

Contract for the delivery of the Erasmus+ and ESC Residual Activity Services

This contract is made on 6th day of January 2022

- 1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and
- 2 THE BRITISH COUNCIL incorporated by Royal Charter and registered as a charity (under number 209131 in England & Wales and number SC037733 in Scotland), with its principal office at 1 Redman Place, Stratford, London. E20 1JQ (the "**Contractor**")

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

It is agreed that:

1. this contract, together with the attached schedules and annexes, collectively form the "**Contract**"; and
2. if there is a conflict between the provisions of the clauses of the Contract and the provisions of the schedules, the following order of precedence shall apply:
 - (a) schedule 2 (Terms and Conditions);
 - (b) schedule 1 (Specification);
 - (c) schedules 3 to 9 and schedules 11 to 12; and
 - (d) schedule 10 (Contractor's Solution).

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

Authorised to sign for and on behalf of BRITISH COUNCIL

Signature: [REDACTED]

Name: [REDACTED]

Position: Director UK Erasmus+ National Agency

Date: Jan 5, 2022

Authorised to sign for and on behalf of the SECRETARY OF STATE FOR EDUCATION

Signature: [REDACTED]

Name: [REDACTED]

Position: Deputy Director - Head of Higher and Further Education Commercial

Date: Jan 6, 2022

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**Schedule 1
The Specification**

**Erasmus+ and European Solidarity Corps
(ESC) Residual Activity Services**

April 2022- March 2025

OFFICIAL-SENSITIVE

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GLOSSARY

| | |
|-------|---|
| DA | Delegation Agreement |
| DfE | Department for Education |
| EACEA | The European Education and Culture Executive Agency |
| EC | European Commission |
| EP | European Parliament |
| ESC | European Solidarity Corps |
| EU | European Union |
| GFNA | Guide for National Agencies |
| HE | Higher education |
| HEI | Higher education institution |
| ICT | Information and Communication Technology |
| NA | UK National Agency |
| NAU | National Authority |
| VET | Vocational Education and Training |

DEFINITIONS

| | |
|---------------------------------------|---|
| Annual Review Report | Annual Review Report means: Information requested and collated that is contractually required that aides transparency of key events, over the 12 month programme year period including sequencing, milestones, objectives and provide qualitative and quantitative measurement of management information as evidence (MI) of value for money. |
| Issues Register | Issues register means: a document that centrally audit stream of minor interruptions that may impede completion of minimum requirements within the agreed timescale herein this specification. |
| Key Performance Indicators | Key performance indicators (as set out in Table 1 of Schedule 4 of the Contract) means: clear qualitative or quantitative objectives which define adequate performance in key areas critical success factors, and against which progress, and performance can be measured. |
| Monthly Performance Management Report | Monthly Performance Management Report means: a central reporting management information document inputted and updated by the contractor that encapsulates agreed qualitative and quantitative objectives and standards of service levels and delivery of the contract-specified output and outcomes. |
| Quarterly Performance Report | Quarterly Performance Report means: a further in depth dive of contractual obligations maintained and updated through a central reporting management information documents inputted and updated by the contractor that encapsulates agreed qualitative and quantitative objectives and standards of service levels and delivery of the contract - specified output and outcomes. |
| Resources Plan | Resource plan means: all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract. |
| Risk Plan / Register | Risk Plan/Register means: the risk register records all risks identified and the result of their analysis and evaluation; their grading in terms of likelihood of occurrence and seriousness of impact, and initial plans for mitigating each high-level risk and subsequent results. |
| Service Levels | Service levels (as set out in Table 2 of Schedule 4 of the Contract) means: a formal statement of performance requirements, specifying the nature and level of service to be provided by a supplier. The purpose of a service level within the specification and agreement is to define the Departments minimum level needs and secure commitment from the supplier to meeting those needs to measure actual performance with agreed service levels, within performance meetings. |

SCOPE OF DFE REQUIREMENTS OF A NATIONAL AGENCY (NA) FOR ERASMUS+ AND EUROPEAN SOLIDARITY CORPS (ESC) RESIDUAL ACTIVITY

1. INTRODUCTION

- 1.1 Erasmus+ is the European Union programme for education, training, youth and sport. It aims to modernise these sectors across Europe, including the UK, and offers opportunities for organisations to collaborate to improve the quality of provision. Learners can study, volunteer and gain work experience abroad, to develop new skills, gain vital international experience and boost their employability.
- 1.2 The European Solidarity Corps (ESC) is the European Union initiative which funds opportunities for young people to volunteer or work in projects in their own country or abroad that benefit communities and people around Europe.
- 1.3 The United Kingdom funded and participated in the 2014-2020 Erasmus+ Programme (Programme). The Department for Education (DfE) is the United Kingdom's (UK) "National Authority" (NAU) for the Programme, responsible for co-ordinating and ensuring management of Erasmus+ obligations in the UK. The DfE is required by the regulations that govern the Programme to appoint a "National Agency", (NA) who shall be responsible for managing all stages of the project lifecycle for Programme actions within the UK, and also engage with the European Commission and other National Agencies.
- 1.4 Although the UK is no longer an EU member state, the Withdrawal Agreement in place between the UK and EU requires that all projects selected and funded under the Programme should continue to operate until their completion on the same basis under which they were selected. The latest Delegation Agreement issued by the European Commission (EC) in 2020 requires the implementation of the entrusted tasks during the period between 1 January 2020 and 30 June 2024.
- 1.5 Accordingly, the DfE is required to ensure ongoing delivery of its obligations to the Programme until complete through an appointed NA. This document details the services that the Contractor, as the appointed National Agency, will deliver to support the DfE in completing its obligations for the residual Erasmus+ activity.

2. PROGRAMME REGULATIONS AND FINANCIAL CONTROLS

- 2.1 The Contractor is required to be familiar with and understand the Programme regulations and financial rules and ensure that their approach to meeting the obligations of the appointed NA is cognisant of and compliant with any relevant conditions and stipulations as detailed in the regulations and financial rules.
- 2.2 The EC determine the following regulations and financial rules that enable the programme to exist and operate:

- 2.2.1 [Regulation \(EU\) No 1288/2013](#) of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport and repealing Decisions [No 1719/2006/EC](#), [No 1720/2006/EC](#) and [No 1298/2008/EC](#), including Article 18(4) on the additional funding derived from external instruments, "the Erasmus+ legal basis";
- 2.2.2 [Regulation \(EU\) 2018/1475](#) of the European Parliament and of the Council of 2 October 2018 laying down the legal framework of the European Solidarity Corps and amending [Regulation \(EU\) No 1288/2013](#), [Regulation \(EU\) No 1293/2013](#) and [Decision No 1313/2013/EU 1](#), "the European Solidarity Corps legal basis"
- 2.2.3 [Regulation \(EU, EURATOM\) No 966/2012](#) of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council [Regulation \(EC, Euratom\) No 1605/2002](#)

3. DELEGATION AGREEMENTS

- 3.1 The EC will issue the Contractor with Delegation Agreements relating to delivery of the Programme. The Contractor is required to comply with the conditions and stipulations of each Delegation Agreement.
- 3.2 The Delegation Agreements are legal documents between the EC and the NA, and will:
 - 3.2.1 Entrust the implementation of Erasmus+ Programme and European Solidarity Corps management tasks to the Contractor in accordance with the terms and conditions of the Erasmus+ and European Solidarity Corps legal bases.
 - 3.2.2 Define the entrusted tasks and lay down the rules - including rights and obligations on both parties; and
 - 3.2.3 Confirm that the Contractor shall perform the entrusted tasks under its own responsibility and in accordance with the principles of sound financial management, transparency and non-discrimination.
- 3.3 For the avoidance of doubt, the EC will issue the Contractor with the following Delegation Agreements:

| Year | DA Term |
|------|-----------------------------------|
| 2018 | 1 January 2018 and 30 June 2022 |
| 2019 | 1 January 2019 and 30 June 2023 |
| 2020 | 1 January 2020 until 30 June 2024 |

- 3.4 The Contractor should note that the Delegation Agreements encompass the entirety of entrusted tasks to be delivered for the Programme. Delegation agreement funding for respective years is ring fenced for grant distribution and calls awarded from that specific year that may stay active for up to four years until close.
- 3.5 For the purposes of concluding delivery of the Programme in line with the Withdrawal Agreement and under this Specification, the following aspects of the Delegation Agreement are not applicable to Residual activity and do not need to be complied with:

- Article I.3. Union Financial Contribution
- I.3.1. Contribution to management costs
- I.3.2.2 Budget transfers within contribution to networks
- I.3.3.2 Budget transfers within Erasmus+ Heading 1 funds
- I.3.3.3 Budget modifications in Key Action 2 in School Education
- I.3.3.4 Erasmus+ Transnational Cooperation Activities between NAs
- I.3.3.8 Budget transfers within European Solidarity Corps funds
- I.5.1.1 First pre-financing payment
- Article I.6. Bank Accounts
- Article I.8. Amendments to the agreement
- Article II.20. Early-detection and exclusion system
- Annex VI Negative Interest and Avoidance Strategy

4. GUIDE FOR NATIONAL AGENCIES

- 4.1 The EC provides a “Guide for National Agencies” (GfNA) and this document sets out the minimum requirements for the internal control standards applicable to all National Agencies and for the management of the project lifecycle. Refer to Annex A, document 9.
- 4.2 The Contractor is required to comply with the conditions and stipulations of the GfNA. As part of the Delegation Agreement signed between the EC and the Contractor (as referred at section 3), the GfNA is contractually binding. 4.3 As such, it is the reference framework for the key controls and supervision of the Contractor that will be undertaken by the EC and the DfE, as well as the Independent Audit Body (as referred at section 4.6.5 of the GfNA).
- 4.4 The EC reserves the right to amend the GfNA as appropriate, and the Contractor must comply with such amendments. As the GfNA constitutes a contractual annex to the Delegation Agreement, the Contractor shall obtain prior authorisation in writing from the EC in case it wishes to deviate from any of the obligations set out in the GfNA. The Contractor must consult with, and take any directions from the DfE, before approaching the EC for authorisation to deviate from the stated obligations.
- 4.5 The Contractor should note that the GfNA as stated relates to the entire project lifecycle. For the purposes of concluding delivery of the Programme in line with the Withdrawal Agreement and under this Specification, the following aspects of the GfNA are not applicable to Residual Activity and do not need to be complied with:

3. Project Lifecycle Management

- 3.2 – Call for proposal
- 3.4.2 – Information and promotion of the programmes
- 3.5 – Counselling of potential applicants
- 3.6 – Reception and registration of grant applications
- 3.7 – Grant award procedures

3.8 – Grant agreements

3.9 – Reserve Lists

4. Management of the Delegation Agreement

4.1.3.2 – Flexibility and transfers

4.1.3.3 – Use and redistribution of unspent funds

4.2 - National co-funding to decentralised actions

4.5.2 – Organisation registration for Erasmus+ and the European Solidarity Corps 4.5.3 – Electronic Application Forms (e-Forms)

5. NA Support to Quality and Impact

5.5 – Communicating the award of the Erasmus+ VET Mobility Charter

5. VOLUMES AND TIMESCALES

- 5.1 The number of Erasmus+ and ESC projects that are to be monitored and closed will decrease during the Residual Activity period and the services to be provided in line with this Service Requirement will reduce as well.
- 5.2 Details of the forecasted number of open projects for each Key Action (KA) relating to Youth/ ESC and KA226/7 projects for 2020 calls and the projects that have extended their duration under Covid-19 measures are outlined at Annex A, document 7.

6. COMMUNICATIONS AND WEBSITES

- 6.1 The Contractor shall set up and keep up-to-date an **Erasmus+ Programme website** providing all necessary information on the opportunities offered by the Programme and the results and impact of projects. This includes in particular: Erasmus+ Programme Guide, (Annex A, document 1) available budget, lists of funded projects, contact points for further information, dissemination guidelines as well as all relevant information and useful links, including to the DG EAC and EACEA (Education, Audio-visual and Culture Executive Agency) Programme website and to the Erasmus+ Project Results platform. Refer to Annex A, document 2.
- 6.2 The Contractor will also set up and keep up-to-date a self-standing **European Solidarity Corps website** providing all necessary information on the opportunities offered by the Corps and the results and impacts of projects. This includes in particular access to the European Solidarity Corps Guide, available budget, lists of funded projects, contact points for further information as well as relevant information and useful links, including to the European Solidarity Corps Portal and website, the EACEA (Education, Audio-visual and Culture Executive Agency) website and to the European Solidarity Corps Results platform. The website cannot be within a section on Erasmus+ website, nor can Erasmus+ feature as part of the URL.

- 6.3 Case studies will remain on the websites with representation across each sector to fulfil 2020 work programme requirements. No new case studies will be created for the residual activity from 2021 onwards.
- 6.4 The websites must also provide information about the Temporary Worker Visa Sponsorship requirements and how individuals may apply for a Certificate of Sponsorship.
- 6.5 The Contractor is required to operate dedicated Erasmus+ and ESC email inboxes and telephone helplines to enable Contractor staff to respond to incoming communications, queries and feedback from beneficiaries and other stakeholders.
- 6.6 The Contractor is expected to use social media to facilitate two-way conversations with organisations and the general public (refer to GFNA section 3.3.3).
- 6.7 The Contractor will host a variety of online webinars and face to face events, conferences and meetings to engage with beneficiaries and stakeholders throughout each year.
- 6.8 In addition to the European Commission requirements regarding accessibility of websites, the Contractor is also subject to, and compliant with, corporate standards in relation to the security of the websites and commissioned independent penetration tests on an annual basis.
- 6.9 The Contractor are required to manage these communication services in line with the reducing nature of the Residual activity volumes and requirements, whilst remaining compliant with the Delegation Agreement (and its annexes). Refer to Annex A, document 10.

7. ICT, SYSTEMS AND DATA SECURITY

- 7.1 The Contractor shall use the IT tools made available by the EC in view of the management of EU Funds for grant support and for communication with the Commission and the network of NAs (please refer to the GfNA, section 4.4).
- 7.2 The Contractor will ensure that in delivering its service obligations it complies with its Data Protection obligations as stipulated by the EC (please refer to GfNA, section 4.4.8) and as provided at Clause 13 and in Schedule 8 of the Contract for Delivery of Erasmus+ and ESC Activity Services.
- 7.3 The Contractor must ensure that any systems, controls and procedures it is responsible for when delivery the obligations of this Service Requirement, are compliant with the Departmental Security Standards for Business Services and ICT Contracts as provided at Clause 13 and in Schedule 8 and Schedule 11 of the Contract for Delivery of Erasmus+ and ESC Activity Services. The Department will assess compliance against the service standard.

8. AUDIT CONTROLS AND YEARLY REPORTS

- 8.1 The GfNA requires the Contractor to provide an Internal Audit function (see GfNA section 2.7). The Contractor is required to inform the DfE of the audit plan to be delivered by the auditor, the outcomes of the audit work undertaken by the auditor and, where the auditor makes recommendations, the

Contractor's progress in implementing and resolving the recommendations. This information will be provided as part of the Performance Management Review meetings.

- 8.2 As required at I.4.2 of the Delegation Agreement, and 4.7.4 of the GfNA, the Contractor shall submit to the EC, DfE and an Independent Audit Body (appointed by the DfE) a Yearly Report (or management declaration) relating to the previous calendar year. The Yearly Report must be submitted by the 15th February following each calendar year.
- 8.3 The Contractor will provide a draft of their Yearly Report to the DfE 15 working days in advance of formal submission to the EC, DfE and an Independent Audit Body. The DfE will provide its own commentary on the report to the Contractor within 5 working days, which the Contractor will take account of when finalising their Yearly Report.
- 8.4 The Contractor will engage with the DfE's appointed Independent Audit Body to enable it to provide its audit opinion on the Yearly Report to the EC and DfE. The Contractor will provide access to information, data, evidence and people as necessary to enable to Independent Audit Body to form its opinion as submit its opinion to the EC by the 15th March in each relevant year.
- 8.5 The Contractor is required to adopt and introduce measures identified from the management declaration of assurance to the satisfaction of both the DfE and the EC.

9. GOVERNANCE AND SERVICE MONITORING

- 9.1 The Contractor will be required to adopt its own robust governance strategy for the purpose of overseeing, managing, and providing assurance over delivery of this Service Requirement. The Contractor will have in place:
 - 9.1.1 Appropriate **Senior Management Oversight and Monitoring** of the Erasmus+ projects being delivered, to ensure requirements and standards are achieved and there is effective, timely and appropriate decision making.
 - 9.1.2 An **Operational and Resource Plan**: that provides an up-to-date forward look of planned activities and key milestones during the lifetime of the contract, including any dependencies between these activities. The Operational and Resource Plan will form the basis for tracking delivery of the Service Requirement over the duration of the contract.
 - 9.1.3 A **Risks and Issues Controls** log: that embeds robust risk and issue management. The controls will identify the key risks to service delivery, their impact, owners, and the proposed mitigations via a risk register. An issues log will contain new issues, matters for escalation, and resolution progress.
 - 9.1.4 A **Quality Management Approach**: that sets out the standards, procedures, and responsibilities to ensure the Service Requirements are delivered to the required quality.
 - 9.1.5 A **Business Continuity Plan**: that ensures essential and time-critical business can be continued in the event of foreseen or unforeseen disruption, including disaster recovery.
 - 9.1.6 A service **Expiry / Exit Management** approach, that is compliant with the provisions set out in the contractual terms and conditions.

- 9.1.7 A service measuring and reporting approach which focuses on **user/customer satisfaction**. The NA will undertake an annual satisfaction survey with beneficiaries, the survey will measure beneficiary satisfaction with all aspects of their experience of the Services, including: i) The receipt of accurate and timely payment of grant; ii) Any grant checking and reporting process they may engage with; iii) The handling of general enquiries; iv) The quality and usefulness of the web services provided.

10. GOVERNANCE/PERFORMANCE REVIEWS

- 10.1 The Contractor will be required to inform and participate in the process of service delivery governance. This will include monthly and quarterly Performance Management Review meetings. These meetings will have the purpose of monitoring the NA's delivery of this Service Requirement, reviewing delivery performance, ensuring risks and issues are being managed appropriately, and ensure compliance with contractual obligations.

11. MONTHLY PERFORMANCE MANAGEMENT REVIEW MEETINGS

- 11.1 The Contractor will engage in monthly Performance Management Review meetings. The focus of the monthly meetings will, as a minimum include:
- 11.1.1 Reviewing the Contractor's delivery of the Erasmus+ Residual Service over the relevant monthly period, taking account of services to be delivered in that month, the Contractor's defined Operational Plan and Resource Plan. This review will take account of anticipated and actual volumes of activity.
 - 11.1.2 To review performance against Key Performance Indicators and Service Levels and, where appropriate, discuss and agree any actions (and associated timescales) to improve performance against any relevant Key Performance Indicators or Service Levels.
 - 11.1.3 To review service delivery risks and issues and discuss/agree actions that will enable the Contractor to mitigate risks and manage issues.
 - 11.1.4 To review and discuss any EC commissions or requests for change that have the potential to impact, or are impacting, delivery of the Erasmus Residual Services.
 - 11.1.5 Approving Contractor invoices for payment.
- 11.2 The Contractor will support the monthly Performance Management Review Meetings by:
- 11.2.1 Providing to the Department information, data and reports that will allow an informed review of and discussion about the service delivery. That information to be provided 7 (seven) working days after the end of the month where performance is being reviewed.
 - 11.2.2 Maintain a record of key discussion points, actions and decisions.
- 11.3 The DfE may amend and supplement the information it requires in response to i) risks and issues that warrant further reporting information, or ii) new reporting aspects that will provide further transparency and assurance over delivery of the Erasmus+ Residual activity.
- 11.4 The DfE reserves the right to validate MI, reports or claims made in reports, in whole or in part, independently or directly with providers, beneficiaries and/or partners.

- 11.5 The Contractor will engage in other meetings as necessary to review, discuss and progress topic specific issues that warrant separate meetings outside of the monthly Performance Review Meetings.

12. QUARTERLY REVIEWS

- 12.1 On a quarterly basis the monthly Performance Management Review meetings will be extended. As well as conducting the stipulated monthly Performance Management Review requirements, the quarterly meetings will also:
- 12.1.1 Provide a forward look of Erasmus+ Residual Activity to be delivered over the next quarterly period. This forward look will be cognisant of the Contractor's Operational Plan and Resource Plan, and be used to:
 - 12.1.2 Discuss services to be delivered during the upcoming quarterly period, taking account of specific obligations as specified Delegation Agreement and GfNA obligations.
 - 12.1.3 Review updated quantification data, to be provided in excel format, and which will enable analysis of key activity forecasts until expiry of the services.
 - 12.1.4 Highlight and inform discussion about any potential/actual changes that are necessary to ensure that Delegation Agreement and GfNA obligations continue to be delivered in light of any influencing factors.
 - 12.1.5 Explain any key upcoming amendment to deliver that are related to managing the wind-down of the services.
- 12.2 The quarterly meetings will review:
- 12.2.1 Review management information regarding outstanding and closed beneficiaries debt recoveries, including current volumes, and forecast with detailed outstanding debt and inclusion of strategic debt recovery plan to facilitate recoveries in line with GFNA section 3:10.
 - 12.2.2 Review a cost report of spend to date for each sector including yearly accounts drawn up for the expenditure incurred for entrusted tasks are properly presented, complete and accurate.
 - 12.2.3 A update on the progression of, and outcomes of Customer Satisfaction Surveys.
 - 12.2.4 Provide an update on Independent Audits the Contractor has conducted in the quarterly period. This update to include details of audit activity, findings and actions being taken forward / completed to respond to the findings.
 - 12.2.5 Undertake a review of exit obligations as stipulated in the contract.
 - 12.2.6 The Contractor to, as relevant, provide an update on Business Continuity activity that has been conducted in the previous quarterly period and/or will be conducted in the upcoming quarterly period, to include monitoring of progress to resolve any findings.
 - 12.2.7 Provide an update on the Social Value Action Plans, and progression towards relevant key performance indicators.

