of the roles, responsibilities, and accountability of senior members of the team.</li> <li>• Numbers of staff resources, full time equivalent (FTE) by job roles, details of the level and skills required for each role.</li> <li>• Details of how, if required you will resource and support a scaling up of TTF places made available to the sector, this scaling up could be a gradual increase from one year to the next, or if funding materialises, it could be a major uplift in funding in a single year and then volumes could stabilise beyond that point</li> </ul> <p><b>To note: the resource plan submitted should be in a word format and inclusive of the word count.</b></p>
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**Redacted**

Question		Description
2.4.1	<b>AQ4 – Relevant Experience (15%)</b>	<p>Provide evidence of recent, demonstrable experience delivering a similar programme(s) and conducting end to end grant management activity. Detail how you would use the experience, insight along with any relevant lessons learnt to enhance the TTF programme. Your response should include:</p> <ul style="list-style-type: none"> <li>• Overview of the activity</li> <li>• Value and length of activity</li> <li>• Processes and systems utilised</li> <li>• Lessons learnt</li> </ul>

**Redacted**

Question		Description
2.5.1	<b>AQ5 - Attraction (10%)</b>	<p>Set out a full description of your communications and marketing strategy to attract providers to the programme. Your response should include:</p> <ul style="list-style-type: none"> <li>• Audience insight and analysis including identifying the target audience and their motivations, the size of market and the channels that can be used to reach them (including low or no cost marketing activity and use of key sector influencers).</li> <li>• Communication objectives which are specific, measurable, realistic and time bound and with evidence and rationale to</li> </ul>

		<p>demonstrate why these are appropriate to support delivery of the service requirements.</p> <ul style="list-style-type: none"> <li>• Strategy, including your brand identity and proposition that is consistent with the aims of the programme. Including any evidence and rationale to demonstrate that the approach will work to attract sufficient interest to achieve the participant target. Explaining how you will enhance the Taking Teaching Further brand.</li> <li>• Implementation detail, outline the key critical milestones for the communications, marketing activity including critical dependencies and any contingency arrangements.</li> <li>• Include supporting evidence and rationale to provide the Authority with assurance that the recruitment activity will be delivered to ensure recruits will commence trainee teaching recruitment status in September 2022.</li> </ul>
Redacted		

Question		Description
2.7.1	AQ7 – Social Value (10%)	<p>Social Value: Tackling Economic Inequality and Tackling Economic Inequality</p> <p>Please set out the activities, policies, and initiatives you will implement, which will create employment and training opportunities, particularly for those who face barriers to employment and/or who are in deprived areas. Please also address the support for employee's health and wellbeing, including physical and mental health that you will provide:</p> <p>Your response should demonstrate, but should not necessarily be limited to:</p> <ol style="list-style-type: none"> <li>Your 'Method Statement', stating how you will achieve this and how your commitment delivers the main aims of the Social Value Criteria</li> <li>A timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals, including, but not limited to: <ul style="list-style-type: none"> <li>• timed action plan</li> <li>• use of metrics</li> <li>• tools/processes used to gather data</li> <li>• reporting</li> <li>• feedback and improvement</li> <li>• transparency</li> </ul> </li> <li>How you will influence staff, suppliers, customers, and communities through the delivery of the contract to support the objective of tackling economic inequality by creating new jobs and skills, e.g., engagement, co-design/creation, training and education, partnering/collaborating, volunteering.</li> </ol>

		iv. How you will influence staff, suppliers, customers, and communities through the delivery of the contract to support the objective of improving health and wellbeing, e.g., engagement, co-design/creation, training and education, partnering/collaborating, volunteering.
Redacted		

## Order Schedule 5 (Pricing Details)

### Financials

1. The Department shall pay the Supplier the charges in accordance with the contract, subject to successful delivery of the services against the KPIs or Service Levels set out in Order Schedule 6. The Charges are inclusive of all expenses incurred by the Supplier in relation to its provision of the services and unless otherwise agreed between the Supplier and Department, the Supplier shall not be entitled to claim any expenses in addition to the charges.
2. All Charges will be calculated in accordance with the following provisions for the Initial Term of the Contract.
  - For the avoidance of doubt, the initial Charges payable by the Department under this contract for the Initial Term will be Redacted for the delivery of up to 550 TTF Teachers (Exclusive of VAT).
  - If more than 550 TTF Teachers are recruited to the programme and commence FE Teaching during the Initial Term, the Department will pay the sum of Redacted for each additional (over and above 550) TTF Teacher, up

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to a maximum of **710 TTF Teachers**.