12.3 The quantification data report must include and be broken down by detailed programme strands KA1, KA2, KA3 and specific sector and include the following volumes of activities (refer to Annex A, document 7 for a summary of Key Actions led by Managing Agents):

- 12.3.1 No of live projects
- 12.3.2 Total value of live projects
- 12.3.3 No of projects that have closed
- 12.3.4 Value of beneficiary payments by month
- 12.3.5 Total of beneficiary payments already made
- 12.3.6 Total amount of beneficiary payment remaining to be made
- 12.3.7 Percentage of pre-finance payment to KA

12.4 The Contractor will support the quarterly version of the Performance Management Review Meetings by:

- 12.4.1 Providing to the Department the relevant quarterly information, data and reports that will allow an informed review of and discussion about the service delivery. That information to be provided 7 (seven) working days after the end of the month/quarter where performance is being reviewed.
- 12.4.2 Maintain a record of key discussion points, actions and decisions.

12.5 The DfE may amend and supplement the information it requires in response to i) risks and issues that warrant further reporting information, or ii) new reporting aspects that will provide further transparency and assurance over delivery of the Erasmus+ Residual activity.

12.6 The DfE reserves the right to validate MI, reports or claims made in reports, in whole or in part, independently or directly with providers, beneficiaries and/or partners.

13. SOCIAL VALUE

13.1 The Contractor is requested to support Government and the Department in the achievement of Social Value policies (see [Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/procurement-policy-note-06-20-taking-account-of-social-value-in-the-award-of-central-government-contracts)).

13.2 One of the Department’s key strategic objectives is to drive economic growth through improving the skills pipeline, levelling up productivity and supporting people to work. Aligned with this strategic objective, a key Departmental policy relates to apprenticeships, with a focus on widening participation in apprenticeships and creating progression for apprentices. Both the strategic objective and apprenticeship policy relate to the Social Value themes of “COVID-19 Recovery” and “Tackling Economic Inequality”.

13.3 A further key Departmental initiative relating to “Project Race”, which concerns creating a race-inclusive culture for all employees, regardless of their ethnicity, and improve the process of creating a level playing field for Black, Asian, and Minority Ethnic staff. This initiative is closely aligned with the Social Value theme of “Equal Opportunity”.

- 13.4 The Contractor's organisation is requested to have in place its own policies and initiatives that support progression towards and achievement of these key Social Value themes, objectives and initiatives.
- 13.5 The Contractor's organisation is requested to prepare, monitor and progress a Social Value Action Plan(s) which:
- 13.5.1 Demonstrates a proactive approach to support alignment with the DFE strategy and vision of recruitment, training and support of employees and increasing apprenticeship opportunities.
 - 13.5.2 Demonstrates a proactive approach to support alignment with the DFE initiative to create a race-inclusive culture for all employees, regardless of their ethnicity; and improve the process of creating a level playing field for Black, Asian, and Minority Ethnic staff.
 - 13.5.3 focuses on achieving the Social Value themes, objectives and initiatives in the performance of the contract and gives confidence the approach is being adopted across its wider business.
 - 13.5.4 Explains how progression will be monitored and how success of the plan will be measured (including KPIs), with mechanisms which help to drive identified improvements.
- 13.6 The Contractor's will report to / update the Department on the delivery of its Social Value Action Plan(s) as part of the quarterly Performance Management Review Meetings.
- 13.7 As requested by the Department, the Contractor will provide information about its relevant Social Value policies and Social Value Action Plans, to enable the Department (if required) to demonstrate progression towards and achievement of Social Value policies.

14. TRANSITION AND MOBILISATION

- 14.1 The Contractor is responsible for ensuring it is ready to deliver the Erasmus+ Residual Services in accordance with the requirement set out in this document.
- 14.2 The Contractor will apply robust planning and management controls to ensure their solution for delivering the Erasmus+ Residual Services is introduced within specified time limits, in a controlled manner, and to an acceptable level of quality.
- 14.3 The Contractor will apply robust internal governance arrangements, which include clear roles and accountabilities, to control delivery of Transition and Mobilisations, manage risks and ensure effective and timely decision making.
- 14.4 The Contractor will prepare and deliver their final Transition and Mobilisation Plan to the Department for approval within 10 working days of entering into contract for delivery of the Erasmus+ Residual Service. The plan will, as minimum:
- 14.4.1 Identify all workstreams and deliverables considered necessary to achieve successful transition to and mobilisation of their solution;

- 14.4.2 Include a timeline, that provides clarity in respect of key milestones, that will be used to measure performance towards achieving successful mobilisation.
- 14.4.3 Include a resourcing plan, setting out the critical roles, type and amount of resource used at each stage.
- 14.4.4 Include a register identifying the key risks associated with its transition and mobilisation solution, an impact assessment of identified risks, risk owners and proposed mitigations and contingencies.
- 14.4.5 Details of contingency that has been allowed.
- 14.4.6 A clear statement of reasonable and appropriate Departmental and European Commission dependencies applicable to each transition/mobilisation stage or activity.

15. EX-ANTE COMPLIANCE ASSESSMENT

- 15.1 Where relevant (i.e. where there is a change of National Agency), the Contractor will support the DfE to fulfil its obligations to provide the EC with an “ex-ante Compliance Assessment”, which provides assurance that the new National Agency complies with the Union requirements for internal control standards for National Agencies and rules for the management of programmes’ funds for grant support. Refer to Annex A, document 8 for further info.
- 15.2 The focus of the Compliance Assessment is to provide assurance that the required legal, organisational, operational and financial requirements are in place, with a focus on ensuring the Contractor:
 - 15.2.1 have legal personality or be part of an entity having legal personality, and be governed by the law of the participating country concerned.
 - 15.2.2 have the adequate management capacity, staff and infrastructure to fulfil its tasks satisfactorily, ensuring efficient and effective management of the Programmes and sound financial management of Union funds;
 - 15.2.3 have the operational and legal means to apply the administrative, contractual and financial management rules laid down at Union level;
 - 15.2.4 offer adequate financial guarantees, issued preferably by a public authority, corresponding to the level of Union funds it will be called upon to manage;
 - 15.2.5 be designated for the duration of the Programme.
- 15.3 The Contractor will support the DfE by providing information, evidence and data to support the Compliance Assessment process. Annex A, document 8 to this service requirement explains the type and level of information that the DfE may need to provide to the EC as part of the Compliance Assessment process. The Contractor will support the DfE’s Compliance Assessment by providing relevant information, evidence and data.
- 15.4 Where the DfE appoints an Independent Audit Body to verify the content of the DfE’s Compliance Assessment, the Contractor will engage with the Audit Body and provide access to relevant supporting information, evidence and data, to enable the Audit Body to provide their assurance assessment to in support of the Compliance Assessment.

16. NOTIFYING GRANT BENEFICIARIES

- 16.1 Where relevant (i.e. where there is a change of National Agency), the Contractor will, as necessary, manage the process of informing all Beneficiaries that there has been a change in National Agency. This will involve a unilateral amendment to the existing grant agreements by way of notification of the change. The Contractor is required to put in place a process to seek acknowledgement of the change from the Beneficiary. Such amendment will legally replace the National Agency in the existing grant agreements, with the Contractor taking legal responsibility for the existing grant agreements on and from 1 April 2022.
- 16.2 The model Erasmus+ Grant Agreements are located at Annex II of the GfNA.

17. MANAGING TRANSITION AND MOBILISATION

- 17.1 The Contractor will:
- 17.1.1 Have in place a person responsible for the overall delivery of the Transition and Mobilisation plan;
 - 17.1.2 Provide names of key personnel responsible for applicable strands of transition / mobilisation work;
 - 17.1.3 Ensure that all key personnel responsible for the management and undertaking of transition and mobilisation activity are suitably qualified.
- 17.2 The Contractor will engage in and fully support Transitional and Mobilisation governance arrangements with the Department. The Contractor will attend monthly Transition and Mobilisation meetings with the DfE, and for each meeting provide updates that enable the parties to (updates to be provided 48hrs in advance of the relevant meeting):
- 17.2.1 Review the transition/mobilisation period until that point, detailing activity delivered and notable achievements.
 - 17.2.2 Provides information on the progress against the Transition and Mobilisation Plan and the achievement of key milestones set out within it.
 - 17.2.3 Provides information on mitigating actions where key milestones could not be achieved.
 - 17.2.4 An update on existing risks/issues, how they are being mitigated and managed, and raise issues for escalation.
 - 17.2.5 A review of relevant Milestone Payments due, supported by relevant evidence to inform decisions on payment.
 - 17.2.6 A view of the next four weeks of the implementation period, including a review of upcoming Departmental dependencies.
- 17.3 In addition, the Contractor will attend other meetings as necessary with the DfE and European Commission to discuss and review pertinent deliverables, risks and issues associated with Transition and Mobilisation.
- 17.4 The Contractor is responsible for securing Authority to Operate from the DfE, where the DfE will seek assurance that:
- 17.4.1 Relevant work process and procedures have been prepared and ready for use;

- 17.4.2 Resources are in place and ready to deliver the services, with relevant security and training needs complete;
- 17.4.3 Testing demonstrates the readiness of the overall technical solution, and this is in line with the Department data protection and security standards.
- 17.4.4 Other supporting documentation provides assurance of readiness;
- 17.4.5 If applicable, demonstrate an effective process of handover from the transition/mobilisation team to the relevant service delivery teams.

Annex A: Erasmus+ Supporting products

| # | Product Description | Product |
|---|---|--|
| 1 | Erasmus Programme Guide 2020 |  Erasmus Programme Guide 20 |
| 2 | Erasmus + and ESC Website Descriptions |  E+ and ESC Website descriptions.pdf |
| 3 | Erasmus+ Assets Register |  Erasmus+ Assets Register.pdf |
| 4 | Erasmus+ ESC Residual – Data Log |  Erasmus+ ESC Residual – Data Log.x |
| 5 | Overview of Erasmus+ Residual Activities Post March 2022 |  Overview of the Erasmus+ Residual / |
| 6 | Work Volume Beyond March 2022 |  Work%20volume%2 Obeyond%20Mar22? |
| 7 | Summary of mobility projects and the Bodies that manage each of the Key Action Types. |  Summary of mobility projects and Managir |
| 8 | Ex-Ante Compliance Assessment – Information Requirements |  Ex-Ante Compliance Assessment – Informa |
| 9 | Erasmus+ and ESC Guide for National Agencies |  Erasmus+ ESC Guide for NAs - Redacted.pr |

| | | |
|----|-------------------------------|---|
| | | |
| 10 | Delegation Agreement |  Delegation Agreement Redacted. |
| 11 | Volume Quantification |  210809%20Quantification%20Table%20 |
| 12 | EPlusLink Platform User Guide |  EplusLink System Specification.pdf |

Schedule 2

Terms and Conditions

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BACKGROUND

- (A) The DfE issued an invitation to tender (ITT) on 20 July 2021 to seek a supplier(s) to deliver the Erasmus+ and ESC Residual Activity Services.

The Services subject to this Tender are “Social or Other Specific Services” within Section 7 of the Public Contracts Regulations 2015 and are therefore not subject to the full extent of the Regulations.

The procurement was carried out using a process in line to the Open Procedure and in accordance with the relevant parts of the Public Contracts Regulations 2015.

The Contract Notice was sent to Find a Tender Service (FTS) for publication on 20 July 2021 (FTS reference: 2021/S 000-017140) <https://www.find-tender.service.gov.uk/Notice/017140-2021> and was advertised on the Jaggaer Portal and Contracts Finder (<https://www.contractsfinder.service.gov.uk/Notice/a18853cd-ed40-481d-a2ba-2fe7ac7e1ad6>).

The deadline for submission of Tenders was 12:00 Noon on Wednesday 25 August 2021.

Compliant tender submissions were evaluated in line with the Tender evaluation process as outlined in the ITT. The tender evaluation process was conducted in a manner that ensures Tenders were evaluated fairly to ascertain the Most Economically Advantageous Tender (“MEAT”).

Tenderers were notified of the Contract Award Decision on 02 November 2021 and the Authority observed a voluntary standstill period which concluded at midnight on 12 November 2021.

The Authority notified the successful tenderer, British Council, on 15 November 2021 to confirm they wish to accept their offer and enter into the contract.

- (B) The Contractor submitted proposals to the DFE through which it represented to the DFE that it is capable of delivering the Services in accordance with the DFE's requirements as set out in the DFE's invitation to submit proposals and, in particular, the Contractor made representations to the DFE in its proposals in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- (C) On the basis of the Contractor's tender, the DFE appointed the Contractor to enter into an agreement to provide the Services in accordance with the terms and conditions of this Contract.

1. DEFINITIONS AND INTERPRETATION

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

"Acquired Rights Directive" means the European Council Directive 2001/23/EC on the approximation of laws of European member states relating to safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended;

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

"Change Control Note" means a note in the form set out in schedule 6.

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

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

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

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

“Confidential Information”

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Contract;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and
- (d) Information derived from any of the above, but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a nonconfidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contractor breach of a duty of confidentiality;
 - (iv) was independently developed without access to the Confidential Information; or
 - (v) relates to the Contractor's performance under this Contract.

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

“Contractor Profit Margin” means the Contractor Profit applied to the Charges expressed as a percentage.

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

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

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

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

“Database Rights” means any and all rights capable of protecting, vesting in or attaching to databases as are defined in section 3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

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

“Delegation Agreement” means the agreement between the Outgoing Contractor and the European Commission that appoints the National Agency of the United Kingdom for the Erasmus+ Programme.

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

“DFE Security Standards” means the security standards as set out in schedule 11.

“DFE Trade Marks” means proprietary trade mark rights (including goodwill and the right to sue for passing off) of DFE including those notified to the Contractor by DFE from time to time.

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

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

“DPA” means the Data Protection Act 2018.

“Effective Date” means the date of this Contract.

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

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

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

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

"Erasmus Grant Agreements" means any grant agreements entered into by the Outgoing Contractor in connection with the delivery of the Services.

"Exit Information" means the information, data and material as defined at clause 26.8.

"Financial Distress Event" has the meaning given to it in clause 8B.

"Financial Distress Service Continuity Plan" means the plan the Contractor will prepare and provide in the event of a Financial Distress Event, as set out in clause 8B.

"Financial Monitoring Plan" means a plan setting out the Contractor's proposals for the monitoring and reporting of its financial stability, and the financial stability of its Key Sub-Contractors, to be provided to the DFE in accordance with clause 8B.

"Financial Year" means any year beginning on 1 April and ending on 31 March.

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

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

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

"General Anti-Abuse Rule" means:

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

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

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

"HMRC" means Her Majesty's Revenue and Customs.

"ICT" means information and communications technology.

"Incoming Employees" means the employees of the Outgoing Contractor or any Outgoing Contractor Agent who are wholly or mainly assigned to the provision of services which are the same as or similar to the Services or any part of the Services immediately prior to the Services Commencement Date and are liable to transfer to the Contractor pursuant to TUPE and/or the Acquired Rights Directive who have not validly objected to the transfer in accordance with Regulation 4(7) of TUPE and "Incoming Employee" means any one of them.

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000.

"Initial Term" means the period from the Effective Date to 31 March 2025.

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

"IP Materials" means any and all materials in digital or physical format developed, used or supplied for use by any party in the course of or for the purposes of the Contract, including but not limited to any programme materials, guidance, papers and research data, results, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

"KPIs" means the key performance indicators in relation to the Services set out in Table 1 of schedule 4 which the Contractor shall comply with.

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

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

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

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses 9, 10, 12, 16, 18 and 34 and in schedule 8 and schedule 11.

"New Fair Deal" means the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for Staff Pensions: Staff Transfer from Central Government"* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Effective Date; and
- (b) any similar pension protection in accordance with the subsequent provisions as notified to the Contractor by the DFE.

"NICs" means National Insurance Contributions.

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

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

"Open Book Data" means complete and accurate financial and nonfinancial information which is sufficient to enable the DfE to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Contractor's costs broken down against each Service, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor Profit Margin; and
 - (iv) reimbursable expenses;
 - (v) overheads;
 - (vi) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
 - (vii) the Contractor's Profit achieved over the Term and on an annual basis;
 - (viii) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor;
 - (ix) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
 - (x) the actual costs profile for each Service Period.

"Outgoing Contractor" means a Contractor engaged by the DfE prior to the Services Commencement Date to provide services which are the same as or similar to the Services or any part of the Services to be provided by the Contractor.

"Outgoing Contractor Agent" means the Outgoing Contractor 's agents and contractors, including each sub-contractor.

"Overheads" means those amounts which are intended to recover a proportion of the Contractor's or the Key Sub-Contractor'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 the Staff.

"Prohibited Act" means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the DFE a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) the defrauding, attempting to defraud or conspiring to defraud the DFE;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

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

“Reimbursable Expenses” means 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 DFE's expenses policy current from time to time, but not including:

- (a) travel expenses incurred as a result of 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 DFE otherwise agrees in advance in writing; and
- (b) subsistence expenses incurred by 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.

“Regulations” means the Public Contract Regulations 2015.

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

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

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

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

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

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

“Services” means the services described in the Specification.

“Services Commencement Date” means 1 April 2022.

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

“Service Levels” means the levels of Service defined in Table 2 of schedule 4.

“Service Period” means the following:

- (a) the first Service Period of the Contract shall begin on the Services Commencement Date and shall expire at the end of the calendar month in which the Services Commencement Date falls; and
- (b) after the first Service Period of the Contract a Service Period shall be a calendar month during the Contract save that the final Service Period of the Contract shall commence on the first day of the calendar month in which the Contract expires or terminates and shall end on the expiry or termination of the Contract.

“Service Users” means those receiving the Services.

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

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

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

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

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

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

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

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

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

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

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

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

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

2. TERM

- 2.1 The Contract commences on the Effective Date and, subject to any provision of this Contract for earlier termination, or extension set out in this clause 2, will terminate at the end of the Initial Term.
- 2.2 DFE may extend the Initial Term by up twelve (12) months by giving not less than 3 months’ written notice to the Contractor prior to the expiry of the Initial Term.

3. THE SERVICES

- 3.1 The Contractor shall provide the Services in accordance with the Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.
- 3.2 The DFE may appoint other contractors for the Services.
- 3.3 The Contractor shall, in performing its obligations under the Contract:
 - 3.3.1 conform to the requirements of the Specification and the Contractor’s Solution or as otherwise agreed in writing between the Parties;
 - 3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;
 - 3.3.3 comply with Good Industry Practice;

- 3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;
 - 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - 3.3.6 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 4;
 - 3.3.7 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within fourteen (14) days of the same being brought to the attention of the Contractor by the DFE;
 - 3.3.8 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
 - 3.3.9 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Staff, employees of the DFE, the Service Users and all other persons including members of the public; and
 - 3.3.10 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Staff also comply.
- 3.4 The DFE may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
 - 3.5 All equipment and other property brought onto DFE Premises shall be at the Contractor's own risk and the DFE shall have no liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the DFE.
 - 3.6 Any land or DFE Premises made available from time to time to the Contractor by the DFE in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or DFE Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or DFE Premises was made available.
 - 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the DFE retains the right at any time to use any DFE Premises in any manner.
 - 3.8 The Contractor shall comply with the requirements of the European Commission regarding either the novation (or otherwise transfer) of the Delegation Agreement or entry into a new delegation agreement on or before the 31 March 2022 in accordance with section 3 of the Specification.
 - 3.9 The Contractor shall procure the novation (or otherwise transfer) of the Erasmus Grant Agreements from the Outgoing Contractor to the Contractor in accordance with section 16 of the Specification.
 - 3.10 In providing the Services the Contractor shall, and shall procure that its employees, consultants, agents or Sub-Contractors shall, subject to where the requirements of the European Commission are to the contrary, comply with the Welsh Language Act 1993.
 - 3.11 The Contractor shall forward the following information in writing to the DFE within the timeframes stated in this clause 3:

- 3.11.1 notices of meetings between the Contractor and the European Commission within five (5) Working Days of the Contractor's receipt of the same from the European Commission;
- 3.11.2 any documents circulated at or in advance of any meeting between the Contractor and the European Commission within five (5) Working Days of the Contractor's receipt of the same;
- 3.11.3 any notes taken in respect of any meeting between the Contractor and the European Commission within ten (10) Working Days of the Contractor's receipt of the same. In addition to this, the Contractor shall record the minutes of any meeting between the Contractor and the European Commission and provide such records of minutes to the DFE within fifteen (15) Working Days of any such meeting; and
- 3.11.4 any communications to the Contractor from the European Commission which can be envisaged to have a significant effect on the Services.

4. NOT USED

5. TRANSFER AND SUB-CONTRACTING

- 5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a "**Transfer**") without the prior written consent of the DFE. The parties acknowledge that the DFE has consented to the sub-contracting of the Services to the Key Sub-Contractors as set out and as particularly described in Schedule 7.
- 5.1A For the avoidance of doubt and notwithstanding any other provision of this Contract, the Contractor is not permitted to sub-contract or otherwise delegate any task, of budget implementation, involving public mission, of use of discretionary powers such as awarding of grants or public contracts, making budgetary and legal commitments and validating and authorising expenditure. In the event that the Contractor sub-contracts any of the tasks that it is not permitted to sub-contract under this clause 5.1A and the European Commission requires the DFE to terminate the Contract as a result of such sub-contracting by the Contractor then the DFE shall have the right to terminate the Contract with immediate effect and without cost or liability to the DFE.
- 5.2 If the DFE consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.
- 5.4 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE's prior written consent.
- 5.5 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE's right of termination pursuant to clause 24 unless the Sub-Contractor can remedy the breach to the DFE's satisfaction within twenty one (21) days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.6 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.7 If the DFE believes there are:
 - 5.7.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or

- 5.7.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DFE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

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

- 5.8 The Contractor shall:
- 5.8.1 subject to clause 5.8.7, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of twenty five thousand pounds (£25,000) that arise during the Contract Period;
 - 5.8.2 within thirty (30) days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
 - 5.8.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - 5.8.4 provide reports on the information at clause 5.8.3 to the DFE in the format and frequency as reasonably specified by the DFE;
 - 5.8.5 for all Sub-Contractors related to this Contract promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
 - 5.8.6 each advert referred to at clause 5.8.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor;
 - 5.8.7 the obligation at clause 5.8.1 shall only apply in respect of subcontract opportunities arising after the contract award date;
 - 5.8.8 notwithstanding clause 5.8, the DFE may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.
- 5.9 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, on request and at no charge, provide timely, full, accurate and complete SME Management Information ("**MI**") Reports to the DFE including:
- 5.9.1 estimated total contract amount (£) to be received by the Contractor from the DFE under this Contract in the Financial Year;
 - 5.9.2 the total value of (£) work Sub-contracted by the Contractor under this Contract in the Financial Year;
 - 5.9.3 the total value of (£) work Sub-Contracted by the Contractor under this Contract to SMEs in the Financial Year; and
 - 5.9.4 the total value of (£) work Sub-Contracted by the Contractor under this Contract to VCSEs in the Financial Year.

6. STAFF

- 6.1 The DFE may refuse admission to DFE Premises and/or direct the Contractor to end the involvement in the Services of any Staff whom the DFE believes is a security risk.
- 6.2 If the DFE require the removal of any Staff pursuant to clause 6.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.

- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Staff and to ensure that the turnover rate of Staff is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the DFE's prior written consent.
- 6.5 For each of the Staff who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
- 6.6 The Contractor acknowledges that Key Staff and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Staff and Key Sub-Contractors listed in schedule 7 as at the Effective Date.
- 6.7 Key Staff shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Staff shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Staff being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Staff or Key Sub-Contractors.
- 6.10 DFE may require the Contractor to remove any Key Staff who the DFE considers in any respect unsatisfactory.
- 6.11 The DFE shall not be liable for the cost of replacing any Key Staff and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.
- 6.12 Except in respect of any transfer of staff under TUPE, for the Term and for twelve (12) months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.
- 6.13 The Contractor shall comply with all statutory pension obligations in respect of all Staff.

7. TUPE

- 7.1 The parties agree and acknowledge that the arrangements pursuant to this Contract may give rise to a relevant transfer under TUPE on commencement. Accordingly the Contractor will indemnify the DFE and/or any Outgoing Contractor (for itself and on behalf of any Outgoing Contractor Agent) against all Employment Liabilities arising from the Contractor's failure to perform and discharge any obligation and against any Employment Liabilities in respect of the Incoming Employees arising from or as a result of:

- 7.1.1 any act or omission by the Contractor relating to an Incoming Employee occurring on or after the Effective Date;
 - 7.1.2 all and any Employee Liabilities in respect of all emoluments and outgoings in relation to the Incoming Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contribution and otherwise) payable on or after the Services Commencement Date;
 - 7.1.3 any claim arising out of the provision of, or proposal by the Contractor to make any change to any benefit, term or condition or working condition of any Incoming Employee in respect of the period on or after the Services Commencement Date; and/or
 - 7.1.4 any failure by the Contractor to comply with the obligations imposed on a transferee by Regulation 13(4) of TUPE in respect of the transfer of any Incoming Employees except to the extent such failure is caused by or related to an act or omission of the Outgoing Contractor and/or any Outgoing Contractor Agent as appropriate.
 - 7.1.5 any statement communicated to or action done by the Contractor, to or in respect of, any Incoming Employee during any period, whether before, on or after the Services Commencement Date, which has not been agreed in advance with the Outgoing Contractor in writing.
- 7.2 No later than six (6) months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE (providing anonymised information where necessary), within thirty (30) days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:
- 7.2.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;
 - 7.2.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.2.1;
 - 7.2.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.2.1, their job titles and qualifications;
 - 7.2.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - 7.2.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union
- (together the “**TUPE Information**”).
- 7.3 At intervals determined by the DFE (which shall not be more frequent than once every thirty (30) days) the Contractor shall give the DFE updated TUPE Information.
- 7.4 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.5 The DFE may use TUPE Information for the purposes of any retendering process.
- 7.6 If TUPE applies or is alleged to apply to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages,

costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:

- 7.6.1 the provision of TUPE Information;
 - 7.6.2 any claim or demand by or in respect of any Transferring Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Transferring Employee on or before the end of the Term;
 - 7.6.3 any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the DFE or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - 7.6.4 any Court or Employment Tribunal claims (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - 7.6.5 any claim by or demand by or in respect of any person who is transferred by or is alleged to be transferred (or in respect of whom any liability transfers or is alleged to transfer) the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Transferring Employees.
- 7.7 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall promptly notify the DFE and provide the DFE with up to date TUPE Information.
- 7.8 This clause 7 applies during the Term and indefinitely thereafter.
- 7.9 The Contractor undertakes to the DFE that, during the twelve (12) months prior to the end of the Term, or at any time after any Party has given notice to terminate this Contract (in whole or in part) or after the Contractor shall have otherwise been notified by the DFE of the proposed termination of this Contract or the provision by it of the Services in whole or in part for whatever reason, the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
- 7.9.1 amend or vary (or promise or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
 - 7.9.2 terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - 7.9.3 transfer away, remove, reduce or vary (including, but not limited to, varying the proportion of time spent on the Services) the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal:
 - (i) was planned as part of the individual's career development;
 - (ii) takes place in the normal course of business; and
 - (iii) will not have any adverse effect on the delivery of the Services,

(provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or

- 7.9.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.
- 7.10 The Contractor shall comply with the schedule 12 and any requirement notified to it by the DFE relating to pensions in respect of any Incoming Employees as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.

8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.8 being issued by the Contractor.
- 8.3 The DFE shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this clause, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 8.4 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Initial Term.
- 8.5 The Charges are exclusive of Value Added Tax ("**VAT**") and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.
- 8.6 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 8.7 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.8 Invoices shall be submitted electronically by email to accountspayable.OCR@education.gov.uk within thirty (30) days of the end of the relevant invoicing date. To request a statement, please email accountspayable.BC@education.gov.uk. An invoice is a "**Valid Invoice**" if it is legible and includes:
- 8.8.1 the date of the invoice;
- 8.8.2 Contractor's full name and address;

- 8.8.3 Contract reference number;
 - 8.8.4 the charging period;
 - 8.8.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
 - 8.8.6 days and times worked (if applicable);
 - 8.8.7 Service Credits (if applicable); and
 - 8.8.8 VAT if applicable.
- 8.9 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.10 The DFE intends to pay Valid Invoices within five (5) days of receipt but shall make payment to the Contractor no later than thirty (30) days of verifying that the invoice is a Valid Invoice. Valid Invoices paid later than such thirty (30) days are subject to interest at the rate of two per cent (2%) above the base rate from time to time of Barclays Bank, but at two per cent (2%) for any period when that base rate is below zero per cent (0%). This clause 8.10 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.11 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within ten (10) Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.12 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE ("**Final Invoice**"). The Final Invoice shall be submitted not later than thirty (30) days after the end of the Term.
- 8.13 The DFE shall not be obliged to pay the Final Invoice until the Contractor has carried out all of the Service.
- 8.14 The Contractor shall ensure that a clause is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within thirty (30) days from the receipt of a valid invoice.
- 8.15 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within ten (10) Business Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending resolution of the dispute.
- 8.16 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within ten (10) Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 37.

8A. OPEN BOOK DATA

8A.1 The Contractor acknowledges the importance to the DFE and the DFE's need for complete transparency in the way in which the Charges are calculated.

8A.2 Financial Transparency Objectives

The Contractor shall co-operate with the DFE in order to achieve the following objectives:

8A.2.1 Understanding the Charges

- (a) for the DFE to understand any payment sought from it by the Contractor including an analysis of the Costs, and time spent by Contractor Staff in providing the Services;
- (b) for the DFE to be able to understand the impact of any proposed Change on the Charges;

8A.2.2 Agreeing the impact of Change

- (a) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Contractor's Charges;
- (b) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

8A.2.3 Continuous improvement

- (a) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (b) to enable the DFE to demonstrate that it is achieving value for money for the tax payer relative to current market prices.

8A.3 During the Term, and for a period of seven (7) years following the end of the Term, the Contractor shall:

8A.3.1 maintain and retain the Open Book Data; and

8A.3.2 disclose and allow the DFE and its appointed representatives and agents access to the Open Book Data.

8A.4 If the DFE reasonably considers the Open Book Data does not accurately represent and detail sums relating to this Contract and the Services then the Contractor shall provide the DFE with documentary evidence relating to such sums and contractual obligations.

8B. FINANCIAL STANDING

8B.1 The Contractor acknowledges and agrees that the financial stability and solvency of the Contractor and its Key Sub-Contractors is critical to the successful delivery of the Services and that any deterioration or potential deterioration of their financial position may have an adverse effect on the performance of the Contract.

8B.2 The Contractor shall promptly notify he DFE in writing if any of the following "**Financial Distress Events**" occurs in respect of the Contractor or a Key Sub-Contractor:

8B.2.1 there is a material deterioration of its financial standing such that it would be reasonable to question the ability of:

- (a) the Contractor to fulfil its obligations under the Contract or;
- (b) the relevant Key Sub-Contractor to fulfil its obligations under the relevant Key Sub-Contract;

8B.2.2 the appointment of an administrator or receiver;

8B.2.3 late filing of statutory accounts with Companies House;

8B.2.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;

- 8B.2.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
- 8B.2.6 it commits a material breach of covenant to its lenders;
- 8B.2.7 a Key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
- 8B.2.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness.
- 8B.3 In the event of a Financial Distress Event occurring, then the Contractor shall and shall procure that any affected Key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and provide a report to the DFE. Where the DFE reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Contractor shall submit to the DFE for approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as the DFE may reasonably require to assess financial standing and risks.
- 8B.4 If the DFE acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Services, then it may require the Contractor (and/or Key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the dispute resolution procedure in accordance with clause 37.
- 8B.5 If the DFE approves the Financial Distress Service Continuity Plan, then the Contractor shall execute and continue to review the plan (with submissions to the DFE for approval where it is updated).
- 8B.6 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Contractor shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- 8B.7 The DFE shall be entitled to terminate this Contract for Material Default if:
- 8B.7.1 the Contractor fails to notify the DFE of a Financial Distress Event in accordance with clause 8B.2;
- 8B.7.2 the DFE and the Contractor fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services); or
- 8B.7.3 the Contractor fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.

9. TAX AND VAT

- 9.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 9.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.
- 9.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

- 9.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.
- 9.5 A request under clause 9.4 may specify the information which the Contractor must provide and the period within which that information must be provided.
- 9.6 The DFE may terminate this Contract if:
- 9.6.1 in the case of a request mentioned in clause 9.4 the Contractor:
- (i) fails to provide information in response to the request within a reasonable time; or
 - (ii) provides information which does not demonstrate either how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it;
- 9.6.2 it receives information which demonstrates that, if clauses 9.1 to 9.3 apply, the Contractor is not complying with those clauses.
- 9.7 The DFE may supply any information which it receives under clause 9.4 to HMRC.
- 9.8 The Contractor bears sole responsibility for the payment of tax and national insurance contributions due from it in relation to any payments or arrangements made under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract.
- 9.9 The Contractor will account to the appropriate authorities for any applicable income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Contractor under the Contract or in relation to any payments made by the Contractor to its officers or employees in connection with the Contract. The Contractor shall indemnify DFE against any liability, assessment or claim made by the HMRC or any other relevant authority arising out of the performance by the Contractor of its obligations under the Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by DFE in connection with any such assessment or claim.
- 9.10 The Contractor authorises the DFE to provide HMRC and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under the Contract whether or not DFE is obliged as a matter of law to comply with such request.
- 9.11 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- 9.11.1 notify the DFE in writing of such fact within five (5) Business Days of its occurrence; and
- 9.11.2 promptly give the DFE:
- (i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the DFE may reasonably require.

10. PREVENTION OF CORRUPTION

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

- 10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
 - 10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 10.2 The Contractor shall not:
- 10.2.1 commit a Prohibited Act; or
 - 10.2.2 do or suffer anything to be done which would cause the DFE or any of its employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 10.3 The Contractor shall and procure that its Sub-Contractors shall:
- 10.3.1 establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 10.3.2 keep appropriate records of its compliance with its obligations under clause 10.3.1 and make such records available to the DFE on request.
- 10.4 The Contractor shall immediately notify the DFE in writing if it becomes aware of any breach of clauses 10.1 and/or 10.2, or has reason to believe that it has or any of the Staff have:
- 10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
 - 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 10.5 If the Contractor notifies the DFE pursuant to clause 10.4, the Contractor shall respond promptly to the DFE's enquiries, co-operate with any investigation, and allow the DFE to audit any books, records and any other relevant documentation.
- 10.6 If the Contractor is in Default under clauses 10.1 and/or 10.2, the DFE may by notice:
- 10.6.1 require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
 - 10.6.2 immediately terminate the Contract.
- 10.7 Any notice served by the DFE under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the party who the DFE believes has committed the Prohibited Act and the action that the DFE has taken (including, where relevant, the date on which the Contract shall terminate).

11. DISCRIMINATION

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

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

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property Rights in IP Materials:
- 12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the "**DFE IP Materials**") shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown); and
- 12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with (including the performance of) the Contract (the "**Service Specific IP Materials**") shall vest in the DFE (save for any Copyright and Database Rights which vest automatically in the Crown).
- 12.2 The Contractor shall not, and shall ensure that Staff shall not, use or disclose DFE IP Materials nor Service Specific IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.
- 12.3 The Contractor hereby assigns, and undertakes to procure any relevant third party (including Staff and Sub-Contractors) assigns, to the DFE all existing and future Intellectual Property Rights in the Service Specific IP Materials, save for Copyright and Database Rights which the Contractor hereby assigns, and undertakes to procure any relevant third party (including Staff and Sub-Contractors) assigns, to the Crown. These assignments:
- 12.3.1 are, and shall be, given with full title guarantee;
- 12.3.2 take effect on the Services Commencement Date (if existing at such date) or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials; and
- 12.3.3 include, and shall include, without limitation, an assignment to the DFE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world including the right to bring, make, oppose, defend and appeal proceedings, claims and actions, and to obtain relief (including damages and other remedies for infringement) occurring prior to, on or after the date of the assignment.
- 12.4 The Contractor shall, and shall procure that any relevant third party (including Staff and Sub-Contractors) shall, execute all documents and do all other acts requested by the DFE and as necessary to execute and perfect the assignments at clause 12.3 and to otherwise evidence the DFE's or the Crown's ownership of such rights, including but not limited to providing all assistance requested by the DFE to register any Intellectual Property Rights (including trade marks and domain names) in the name of the DFE (or any third party nominated by the DFE) with the relevant authorities.
- 12.5 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in the Service Specific IP Materials (in accordance with the Copyright, Designs and Patents Act 1988 or any similar legislative provision).

- 12.6 In the event that any Intellectual Property Rights belonging to any party other than the Contractor or Sub-Contractors ("**External IP**") are integrated into the Service Specific IP Materials or otherwise provided to the DFE, and the DFE would be obligated to accept and be bound by any additional licensing terms and conditions to use such External IP, the following shall apply:
- 12.6.1 the Contractor shall specifically identify in writing all External IP before such External IP is used, provided or integrated;
 - 12.6.2 the Contractor shall provide written copies or details (in writing) of all External IP licence agreements or terms which would be applicable to the DFE;
 - 12.6.3 the Contractor warrants that:
 - (a) to the best of Contractor's knowledge, the External IP does not and will not, and the use of the External IP by the DFE as contemplated by the Contract will not, infringe any Intellectual Property Rights of any other third party;
 - (b) any such licence is non-exclusive, perpetual, worldwide and irrevocable, permits the DFE to use, reproduce, modify and develop the External IP (for any purpose), and permits the DFE to sub-license, transfer, assign or novate such rights (including to any Replacement Contractor);
 - (c) unless specifically provided otherwise herein or following termination, the DFE (and any sub-licensee of the DFE, including any Replacement Contractor) shall have no obligation to pay any fees, royalties, or other payments for use of any External IP in accordance with the terms of the Contract; and
 - (d) to the extent permitted by law or contract, the Contractor shall pass through to the DFE the same warranties for the External IP, that the Contractor has received;
 - 12.6.4 the Contractor shall, wherever possible, ensure that the External IP shall be licensed on standard, commercially available terms as appropriate in the marketplace for such External IP; and
 - 12.6.5 upon termination and as far as possible, the Contractor will negotiate a right to assign the licences for any External IP to the DFE.
- 12.7 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 12, except to the extent that any such claim arises from:
- 12.7.1 the use of the DFE IP Materials; or
 - 12.7.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.
- 12.8 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in respect of Service Specific IP Materials or any other materials supplied by or on behalf of, and/or licensed by, the Contractor.
- 12.9 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in respect of Service Specific IP Materials or any other materials supplied by or on behalf of, and/or licensed by, the Contractor to the DFE, provided always that the Contractor shall:

- 12.9.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 12.9.2 take due and proper account of the interests and concerns of the DFE; and
 - 12.9.3 not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).
- 12.10 Notwithstanding clause 12.9, the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action, the Contractor shall at the request of the DFE provide all reasonable assistance to the DFE for the purpose of contesting such claim.
- 12.11 The DFE shall (at the request of the Contractor) afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 12.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:
- 12.12.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to such modified materials or services or to the substitute materials or services; or
 - 12.12.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and the Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.
- 12.13 If the Contractor is unable to comply with clauses 12.12.1 and 12.12.2 within twenty (20) Business Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.
- 12.14 The Contractor grants to the DFE and, if requested by DFE, to any Replacement Contractor, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed the Contractor or (insofar as the Contractor has such rights) licensed for use to the Contractor prior to the Services Commencement Date or otherwise not in connection with the Contract ("**Contractor IP**") and which the DFE (or such Replacement Contractor) reasonably requires in order to exercise its rights and take the benefit of the Contract, including the Services provided and the use and further development of the IP Materials.
- 12.15 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.
- 12.16 If the Contractor is not able to grant a licence to use any Contractor IP under clause 12.14 for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall grant, or use its reasonable endeavours to procure any necessary third party grants to the DFE (and any Replacement Contractor) a licence on standard, commercially available terms as appropriate in the marketplace for such Contractor IP.

- 12.17 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are DFE IP Materials, or are to be the Service Specific Materials any act or thing which:
- 12.17.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same;
 - 12.17.2 would or might or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry;
 - 12.17.3 would or might jeopardise or invalidate any domain name held by the DFE registered in connection with the Contract; or
 - 12.17.4 would or might prejudice the right or title of the DFE (or the Crown) to any of the DFE IP Materials or Service Specific IP Materials.
- 12.18 The Contractor shall comply with the DFE's branding guidelines and shall not use any other branding, including its own, other than as set out in the DFE's branding guidelines or as otherwise agreed with the DFE.
- 12.19 When using DFE Trade Marks, the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:
- 12.19.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any of the DFE Trade Marks, or unfairly competes with any of the DFE Trade Marks; or
 - 12.19.2 apply anywhere in the world to register any trade marks identical to or so nearly resembling any of the DFE Trade Marks as to be likely to deceive or cause confusion.
- 12.20 For the duration of the Term, insofar as the DFE has such rights, the DFE grants to the Contractor a non-exclusive, non-transferable licence to use the DFE IP Materials and Service Specific IP Materials for the purposes only of providing the Services, performing the Contractor's other obligations under the Contract, and for any other acts by the Contractor which are necessary in order for the Contractor to carry out the Services or to perform its obligations under the Contract.

13. DATA

- 13.1 The Parties shall comply with the provisions of schedule 8.
- 13.2 The Parties shall comply with the provisions of schedule 11.

14. NOT USED

15. PUBLICITY, PUBLICATION AND PROMOTION

- 15.1 Subject to clause 16.2, without prejudice to the DFE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- 15.2 The Contractor shall use reasonable endeavours to ensure its Staff comply with clause 15.1.
- 15.3 Without prejudice to the generality of clauses 12.19 and 15.1, the Contractor shall not itself use the name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.

- 15.4 It is acknowledged and agreed between the parties that, subject to clauses 12 and 16, the DFE may disclose, copy and otherwise distribute to the public (including but not limited to, by way of the Open Government Licence) any information arising out of the Services or comprised in any work relating to the Services, and the publication of any such materials shall be at the sole discretion and direction of the DFE.
- 15.5 Where the Contractor, other than in its performance of the Services, wishes to release publicly any information arising out of the Services or comprised in any work relating to the Services, or issue any public commentary, press notice or publicity materials thereupon, the Contractor must provide details of the proposed dissemination and seek prior approval from the DFE, which shall have absolute discretion to decide whether it grants permission and to set any conditions for any permission granted.

16. CONFIDENTIALITY

- 16.1 Except to the extent set out in this clause 16 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's written consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- 16.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract but excluding the Commercially Sensitive Information.
- 16.3 The Contractor may only disclose the DFE's Confidential Information with the DFE's prior written consent (such consent not to be unreasonably withheld) or to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Staff are aware of and shall comply with these obligations as to confidentiality.
- 16.4 The Contractor shall not, and shall procure that Staff do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 16.5 Clause 16.1 shall not apply to the extent that:
- 16.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - 16.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 16.5.3 such information was obtained from a third party without obligation of confidentiality;
 - 16.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 16.5.5 it is independently developed without access to the other Party's Confidential Information.
- 16.6 Nothing in clause 16 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
- 16.6.1 for the purpose of the examination and certification of the DFE's accounts;
 - 16.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;

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

16.6.4 to any consultant, contractor or other person engaged by the DFE

provided that in disclosing information under clauses 16.6.3 and 16.6.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

16.7 Nothing in clauses 16.1 to 16.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

16.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 16.6 is made aware of the DFE's obligations of confidentiality.

16.9 If the Contractor does not comply with clauses 16.1 to 16.5 the DFE may terminate the Contract immediately on notice to the Contractor.

17. FREEDOM OF INFORMATION

17.1 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the EIR.

17.2 Where a Party receives a Request for Information in relation to information which it has received from the other Party pursuant to the Contract, the receiving Party shall transfer to the other Party such Request for Information as soon as practicable and in any event within two (2) Business Days of receipt:

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

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

17.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the other Party.

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

18. OFFICIAL SECRETS ACTS AND FINANCE ACT

18.1 The Contractor shall comply with the provisions of:

18.1.1 the Official Secrets Acts 1911 to 1989; and

18.1.2 section 182 of the Finance Act 1989.