- The Supplier will confirm in their monthly Performance Reports the volumes of new TTF Teachers that have been recruited to the programme and commenced FE Teaching in the relevant reporting period.
  - Table 1 details the per participant cost submitted by the Supplier as part of the Invitation to Tender process.
  - Table 2 details the cost by the Supplier to deliver the 550 places for the initial term of the contract.
  - Table 3 details the monthly payment amounts that the Department will pay the Supplier on the production of a valid invoice.
  - The Supplier shall be entitled to invoice the Charges following acceptance by the Department of satisfactory completion of the Services.
3. The Department will notify the Supplier a minimum of 1 month prior to the end of the contract year the ongoing programme funding for the next contractual year.
4. The Department and Supplier will meet prior to the commencement of each delivery year to agree the cost of delivery. A Programme base line will be set, and monthly charges will be defined in the payment schedule.
5. For the next contractual year, the financial profile applied will be documented in two payment tables: the contracted cost and monthly payment profile, these will be agreed by both parties and recorded in the contract through the enactment of **Joint Schedule 2 (Variation Form)**
6. Table 1 – Per Participant Contracted Price

**Redacted**

7. Table 2 – Initial Term Contracted Price

Redacted

8. Table 3 - Monthly Payment Profile

For the initial contract term, the Department will pay the supplier for delivery of **up to 550 TTF Teachers** in twelve equal instalments, as per the table below. For the recruitment of every TTF Teacher **above 550** the Department will pay the Supplier for each additional teacher at a rate of **Redacted** per TTF Teacher up to a maximum of 710 TTF Teachers.

Dates	Amount
March 2022	Redacted
April 2022	Redacted
May 2022	Redacted
June 2022	Redacted
July 2022	Redacted
August 2022	Redacted
September 2022	Redacted
October 2022	Redacted
November 2022	Redacted
December 2022	Redacted
January 2023	Redacted
February 2023	Redacted
Total	Redacted

If the contract is extended the rate per recruit in the 2nd year will remain the same as the 1st year for recruitment of up to 1,000 recruits. If recruitment exceeds this level, the rate for any incremental recruits will be reviewed by applying the Variation Procedure.

8. Invoicing and Payment Terms

9. Supplier Invoices

9.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.

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- 9.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European standard the Supplier shall:
- (a) comply with the requirements of the Authority's e-invoicing system;
  - (b) prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph (c) together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
  - (c) make such amendments as may be reasonably required by the Authority if the template invoice outlined in (b) is not approved by the Authority.
- 9.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
- 9.3.1 the date of the invoice;
  - 9.3.2 a unique invoice number;
  - 9.3.3 the Service Period or other period(s) to which the relevant Charge(s) relates;
  - 9.3.4 the correct reference for this Agreement;
  - 9.3.5 the reference number of the purchase order to which it relates (if any);
  - 9.3.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
  - 9.3.7 a description of the Services;
  - 9.3.8 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
  - 9.3.9 the banking details for payment to the Supplier via electronic transfer of funds (i.e., name and address of bank, sort code, account name and number);
  - 9.3.10 Each invoice shall always be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
  - 9.3.11 the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, and,

separately, any VAT or other sales tax payable in respect of each of the same;

9.3.12 details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;

9.3.13 reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by

#### 9.4 Payment Terms

9.4.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.

9.4.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on.

#### 10. Grant Funding Providers

10.1 To ensure the governance of the grant funding process remains independent, the Department will issue the Supplier with an annual drawn down grant agreement. For the transfer and management of funds to grant recipients for the TTF Programme.

10.2 The Taking Teaching Further (TTF) Grant Fund will be governed by a Grant Funding Agreement between the Department and the Supplier. The Power under which the grant is to be paid is Section 14 of the Education Act 2002.

10.3 The first Grant Funding Agreement in conjunction with this contract will be signed by both parties, no later than the 1<sup>st</sup> of April 2022.

10.4 The Grant Funding Agreement will include clearly defined provisions, limitations and conditions and clearly define the payment process between FE grant recipients, the Supplier and the Department.

10.5 The Grant Funding Agreement will be governed by the Department's Grant Terms and Conditions.

10.6 Upon contract cessation the grant funding agreement between the Department and the Supplier will terminate and the Grant Funding Agreements between the Supplier and FE grant recipients will novate to the Department (or specified party).

10.7 The signed Grant Funding Agreement will be uploaded to the Department's e-tendering platform JAGGAER.

10.8 Once signed a record of the Grant Funding Agreement will be documented, including the File name, Applicable Financial Year, JAGGER reference and Fund Value in Table 4.

11. Table 4 – Grant Funding Agreement Data

File Name	Financial Year	JAGGAER Reference	Fund Value

12. Annex 1. Grant Funding Agreement



Taking Teaching  
Further - Draw Down

# Order Schedule 6 (ICT Services)

## 1. Definitions

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

<b>"Buyer Property"</b>	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer, and which is or will be used by the Supplier for the purposes of providing the Deliverables;
<b>"Buyer System"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
<b>"Commercial off the shelf Software" or "COTS Software"</b>	non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;
<b>"Defect"</b>	any of the following: <ul style="list-style-type: none"><li>a) any error, damage or defect in the manufacturing of a Deliverable; or</li><li>b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li><li>c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Order Contract; or</li></ul>