19. LIABILITY

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

- 19.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - 19.1.2 for personal injury or death resulting from its negligence;
 - 19.1.3 under section 2(3) Consumer Protection Act 1987;
 - 19.1.4 any breach of clause 13 (Data), clause 16 (Confidentiality), schedule 8 (Processing Data (Data Protection Act)) or schedule 11 (Data Handling and Systems Assurance (Security));
 - 19.1.5 for its own fraud; or
 - 19.1.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
- 19.2 Subject to clauses 19.1 and 19.3, the Contractor shall indemnify the DFE and keep the DFE indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Staff on the DFE Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- 19.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 7 (TUPE), 9 (Tax) and 12 (Intellectual Property).
- 19.3A Nothing in the Contract shall operate to exclude or limit the Contractor's liability for any claim made by the European Commission arising out of or in connection with the provision of the Services to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Contractor, its employees, agents or sub-contractors.
- 19.4 Subject to clauses 19.1, 19.3, 19.3A, and 19.7, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:
- 19.4.1 for any losses of an indirect or consequential nature;
 - 19.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
 - 19.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 19.5 Subject to clauses 19.1 and 19.3, the maximum liability of the Contractor to the DFE under the Contract, whether in contract, tort (including negligence) or otherwise in each calendar year shall not exceed the greater of two million pounds (£2,000,000) and one hundred and fifty per cent (150%) of the sum of the Charges payable in that calendar year.
- 19.6 Subject to clauses 19.1, the maximum liability of the DFE to the Contractor under the Contract, whether in contract, tort (including negligence) or otherwise is limited in each calendar year in aggregate to one hundred per cent 100% of the sum of the Charges payable in that calendar year.
- 19.7 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:

- 19.7.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
 - 19.7.2 any wasted expenditure or charges;
 - 19.7.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
 - 19.7.4 any compensation or interest paid to a third party by the DFE; and
 - 19.7.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 19.8 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 19.9 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 19.10 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one claim in the case of employer's liability insurance and £5,000,000 in the case of public liability insurance, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of six (6) years following the end of the Term.
- 19.11 The Contractor shall supply to the DFE on demand copies of the insurance certificates and policies maintained under clause 19.10.
- 19.12 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 19.13 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.

20. WARRANTIES AND REPRESENTATIONS

- 20.1 The Contractor warrants and represents that:
- 20.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - 20.1.2 in entering the Contract it has not committed any fraud;
 - 20.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;
 - 20.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened

against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;

- 20.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 20.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 20.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 20.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 20.1.8 in the three (3) years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 20.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- 20.1.10 it has notified the DFE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

21. FORCE MAJEURE

- 21.1 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that Party shall immediately serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice and to clause 21.3 have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that Party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 21.2 If either Party is prevented from performance of its obligations for a continuous period in excess of three (3) months, the other Party may terminate the Contract forthwith on service of written notice upon the Party so prevented, in which case neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 21.3 The Party claiming to be prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure shall use reasonable endeavours to end Force Majeure or to find solutions by which the Contract may be performed despite the Force Majeure.

22. MONITORING AND REMEDIATION

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

23. STEP IN RIGHTS

- 23.1 Without prejudice to DFE's rights of termination under clause 24 the DFE may exercise one or more of the rights set out in this clause 23 ("**Step In Rights**") if:
- 23.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;
 - 23.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
 - 23.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 23 is necessary;
 - 23.1.4 a serious risk exists to the health and safety of persons, property or the environment;
 - 23.1.5 it is necessary to discharge a statutory duty; or
 - 23.1.6 the DFE, in its absolute discretion, deems it is necessary for the effective performance of the Services;

- 23.1.7 the Contractor becomes insolvent.
- 23.2 If the DFE has a Step In Right it may serve notice on the Contractor (a “**Step-In Notice**”) that it will take action under this clause 23 either itself or with the assistance of a third party.
- 23.3 The Step-In Notice shall set out:
- 23.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
 - 23.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor’s Default;
 - 23.3.3 the date on which it wishes to commence the Required Action;
 - 23.3.4 the time period which it believes will be necessary for the Required Action;
 - 23.3.5 whether the DFE will require access to the Contractor's premises; and
 - 23.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor’s obligations to provide the Services during the period that the Required Action is being taken.
- 23.4 Following service of a Step-In Notice, the DFE shall:
- 23.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 23.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
 - 23.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide those Services of which the DFE is not assuming control; and
 - 23.4.4 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 23.5 For as long as and to the extent that the Required Action continues:
- 23.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
 - 23.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.
- 23.6 If the Contractor demonstrates to the DFE’s reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.
- 23.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a “**Step-Out Notice**”), specifying:
- 23.7.1 the Required Action it has taken; and
 - 23.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 23.8.

- 23.8 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Business Days prior to the date specified in clause 23.7.2, develop for the DFE's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- 23.9 If the DFE does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.
- 23.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 23, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE under clauses 23.1.2 to 23.1.5 (insofar as the primary cause of the DFE serving the Step In Notice is identified as not being the result of a Contractor's Default).

24. TERMINATION

- 24.1 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- 24.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- 24.1.2 a shareholders' or members' 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);
- 24.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- 24.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- 24.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- 24.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- 24.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 24.1.8 any event similar to those listed in clauses 24.1.1 to 24.1.7 occurs under the law of any other jurisdiction.
- 24.2 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:
- 24.2.1 being notified that a Change of Control has occurred; or

- 24.2.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control
- but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 24.3 Not used.
- 24.4 Not used.
- 24.5 Not used.
- 24.6 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 24.6.1 the Contractor has not remedied the Default to the satisfaction of the DFE within twenty one (21) Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
- 24.6.2 the Default is not, in the opinion of the DFE, capable of remedy; or
- 24.6.3 the Default is a Material Breach.
- 24.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 24.7.1 the Contractor's warranty in clause 20.1.10 is materially untrue;
- 24.7.2 the Contractor commits a material breach of its obligation to notify the DFE of any Occasion of Non-Tax Compliance;
- 24.7.3 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 24.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 24.8.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- 24.8.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
- 24.8.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
- 24.9 If the DFE terminates the Contract under clauses 24.6, 24.7 or 24.8:
- 24.9.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred by itself of making those other arrangements; and
- 24.9.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 24.

- 24.10 The DFE may terminate the Contract (or any part of it) at any time by giving at least six (6) months' prior written notice to the Contractor.
- 24.11 Not used.
- 24.12 If the DFE terminates the Contract under clauses 24.8.1 or 24.8.3 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavoidability of such costs.
- 24.13 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 24.14 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within thirty (30) Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clause 8.7 or to Force Majeure.
- 24.15 Save as otherwise expressly provided in the Contract:
- 24.15.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 24.15.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Charges), 9 (Tax and VAT), 10 (Prevention of Corruption), 12 (Intellectual Property), 13 (Data), 16 (Confidentiality), 17 (Freedom of Information), 18 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 19 (Liability), 20 (Warranties and Representations), 24 (Termination) 25 (Retendering and Handover), 26 (Exit Management), 27 (Audit) and 38 (Governing Law and Jurisdiction).
- 24.15.3 Not Used

25. RETENDERING AND HANDOVER

- 25.1 Within thirty (30) days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the DFE to engage in a procurement exercise for the future provision of replacement services, including but not limited to the issue of tender documents, pre-procurement engagement activity and soft market testing.
- 25.2 The DFE shall require that all potential contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender or similar document issued by the DFE or otherwise engaging with DFE in any other form of procurement exercise; and that they shall not use it for any other purpose.
- 25.3 The Contractor shall allow access to its premises in the presence of DFE's authorised representative, to any person representing any potential contractor whom the DFE in any other form of procurement exercise has selected to tender for the future provision of the Services.

- 25.4 If access is required to the Contractor's premises for the purposes of clause 27.4, the DFE shall give the Contractor seven (7) days' notice of a proposed visit together with the names of all persons who will be visiting.
- 25.5 The Contractor shall co-operate fully with the DFE during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 25.6 Within ten (10) Business Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the DFE.

26. EXIT MANAGEMENT

- 26.1 If the DFE requires a continuation of all or any of the Services at the end of the Term or as a result of the early termination of this Contract, either by performing them itself or by engaging a third party or third parties to perform them, the Contractor shall co-operate fully with the DFE and any such third party or third parties and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 26.2 The Contractor will, within three (3) months of the Effective Date or within a time period otherwise approved by the DFE, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its or their Replacement Contractor at the end of the Term or in the event of early termination of this Contract (an "**Exit Plan**"), which will, as a minimum, include details of the following:
- 26.2.1 sets out the Contractor's proposed methodology for achieving such orderly transition of the Services;
 - 26.2.2 details of how the Exit Information will be provided;
 - 26.2.3 a mechanism for dealing with any partial termination on the assumption that the Contractor will continue to provide the remaining Services under this Contract;
 - 26.2.4 the management structure to be employed during both transfer and cessation of the Services;
 - 26.2.5 the management structure to be employed whilst carrying out the activities to be performed by the Contractor as identified in the Exit Plan;
 - 26.2.6 a detailed description of both the transfer and cessation processes, data and information technology, including a timetable;
 - 26.2.7 how the Services will transfer to the Replacement Contractor and/or the DFE, including details of the processes, documentation, data transfer, systems migration, security and the segregation of DFE technology components from any technology components operated by the Contractor or its Sub-Contractors (where applicable);
 - 26.2.8 details of contracts (if any) which will be available for transfer to DFE and/or the Replacement Contractor upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Contractor agrees that all assets and contracts used by the Contractor in connection with the provision of the Services will be available for such transfer);
 - 26.2.9 proposals for the training of key personnel of the DFE or any Replacement Contractor in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;

- 26.2.10 proposals for providing the DFE or a Replacement Contractor copies of all documentation:
- (a) used in the provision of the Services and necessarily required for the continued use of the DFE or a Replacement Contractor, in which the Intellectual Property Rights are owned by the Contractor; and
 - (b) relating to the use and operation of the Services;
- 26.2.11 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Contractor in connection with the performance of the supply of the Services;
- 26.2.12 proposals for the disposal of any redundant Services and materials;
- 26.2.13 procedures to:
- (a) deal with requests made by the DFE and/or a Replacement Contractor for Staffing Information pursuant to clause 7 (TUPE);
 - (b) determine which Contractor Personnel are or are likely to become Transferring Employees; and
 - (c) identify or develop any measures for the purpose of TUPE envisaged in respect of Transferring Employees;
- 26.2.14 how each of the issues set out in this clause 26.2 will be addressed to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or DFE with the aim of ensuring that there is no disruption to or degradation of the Services;
- 26.2.15 proposals for the supply of any other information or assistance reasonably required by the DFE or a Replacement Contractor in order to affect an orderly handover of the provision of the Services.
- 26.3 Within thirty (30) days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 37.
- 26.4 The Contractor will review and (if appropriate) update the Exit Plan every six (6) months during the Term to reflect changes to the Services or, in the event of no changes to the Services, notify the DFE that no updates are required to the Exit Plan. Following such update (if applicable) the Contractor will submit the revised Exit Plan to the DFE for review. Within thirty (30) days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within thirty (30) days, such dispute shall be referred to the dispute resolution procedure in clause 37.
- 26.5 Within twenty (20) Working Days after notification of termination by either Party or six (6) months prior to the expiry of this Contract, the Contractor will submit for the DFE's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Contract and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed. The Parties will meet and use their respective reasonable endeavours to finalise and agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the DFE, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Contractor shall provide Exit Management services in accordance with the principles set out in this Contract and the last approved version of the Exit Plan (insofar as relevant).

- 26.6 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.
- 26.7 Within one (1) month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 26.8 Without prejudice to any other provision of this Contract, the Contractor shall maintain and update the following material and information in order to facilitate the preparation by the DFE of any retender activity, facilitate any potential Replacement Contractor's undertaking due diligence and/or transfer of the services to the DFE and/or Replacement Contractor:
- 26.8.1 details of the Service(s);
 - 26.8.2 a copy of the Register, updated by the Contractor up to the date of delivery of such Registers;
 - 26.8.3 an inventory of DFE data in the Contractor's possession or control;
 - 26.8.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 26.8.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 26.8.6 to the extent permitted by applicable law, all information relating to Transferring Employees or those who may be Transferring Employees required to be provided by the Contractor under this Contract such information to include the TUPE Information as defined in clause 7; and
 - 26.8.7 such other material and information as the DFE shall reasonably require,
- (together, the "**Exit Information**").
- 26.9 If the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:
- 26.9.1 the provision of the Services; and/or
 - 26.9.2 the delivery of the exit services/exit plan; and/or
 - 26.9.3 any re-tender exercise by the DFE.
- then the Contractor shall notify the DFE and within a reasonable period of time shall consult with the DFE regarding such proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the DFE.
- 26.10 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than fifteen (15) Business Days from the date that that request was made.
- 26.11 Not used.
- 26.12 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to enable a third party to:

- 26.12.1 prepare an informed offer for those Services; and
 - 26.12.2 not be disadvantaged in any subsequent procurement process compared to the Contractor.
- 26.13 On reasonable notice at any point during the Term, the Contractor shall provide to the DFE and/or its potential Replacement Contractor (subject to the potential Replacement Contractor entering into reasonable written confidentiality undertakings), the Exit Information in order to facilitate the preparation by the DFE of any invitation to tender and/or to facilitate any potential Replacement Contractor's undertaking due diligence.

27. AUDIT

- 27.1 The Contractor shall keep and maintain until seven (7) years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.
- 27.2 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.
- 27.3 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- 27.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources in relation to this Contract. The Contractor shall provide such explanations as are reasonably required for these purposes.

28. ENTIRE AGREEMENT

- 28.1 The Contract contains all the terms which the Parties have agreed in relation to the subject matter of the Contract and supersedes any prior written or oral agreements, representations or understandings between the Parties.
- 28.2 Nothing in this clause 28 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

29. PARTNERSHIP

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

30. WAIVER

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

31. CHANGE CONTROL

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

32. COUNTERPARTS

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

33. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 33.1 The provisions of clauses 7.6 and 12 confer benefits on a Replacement Contractor and are intended to be enforceable by a Replacement Contractor by virtue of the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”). The provisions of clause 7.1 confer benefits on an Outgoing Contractor and Outgoing Contractor Agent and are intended to be enforceable by an Outgoing Contractor by virtue of CRTPA.
- 33.2 Subject to clause 33.1, a person who is not a Party has no right under CRTPA to enforce provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 33.3 A Replacement Contractor may not enforce or take steps to enforce the provisions of clauses 7.6 and 12 without DFE’s prior written consent.
- 33.4 The Parties may amend the Contract without the consent of any Replacement Contractor.

34. CONFLICTS OF INTEREST

- 34.1 The Contractor shall:
- 34.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and
 - 34.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Staff is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Staff and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 34 as a “**Conflict of Interest**”.
- 34.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 34 the Contractor shall forthwith provide full particulars to the DFE.
- 34.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.
- 34.4 Without prejudice to the foregoing provisions of this clause 34, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:
- 34.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and
 - 34.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.
- 34.5 If the DFE is not satisfied with the Contractor’s actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).

34.6 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing breach by the Contractor of the provisions of this clause 34.

35. FURTHER ASSURANCE

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

36. NOTICES

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

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

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

36.2.2 if given or made by prepaid first class post forty eight (48) hours after being posted or in the case of airmail fourteen (14) days after being posted.

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

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

37. DISPUTE RESOLUTION

37.1 Any Dispute shall be dealt with in accordance with this clause 37.

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

37.3 If a Dispute cannot be resolved by negotiation as referred to in clause 37.2 within thirty (30) days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

38. GOVERNING LAW AND JURISDICTION

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

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

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

Schedule 3

Financials

1. DEFINITIONS

| | |
|----------------------------|--|
| "Milestone" | the relevant milestone set out Annex A of this Schedule 3. |
| "Milestone Payment" | the relevant milestone payment set out in Annex A of this Schedule 3. |
| "Monthly Charge" | has the meaning given to it in paragraph 3 of this Schedule 3 (Financials). |
| "Service Credits" | has the meaning given to it in Schedule 4 (KPIs, Service Levels and Service Credits). |
| "Set-Up Costs" | the fee as set out in the Contractor's Solution for the provision of the Services for the period 1 November 2021 to 31 March 2022. |

2. SET-UP COSTS MILESTONE PAYMENTS

Provided that the Contractor has demonstrated to the DFE's reasonable satisfaction that they have achieved the relevant Milestone then the DFE shall pay to the Contractor the relevant Milestone Payment one (1) month in arrears in accordance with Clause 8 (Charges) of Schedule 2 (Terms and Conditions).

3. MONTHLY CHARGE

The Contractor shall invoice the DFE in arrears no later than the fifth (5th) Business Day of each calendar month for the Monthly Charge relating to the previous month and the DFE shall pay such invoice in accordance Clause 8 (Charges) of Schedule 2 (Terms and Conditions).

"Monthly Charge" means the sum of:

MP - SC

where

MP = the monthly payment of [REDACTED]

SC = Service Credits

Annex A: Set-Up Costs Milestone Payments

| Milestone number | Milestone description | Milestone Date | Milestone Payment (£) |
|-------------------------|------------------------------|-----------------------|------------------------------|
| N/A | N/A | N/A | N/A |

Annex B: Summary of total costs submitted by British Council for delivering the Erasmus+ and ESC Residual Activity Services

| Cost Line | Set Up Costs | Year 1 <i>April 22 - March 23</i> | Year 2 <i>April 23 - March 24</i> | Year 3 <i>April 24 - March 25</i> | Total |
|----------------------------------|---------------------|--|--|--|--------------|
| 2.1 Direct Staff Costs | | | | | |
| 2.2 Indirect Staff Costs | | | | | |
| 2.3 Staff Related Expenses | | | | | |
| 2.4 Staff Training | | | | | |
| 2.5 Staff Recruitment | | | | | |
| 2.6 Other Staff Costs | | | | | |
| TOTAL STAFF COSTS | | | | | |
| 3.1 Rent/ Lease/ Mortgage Costs | | | | | |
| 3.2 Fit Out Costs | | | | | |
| 3.3 Rates | | | | | |
| 3.4 Facilities Management Costs | | | | | |
| 3.5 Premise Security Costs | | | | | |
| 3.6 Other Accommodation Costs | | | | | |
| TOTAL ACCOMMODATION COSTS | | | | | |
| 4.1 IT Hardware | | | | | |
| 4.2 IT Software | | | | | |
| 4.3 IT Maintenance | | | | | |
| 4.4 IT Security Costs | | | | | |
| 4.5 Telephony and Communications | | | | | |

| | | | | | |
|--|--|--|--|--|--|
| 4.6 Other IT Costs | | | | | |
| TOTAL TECHNOLOGY COSTS | | | | | |
| 5.0 Subcontractor Costs | | | | | |
| TOTAL SUBCONTRACTOR COSTS | | | | | |
| 6.1 Printing and Stationery | | | | | |
| 6.2 Office Equipment | | | | | |
| 6.3 Postage and Courier | | | | | |
| 6.4 Marketing Costs | | | | | |
| 6.5 Storage Costs | | | | | |
| 6.6 Other Operating Costs | | | | | |
| TOTAL OTHER OPERATING COSTS | | | | | |
| 7.1 Legal Fees | | | | | |
| 7.2 Auditing Fees | | | | | |
| 7.3 Other Professional Services | | | | | |
| TOTAL CONSULTANCY SERVICE COSTS | | | | | |
| 8.0 Other Costs | | | | | |
| TOTAL OTHER COSTS | | | | | |
| 9.1 HR Support Costs | | | | | |
| 9.2 Finance Support Costs | | | | | |
| 9.3 Financing Costs | | | | | |
| 9.4 Other Corporate Overhead Costs | | | | | |
| TOTAL CORPORATE OVERHEAD COSTS | | | | | |
| TOTAL PROVIDER DELIVERY COSTS | | | | | |
| 10.0 Profit/ Operating Surplus | | | | | |
| 11.1 Risk Premium | | | | | |
| Total | | | | | |

Tendered Price

| | |
|-----------------------------------|-------------------|
| Total Contract Value | £9,953,486 |
| Minus 75% of implementation costs | £0 |
| Tendered Price | £9,953,486 |

The following documents provide a full breakdown and rationale of the total costs and payments which form part of this contract:

- British Council's fully completed pricing schedule: "001-Erasmus_Pricing Schedule_-_British_Council_", submitted on 25 August 2021
- "Lot 1 - Erasmus+ Clarifications for British Council - SR" document, submitted on 13 September 2021

Schedule 4

KPIs, Service Levels and Service Credits

1. DEFINITIONS

- Delegation Agreement** means the delegation agreement issued by the European Commission and more particularly described at Section 3 of the Specification.
- GfNA** means the Guide for National Agencies issued by the European Commission and more particularly described in Section 4 of the Specification.
- Performance Monitoring Period** means the relevant time period set out in Table 1 of Schedule 4.
- Target Performance Level** means the relevant performance level for each KPI set out in Table 1 of this Schedule 4.

2. OVERVIEW

2.1 The objectives of the KPIs and Service Levels are to:

- 2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the DFE;
- 2.1.2 provide a mechanism whereby the DFE can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the Services; and
- 2.1.3 incentivise the Contractor to meet the KPIs and Service Levels and to remedy any failure to meet the KPIs and Service Levels expeditiously.

3. KEY PERFORMANCE INDICATORS (KPIs) AND SERVICE LEVELS (SLS)

- 3.1 This schedule 4 sets out the KPIs and Service Levels against which the Contractor shall measure its performance.
- 3.2 The Contractor shall monitor its performance against of each of the KPIs and Service Levels in and send the DFE a report detailing the KPIs and Service Levels which were achieved in accordance with the provisions of this schedule 4.

4. TARGET PERFORMANCE LEVEL

- 4.1 The Contractor must meet the Target Performance Level for each identified KPI as set out in Table 1 below within the relevant Performance Monitoring Period (as set out in Table 1 and restated below):

| KPI | Performance Monitoring Period |
|-------|---------------------------------|
| KPI 1 | Annually 1 April to 31 March |
| KPI 2 | Quarterly |

| | |
|-------|--|
| | 1 April – 31 June 1 July – 31 September 1 October – 31 December 1 January – 31 March |
| KPI 3 | Bi-annually 1 April – 31 September 1 October – 31 March |
| KPI 4 | Quarterly 1 April – 31 June 1 July – 31 September 1 October – 31 December 1 January – 31 March |

- 4.2 If during a Performance Monitoring Period the Contractor achieves a KPI, no Service Credit will accrue to the Contractor in respect of that KPI.
- 4.3 The Contractor confirms that it has taken the Target Performance Levels and Service Credits into account in calculating the Charges. Both Parties agree that the Target Performance Level and Service Credits are a reasonable method of adjusting the Charges to reflect poor Contractor performance.
- 4.4 The Contractor will be expected to meet/comply with all Service Levels as set out within Table 2 below.
- 5. CONSEQUENCES OF FAILURE TO MEET KPIS**
- 5.1 A failure to meet the required Target Performance Level will be considered a “Service Failure” in respect of the KPIs set out in Table 1 below.
- 5.2 In the event that there is a Service Failure of one or more of the KPIs listed in Table 1 in any given Performance Monitoring Period, the DFE will be entitled at its sole discretion, to reduce the total amount of Charges payable to the Contractor by the relevant Service Credit as set out in Table 1.
- 5.3 Any relevant Service Credits will be applied in the month immediately following the relevant Performance Monitoring Period.
- 5.4 A failure to meet the Target Performance Level for the Service Levels will not be considered a Service Failure in the context of paragraph 4 but the DFE expects the Contractor to meet the Target Performance Levels and will consider repeated failures as breaches of this Contract.

Table 1 KPIs

| KPI No. | KPI (Desired Outcome) | Relevant Service Requirements | Target Performance Levels | Performance Monitoring Period | Performance Evidence | Measurement Methodology | Service Credits |
|----------------|---|--|--|---|---|---|--|
| 1 | <p>The NA Yearly Report</p> <p>The Contractor shall submit its Yearly Report on the programme delivery for the previous calendar year.</p> | Section 8, paragraphs 8.2 - 8.3 of the Specification | <p>The NA Yearly Report is submitted by the Contractor:</p> <ul style="list-style-type: none"> - To each of the EC, DfE and Independent Audit Body, and - By 15th February in each year. | <p>Annually</p> <p>1 April 2022 – 31 March 2023</p> <p>1 April 2023 – 31 March 2024</p> <p>1 April 2024 – 31 March 2025</p> <p>Measured in the April following each Performance Monitoring Period</p> | <p>The NA Yearly Report has been submitted by the target date, with evidence that the report complies with the requirements of I.4.2 of the Delegation Agreement and 4.7.4 of the GfNA</p> | Review of Yearly Report against Relevant Service Requirement. | <p>1.5%</p> <p>(0.5% per Performance Monitoring Period)</p> |
| 2 | <p>Performance Management Reviews</p> <p>The Contractor will provide information, data and evidence to enable the DfE to review delivery of the Erasmus Residual Services and associated</p> | Section 9, paragraph 9.8 – 9.10 of the Specification | <p>The Performance Management Report is submitted to the DfE by the 7th working day following conclusion of the relevant quarterly reporting period.</p> | <p>Quarterly</p> <p>1 April 2022 to 31 March 2025</p> <p>Measured in the month following Performance Monitoring Period</p> | <p>The quarterly Performance Management Report is issued to the DfE Contract Manager in the required timescales.</p> <p>The Performance Management Report responds to the minimum requirements set out in section 9 of the Specification.</p> <p>For the avoidance of doubt, a correct quarterly Performance Management Report will respond to the minimum requirement stipulated for</p> | Review of report against Relevant Service Requirement | <p>1.5%</p> <p>(0.125% per Quarter across the Performance Monitoring Period)</p> |

| KPI No. | KPI (Desired Outcome) | Relevant Service Requirements | Target Performance Levels | Performance Monitoring Period | Performance Evidence | Measurement Methodology | Service Credits |
|---------|--|--|---|--|---|--|---|
| | service contract. | | | | relevant monthly Performance Management Reports. | | |
| 3 | <p>Recovery of EU Funds from beneficiaries</p> <p>The Contractor shall recover EU Funds from beneficiaries.</p> | Section 4 of the Specification – cross reference to section 3.12 of the GfNA. | 100% compliance with obligations, process and timescales stipulated in section 3.12 of the GfNA | <p>Bi-annually</p> <p>1 April 2022 to 31 March 2025, measured on half-yearly basis.</p> <p>Measured in October and April following each Performance Monitoring Period.</p> | The relevant quarterly Performance Management Report to be supplied by the Contractor provides evidence of compliance with the Relevant Service Requirement and Target Performance Levels for each month covered by the report. | Contractor to validate compliance in quarterly report, supplemented as necessary with outcomes of scheduled audit reports. | <p>1.00%</p> <p>(0.17% per half-year across the Performance Monitoring Period.)</p> |
| 4 | <p>IT/Website Availability</p> <p>Ensure that technical services are performing to required standards, and that website services uptime is 99.5%, with any issue resolved in a timely manner.</p> | <p>Section 6, paragraphs 6.1 and 6.2 of the Specification</p> <p>Section 7, paragraph 7.3 of the Specification</p> | <p>i) The IT service provided meets the required data protection and security standards set out in Clause 13 and Schedules 8 and 11 of this Contract.</p> <p>ii) The Erasmus+ and ESC website services comply with Web Content Accessibility Guidelines (WCAG) 2.1.</p> | <p>Quarterly</p> <p>1 April 2022 to 31 March 2025, measured on a quarterly basis</p> <p>Measured in the month following Performance Monitoring Period</p> | The quarterly Performance Management Report provides evidence of compliance with the Relevant Service Requirement and Target Performance Levels for each month covered by the report. | Contractor to test conformance and measure IT service down time each month, but report on a quarterly basis. | <p>1.2%</p> <p>(0.1% per quarter across the Performance Monitoring Period.)</p> |

| KPI No. | KPI (Desired Outcome) | Relevant Service Requirements | Target Performance Levels | Performance Monitoring Period | Performance Evidence | Measurement Methodology | Service Credits |
|---------|-----------------------|-------------------------------|---|-------------------------------|----------------------|-------------------------|-----------------|
| | | | iii) The Erasmus+ and ESC website services deliver an average up time of 99.5%. iv) The website services must, as a minimum comply with GfNA section 3.3.1, section 3.11.2, section 3.11.5.10, and section 3.13.2. | | | | |

Table 2 Service Levels

| SL No. | Service Level (Desired Outcome) | Relevant Service Requirements | Target Performance Levels | Performance Monitoring Period | Performance Evidence | Measurement Methodology |
|--------|--|---|---|---|---|--|
| 1 | <p>Checks of Grant Beneficiaries</p> <p>Evidence that the Contractor is meeting their obligations to have in place a robust system of checks of grant beneficiaries.</p> | Section 4 of the Specification – cross reference to section 3.11 of the GfNA. | 100% compliance with obligations, process and timescales stipulated in section 3.12 of the GfNA | <p>1 April 2022 to end of 31 March 2025, measured on a quarterly basis</p> <p>Measured in the month following Performance Monitoring Period</p> | The relevant quarterly Performance Management Report to be supplied by the Contractor provides evidence of compliance with the Relevant Service Requirement and Target Performance Levels for each month covered by the report. | Contractor to validate compliance in quarterly report, supplemented as necessary with outcomes of scheduled audit reports. |
| 2 | <p>Notification of EU Directives</p> <p>The Contractor will notify the DfE of any commissions from, or request for changes to delivery of Erasmus+ and ESC Residual Activity Services, received from the European Commission.</p> | Section 9.3.4 of the Specification | All notifications to the DfE within five (5) Working Days of receipt from the European Commission of a commission / request for change. | 1 April 2022 to end of 31 March 2025, measured on a monthly basis | <p>Notification to be provided by the Contractor to the DfE Contract Manager by email, confirming:</p> <ul style="list-style-type: none"> - The commissions / proposed change. - Rationale for the commission / change - An initial impact assessment of the proposal on delivering the Erasmus Residual Services / fulfilling contractual obligations | The Performance Management Reports are used to log and track progress/decisions regarding all notifications. |

| SL No. | Service Level (Desired Outcome) | Relevant Service Requirements | Target Performance Levels | Performance Monitoring Period | Performance Evidence | Measurement Methodology |
|--------|--------------------------------------|---|--|--|--|--|
| 3 | Customer Satisfaction Survey. | Section 9, paragraph 9.1.7 of the Specification | <p>The Customer Satisfaction survey shall:</p> <p>(i) Ensure all beneficiaries are sent a customer satisfaction survey to assess their satisfaction with their experience of the Services including but not limited to:</p> <ol style="list-style-type: none"> a. The receipt of accurate and timely payment of grant; b. Any grant checking and reporting process they may engage with; c. The handling of general enquiries; d. The quality and usefulness of the web services provided. <p>2. To achieve a Customer Satisfaction Score (CSAT) of at least 70%.</p> <p>Scale of rating to be used:</p> <p>5 = very satisfied 4 = satisfied 3 = neither satisfied or dissatisfied 2 = dissatisfied</p> | <p>Annually</p> <p>1 April 2022 – 31 March 2023</p> <p>1 April 2023 – 31 March 2024</p> <p>1 April 2024 – 31 March 2025</p> <p>Measured in the March of each Performance Monitoring Period</p> | A report to be produced following completion of the survey period and shared with the Contractor | <p>Online questionnaire to beneficiaries. This survey should achieve a minimum response rate of 50% of those surveyed to be valid.</p> <p>Formula to produce CSAT score = (Total No. of 4 or 5 scores ÷ total no of responses) x 100</p> |

| SL No. | Service Level (Desired Outcome) | Relevant Service Requirements | Target Performance Levels | Performance Monitoring Period | Performance Evidence | Measurement Methodology |
|--------|---------------------------------|-------------------------------|---------------------------|-------------------------------|----------------------|-------------------------|
| | | | 1= very dissatisfied | | | |

Schedule 5

Not Used

Schedule 6

Change Control Procedure

1. The Parties acknowledge that minor changes to the Contract may be necessary to reflect operational and administrative procedures during the Term and that such minor changes may be agreed in writing between the Parties' respective contract managers.
2. The Contractor shall use reasonable endeavours to incorporate minor changes requested by the DFE within the current Charges and shall not serve a Change Control Notice unless the change involves a demonstrable material increase to its costs or requires a material change to the Contract.
3. The DFE may request a change by completing the Change Control Note and giving the Contractor sufficient information to assess the extent of the change and consider whether any change to the Charges are required in order to implement the change within a reasonable time limit specified by the DFE. The Contractor shall confirm in writing within twenty one (21) days of receiving the Change Control Note (or such longer period as the Parties may agree) if it accepts or rejects the change.
4. If the Contractor rejects a change requested by the DFE or where the Parties are unable to agree a change to the Charges relating to such change, the DFE may either allow the Contractor to fulfil its obligations under the Contract without the Change Control Notice taking effect, or refer the matter to be determined in accordance with clause 37.
5. If the Contractor wishes to introduce a change to the Contract it may request a change by serving a Change Control Note on DFE and giving the DFE sufficient information to assess the extent of the Variation. The DFE shall evaluate the Contractor's proposed change in good faith, taking into account all relevant issues. The DFE shall confirm in writing within twenty one (21) days of receiving the Change Control Note (or such longer period as the Parties may agree) if it accepts or rejects the change in default of which the change shall be deemed to have been rejected.
6. The DFE may in its absolute discretion reject any request for a change proposed by the Contractor. In such circumstance, the DFE shall allow the Contractor to continue to fulfil its obligations under the Contract without the Change Control Note taking effect

Change Control Note

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

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

| | |
|---|---|
| Supporting Information (please attach all supporting documentation for this Change Control) | |
| Terms and Conditions | Save as herein amended all other terms and conditions of the Original Contract shall remain in full force and effect. |
| Change Agreed | |
| For the Contractor: | For the DFE: |
| Signature..... | Signature..... |
| Full Name..... | Full Name..... |
| Title..... | Title..... |
| Date..... | Date..... |

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

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

Schedule 7

Key Staff and Key Sub Contractors

Key Staff

The individuals listed in the table below are Key Staff:

| Name | Role | Period of Involvement |
|------------|------------------|--------------------------------------|
| ██████████ | Director | For the Initial Term of the Contract |
| ██████████ | Head of Delivery | For the Initial Term of the Contract |

Key Sub-Contractors

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

| Key Sub-Contractor Name and Address (if not the same as the registered office) | Registered Office and Company Number | Related Product/Service Description | Sub-contract Price expressed as a percentage of total projected Charges over Term | Role in delivery of the Services |
|--|--|-------------------------------------|---|--|
| Ecorys UK Limited | <p>Albert House, Quay Place, 92-93 Edward Street, Birmingham. B1 2RA</p> <p>Company Registration Number 01650169</p> | Sub-contracted delivery provider | 46.75% | <p>Provision of sub-contracted services including:</p> <p>Continuation of Ecorys as the NA, with the British Council</p> <p>Grant Management</p> <p>Providing information on Erasmus+ and ESC</p> <p>Monitoring and evaluating Erasmus+ and ESC projects</p> <p>Supporting applicants and participants</p> <p>Completion of residual tasks entrusted to the NA under the Delegation Agreements</p> <p>Technical and sector specialism lead for Vocational Education and Training, Adult Education, KA 1 of the youth strand and ESC</p> <p>Lead on Marketing and communications</p> <p>Joint lead for NA internal Audit function</p> |

Schedule 8

Processing Data (Data Protection Act)

1. Definitions

| | |
|--|---|
| "Control" | means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" are interpreted accordingly; |
| "Data Loss Event" | any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach; |
| "DPA" | the Data Protection Act 2018; |
| "Data Protection Impact Assessment" | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| "Data Protection Legislation" | <ul style="list-style-type: none">(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; |
| "Data Subject" | has the meaning given in the DPA; |
| "Data Subject Request" | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data; |
| "Controller", "Processor," "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer" | shall have the meanings given in the GDPR; |
| "GDPR" | the General Data Protection Regulation (Regulation (EU) 2016/679); |
| "Law" | means any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply; |
| "LED" | Law Enforcement Directive (Directive (EU) 2016/680); |
| "Processor Personnel" | employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract; |
| "Protective Measures" | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of |

systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those set out in the Contract;

“Sub-processor”

any third Party appointed to process Personal Data on behalf of the Processor related to this Contract.

"UK GDPR"

GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419)

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the DFE is the Controller and the Contractor is the Processor unless otherwise specified in schedule 8 Annex 1. The only processing that the Processor is authorised to do is listed in schedule 8 Annex 1 by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - (a) process that Personal Data only in accordance with schedule 8 Annex 1, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex 1 of this Schedule 8);

- (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 paragraph;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the United Kingdom 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 UK GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

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

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

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

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

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

- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than two hundred and fifty (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 UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 1 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Controller may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 In regards to the Protective Measures referred to in above, the DFE acknowledges that the applications used to store and process personal data under this Contract in respect of the Services is owned and managed by the European Commission. The technical security controls of the application and related maintenance in respect of the Services are therefore the responsibility of the European Commission and not the Contractor. The Contractor is however obliged to ensure that it has appropriate Protective Measures in place (policies and process controls) in relation to its use of the application.

Schedule 8 – Annex 1

Processing, Personal Data and Data Subjects

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

- 1 The contact details of the Controller's Data Protection Officer are: [REDACTED] Departmental Data Protection Officer, Department for Education, 2 Rivergate, Temple Quay, Bristol, BS1 6AL
- 2 The contact details of the Processor's Data Protection Officer are:
 [REDACTED]
 Head of Information Governance & Privacy
 British Council
 Bridgewater House
 58 Whitworth Street
 Manchester M1 6BB
 [REDACTED]
- 3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 4 Any such further instructions shall be incorporated into this Schedule.

| Description | Details |
|---------------------------------------|---|
| Subject matter of the processing | Enquirers about, and applicants to, Erasmus+ programme, Residual activity and/or the European Solidarity Corps 2018-2020 or where applicants are corporate, their staff or students/ pupils. Also, staff in related bodies (UK Government Departments, the European Commission and its Agencies and its auditors) |
| Duration of the processing | Enquirers: until the relevant deadline for applications. Applicants: during the lifetime of projects. Related bodies: the relevant time for the matter concerned. Retention periods specified in 'Nature and purposes of the processing' below. |
| Nature and purposes of the processing | <p>Enquirers: to reply to their enquiries, and short-term retention (up to six months) of their details to assist in the event that they become applicants or otherwise follow-up their enquiries. Applicants: retention of details from receipt of their applications from the Commission until five years after the conclusion of their projects, for making payments due to them, and for monitoring and audit purposes. Related bodies: to reply to and store correspondence. Data to be retained securely within the UK for up to six years.</p> <p>Further information regarding the type of enquirers and applicants can be found in the Erasmus Programme Guide or the European Solidarity Corps Guide, as appropriate.</p> <p>Correspondence and payments will mainly be directed within the UK and its territories, except where compliance with the EU Financial and other Regulations requires payments to and/or correspondence with the European Commission relating to applicants.</p> |
| Type of Personal Data | <p>All: Names including title and gender, addresses, telephone numbers, plus where relevant corporate affiliation and nationality and age.</p> <p>Applicants: additionally details of their project, assessment thereof, acceptance or rejection, and for accepted projects payments and reporting.</p> |

| Description | Details |
|--|--|
| Categories of Data Subject | Staff (including volunteers, agents, and temporary workers) of applicants, and their students/ members, Government Departments and their staff, members of the public who enquire. |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <p>Enquirers: until the relevant deadline for applications</p> <p>Applicants: in accordance with EU requirements, five years after the conclusion of their projects.</p> <p>Related bodies: the relevant time for the matter concerned.</p> <p>After these periods the data is to be securely destroyed.</p> |

Schedule 9

Commercially Sensitive Information

PART C: CONFIDENTIAL INFORMATION (as per “1G form - Erasmus+ - British Council”)

| NO/Information (cross reference to Tender) | Reasons for Exemption | Exemption to be applied | Duration period for exemption |
|---|--|--|---|
| Q2 Delivery Solution | It would be anticompetitive if such information were freely available to our competitors | S(2) 41 Information provide in confidence S(2) 43 commercial interest | 6 years post tender / unless contracted and then 6 years post contract. |
| Q3 Internal systems, controls and governance | It would be anticompetitive if such information were freely available to our competitors | S(2) 41 Information provide in confidence S(2) 43 commercial interest | 6 years post tender / unless contracted and then 6 years post contract. |
| Q5 Implementation and Mobilisation | It would be anticompetitive if such information were freely available to our competitors | S(2) 41 Information provide in confidence S(2) 43 commercial interest | 6 years post tender / unless contracted and then 6 years post contract. |
| Pricing Schedule | It would be anticompetitive if such information were freely available to our competitors | S(2) 41 Information provide in confidence S(2) 43 commercial interest | 6 years post tender / unless contracted and then 6 years post contract. |
| Qualification Envelope/ responses to Part 3 – 1.16 and 1.17 | It would be anticompetitive if such information were freely available to our competitors | S(2) 41 Information provide in confidence S(2) 43 commercial interest | 6 years post tender / unless contracted and then 6 years post contract. |

PART D: COMMERCIALLY SENSITIVE INFORMATION (as per “1G form - Erasmus+ - British Council”)

| Commercially Sensitive Information | For period ending on date below |
|---|---------------------------------|
| | |
| British Council FVART (including any red metrics document) | 5 years |
| Ecorys FVART (including any red metrics document) | 5 years |
| British Council audited accounts | 5 years |
| The British Council excel document – Year ended March 2021 Primary statements | 5 years |
| Ecorys audited accounts | 5 years |
| Document 4a- The completed pricing schedule submitted as part of the British Council proposal | 5 years |

Schedule 10

The Contractor's Solution

1. The Contractor shall provide the Services in accordance with the Specification and the Contractor's Solution set out below.
2. The Contractor's Solution shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
3. The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Services Commencement Date the Contractor is able to provide the Services:
 - 3.1 in accordance with the provisions of the Contract; and
 - 3.2 in a manner that maintains the continuity of Services to the DFE.
4. The Contractor shall monitor its performance against the Specification and the Contractor's Solution and report to the DFE monthly (or more frequently if so required by the DFE) on its performance.

Q1 – UNDERSTANDING OF THE OBLIGATIONS OF A NATIONAL AGENCY

Introduction

This response explains and demonstrates our in-depth understanding of the role and obligations of a

National Agency (NA) to support delivery of the Erasmus+ and ESC Residual Activity Services. The British Council and Ecorys have successfully operated in an incorporated consortium as the NA, delivering Erasmus+ and ESC programmes since 2014 as evidenced by the most recent European Commission (EC) assessment of the NA's 2020 Management Declaration ('without qualification', EC Management Assessment EAC.B.4/SEW/PH/el /Ares 2021, File code EAC-ERASMUS-UK01/-2020, dated 9 August 2021, p.2) and the latest Department for Education (DfE) external audit in 2020 which reported unqualified audit opinions of all call years since 2016.

Our response to this question describes how this extensive experience ensures the effective and efficient delivery of Service Requirements 2, 3, and 4 for the remainder of the contract and the multitude of benefits accruing to the Buyer of the British Council and Ecorys continuing in their current role working.

Our response to question 1 covers four areas as specified in the Invitation to Tender:

- a high-level overview of the Erasmus+ and ESC Residual Activity Services
- a high-level overview of the role of the National Agency in supporting continued delivery of the Erasmus+ and ESC Residual Activity Services
- our understanding of the residual tasks that would be entrusted to us, and which we will be contracted to deliver by way of the Delegation Agreement(s) with, the European Commission
- an assessment of key risks and issues that we will need to manage in delivering the residual tasks, including how our organisation will mitigate these.