	d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;
<b>"Emergency Maintenance"</b>	ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;
<b>"ICT Environment"</b>	the Buyer System and the Supplier System;
<b>"Licensed Software"</b>	all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Order Contract, including any COTS Software;
<b>"Maintenance Schedule"</b>	has the meaning given to it in paragraph 8 of this Schedule;
<b>"Malicious Software"</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>"New Release"</b>	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
<b>"Open-Source Software"</b>	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study,

	change and distribute the software to any and all persons and for any and all purposes free of charge;
<b>"Operating Environment"</b>	means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third-party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Deliverables are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or</li> <li>c) where any part of the Supplier System is situated;</li> </ul>
<b>"Permitted Maintenance"</b>	has the meaning given to it in paragraph 8.2 of this Schedule;
<b>"Quality Plans"</b>	has the meaning given to it in paragraph 6.1 of this Schedule;
<b>"Sites"</b>	has the meaning given to it in Joint Schedule 1 (Definitions), and for the purposes of this Order Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
<b>"Software"</b>	Specially Written Software, COTS Software and non-COTS Supplier and third-party Software;
<b>"Software Supporting Materials"</b>	has the meaning given to it in paragraph 9.1 of this Schedule;
<b>"Source Code"</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>"Specially Written Software"</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this



Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;

**"Supplier System"** the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System).

## **2. When this Schedule should be used**

2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Deliverables.

## **3. Buyer due diligence requirements**

3.1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following.

3.1.1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment.

3.1.2. operating processes and procedures and the working methods of the Buyer.

3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and

3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.

3.2. The Supplier confirms that it has advised the Buyer in writing of:

3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services.

3.2.2. the actions needed to remedy each such unsuitable aspect; and

3.2.3. a timetable for and the costs of those actions.

## **4. Licensed software warranty**

4.1. The Supplier represents and warrants that:

4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer.

4.1.2. all components of the Specially Written Software shall:

4.1.2.1. be free from material design and programming errors.

4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Order Schedule 14 (Service Levels) and Documentation; and

4.1.2.3. not infringe any IPR.

## **5. Provision of ICT Services**

5.1. The Supplier shall:

5.1.1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade.

5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification.

5.1.3. ensure that the Supplier System will be free of all encumbrances.

5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract.

5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables.

## **6. Standards and Quality Requirements**

6.1. The Supplier shall develop, in the timescales specified in the Order Form, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

6.2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.

6.3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.

6.4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Order Contract Period:

6.4.1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract.

6.4.2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and

6.4.3. obey all lawful instructions and reasonable directions of the Buyer (including, if so, required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

## 7. **ICT Audit**

7.1. The Supplier shall allow any auditor access to the Supplier premises to:

7.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them).

7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing.

7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

## 8. **Maintenance of the ICT Environment**

8.1. If specified by the Buyer in the Order Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.

8.2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

8.3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.

8.4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

## 9. Intellectual Property Rights in ICT

### 9.1. Assignments granted by the Supplier: Specially Written Software

9.1.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:

9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and

9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").

9.1.2. The Supplier shall:

9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software.

9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and

9.1.2.3. without prejudice to paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

## **9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer**

9.2.1. Unless the Buyer gives its Approval, the Supplier must not use any:

- a) of its own Existing IPR that is not COTS Software.
- b) third party software that is not COTS Software

9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grants to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Call Off Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

9.2.3. Where the Buyer Approves the use of third-party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Buyer, it shall:

9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and

9.2.3.2. only use such third party IPR as referred to at paragraph 9.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.

9.2.4. Where the Supplier is unable to provide a license to the Supplier's Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.

9.2.5. The Supplier may terminate a licence granted under paragraph 9.2.1 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

## **9.3. Licenses for COTS Software by the Supplier and third parties to the Buyer**

9.3.1. The Supplier shall either grant or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the

Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:

9.3.4.1. will no longer be maintained or supported by the developer; or

9.3.4.2. will no longer be made commercially available

#### **9.4. Buyer's right to assign/novate licences**

9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.2 to:

9.4.1.1. a Central Government Body; or

9.4.1.2. to anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 9.2.

#### **9.5. Licence granted by the Buyer**

9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).

#### **9.6. Open-Source Publication**

9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or

able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:

9.6.1.1. suitable for publication by the Buyer as Open Source;  
and

9.6.1.2. based on Open Standards (where applicable),  
and the Buyer may, at its sole discretion, publish the same as Open Source.

9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:

9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System.

9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them.

9.6.2.3. do not contain any material which would bring the Buyer into disrepute.

9.6.2.4. can be published as Open Source without breaching the rights of any third party.

9.6.2.5. will be supplied in a format suitable for publication as Open Source ("**the Open-Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and

9.6.2.6. do not contain any Malicious Software.

9.6.3. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open-Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open-Source publication;  
and

9.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such

IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.

## **9.7. Malicious Software**

9.7.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.

9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.

9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:

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

9.7.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Government Data (whilst the Government Data was under the control of the Buyer).



## Order Schedule 7 (Key Supplier Staff)

- 1.1 The Annex 1 to this Schedule lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date.
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
  - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed).
  - 1.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - 1.4.3 the person’s employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
  - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role).
  - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days.
  - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff’s employment contract, this will mean at least three (3) Months’ notice.
  - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
  - 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.
- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

## Annex 1- Key Roles

Redacted

# Order Schedule 8 (Business Continuity and Disaster Recovery)



DPS Order Schedule  
8 - Business Continuit

DPS Ref: RM6172

Order Form: Department For Education

Order Ref: In Service FE Teaching – Taking Teaching Further Project\_5228

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DPS Ref: RM6172

Order Form: Department For Education

Order Ref: In Service FE Teaching – Taking Teaching Further Project\_5228

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# **Annex 1 – Supplier’s Business Continuity and Disaster Recovery Plan**

DPS Ref: RM6172

Order Form: Department For Education

Order Ref: In Service FE Teaching – Taking Teaching Further Project\_5228

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# Order Schedule 9 (Security)

## Part A: Short Form Security Requirements

### 1. Definitions

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

**"Breach of Security"**

1 the occurrence of:

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

2 in either case as more particularly set out in the Security Policy where the Buyer has required compliance therewith in accordance with paragraph 2.2;

**"Security Management Plan"**

3 the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and as updated from time to time;

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

- 2.1 The Buyer and the Supplier recognise that, where specified in DPS Schedule 4 (DPS Management), CCS shall have the right to enforce the Buyer's rights under this Schedule.
- 2.2 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer that has undertaken a Further Competition it shall also comply with the Security Policy and shall ensure

that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

- 2.3 Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 2.4 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables, it may propose a Variation to the Buyer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.
- 2.5 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

### **3. Security Standards**

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
  - 3.2.1 is in accordance with the Law and this Contract.
  - 3.2.2 as a minimum demonstrates Good Industry Practice.
  - 3.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and
  - 3.2.4 where specified by the Buyer in accordance with paragraph 2.2 complies with the Security Policy and the ICT Policy.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

## **4. Security Management Plan**

### **4.1 Introduction**

- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

### **4.2 Content of the Security Management Plan**

- 4.2.1 The Security Management Plan shall:

- (a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security.
- (b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier.
- (c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables.
- (d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables.
- (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract.
- (f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with paragraph 2.2 the Security Policy; and
- (g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference



documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

#### **4.3 Development of the Security Management Plan**

- 4.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and, in any event, no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However, a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.

#### **4.4 Amendment of the Security Management Plan**

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
  - (a) emerging changes in Good Industry Practice.
  - (b) any change or proposed change to the Deliverables and/or associated processes.
  - (c) where necessary in accordance with paragraph 2.2, any change to the Security Policy.
  - (d) any new perceived or changed security threats; and
  - (e) any reasonable change in requirements requested by the Buyer.

- 4.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:
- (a) suggested improvements to the effectiveness of the Security Management Plan.
  - (b) updates to the risk assessments; and
  - (c) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.
- 4.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

## **5. Security breach**

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:
- 5.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security.
  - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security.
  - (c) prevent an equivalent breach in the future exploiting the same cause failure; and
  - (d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management

Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.

- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

## Order Schedule 10 (Exit Management)

### 1. Definitions

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

<b>"Exclusive Assets"</b>	1 Supplier Assets used exclusively by the Supplier in the provision of the Deliverables;
<b>"Exit Information"</b>	2 has the meaning given to it in Paragraph 3.1 of this Schedule;
<b>"Exit Manager"</b>	3 the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Net Book Value"</b>	4 the current net book value of the relevant Supplier Asset(s) calculated in accordance with the DPS Application or Order Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	5 those Supplier Assets used by the Supplier in connection with the Deliverables, but which are also used by the Supplier for other purposes;
<b>"Registers"</b>	6 the register and configuration database referred to in Paragraph 2.2 of this Schedule;
<b>"Replacement Goods"</b>	7 any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	8 any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Termination Assistance"</b>	9 the activities to be performed by the Supplier pursuant to the Exit Plan, and

	other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	10 has the meaning given to it in Paragraph 5.1 of this Schedule;
<b>"Termination Assistance Period"</b>	11 the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
<b>"Transferable Assets"</b>	12 Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	13 Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	14 has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	15 has the meaning given to it in Paragraph 8.2.3 of this Schedule.

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

2.1 The Supplier shall within 30 days from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value (if applicable).

2.2 During the Contract Period, the Supplier shall promptly:

- 2.2.1 create and maintain a detailed register of all relevant agreements required in connection with the Deliverables; and
- 2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables

("Registers").

2.3 The Supplier shall (**if applicable**):

- 2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
  - 2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.
- 2.4 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

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

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

### **4. Exit Plan**

- 4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.

4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

- 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;
- 4.3.2 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
- 4.3.3 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
- 4.3.4 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
- 4.3.5 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
- 4.3.6 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
- 4.3.7 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
- 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
- 4.3.9 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
- 4.3.10 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.