Prior to outlining our response in detail to each of the areas above, it is important to highlight several benefits to the Buyer and the EC of the British Council and Ecorys continuing as the NA for Erasmus+ and ESC Residual Services:

- We have pro-actively built strong stakeholder relationships with the EC and DfE and Department for Culture Media and Sport (DCMS) at all levels.
- We have all the necessary EC and DfE approvals, and Authority to Operate as the NA.
- We are in place and working at pace on the delivery of the residual activity, thus reducing any need for readiness activity or transition activity. This in turn reduces cost and management time for the Buyer as there will be no transition, as well as mitigating significant risks such as the need to novate 2,873 projects in mid-flight (ITT Annex A, Document 6).
- We are on the ground in all the Devolved Administrations and have pro-actively developed extensive networks across the UK in all sectors covered by the Erasmus+ and ESC programmes.
- We have well-established and robust governance, delivery processes, and support mechanisms in place for beneficiaries that have been subject to regular internal and external scrutiny since 2014.
- We have an exemplary track record in delivering Erasmus+ and ESC services (from 2014-2020 €1bn of activity across 6,906 projects (Application Results Table, Tables 1 and 5, <https://www.erasmusplus.org.uk/statistics>), as evidenced by our performance against the KPIs and evaluation reports noted above.
- Our teams are highly skilled, well-trained and have extensive knowledge of the programme technicalities as laid out in the Guide for National Agencies (GfNA).

1 – High-level overview of the Erasmus+ and ESC Residual Activity Services.

This section outlines our understanding of the Erasmus+ and ESC Residual Activity Services. Further details on our delivery solution and our proposal for managing the services in accordance with EC and DfE requirements are set out in our response to Question 2.2.

Following the UK's withdrawal from the European Union and the signing of the Withdrawal Agreement, there are ongoing obligations for projects selected and funded under the Erasmus+ and ESC programmes 2014-2020. These are commonly termed as 'residual activities'.

Residual activity projects operate across all five sectors of the Erasmus+ and ESC programmes (higher education, vocational education and training, school education, adult education, youth) and are categorised under one of the three Key Actions defined by the EC:

| | |
|--------------|---|
| Key action 1 | Mobility |
| Key action 2 | Cooperation for Innovation and Exchange of Good Practices |
| Key action 3 | Support for Policy Reform |

In addition, under the ESC programme, there are three further activities: Volunteering, Traineeships and Solidarity Projects. The quality of volunteering and traineeship projects are underpinned by the Quality Label. In the UK, the DfE act as the National Authority (NAU) for Erasmus+ and ESC programmes and have obligations to ensure the ongoing delivery of the residual activities until they reach their natural conclusion. These residual activities are administered by a NA (currently the British Council and Ecorys), who are appointed by the NAU and operated under three Delegation Agreements signed with the EC between 2018 and 2020 in addition to the recently signed contract variation with DfE for the 2021/22 financial year. The Residual Activity Services comprise of six areas as outlined in the Invitation to Tender:

- checks of grant beneficiaries, including compliance checks and assessments
- monitoring and support to beneficiaries
- interim and Final project report assessments and payments
- recovery of EU funds from beneficiaries and managing waivers
- financial management of relevant EU funds and payment requests
- national Agency reporting for European Commission (e.g., Yearly Reports, Audit requirements)

Table 1. below describes each area of activity in more detail. The British Council and Ecorys have experienced, specialist teams in place already working on these activities. This represents a significant saving for the Buyer in terms of management time and costs of transition and handover. The established governance structures, delivery processes and procedures, and extensive networks of relationships built by the NA over the past seven years further ensure the smooth delivery of the Residual Activity Services and minimise risk to the Buyer e.g. compliance issues arising from novating 2,873 open project to a new supplier

Table 1. A high-level overview of the Erasmus+ and ESC Residual Activity Services

| Residual Activity Service | Summary of NA activities to deliver the Service Requirements |
|--|--|
| Checks of grant beneficiaries, including compliance checks and assessments | <ul style="list-style-type: none"> • Ongoing management and checks of 2,873 open projects at various stages of the project life cycle in line with the GfNA • Managing the ongoing impact of COVID-19, including assessing requests for project changes, delays in activity and early terminations • Ensuring beneficiary organisations remain valid and projects remain eligible for Erasmus+ and ESC funding • Taking action to prevent irregularities or fraud and reporting serious cases to the EC • Managing project closures in line with Erasmus+ and ESC rules as set out in the GfNA |
| Monitoring and support to beneficiaries | <ul style="list-style-type: none"> • Providing ongoing customer service, support, and training for beneficiaries at key points in the lifecycle of their projects, scaling down over time as projects come to a natural close • Maintaining dedicated Erasmus+ and ESC helplines as a central point of contact for beneficiaries • Risk based monitoring of beneficiaries to support project delivery and mitigate risks • Maintaining existing IT infrastructure and digital platforms (social media, newsletter, website) and scaling these down over time as programmes come to their natural conclusion • Ongoing maintenance and updating of project handbooks, videos and guidance to ensure compliance with scheme rules |

| | |
|--|---|
| Interim and Final project report assessments and payments | <ul style="list-style-type: none"> Assessing and validating interim and final project reports in adherence to the GfNA (30+ specific tasks per final report) Quality assuring the compliance of projects against specific technical/financial guidance with full audit trail for the EC and NAU Ongoing professional development and maintenance of our pool of 88 expert assessors Timely payment of interim pre-financing and final payments in line with EC requirements |
| Residual Activity Service | Summary of NA activities to deliver the Service Requirements |
| Recovery of EU funds from beneficiaries and managing waivers | <ul style="list-style-type: none"> Continuing Desk and On the Spot (OTS) checks to assess recoveries Ongoing management of recoveries of grant payments issued to beneficiaries for Erasmus+ and ESC projects e.g. when a beneficiary has unspent funds or ineligible expenditure has been identified (from 2014 – 2019, 25% of programmes required a recovery) Pursuing aged debtors, taking legal action, and liaising with liquidators as appropriate Prepare and submit Waiver reports and accompanying documentation to the EC for unrecoverable funds |
| Financial management of relevant EU funds and payment requests | <ul style="list-style-type: none"> Verifying beneficiary and project financial independence, liquidity, and sustainability in accordance with the GfNA Ongoing management of EU grant payments within the timeframe set by the EC; grant reductions for poor, partial or late project implementation applied by the NA in line with the EC standards |
| National Agency reporting for European Commission (e.g., Yearly Reports, Audit requirements) | <ul style="list-style-type: none"> Continuing provision of statistical data reports, updated yearly, that reflect contracts awarded, projects delivered and their outputs Continuing provision of reports of applications and funding distribution by sector, Key Action, and UK Home Nation Preparation of financial Annexes, including reconciliation of year-end figures, and provision of documents to external auditors Receiving external auditors, and facilitating checks on individual project files, and checks on the Yearly Report Maintain accurate project status updates for 6,906 projects |

NB: the above activities ensure delivery is compliant with Service Requirement Section 2: Programme Regulations and Financial Controls, Section 3: Delegation Agreements, and Section 4: Guide for National Agencies

2 – High-level overview of the role of the National Agency in supporting continued delivery of the Erasmus+ and ESC Residual Activity Services.

As defined by the EC, ‘the EU works with National Agencies to bring the Erasmus+ programme as close as possible to the participants’. The role of the UK NA in the contracting period 2022-2025 involves:

- providing information on Erasmus+ and ESC projects
- monitoring and evaluating Erasmus+ and ESC projects
- supporting participants
- working with other National Agencies and the EU
- sharing success stories and best practices.

The UK NA, currently operated by British Council and Ecorys, works with the DfE as the National Authority to oversee the management and delivery of the Erasmus+ and ESC programmes in the UK, encouraging maximum utilisation of the available UK budget, maximum positive impact for the Erasmus+ and ESC programmes in the UK, and ensuring compliance with the programme rules.

Aside from the service delivery activities described above, the NA also ensures strong governance of the

Erasmus+ and ESC programmes in the UK. It has links with members of Sector Consultative Groups and Country Advisory Groups across the Devolved Administrations to ensure the delivery of the programme is aligned with policies across the UKⁱⁱ. As the residual activity concludes these advisory groups will be scaled back in line with reduced activity. More details of this are in our response to Question 3.

Since being appointed as the NA, the British Council and Ecorys have successfully delivered over 6,906 Erasmus+ and ESC projects with funds of over €1bn as evidenced by our performance against the KPI's, evaluation reports, and audit ratings noted above. Throughout this period, we have actively developed wideranging knowledge and understanding of the Erasmus+ and ESC programmes and core capabilities across both organisations to deliver the role of a National Agency. Our highly trained and skilled teams have been in place for several years, are cognisant of the technical requirements of the scheme and we represent a highly professional 'safe pair of hands' to deliver the remaining activities efficiently and in a cost-effective way.

As the final call for proposals concluded in 2020, there are some roles that are no longer required for the residual activity. Table 2. below outlines in more detail the roles of a NA and how the core capabilities of the British Council and Ecorys will successfully fulfil them.

TABLE 2: OVERVIEW OF ROLES OF THE NATIONAL AGENCY AND BRITISH COUNCIL/ECORYS CAPABILITIES

| Role | British Council/Ecorys Capabilities | Evidenced by |
|---|--|---|
| Providing information on Erasmus+ and ESC | <ul style="list-style-type: none"> • Programme knowledge of the team is unparalleled, relevant and up to date • Established programmes guides, support materials and resources for beneficiaries, regularly updated to reflect the latest information on the programme • Dedicated customer support from highly trained and skilled teams to advise beneficiaries throughout the project life cycle • Pro-actively managed website and social media platforms, including case studies of projects and information on Tier 5 visa requirements | <ul style="list-style-type: none"> • 96% of budget allocation successfully utilised in 2020 • Successful delivery of 6700 projects /€1bn of project activity since 2014 • Exemplary audit record as noted above |
| Monitoring and evaluating Erasmus+ and ESC projects | <ul style="list-style-type: none"> • Detailed advice, guidance, and resources across all Erasmus+ sectors to help beneficiaries deliver agreed outcomes including monitoring and evaluation • Established monitoring and evaluation processes and reporting to NAU and EC, including an established audit regime • Maintenance of Project Results Platform to highlight best practice and statistical reporting on outcomes and outputs • Highly knowledgeable and expert staff with wide-ranging experience of Erasmus+ and ESC programmes, crucial to monitoring and evaluating projects effectively and managing risk | <ul style="list-style-type: none"> • External audit results noted in Section 1 above • Availability of 88 experienced external assessors across all sectors, complemented by in-house project assessment expertise and established procedures |
| Supporting applicants and participants | <ul style="list-style-type: none"> • Dedicated support materials and resources across all Erasmus+ sectors to help beneficiaries manage their grants, already tried and tested for effectiveness • Annual Erasmus+ UK conference and Learning Networks to exchange best practice and build communities of practice (this is no longer required under the residual service activity). • Strong understanding and experience of the roles of the NA in supporting beneficiary organisations | <ul style="list-style-type: none"> • Audit results noted above in Section 1 • Dedicated Erasmus+ and ESC customer service Helpline • Publicly available E+ and ESC complaint procedures and advice for participants |

| | | |
|---|---|--|
| Working with other National Agencies and the EC | <ul style="list-style-type: none"> • Long established connections with other NAs with active sharing of best practice and mutual support • Several of the key leads of the current team have provided insight and input directly to the EC as the Erasmus+ programme has developed and grown since 2014 • Actively involved from 2014 to 2020, as members of EC working groups across various disciplines e.g. IT tools and sector expert groups | <ul style="list-style-type: none"> • British Council and Ecorys have acted as the NA and collaborated with other NAs and the European Commission for the 2014-2020 E+ programme and the predecessor programmes to Erasmus+. |
| Role | British Council/Ecorys Capabilities | Evidenced by |
| | <ul style="list-style-type: none"> • In-depth understanding of the technicalities of EU programme work, and extensive experience of working with the European Commission (British Council is an EU Pillar Assessed EU Implementing Partner – see Question 3 for more details) | |
| Sharing success stories | <ul style="list-style-type: none"> • Dedicated support materials and resources across all Erasmus+ sectors to help beneficiaries promote and disseminate their projects • Pro-active promotion of Erasmus+ across traditional and social media • Significant experience of running in person and virtual events to share success stories • Established networks of beneficiaries and stakeholders across all sectors and the Devolved Administrations that we target to share Erasmus+ and ESC success stories and best practices | <ul style="list-style-type: none"> • Publicly available platforms for sharing best practices https://www.erasmusplus.org.uk/stories/sector (160 full case studies covering all sectors and Devolved Administrations). • Delivered Annual E+ conference for up to 200 attendees since 2014 • Established links with Sector and Country Advisory Groups |

NB: The above activities ensure delivery is compliant with Service Requirement Section 2: Programme Regulations and Financial Controls, Section 3: Delegation Agreements, and Section 4: Guide for National Agencies

3 – Understanding of the residual tasks that would be entrusted to them by, and which they will be contracted to deliver by way of the Delegation Agreement(s) with, the European Commission

Having carefully reviewed the Delegation Agreements (DAs) and the Invitation to Tender documents, Table 3., below, outlines our understanding of the residual tasks that would be entrusted to us. It is broken down into three areas: 1) entrusted tasks flowing from the DAs; 2) activities required by the NA to deliver the entrusted tasks; and 3) specific exclusions to the DAs arising from The European Union (Withdrawal Agreement) Act of 2020.

TABLE 3. RESIDUAL TASKS ENTRUSTED TO THE NA BY EC DELEGATION AGREEMENTS

| Entrusted tasks flowing from EC Delegation Agreement (DA) to National Agency (NA) | Activities performed by the NA to deliver the entrusted tasks | Specific exclusions from DAs arising from the Withdrawal Agreement |
|---|---|--|
|---|---|--|

| <p>A - Manage all stages of the project lifecycle of the following Programmes' Actions: – Erasmus+ learning mobility of individuals, with the exception of mobility organised on the basis of joint or double/multiple degrees and the Student Loan Guarantee Facility.</p> <p>B - Erasmus+ strategic partnerships within the action "cooperation for innovation and the exchange of good practices"</p> <p>C - The management of Erasmus+ small-scale activities supporting the structured dialogue in the youth field within the action "support for policy reform"</p> <p>D - Issue grant support to beneficiaries by way of a grant agreement, as specified by the</p> | <p>- set up and ensure the functioning of an internal control system that is effective and efficient in accordance with para. 2 of Annex II</p> <p>- use an accounting system that provides accurate, complete and reliable information in a timely manner in accordance with para. 4.3.1 of Annex II</p> <p>- be subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit service functionally independent of it</p> <p>- ensure the ex-post publication of information on recipients of Union funds in accordance with para. 3.7.10 of Annex II E - ensure the protection of personal data in its capacity of processor as laid down in Regulation (EU) 2018/1725 of the European Parliament and of the Council and particularly in Article 29 thereof, in accordance with Article II.6</p> <p>- apply appropriate rules and procedures for the management of funding as procurement and grants in accordance with para. 4.4 and para. 3.1 to 3.10 of Annex II</p> <p>- carry out checks on grant beneficiaries in accordance with para. 3.11 of Annex II</p> <p>- recover funds unduly paid in accordance with para. 3.12 of Annex II</p> | <ul style="list-style-type: none"> • Article I.3. Union Financial Contribution • I.3.1. Contribution to management costs • I.3.2.2 Budget transfers within contribution to networks • I.3.3.2 Budget transfers within Erasmus+ Heading 1 funds • I.3.3.3 Budget modifications in Key Action 2 in School Education • I.3.3.4 Erasmus+ Transnational Cooperation Activities between NAs • I.3.3.8 Budget transfers within European Solidarity Corps funds • I.5.1.1 First pre-financing payment |
|--|--|---|
| Entrusted tasks flowing from EC Delegation Agreement (DA) to National Agency (NA) | Activities performed by the NA to deliver the entrusted tasks | Specific exclusions from DAs arising from the Withdrawal Agreement |
| <p>Commission for the Programme Action concerned.</p> <p>E - Perform, as autonomous additional tasks, the functions of national Erasmus+ and European Solidarity Corps structures other than the NA (hereinafter referred to as "networks"), in accordance with the Erasmus+ and European Solidarity Corps Work Programmes.</p> | <p>- take appropriate measures to prevent, detect and correct irregularities and fraud in accordance with para. 3.14 of Annex II</p> <p>- report to the Commission on the implementation of the entrusted tasks in accordance with Article I.4</p> <p>- make use of the relevant IT tools provided by the Commission to record all information in relation to the Programme Actions managed by the NA</p> <p>- develop a consistent policy with regard to dissemination and exploitation of results of activities supported under the actions they manage within the Programmes.</p> <p>- assist the Commission in the general task of disseminating information in respect of actions and activities managed at European level, and its results, and shall inform relevant target groups about the actions undertaken in their country</p> <p>N - ensure separation between the Union financial contributions allocated to the two Programmes and the audit trail showing the attribution of expenses to the relevant Programme. Expenses may be attributed by means of estimates and reasonable allocation keys.</p> | <ul style="list-style-type: none"> • Article I.6. Bank Accounts • Article I.8. Amendments to the agreement • Article II.20. Earlydetection and exclusion system • Annex VI Negative Interest and Avoidance Strategy |

NB: The British Council and Ecorys' delivery of the Erasmus+ and ESC is fully compliant with Service Requirement Section 2: Programme Regulations and Financial Controls; Service Requirement Section 3: Delegation Agreements and Service Requirement Section 4: Guide for National Agencies. We take a proactive approach to contract management, flowing obligations appropriately to partners and beneficiaries through our consortium agreement and the grant agreements

4 – An assessment of key risks and issues that the tenderer will need to manage in delivering the residual tasks, including how your organisation will mitigate these

Since setting up the NA in 2014, the British Council and Ecorys have adopted a rigorous risk management approach to the delivery of Erasmus+ and ESC programmes, including maintaining a detailed Risk and Issues Log. The log is reviewed and updated monthly in advance of each Joint Management Team (JMT) meeting (see response to Q3 for further details on governance).

As part of our approach, risks and issues are classified into different categories and each risk or issue is assigned an owner who is responsible for the agreed mitigation action. Once resolved, risks are either closed or moved to the issues log and then managed through ongoing programme delivery. The table below is a summary of the latest risk and issues log. A more detailed version is maintained by the British Council and Ecorys.

TABLE 4. SUMMARY OF RISKS AND ISSUES LOG

| Risk area | Risk description | Mitigations and actions required |
|-------------------------|---|---|
| Programme and strategic | Talent Retention | <ul style="list-style-type: none"> Organisational succession planning approach adopted Career advice and support including learning and development opportunities Access to suite of wellbeing and mental health resources |
| Programme and strategic | Erasmus+ finance team are unable to make payments, raise recoveries or produce reports due to resourcing/IT issues as a result of Covid-19 | <ul style="list-style-type: none"> Contingency plans in place for risk mitigation around Covid-19 pandemic Effective communication with Grant Management teams to make them aware of any issues affecting normal payment schedules Effective communication with beneficiaries to manage their expectations around payment schedules Monitoring of the payment run and other financial processes and planning for financial peaks and troughs using the monthly cash-flow forecast |
| Programme Management | That conflicting requirements and interdependencies on demands from two different clients, EC and DfE, undermine the NA's ability to satisfy either client or fulfil contractual requirements | <ul style="list-style-type: none"> Timely discussions with DfE to flag issues and support offered with discussions with the EC (as appropriate) |
| Programme and Strategic | That the EC introduce additional reporting or additional activity that is not included in the current Guide for National agencies or the DfE specification | <ul style="list-style-type: none"> Timely discussions with DfE to review the requirements and to scope the impact. Agree an approach to the change. |
| Issue area | Issue Description | Mitigations and actions required |
| Operational | Variable performance of the EC's IT tools impact on delivery of the grant life cycle and adherence to programme management deadlines | <ul style="list-style-type: none"> Keep up to date with EC developments and contribute to testing Have in-house ICT expertise to adapt and tailor the system to meet changing requirements/follow up with EC to correct known issues Keep up to date with relevant Yammer postings and notifications from across all NAs Yearly Report working group formed from a cross-section of NA staff, to share knowledge and experience |
| Operational | Large amounts of work generated as a result of Covid19 pandemic. | <ul style="list-style-type: none"> Workloads prioritised to focus resources on tasks of highest importance Flexible use of resources across the sectors |

Both organisations have a strong internal control and compliance operating environment. For the British Council this is evidenced by our lobal Policy Statements, including Risk Management and Anti-Fraud and Corruption are publicly available (<https://www.britishcouncil.org/about-us/how-we-work/policies>).

Summary

This response has outlined the in-depth understanding that the British Council and Ecorys have of the role and obligations of a NA to support delivery of the Erasmus+ and ESC Residual Activity Services. It has outlined the wide-ranging experience of the consortium to successfully deliver Requirements 2, 3 and 4 of the Specification to the Buyer's and EC standards. Further, it has demonstrated the key benefits for the Buyer of maintaining the current NA in terms of readiness of delivery, established networks, processes and procedures in all aspects of delivery: highly trained and skilled staff, and a strong track record of successful delivery of the Erasmus+ and ESC programme over the last seven years.

ⁱ https://ec.europa.eu/programmes/erasmus-plus/contact/national-agencies_en, accessed on 1 August 2021 ⁱⁱ
<https://www.erasmusplus.org.uk/erasmus-in-the-uk>, accessed on 1 August 2021

British Council's response to Q2 - Delivery Solution



British Council's response to Q3 - Internal system, controls and governance

██████████

British Council's response to Q4 - Expiry of the services

Complementary to our response to Questions 1-3, this section provides an explanation of our approach to managing the expiry of the contract as Erasmus+ and European Solidarity Corps (ESC) Residual Activity Services conclude.

Since 2014, the National Agency (NA), the British Council and Ecorys have delivered just under 4000 project closures across all sectors and Key Actions on Erasmus+ and ESC, ensuring adherence to the programme rules (referenced in the ITT as Service Requirements 4, 5, 9, 10 and 12) and value for money for the European Commission (EC) and the UK taxpayer. As more projects reach their natural conclusion, the NA Agency will continue to be a responsible and responsive supplier, working collaboratively with the Buyer to ensure that resources are flexibly managed down as project volumes fall.