4.4 The Supplier shall:

- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
  - (a) every [six (6) months] throughout the Contract Period; and
  - (b) no later than [twenty (20) Working Days] after a request from the Buyer for an up-to-date copy of the Exit Plan;
  - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than [ten (10) Working Days] after the date of the Termination Assistance Notice;

- (d) as soon as reasonably possible following, and in any event no later than [twenty (20) Working Days] following, any material change to the Deliverables (including all changes under the Variation Procedure); and

4.4.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.

4.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.

4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

## 5. Termination Assistance

5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

5.1.1 the nature of the Termination Assistance required; and

5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Deliverables.

5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.

5.3 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).



## **6. Termination Assistance Period**

6.1 Throughout the Termination Assistance Period the Supplier shall:

- 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
  - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
  - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
  - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI's) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
  - 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;
  - 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

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

7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:

- 7.2.1 vacate any Buyer Premises;
- 7.2.2 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;

- 7.2.3 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
- (a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
  - (b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.

7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## 8. Assets, Sub-contracts and Software

8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

- 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
- 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:

- 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");
- 8.2.2 which, if any, of:

- (a) the Exclusive Assets that are not Transferable Assets; and
- (b) the Non-Exclusive Assets,

the Buyer and/or the Replacement Supplier requires the continued use of; and

- 8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and

Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.

8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.

8.6 The Supplier shall as soon as practically reasonably assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires affecting this novation or assignment.

8.7 The Buyer shall:

8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

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

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

## 9. No charges

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

## 10. Dividing the bills

10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

# Order Schedule 13 (Implementation Plan and Testing)

## Part A - Implementation

### 1. definitions

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

<b>"Delay"</b>	a) a delay in the Achievement of a Milestone by its Milestone Date; or
	b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
<b>"Deliverable Item"</b>	1 an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
<b>"Implementation Period"</b>	2 has the meaning given to it in Paragraph 7.1;

**"Milestone Payment"**

3 a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone.

4

**2. Agreeing and following the Implementation Plan**

- 2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan 7 days after the Order Start Date.
- 2.2 The draft Implementation Plan:
  - 2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and
  - 2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 2.3 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 2.4 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 2.5 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.

**3. Reviewing and changing the Implementation Plan**

- 3.1 Subject to Paragraph 4.3, the Supplier shall keep the Implementation Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.
- 3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.

- 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a material Default.

#### **4. Security requirements before the Start Date**

- 4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Order Start Date. The Supplier shall ensure that this is reflected in their Implementation Plans.
- 4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
- 4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.
- 4.4 The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Order Contract.
- 4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.
- 4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

#### **5. What to do if there is a Delay**

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
- 5.1.1 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay.
- 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay.
- 5.1.3 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and

- 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

## 6. Compensation for a Delay

- 6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Buyer such Delay Payments (calculated as set out by the Buyer in the Implementation Plan) and the following provisions shall apply:
- 6.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to Achieve the corresponding Milestone.
- 6.1.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
- (a) the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (When CCS or the Buyer can end this contract); or
  - (b) the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date.
- 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved.
- 6.1.4 no payment or other act or omission of the Buyer shall in any way affect the rights of the Buyer to recover the Delay Payments or be deemed to be a waiver of the right of the Buyer to recover any such damages; and
- 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 11 (How much you can be held responsible for).

## 7. Implementation Plan

- 7.1 The Implementation Period will be a [six (6)] Month period.
- 7.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Order Start Date or as otherwise formally agreed with the Buyer. The Supplier's full-service obligations shall formally be assumed on the Order Start Date as set out in Order Form.
- 7.3 In accordance with the Implementation Plan, the Supplier shall:

- 7.3.1 work cooperatively and in partnership with the Buyer, incumbent supplier, and other DPS Supplier(s), where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services.
  - 7.3.2 work with the incumbent supplier and Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services.
  - 7.3.3 liaise with the incumbent Supplier to enable the full completion of the Implementation Period activities; and
  - 7.3.4 produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
- 7.4 The Implementation Plan will include detail stating:
- 7.4.1 how the Supplier will work with the incumbent Supplier and the Buyer Authorised Representative to capture and load up information such as asset data; and
  - 7.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.
- 7.5 In addition, the Supplier shall:
- 7.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer.
  - 7.5.2 mobilise all the Services specified in the Specification within the Order Contract.
  - 7.5.3 produce an Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:
    - (a) the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Buyer's approval; and
    - (b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then



such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 7.5.4 manage and report progress against the Implementation Plan.
- 7.5.5 construct and maintain an Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them.
- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Order Form) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent provider and the Supplier.]

## **Annex 1: Implementation Plan**

Implementation Plan to be agreed by both parties within 7 days of contract signature.

For the initial term of the contract, the Department will test the implementation plan within 7 days of receipt of the plan from the supplier. The Department will not test the plan in accordance with **Part B Testing** but will apply an appropriate level of due diligence, noted at the implementation meeting.