Our response to this question covers five areas as laid out in the invitation to tender:

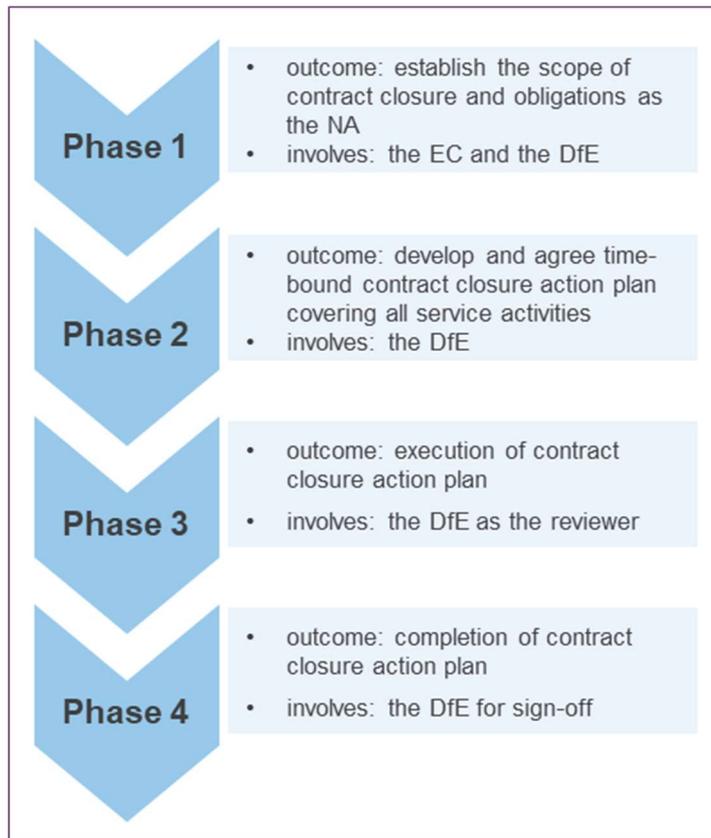
1. A view of the key phases of expiry that need to be managed, and assumptions being applied, related to the Erasmus+ and ESC Residual Activity Services winding down. (Response area 1).
2. An outline of the governance approach that will be applied to assess, make decisions with the Department for Education (DfE), and subsequently manage a controlled and progressive expiry of the Erasmus+ and ESC Residual Activity Services / Contract. (Response area 2).
3. An explanation of our how our approach will be an effective reduction of resources in line with decreasing volumes / activity that is expiring. (Response area 3).
4. An explanation of our how our overall approach to managing expiry of the Erasmus+ and ESC Residual Activity Services / Contract achieves value for money for the taxpayer. (Response area 4).
5. An outline of the approach that we will apply to ensure post-contract retention obligation are delivered. (Response area 5).

RESPONSE AREA 1

A view of the key phases of expiry that needs to be managed, and assumptions being applied, related to the Erasmus+ and ESC Residual Activity Services winding down

Our exit activity will start from day one of the contract, as outlined below. The NA will manage the following key phases of contract closure, which will be reviewed at each Quarterly Performance Meeting as defined in Service Requirement 12.

FIGURE 1: OVERVIEW OF CONTRACT CLOSURE PHASES



As of July 2021, there are 2,873 open projects under the Erasmus+ and ESC Residual Activity Services at varying stages of the project life cycle as specified in the ITT Annex A, Document 6. As part of the governance model outlined in our response to Question 3, we will provide regular reports to DfE on the number of open projects and forecasts of when projects are due to close (this is referred to as 'quantification'). Specifically, in terms of each project closure we will take the following actions:

- Confirm and assess the delivery of activity against the agreed objectives, outcomes, and grant funding via the final reporting process.
- Evaluate and report the cumulative impact, results, learning and achievements against the stated objectives and outcomes.
- Ensure that all funds disbursed are accounted for, all necessary payments made, and any recoveries concluded (a condition of formal grant contract closure).
- Identify any lessons and recommendations from the final evaluation reports that may be useful for making improvements to any future programmes the EC or DfE may commission.
- Once all financial and impact reporting has been verified and any outstanding issues and any actions taken by the beneficiary, initiate the formal project and grant contract closure and issue the formal closure declaration.

These closure activities are based on the following assumptions:

| Assumption | Detail |
|--------------|---|
| Assumption 1 | The impact from Covid-19 will result in projects extending their timeframes. |
| Assumption 2 | The NA will follow all due processes on recoveries and irregularities to contract expiry; however, beyond contract expiry liability rests with DfE. |
| Assumption 3 | During the residual period, DfE will not ask the NA to do anything that is contrary to the obligations set out in the ITT and/or with the EC. |
| Assumption 4 | Should the residual contract be terminated prior to its end-date, the NA will facilitate transfer of existing live projects prior to their end dates as a new supplier is on-boarded. This will require contract novation, transfer of files, and transfer of data. Early exit costs (including resource costs) have not been included in the cost model. |

| | |
|--------------|--|
| Assumption 5 | That the EC will not introduce any new requirements and that the EC will require the usual project closure processes to apply. |
|--------------|--|

Furthermore, to ensure a smooth and managed approach to the expiry of the contract, we will:

- ensure that all institutions and partners have fully fulfilled the requirements of their contracts and all funds allocated to them and disbursed have been fully accounted for
- ensure that all project records, material, websites, research, and findings are retained, transferred, archived, or disposed of in line with information security and record management procedures
- document any outstanding risks which are identified that could still be of significance to the Buyer or EC beyond the life of the contract, identifying and recommending suitable residual control measures
- ensure that all communications on the conclusion of the programme are disseminated in a timely way via established channels (website, social media, newsletter)
- identify and signpost any opportunities that we have identified from delivery and that could be built on or further developed by the Buyer or the EC
- ensure that all lessons and recommendations coming from monitoring, evaluation, and learning are fully captured and documented in a way most helpful for the Buyer and EC
- initiate the formal, auditable exit plan sign-off process with the Buyer, seeking confirmation that all elements of the plan have been fully delivered to their satisfaction and fully addressing any issues that the Buyer may consider as requiring further work.

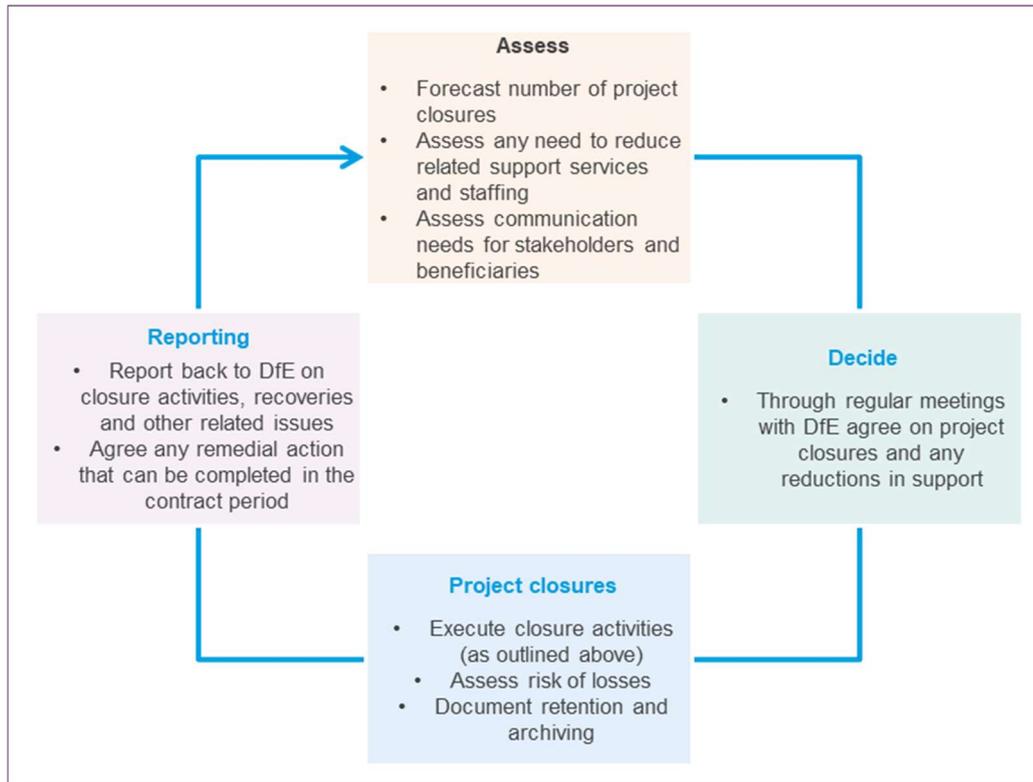
Response area 2

An outline of the governance approach that will be applied to assess, make decisions with the DfE, and subsequently manage a controlled and progressive expiry of the Erasmus+ and ESC Residual Activity Services / Contract

The overall governance model and approach for the management of the Erasmus+ and ESC Residual Activities including decision making and escalation is outlined in our response to Question 3. This section addresses our governance and approach to expiry of the contract.

The National Agency will use our established governance model and the related sector and Advisory Groups to ensure strong stakeholder and beneficiary engagement through the expiry of the services. Specific to project closures and working closely with DfE to ensure a controlled and responsible closure of remaining open projects, we will adopt a cycle of decision making, activities, and closure as summarised in Figure 1 below.

FIGURE 1. SUMMARY OF DECISION MAKING AND ACTIVITIES DURING PROJECT CLOSE DOWN



NB: this approach and the detailed activities outlined above ensure full compliance with Service Requirements 4, 5, 9, 10 and 12

Successfully managing project closures in adherence with the programme rules is not new to the NA. We have responsibly and successfully managed the closure of close to 4,000 projects since 2014, effectively managing risk around recoveries and losses and ensuring value for money for the EC and DfE. Our highly trained and skilled teams are in place and working on the residual services.

Response area 3

Explain how, in our approach, there will be effective reduction of resources in line with decreasing volumes / activity that is expiring

As project volumes reduce the NA will assess and allocate the resources required to support beneficiaries both in terms of providing collateral around the Erasmus+ and ESC services e.g. websites, social media channels, customer service, and in the final stages required to deliver the residual activity. The phased resource approach has been reflected in our costed resourcing plan. The NA has established processes for assessing resource year on year and responsibly reducing programme inputs in relation to volume reductions as evidenced by the responsible and carefully managed closure of the EPALe and E-twinning programmes in 2020/21. Table 1. below outlines this in more detail.

TABLE 1. APPROACH TO REDUCING RESOURCES

| Area of resource | Approaches to be adopted |
|--|--|
| Programme websites and social media channels | <ul style="list-style-type: none"> • Merging content / reducing the number of web pages • Consolidation and archiving of old content • Reduction of mailing list frequency (from quarterly to bi-annual) with facility for urgent updates (e.g. COVID-19 travel arrangements) • Social media channels remain in place but limited to signposting to website content, forwarding queries to Helpline email inbox, or providing urgent updates |

| | |
|-------------------------------------|---|
| Communication and Customer services | <ul style="list-style-type: none"> • Flexible resourcing model for the Helpline with all staff trained to deal with general/basic queries and more complex queries escalated to staff with specialist knowledge (staffing to be adjusted as queries reduce for particular Key Actions and across sectors) • Maintain customer service standards and manage expectations in terms of prioritising the most urgent queries and requests • Phone line in operation but increased use of generic FAQs on website |
| Grant Management | <ul style="list-style-type: none"> • Prioritise work in line with the requirements and timescales in the GfNAs and DAs • Flexible deployment of staff across work areas • Use of trained and experienced external experts to support with report assessments, with consideration given to extending this to cover primary checks • Use of fixed term staff contracts in line with project closures • Re-deployment of staff into other areas of work to mitigate redundancy costs |
| Compliance and recoveries | <ul style="list-style-type: none"> • As the focus of work shifts from monitoring to timely recoveries of unspent or ineligible grant funding, delivery staff will receive specific tailored training to support this activity |
| Exit management | <ul style="list-style-type: none"> • A small core-team which has an ownership of execution of the exit plan through to the contract closure |
| Hard copy filing | <ul style="list-style-type: none"> • Regularly archive project files as soon as the projects are finalised and external audit completed |

Response area 4

Explain how the overall approach to managing expiry of the Erasmus+ and ESC Residual Activity Services / Contract achieves value for money for the taxpayer.

Our approach to Value for Money (VfM) across the Erasmus+ and ESC Residual Activity Services was outlined in our response to Question 2. Through the remainder of the contract we will continue to focus our VfM on the same criteria:

- Economy: spending less, minimising the cost of resources
- Efficiency: spending well, using resources to maximise outputs and outcomes
- Effectiveness: spending wisely, so resources deliver the results for which they were granted Table 2. outlines how our criteria will translate in practice.

TABLE 2. OVERVIEW OF VFM FOR MANAGING THE EXPIRY OF SERVICES

| Economy | Efficiency | Effectiveness |
|--|--|---|
| Immediate readiness to deliver – no startup cost for mobilisation; instead, the NA will focus on service delivery and exit planning from Day 1 of the contract | Immediate readiness to deliver – no duplication of effort or management for the Buyer managing for overlap of two suppliers; instead, the NA will focus on service delivery and exit planning from Day 1 of the contract | Immediate readiness to deliver – reduced financial risk for the Buyer through removal of the need to novate beneficiary contracts; rather the Buyer can focus on core support activities on the programme |
| Ongoing cost-benefits of earlier investment in systems from 2014 onwards which reduces additional costs of system set-up by new supplier | Established systems in place with EC e.g. EPlusLink provide major efficiencies and reduces errors in developing closure plan of the projects | Existing talent base to deliver from day 1; highly trained staff with extensive knowledge and experience of project closures such that closures will be completed quickly and accurately |
| Economy | Efficiency | Effectiveness |
| Flexible resource management across integrated team, with staff numbers reducing as volumes fall | Integrated NA and EC IT systems reduce administrative burden and synchronise data archive | UK-wide presence – local knowledge and context facilitates effective communications around closure and exit |

| | | |
|--|--|---|
| Reducing accommodation and salary costs as volumes fall | Highly trained and skilled multi-tasking teams reduce risk of mistakes or duplication; flexibly deployed to gain economies of scale and amalgamation of services as volumes fall | Structured performance monitoring and benchmarking, building on previous experience of large-scale EC contract closures such as Lifelong Learning Programme and Youth in Action |
| Large scale organisational procurement reduces transaction costs and cost of goods and services in organising archive and data wipe services | In-house teams used for aspects of delivery e.g. design, brand which reduces cost for sub-contracting, reducing as volumes fall | Reducing and merging on-line content as volumes fall |

We also deliver a 4th 'E' of VfM around Equity, ensuring during closure that our services are as accessible as possible e.g. our website is 'Double A' rated for accessibility and we provide information tailored to the Devolved Administrations.

Response area 5

An outline of the approach that will be applied to ensure post-contract retention obligation are delivered. As the NA, we have developed a document management system in line with Section 2.8 of the GfNA ensuring systematic and secure filing of records relevant to the NA operations, management of the programme and the project life cycle.

In earlier years of the programme, the majority of the beneficiary related documents were paper based. However, since the outbreak of Covid-19, we have accelerated our effort to make the documentation digital and which can be stored in digital/electronic format within the digital storage infrastructure of the British Council and Ecorys. This will enable a streamlined archiving of the documents.

Programme records will be archived and disposed of in compliance with the programme retention schedule. All records will be kept on file for seven years upon the end of the programme's life cycle unless an alternate retention period is specified in the programme contract. The data in EPlusLink is owned and managed by the EC but we will seek a clarification from the EC with regards to any specific obligations for the NA as data processor. Any data from the internal management tools will be stored on the British Council or Ecorys servers and will be governed by an agreed Privacy Policy.

Our wider corporate approaches to Information Management and compliance with the General Data Protection Regulation (GDPR) are outlined in our response to Question 3: the British Council and Ecorys have well-established enterprise-wide practices to ensure compliance. For the British Council, corporate approaches and practices are managed by dedicated Information Governance Management (IGRM) team, led from the UK but with a global presence. This team works with teams across the global network to implement the British Council's 'Two Lines of Defence' model (Question 3, Figure 1).

Summary

This response has provided an explanation of the approach we will apply to manage expiry of the Contract as the Erasmus+ and ESC Residual Activity Services conclude. Over the last seven years as the National Agency, the British Council and Ecorys have successfully brought just under 4,000 projects to a close, managing resources flexibly across sectors and Key Actions to ensure both compliance with the programme rules (Service Requirement Sections 4, 5, 9, 10 and 12) and value for money for the EC and UK taxpayer. With teams in place and already working at pace on the Residual Activity Services, there is no need for transition or mobilisation. This represents a significant saving to the Buyer in terms of management time and cost, as well as mitigating risk of transition to a new supplier.

British Council's response to Q5 - Implementation and mobilisation



British Council's response to Q6.1 - Social Value 1

COVID -19 RECOVERY AND TACKLING ECONOMIC INEQUALITY

Introduction

The British Council and Ecorys are wholly committed to supporting the UK government and the DfE in achieving the social value policies outlined in the Procurement Policy Note (PPN 06/20), including those highlighted by the DfE as most pertinent to the delivery of this contract. The social value themes identified, namely Covid-19 recovery and tackling economic equality are areas where both our organisations have existing policy and current activity in place which we will refer to in this document.

To further align our organisational policies with the DfE strategy and vision to support social value, we have outlined below additional commitments and policies that will be introduced. The action plan below also illustrates our proactive approach to supporting the DfE in this regard and to continuous improvement, particularly in respect of the delivery of this contract.

Both organisations have a reputation for conducting business with integrity, ethically, and with a deep understanding of the communities that are supported by our work.

Context - British Council

The British Council is a charity and a non-departmental public body. It enhances educational and cultural outcomes for people in the UK and internationally and thus can be considered an organisation with a social purpose. Delivering social value is at the heart of our work ranging from brokering partnerships and collaborations that provide young people with opportunities to learn and develop skills for the world of work. In addition we support diverse and community rooted supply chains to make positive contributions to society through social action and artistic expression.

The British Council takes our responsibilities very seriously ensuring we follow all relevant UK government legislation including the PPN 06/20 Social Value in Procurement, the Social Value Act of 2015, The Modern Slavery Act 2012 and the DFID 2019 SME Action Plan amongst others. Our Code of Conduct with which all employees and contractors/sub-contractors must comply reflects our commitment to working ethically and professionally. Our network and presence is global and includes all four nations of the UK, so we are ideally placed to develop our social value policies in a way which supports connections between the UK and other countries for all communities. Our commitment to diversifying our workforce is reflected through our Equality Policy and our Equality, Diversity, and Inclusion (EDI) strategy. Our Anti-Racism Action Plan is aligned to the DfE Race Strategy and establishes that we are proactive about examining our own organisational culture, promoting equality, and tackling discrimination within our workforce. This equality and anti-racist ethos is thus being embedded not only through our programmes, products and services. but deep into our supply chains. The workforce currently engaged in delivering the Erasmus+ and European Solidarity Corps Residual have all undertaken appropriate mandatory training on our Code of Conduct, Safeguarding, counter fraud and in addressing Modern Slavery.

Context – Ecorys

Ecorys' vision and mission are focussed upon delivering social change through their work in addressing societal challenges.

Their social value actions are based on a core set of policies and procedures. Their Business Conduct, Ethics and Social Value Policy is a vital element of their work, covering core areas such as regulatory compliance, equality and inclusion, environmental issues, and safeguarding. The policy applies to all Ecorys personnel, and forms part of the Ecorys Governance Manual which is adopted by all employees. There is mandatory e-learning on our Corporate Social Responsibility (CSR), and it is integrated throughout their programmes, projects and wider work.

Ecorys has put in place plans to evaluate their social value policy, including those outlined in this section of the proposal. They have set aims and objectives for the policy and they will develop KPIs to measure the impacts of their social value policy. This overall approach is fundamental to delivering social value in respect of this project. Ecorys' positive organisational culture and strong processes and protocols mean they consistently deliver social value to the highest standard across their contracts.

COVID-19 RECOVERY – ORGANISATIONAL POLICIES AND COMMITMENTS

British Council

Our approach consists of three fundamental components: i) the need to keep our staff safe and consider their wellbeing; ii) the need to pivot our programmatic response to ensure we can best meet commitments made to our beneficiaries; and iii) to respond as best we can to local community need, especially for the disadvantaged both in the UK and overseas. We present staff wellbeing first and then examples of community engagement and support.

In 2020/21 in response to the impact of the Covid-19 pandemic many of our policies were reviewed and revised to support home working, and to support for carers. Actively promoted by senior managers these have included:

- guidance for line managers on how to support their teams, especially those with caring responsibilities
- risk assessment for colleagues working from home plus funds for equipment for home working
- redesigned intranet pages and PDF guides to ensure that relevant information – for instance on our generous flexible working options - is easily accessible
- two extra days of paid special leave per month for parents who are looking after children aged 11 or under while schools and nurseries are closed or partially closed
- establishment of a Parent Network to promote a nurturing space for colleagues to listen, learn and share resources and experiences on work and childcare, especially in the context of the Covid-19 pandemic and the future for working parents
- enhanced wellbeing guidance available to all staff, including guidance for managers.

British Council provides accreditation for some 423 English language teaching centres including monitoring of quality standards. A number of these are located in areas of deprivation (e.g. parts of London, West Yorkshire and the North East) and many have had to furlough staff and have suffered from reduced income streams. To support these organisations, who provide important services for the local community (especially those for whom English is not their native language), the British Council:

- declined to charge our management fee for administering the Accreditation UK scheme
- reduced fees for 2020/21 and 2021/22
- provided additional resources and access to training on teaching online to support pivoting to teaching online.

The British Council funded Active Citizens Programme has operated globally for many years with an increased presence amongst disadvantaged communities. Programme partners and their networks have been leading the crisis response in their local communities. For example,

- In Liverpool, Active Citizens have been supplying bicycles donated by the local community to NHS staff and key workers, so they can travel without using cars or public transport, keeping them both safe and healthy. The project is also helping to battle the negative effects of lockdown, by encouraging more people to enjoy the physical and mental health benefits of cycling.
- In Hull, Active Citizens identified government health and safety messages were not reaching some black, Asian and minority ethnic communities due to language and cultural barriers so they started the BAME vs COVID-19 project, bringing together musicians and music producers from ethnic communities to create songs in their own languages about how to stay safe during the pandemic, providing a critical source of information for many communities. More recently, they have adapted their messaging to encourage uptake in the vaccination rollout, using respected local figures to advocate for vaccinations.