## Part B - Testing

### 1. Definitions

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

<b>"Component"</b>	5 any constituent parts of the Deliverables;
<b>"Material Test Issue"</b>	6 a Test Issue of Severity Level 1 or Severity Level 2;
<b>"Satisfaction Certificate"</b>	7 a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria;
<b>"Severity Level"</b>	8 the level of severity of a Test Issue, the criteria for which are described in Annex 1;
<b>"Test Issue Management Log"</b>	9 a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
<b>"Test Issue Threshold"</b>	10 in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
<b>"Test Reports"</b>	11 the reports to be produced by the Supplier setting out the results of Tests;
<b>"Test Specification"</b>	12 the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6 of this Schedule;
<b>"Test Strategy"</b>	13 a strategy for the conduct of Testing as described further in Paragraph 3 of this Schedule;

<b>"Test Success Criteria"</b>	14 in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Schedule;
<b>"Test Witness"</b>	15 any person appointed by the Buyer pursuant to Paragraph 9 of this Schedule; and
<b>"Testing Procedures"</b>	16 the applicable testing procedures and Test Success Criteria set out in this Schedule.

## **2. How testing should work**

2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.

2.2 The Supplier shall not submit any Deliverable for Testing:

2.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria.

2.2.2 until the Buyer has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s); and

2.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

2.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.

2.4 Prior to the issue of a Satisfaction Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

## **3. Planning for testing**

3.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Start Date but in any case, no later than twenty (20) Working Days after the Start Date.

3.2 The final Test Strategy shall include:

3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan.

3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues.

3.2.3 the procedure to be followed should a Deliverable fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues.

3.2.4 the procedure to be followed to sign off each Test.

3.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues.

3.2.6 the names and contact details of the Buyer and the Supplier's Test representatives.

3.2.7 a high-level identification of the resources required for Testing including Buyer and/or third-party involvement in the conduct of the Tests.

3.2.8 the technical environments required to support the Tests; and

3.2.9 the procedure for managing the configuration of the Test environments.

#### **4. Preparing for Testing**

4.1 The Supplier shall develop Test Plans and submit these for Approval as soon as practicable but in any case, no later than twenty (20) Working Days prior to the start date for the relevant Testing as specified in the Implementation Plan.

4.2 Each Test Plan shall include as a minimum:

4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and

4.2.2 a detailed procedure for the Tests to be carried out.

4.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Buyer in the Test Plan.

#### **5. Passing Testing**

5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.

#### **6. How Deliverables will be tested**

6.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).

**6.2 Each Test Specification shall include as a minimum:**

- 6.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data.
- 6.2.2 a plan to make the resources available for Testing.
- 6.2.3 Test scripts.
- 6.2.4 Test pre-requisites and the mechanism for measuring them; and
- 6.2.5 expected Test results, including:
  - (a) a mechanism to be used to capture and record Test results; and
  - (b) a method to process the Test results to establish their content.

**7. Performing the tests**

7.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

7.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.

7.3 The Supplier shall notify the Buyer at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests.

7.4 The Buyer may raise and close Test Issues during the Test witnessing process.

7.5 The Supplier shall provide to the Buyer in relation to each Test:

7.5.1 a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end, and

7.5.2 the final Test Report within 5 Working Days of completion of Testing.

7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:

7.6.1 an overview of the Testing conducted.

7.6.2 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met.

7.6.3 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed.

7.6.4 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and

7.6.5 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

7.7 When the Supplier has completed a Milestone, it shall submit any Deliverables relating to that Milestone for Testing.

7.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Buyer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.

7.9 If the Supplier successfully completes the requisite Tests, the Buyer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Deliverables are implemented in accordance with this Contract.

## **8. Discovering Problems**

8.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.

8.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Buyer upon request.

8.3 The Buyer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

## **9. Test witnessing**

9.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

9.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test

Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

### 9.3 The Test Witnesses:

9.3.1 shall actively review the Test documentation.

9.3.2 will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested.

9.3.3 shall not be involved in the execution of any Test.

9.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification.

9.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved.

9.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and

9.4 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

## 10. Auditing the quality of the test

10.1 The Buyer or an agent or contractor appointed by the Buyer may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.

10.2 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.

10.3 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.

10.4 The Supplier shall provide all reasonably necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.

10.5 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.

10.6 In the event of an inadequate response to the written report from the Supplier, the Buyer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.



## **11. Outcome of the testing**

11.1 The Buyer will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria, then the Buyer shall notify the Supplier and:

11.2.1 the Buyer may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues.

11.2.2 the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

11.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.

11.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

11.4 The Buyer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:

11.4.1 the issuing by the Buyer of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

11.4.2 performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone.

11.5 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).

11.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues any other reasons for the relevant Milestone not being Achieved.

11.7 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Satisfaction Certificate.

11.8 If there is one or more Material Test Issue(s), the Buyer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.

11.9 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

11.9.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 10.5); and

11.9.2 where the Buyer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

## **12. Risk**

12.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:

12.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or

12.1.2 affect the Buyer's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

# Annex 1: Test Issues – Severity Levels

## 1. Severity 1 Error

- 1.1 This is an error that causes non-recoverable conditions, e.g., it is not possible to continue using a Component.

## 2. Severity 2 Error

- 2.1 This is an error for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
  - 2.1.1 causes a Component to become unusable.
  - 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
  - 2.1.3 has an adverse impact on any other Component(s) or any other area of the Deliverables?

## 3. Severity 3 Error

- 3.1 This is an error which:
  - 3.1.1 causes a Component to become unusable.
  - 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
  - 3.1.3 has an impact on any other Component(s) or any other area of the Deliverables?

but for which, as reasonably determined by the Buyer, there is a practicable workaround available.

## 4. Severity 4 Error

- 4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Deliverables; and

## 5. Severity 5 Error

- 5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Deliverables.

## Annex 2: Satisfaction Certificate

To: [insert name of Supplier]

From: [insert name of Buyer]

[insert Date dd/mm/yyyy]

Dear Sirs,

### Satisfaction Certificate

Deliverable/Milestone(s): [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the agreement ("**Order Contract**") [insert Order Contract reference number] relating to the provision of the [insert description of the Deliverables] between the [*insert Buyer name*] ("**Buyer**") and [*insert Supplier name*] ("**Supplier**") dated [*insert Order Start Date dd/mm/yyyy*].

The definitions for any capitalised terms in this certificate are as set out in the Order Contract.

[We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position] acting on behalf of [insert name of Buyer]

## Order Schedule 14 (Service Levels)

### 1. Definitions

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

<b>"Critical Service Level Failure"</b>	has the meaning given to it in the Order Form;
<b>"Service Credits"</b>	any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Credit Cap"</b>	has the meaning given to it in the Order Form;
<b>"Service Level Failure"</b>	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
<b>"Service Level Performance Measure"</b>	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and
<b>"Service Level Threshold"</b>	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

### 2. What happens if you don't meet the Service Levels?

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
- 2.2 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:
- 2.4.1 the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or
  - 2.4.2 the Service Level Failure:

- (a) exceeds the relevant Service Level Threshold.
  - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier.
  - (c) results in the corruption or loss of any Government Data; and/or
  - (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
- 2.4.3 the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (CCS and Buyer Termination Rights).
- 2.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
  - 2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date.
  - 2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and
  - 2.5.3 there is no change to the Service Credit Cap.

### 3. Critical Service Level Failure

On the occurrence of a Critical Service Level Failure:

- 3.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- 3.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

## **Part A: Service Levels and Service Credits**

### **1. Service Levels**

If the level of performance of the Supplier:

1.1 is likely to or fails to meet any Service Level Performance Measure; or

1.2 is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- 1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring.
- 1.2.2 instruct the Supplier to comply with the Rectification Plan Process.
- 1.2.3 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Buyer; and/or
- 1.2.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

### **2. Service Credits**

- 2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.
- 2.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

# Annex A to Part A: Services Levels and Service Credits Table

Key Performance Indicators (KPI's)

**Redacted**

## Part B: Performance Monitoring

### 3. Performance Monitoring and Performance Review

- 3.1 Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 3.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 3.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period.
  - 3.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period.
  - 3.2.3 details of any Critical Service Level Failures.
  - 3.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence.
  - 3.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
  - 3.2.6 such other details as the Buyer may reasonably require from time to time.
- 3.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
  - 3.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time



(within normal business hours) as the Buyer shall reasonably require.

- 3.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
- 3.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 3.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 3.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

#### **4. Satisfaction Surveys**

- 4.1 The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

# Order Schedule 15 (Order Contract Management)

## 1. Definitions

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

**"Operational Board"** the board established in accordance with paragraph 2.1 of this Schedule;

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

## Project Management

1.2 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.

1.3 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

1.4 Without prejudice to paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

## 2. Role of the Supplier Contract Manager

2.1 The Supplier's Contract Manager shall be:

2.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer.

2.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be the delegated person's responsibility to fulfil the Contract Manager's responsibilities and obligations.

2.1.3 able to cancel any delegation and recommence the position himself; and

2.1.4 replaced only after the Buyer has received notification of the proposed change.

2.2 The Buyer may provide revised instructions to the Supplier's Contract Manager in regard to the Contract and it will be the Supplier's Contract Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.

2.3 Receipt of communication from the Supplier's Contract Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

### **3. Role of the Operational Board**

3.1 The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.

3.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in the Order Form.

3.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.

3.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.

3.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

### **4. Contract Risk Management**

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

4.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:

- 4.2.1 the identification and management of risks.
- 4.2.2 the identification and management of issues; and
- 4.2.3 monitoring and controlling project plans.

4.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.

4.4 The Supplier will maintain a risk register of the risks relating to the Order Contract which the Buyer and the Supplier have identified.

## **Annex: Contract Boards**

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

DPS Ref: RM6172

Order Form: Department For Education

Order Ref: In Service FE Teaching – Taking Teaching Further Project\_5228

## Order Schedule 16 (Benchmarking)

### 1. DEFINITIONS

1.1 In this Schedule, the following expressions shall have the following meanings:

<b>"Benchmark Review"</b>	a review of the Deliverables carried out in accordance with this Schedule to determine whether those Deliverables represent Good Value;
<b>"Benchmarked Deliverables"</b>	any Deliverables included within the scope of a Benchmark Review pursuant to this Schedule;
<b>"Comparable Rates"</b>	the Charges for Comparable Deliverables;
<b>"Comparable Deliverables"</b>	deliverables that are identical or materially similar to the Benchmarked Deliverables (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Deliverables exist in the market, the Supplier shall propose an approach for developing a comparable Deliverables benchmark;

<b>"Comparison Group"</b>	a sample group of organisations providing Comparable Deliverables which consist of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations;
<b>"Equivalent Data"</b>	data derived from an analysis of the Comparable Rates and/or the Comparable Deliverables (as applicable) provided by the Comparison Group;
<b>"Good Value"</b>	that the Benchmarked Rates are within the Upper Quartile; and
<b>"Upper Quartile"</b>	in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Deliverables, are within the top 25% in terms of best value for money for the recipients of Comparable Deliverables.

### **When you should use this Schedule**

- 1.1 The Supplier acknowledges that the Buyer wishes to ensure that the Deliverables, represent value for money to the taxpayer throughout the Contract Period.
- 1.2 This Schedule sets to ensure the Contracts represent value for money throughout and that the Buyer may terminate the Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraphs 3 of this Schedule.
- 1.3 Amounts payable under this Schedule shall not fall within the definition of a cost.

### **Benchmarking**

- 1.4 How benchmarking works
  - 1.4.1 The Buyer and the Supplier recognise that, where specified in DPS Schedule 4 (DPS Management), the Buyer may give CCS the right to enforce the Buyer's rights under this Schedule.

- 1.4.2 The Buyer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Deliverables.
- 1.4.3 The Buyer shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Contract Start Date or at intervals of less than twelve (12) Months after any previous Benchmark Review.
- 1.4.4 The purpose of a Benchmark Review will be to establish whether the Benchmarked Deliverables are, individually and/or as a whole, Good Value.
- 1.4.5 The Deliverables that are to be the Benchmarked Deliverables will be identified by the Buyer in writing.
- 1.4.6 Upon its request for a Benchmark Review the Buyer shall nominate a bench marker. The Supplier must approve the nomination within ten (10) Working Days unless the Supplier provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Buyer may propose an alternative bench marker. If the Parties cannot agree the appointment within twenty (20) days of the initial request for Benchmark review then a benchmarked shall be selected by the Chartered Institute of Financial Accountants.
- 1.4.7 The cost of a bench marker shall be borne by the Buyer (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Deliverables are not Good Value, in which case the Parties shall share the cost of the bench marker in such proportions as the Parties agree (acting reasonably). Invoices by the bench marker shall be raised against the Supplier and the relevant portion shall be reimbursed by the Buyer.

## **Benchmarking Process**

- 1.4.7 The bench marker shall produce and send to the Buyer, for Approval, a draft plan for the Benchmark Review which must include:
  - (a) a proposed cost and timetable for the Benchmark Review;
  - (b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
  - (c) a description of how the bench marker will scope and identify the Comparison Group.
- 1.4.8 The bench marker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.

- 1.4.9 The Buyer must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the bench marker and the Supplier whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the bench marker must produce an amended draft plan and this Paragraph 3.2.3 shall apply to any amended draft plan.
- 1.4.10 Once both Parties have approved the draft plan then they will notify the bench marker. No Party may unreasonably withhold or delay its Approval of the draft plan.
- 1.4.11 Once it has received the Approval of the draft plan, the bench marker shall:
- (a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Supplier's professional judgment using:
    - 1. the bench marker's own data and experience;
    - 2. relevant published information; and
    - 3. Market intelligence;

Pursuant to Paragraph 3.2.7 below, information from other suppliers or purchasers on Comparable Rates;

- a) by applying the adjustment factors listed in Paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data
  - b) using the Equivalent Data, calculate the Upper Quartile;
  - c) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
- ii) The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the bench marker in order to undertake the benchmarking. The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.
- iii) In carrying out the benchmarking analysis the bench marker may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:
- a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
  - b) exchange rates;
  - c) any other factors reasonably identified by the Supplier,



which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

### **Benchmarking Report**

- iv) For the purposes of this Schedule "**Benchmarking Report**" shall mean the report produced by the bench marker following the Benchmark Review and as further described in this Schedule.
  - v) The bench marker shall prepare a Benchmarking Report and deliver it to the Buyer, at the time specified in the plan Approved pursuant to Paragraph 3.2.3, setting out its findings. Those findings shall be required to:
    - a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Deliverables as a whole are, Good Value;
    - b) if any of the Benchmarked Deliverables are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Deliverables as a whole Good Value; and
    - c) include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Supplier has calculated whether or not the Benchmarked Deliverables are, individually or as a whole, Good Value.
- 1.4.12 The Parties agree that any changes required to this Contract identified in the Benchmarking Report shall be implemented at the direction of the Buyer in accordance with Clause 24 (Changing the contract).

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