Ecorys

Ecorys is committed to supporting communities in the Covid-19 recovery and will do this in two specific ways. Firstly, their Ecorys UK charity for 2021 is Farershare, which distributes food to families in need. They have played a vital role during the COVID-19 pandemic helping distribute food during lockdowns and helping families on furlough affected by the reduced income. They promote activities throughout the year, via Ecorys' CSR team to raise money for Fareshare and will donate one percent of annual profits to them

for the next two years. Secondly a key part of Ecorys' CSR approach is to encourage employees to support the local community. To facilitate this, they give all employees a paid volunteering day per year to work for a charity of their choice.

In addition to work in the community, and in line with the DfE strategy in supporting people to work, Ecorys has developed policies and initiatives for their own staff in relation to Covid-19 recovery. These are:

- Wellbeing. Ecorys has a wellbeing team that has promoted the importance of mental health during the Covid-19 pandemic. They have run a series of webinars in conjunction with our benefits partner, Validium, to give support to employees and provide advice on positively managing mental health. The employee feedback from these webinars has helped Ecorys to adjust our response to Covid-19 and put in place additional measures to ensure our employees are safe.
- Works Council. Ecorys met with their Works Council on a regular basis to discuss important issues affecting Ecorys, including their response to Covid-19. This has proved a useful way of getting early feedback on proposed responses to the pandemic and gives employees a route to raise any concerns confidentially.
- Risk assessments. Working from their offices is currently voluntary and employees are still recommended to work from home until autumn 2021. To ensure anyone choosing to work from Ecorys' offices is safe, they have undertaken Covid-19 risk assessments and put in place guidance around hot desks, which includes prevention and mitigation measures.
- Hybrid working. Ecorys has created a global hybrid working policy and are currently in the process of implementing this in Ecorys UK. This policy gives employees a balance of working at home on tasks that require concentration and collaborating with colleagues in the office. They are intending to implement this policy in autumn 2021.

TACKLING ECONOMIC EQUALITY

British Council

The British Council undertakes several initiatives which align with the DfE strategy and vision on creating job opportunities and supporting in work progression. Our team currently delivering the Erasmus+ services include staff who originally undertook placements at the British Council and have now secured jobs. In our action plan we will continue to seek to place students within the contract workforce and with a focus on attracting those from marginalised communities.

We will continue to use our apprenticeship levy to support staff progression and will be aiming for a target of 3% of UK staff trained by the end of this contract. This exceeds the 2.3% target set for public bodies. Furthermore, we will extend the use of our levy to ring fence the maximum 25% of funds to support our supply chains grow their businesses, especially in sectors hardest hit by COVID-19, such as the cultural sector. Research from Return on Investment of work-based learning and Investment (ROI) shows benefits to SMEs such as higher productivity and staff retention as well as societal benefits such as development of skilled workers and social inclusion of vulnerable groups.

The British Council uses its own funds to support the provision of social value. The Our Shared Cultural Heritage (OSCH) programme is designed to support young, disadvantaged people into work and is youth-led with decision making conducted by young people aged 11-25 across Manchester and Glasgow. In Manchester we have the OSCH Collective – a group of young people (there are around 60 members currently) who lead decision making for the programme. These young people are primarily from South Asian backgrounds. The programme has delivered the following:

- 30 young people are leading on Manchester Museum's flagship South Asia Gallery development, the first permanent gallery of its kind in the UK.
- Supported Glasgow Life to deliver UK Government Kickstart Scheme, which provides funding to employers to create jobs for 16- to 25-year-olds on Universal Credit. This will provide an expected three six-month job role for South Asian young people from Glasgow who are at risk of long-term unemployment. In our action plan, we plan to continue supporting this work.

We have a significant commitment to addressing economic inequality through our programmatic work in TVET. For the last four years in partnership with the Association of Colleges we have supported the British Council International Beacon award. These awards offer colleges the opportunity to showcase the innovative ways they can support students, especially those from deprived areas and/or who are marginalised and represents the best approaches colleges have developed to meet the skills needs of local employers and career aspirations of students.

The British Council follows the principles laid out in the Good Work Plan and these are reflected in our policies and processes allowing us to attract and retain motivated and experienced employees in locations around the UK including London, Manchester, Cardiff, Edinburgh and Belfast. Those employees are supported through a wealth of online, face to face and virtual learning and development resources some of which are made available to our supply chains. Aside from a short-term assignment process that can support skills development of staff, especially those from lower pay bands, we also operate a mentoring scheme which, in the main, focusses on minority ethnic and disadvantaged staff.

Ecorys

Ecorys is committed to supporting economic equality and this is integral in the development of the organisation's policies and initiatives. A key part of our HR strategy for 2021-2025 involves a 'build' approach, where emphasis is placed on developing competencies through training and opportunities to develop skills.

Ecorys also gained Real Living Wage accreditation in 2020 and this ensures all of their employees and people in their supply chain are paid a fair wage. The organisation is dedicated to maintaining this commitment by conducting annual reviews to ensure they continue to meet the real living wage criteria.

Ecorys has provided a number of paid intern and graduate entry opportunities, alongside accredited training courses for their staff. They are signed up to the apprenticeship levy, and they have recently had two apprentices in their Birmingham office working in their IT team and Erasmus+ team.

Ecorys has provided a number of work experience placements in the past across all areas of their business and will continue to offer these in the future. Opportunities will be available at all levels for communications, finance and compliance and delivery teams, including administrative staff, IT and HR staff from the wider company, who are associated with the delivery of the contract. Ecorys will share all such vacancies with the DfE and link in with local training/employment support programmes.

As another example of a social value initiative in the area of supporting economic equality, in the context of a grant management contract with the Careers & Enterprise Company, Ecorys staff provided regular mentoring sessions in schools funded through the Company's grants. As a result, young people improved knowledge around possible employment prospects and careers.

Delivering the action plan

Our plan is based upon actions we will deliver across our respective organisations, but in all cases will support the delivery and performance of this contract. In reporting to the DfE we will provide data through our HR reporting tools and make comparison between how progress applies specifically to the contract and the wider business, where appropriate. We will agree with DfE what information, and particularly what metrics, will be provided and ensure this is reported at the quarterly client meetings. We will also work with the DfE to develop clear KPIs on our social value action plan(s) and agree priorities in line with the strategy and vision.

The plan embeds social value through regular reporting supplemented by ongoing review and reflection. This approach incorporates feedback loops and transparency with the DfE, allowing us to maximise social value and develop our approach throughout the project, based on what works and emerging practice. We anticipate British Council, Ecorys and DfE working together closely to make the most of our opportunities in this area and to ensure continuous improvement.

| Action description | BC/ Ecorys | Tasks | Start date | Review date | End date | Expected outcomes | Success measures |
|--|-----------------|--|--------------|------------------------------|--------------|---|---|
| Maximise use of Levy to support DfE Apprenticeship Strategy (Part 1) | British Council | Increase number of staff upskilled at levels 2.3. and 4 through apprenticeship levy from current 29 to 45 over contract lifetime | Jan-Mar 2022 | Apr-Jun 2023 Apr-Jun 2024 | Jan-Feb 2025 | <ul style="list-style-type: none"> • Supports in work progression • Minority Ethnic colleagues report clearer career path | <ul style="list-style-type: none"> • Survey of staff undertaking training • Feedback stories |
| Maximise use of Levy to support DfE Apprenticeship Strategy (Part 2) | British Council | Ring fencing of 25% of levy to be spent supporting SMEs | Apr-Jun 2022 | Jan-Mar 2023 Jan-Mar 2024 | Jan-Feb 2025 | <ul style="list-style-type: none"> • Strengthened supply chains • Support to job creation • Support to SME sector | <ul style="list-style-type: none"> • % of levy committed per year • Number of SMEs supported |
| Apprenticeships review | Ecorys | Review apprenticeship recruitment and completion (Ecorys) including from marginalised groups. | Apr-Jun 2022 | Apr-Jun 2023 Jan-Mar 2024 | Jan-Feb 2025 | <ul style="list-style-type: none"> • Policy developed on future recruitment and support of apprenticeships. | <ul style="list-style-type: none"> • Policy shared with DfE on both apprenticeship recruitment and the inclusion of disadvantaged/marginalised groups in the workforce. |
| Work placements | British Council | Erasmus+ programme to support a minimum of 1 work placement in its lifetime (depending upon supply) | Apr-Jun 2022 | Apr-Jun 2023 | Jan-Feb 2025 | <ul style="list-style-type: none"> • Supports opportunities for young learners | <ul style="list-style-type: none"> • Number of disadvantaged learners (min 1) • Feedback from learners |
| Skills development | Ecorys | Facilitate training (accredited where viable) for employees in areas relevant to contract delivery. | Apr-Jun 2022 | Apr-Jun 2023 | Jan-Feb 2025 | <ul style="list-style-type: none"> • Staff are better equipped to enter higher level jobs • Staff more likely to stay within organisation • Increased staff satisfaction | <ul style="list-style-type: none"> • Review of new training/qualifications completed • Revised policy developed and shared with the DfE. |
| Vocational qualifications | British Council | To deliver accredited qualifications through British Council's own programming (Our Shared Cultural Heritage) | Apr-Jun 2022 | Apr-Jun 2023 | Oct-Dec 2023 | <ul style="list-style-type: none"> • Supporting employers meet skills shortages • Supporting job creation | <ul style="list-style-type: none"> • Minimum of 50% students achieve accredited vocational qualifications • Employers report skills shortages filled (to some extent) |

British Council's response to Q6.2 - Social Value 2

INTRODUCTION

The commitment of British Council and its delivery chain to providing equal opportunity is serious and long term. We are committed to creating inclusive and diverse working cultures where potential and actual discrimination is identified and tackled, and where the value of a diverse and representative workforce and practices continues to be demonstrated in our work. We believe this is demonstrated in the breadth of our policies as shown below. We welcome and endorse the Department of Education (DfE) Race strategy and strongly believe the British Council's global Anti Racism Action Plan (ARAP) is aligned to it.

The ARAP is ambitious and through it we will strive to become anti-racist in our culture and practices. We will seek to give colleagues and everyone we engage with the opportunity to achieve their potential, regardless of race, ethnicity, or background. We will actively dismantle barriers across our organisation and build a more inclusive and representative workplace and leadership that embraces diversity, calls out discrimination and puts equality at its heart. We will say more about the plan later in this document.

“Inclusion is at the heart of everything British Council does. By involving everyone in the conversation we learn from each other and bring together all of our experience, knowledge and expertise to do the best

POLICY LANDSCAPE

The table below illustrates the commonality of relevant policy for this section across our delivery chain.

| Policy | British Council | Ecorys |
|---|------------------------|---------------|
| Equality Policy | Yes | Yes |
| EDI Strategy | Yes | Yes |
| Gender | Yes | Yes |
| Compliance with Modern Slavery Act 2015 | Yes | Yes |
| Anti Racism Policy/initiatives | Yes | Yes |

CONTEXT - BRITISH COUNCIL

British Council has an established Global Diversity Unit, which has been in place for almost two decades. This reflects our long-term commitment to ensuring that Equality, Diversity and Inclusion (EDI) is at the heart of and runs through everything we do. Our Global Head of Diversity is a member of the Senior Leadership Team and is supported by a network of Senior EDI Leads in every Region and Business Unit globally. Our approach to EDI is set out in our Global Equality Policy, reviewed annually and in the organisation's global EDI Strategy which sets out our priorities and global framework for a three-year period. The most recent version was published in July 2021.

All staff are required to work in adherence with and in support of the Equality Policy, which reflects our commitment to operate in line with the UK Equality Act, both in the spirit of the law, or local legislation where this exceeds the UK Equality Act.

The British Council as a Non-Departmental Public Body (NDPB) is committed to a transparent approach which includes monitoring and reporting on its commitments. Aside from statutory public reporting, it has a bespoke assessment tool, the Diversity Assessment Framework. This global benchmarking tool is used to assess the six protected characteristics throughout our work. Senior Leads are responsible for providing written evidence annually. They must ensure that submissions are a fair representation of progress being made in the areas of British Council for which they are accountable. The Diversity Assessment Framework evidence is reviewed robustly. Results and recommendations are published to further drive improvement and support organisational learning in relation to progress being made.

SUPPORTING STAFF

The British Council operates in over 100 countries and is thus ideally placed to provide an enabling environment for staff to actively learn about, discuss and report issues over race. The British Council's organisational values have been adapted to reflect changing times and our commitment to EDI is reflected in the value "expert and inclusive". Our training and activity portfolio includes:

- Mandatory EDI training for all staff soon to be supported by mandatory anti-racism training, as shown in our action plan.
- Inclusive Leadership and talent management core learning programmes. Along with Anti-Racism, they form part of our induction offer and all staff are required to meet a minimum additional standard annually of learning and development in support of one of these areas.
- Our Arts team has led on a series decolonisation events bringing in part of our supply chain, and wider, who have expertise in this area.

The supportive environment for staff includes:

- Working time allocated to anti-racist and EDI learning and development.
- A mentoring scheme aimed at Minority Ethnic and disadvantaged staff.
- A readily available suite of wellbeing materials.
- The creation for UK staff, with support from Senior Leadership, of a Minority Ethnic Working Group (MEWG) to advocate for a more diverse workforce and improved career progression and to raise awareness of barriers faced by non-white staff.
- With some 11,000 staff and responding to demand, an Ethnically Diverse Group (EDG) has been established and managed on a regional basis to ensure nuances affecting racism found in different regions can also be better known, understood and tackled. Both this and the MEWG play important roles in creating safe spaces for Minority Ethnic colleagues to support each other.
- The British Council's Raising Complaints Policy and Grievance Policy set out the process for raising and managing complaints and concerns. In addition to our internal process, we also provide an external, independent service, Safe Call. This is run by a contracted independent supplier which enables suppliers, stakeholders, beneficiaries, and staff to raise complaints, concerns, or grievances on a variety of topics including racism. The external management and case resolution mitigates conflict of interest issues.

In April 2021, the British Council launched its Global Anti- Racism Action Plan (ARAP) in line with our organisational commitment to becoming anti-racist in culture and practice.

The ARAP is owned by the Senior Leadership Team and is driven and delivered by an Anti-Racism Task Force comprising global senior roles and a Challenge Group, a cross-organisational staff network representing staff of diverse ethnic backgrounds whose role is to challenge given assumptions and monitor implementation of the plan.

The anti-racism action plan has five priorities:

1. Improving our learning and understanding about racism/s and its impact.
2. Supporting a more inclusive organisational culture that prioritises anti-racist actions, behaviors, leadership development, and improved ways of listening to and acting on colleagues' feedback and concerns.
3. Human resource policies and practices that are reviewed, revised, and equality screened to ensure they promote inclusion and anti-racist principles.
4. Greater diversity of nationality and race in our global leadership.
5. Programmes, products, and services that are deliberately anti-racist and inclusive in their development and delivery, consistent with our commitment to decolonise our work.

The areas of focus in the plan are set out below, along with a phased approach to related activity, outcomes and measures. These are informed by relevant external benchmarking, recommendations, and standards, including the well-established and regarded Centre for Global Diversity Inclusion standards, EU Diversity Charters, the UK's Equality Framework for Local Government, NHS Race Equality Standard and the Law Society Diversity and Inclusion standards.

To measure success, the following actions will be implemented, working towards the targets and measures identified. We will need to take a phased approach over the next five years to bring about the substantial and lasting culture change we seek. Actions, targets and measures may change over this period, as directed by annual reviews, feedback from the Challenge Group and relevant external factors (e.g. demographic data, legislation, etc). **Context - Ecorys**

Ecorys updated and expanded its Equality, Diversity and Inclusion Commitment and Policy in 2021. Ecorys aims to make a positive difference to society through the work they do and their values. Ecorys welcomes people from every background, and actively provides them with the chance to thrive. They believe that diversity is one of their greatest strengths. Ecorys' team is diverse but united by their commitment to making a difference in society. They are committed to creating an inclusive and diverse culture where every person feels respected and empowered to reach their potential. They want to encourage all employees to develop their career. Ecorys' competency-based approach to recruitment, reward and progression aims to promote fair working conditions and equal opportunities for all their employees.

Ecorys commit to creating a working environment that promotes transparency and encourages feedback to support continuous improvement. They will ensure a culture where there is dignity and respect for all, and where individual differences and the contributions of all staff are recognised and valued. They oppose all forms of discrimination on the grounds of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race/ethnicity (including colour, nationality, and ethnic or national origin), religion or belief, sex and sexual orientation. Ecorys has a zerotolerance stance on bullying, harassment, and victimisation.

Ecorys' key commitments governing our action and decision-making are to:

- Be a company that reflects the diversity in society and in the communities in which we work.
- Take a fair and transparent approach to team management and staff development.
- Encourage active engagement from people of all backgrounds to this commitment, staff, stakeholders and the Ecorys Works Council, seeking their feedback and adjusting our approach accordingly.
- Avoid stereotyping or making broad assumptions.
- Communicate regularly internally and externally about our commitment to equality, diversity and inclusion.
- Embed equality and diversity training for all staff and make clear this is a fundamental responsibility for every employee
- Actively monitor equality and diversity, review this at UK board level and use this data to inform action planning.
- Have an Equality, Diversity and Inclusion taskforce, with UK Board- level sponsorship.
- Have an Ecorys UK Equality, Diversity and Inclusion action plan, that is reviewed and updated annually.
- Take seriously complaints of bullying, harassment, victimisation and unlawful discrimination by fellow employees, clients, suppliers, visitors, the public, research participants and any others in the course of Ecorys' work activities and deal with them under the organisation's grievance and/or disciplinary procedures, taking action as appropriate.

Ecorys Equality, Diversity and Inclusion commitment is fully supported by the Ecorys Board and has been agreed with the Ecorys Works Council.

To support a stronger approach in tackling workforce inequality Ecorys has revised its Equality and Diversity Policy. It lays out their commitment to provide equal opportunities and encourages a diverse workforce. Our work on equal opportunities will further enhance engagement and retention. This will also support our vision of being an employer of choice.

Ecorys fully monitor the profile of applicants, and their workforce, by gender, age, ethnic background, and other protected characteristics. All staff receive mandatory training on Equal Opportunities, as well as Business Ethics, The Modern Slavery Act, and the Bribery Act.

Ecorys is currently establishing its Equality, Diversity, and Inclusion steering group to oversee EDI commitment and policy. This group, co-led by three UK Board members, will oversee separate taskforces that will work on diversity strands for gender, race and ethnicity, and disability. Each diversity strand will drive positive action initiatives and involve employees from multiple areas of Ecorys. The EDI steering group is expected to go live in Q3 2021. The taskforces will have a data driven approach. Each diversity strand will analyse workforce data and use an evidence-based approach to determine which initiatives to focus on. The use of internal data and metrics will be used to measure the progress of initiatives and feedback from employees will ensure initiatives are effective.

In 2019 Ecorys established a Gender Taskforce, that works on initiatives to improve the gender pay gap at Ecorys. They carry out and publish annual gender pay gap reviews which are shared with all staff for transparency and include extracts from the company's action plan to improve the gender balance at senior grades. Ecorys has a two-year gender action plan in place, which is overseen by their UK Board and led by the Gender Taskforce. The following areas form part of their action plan: investigating options to increase flexible working; developing a carers policy; supporting women's health; developing mentoring programmes; and tackling unconscious bias. They are tracking the recruitment and progression of women to senior grades as part of key metrics and regularly collect feedback from women through surveys and focus groups to inform the taskforce's work and action plan.

Ecorys run Teams seminars for the whole company to share the results of the work and publicise initiatives. The Taskforce runs targeted sessions with teams within the business to understand gender issues within their teams and develop bespoke, targeted action plans. As part of the Gender Task Force, women in the company have created a Women's Network Group to continue the company's commitment to gender equality and to support women's progression. The group is open to all women at Ecorys and offers a supportive space to raise views on working life at Ecorys and give advice to help others with career progression. Ecorys also has a women's book club which explores feminist literature. They recently empowered staff to include gender pronouns in email signatures as part of our inclusivity work.

Improving the racial and ethnic diversity of the company is a key priority. Whilst not mandatory, Ecorys has recently reviewed its ethnicity pay gap which analyses data against salary bands, contract type and diversity in the company compared to the national average. The data has been reviewed by the UK Board and will form the basis for the Race and Ethnicity Taskforce when this is setup in Q3 2021. This group will establish action plans and determine key metrics to track progress. The work will commence with data collection and feedback from staff to inform action planning.

Ecorys' annual employee engagement surveys show how seriously they take equality issues and our work to welcome everyone and provide a positive culture. The second highest score out of 38 questions was given to having a culture that discourages discrimination or harassment (8.2 out of 10, with the highest score being for having colleagues committed to doing quality work).

DELIVERING THE ACTION PLAN

This plan overleaf is based upon actions we will deliver across our respective organisations, but in all cases will support the delivery and performance of this contract. In reporting to the DfE we will provide data through our HR reporting tools and make comparison between how progress applies specifically to the contract and the wider business, where appropriate. We will agree with DfE what information, and particularly what metrics, will be provided and ensure this is reported at the quarterly client meetings. We will also work with the DfE to develop clear KPIs on our social value action plan(s) and agree priorities in line with the strategy and vision.

This plan embeds social value through regular reporting supplemented by ongoing review and reflection. This approach incorporates feedback loops and transparency with DfE, allowing us to maximise social value and develop our approach throughout the project, based on what works and emerging practice. We anticipate British Council, Ecorys, and DfE working together closely to make the most of our opportunities in this area and to ensure continuous improvement.

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| Organisational learning | British Council | Increased awareness and learning of issues of racism and processes/actions planned/needed to deliver action plan. | Jan-Mar 2022 | Apr-Jun 2023 Jan-Mar 2024 | Jan-Feb 2025 | <ul style="list-style-type: none"> Learning and awareness of issues of racism consistently embedded in learning and development plan. Staff have increased skills and are empowered to respond to issues of race with empathy and reflection. | <ul style="list-style-type: none"> Staff survey results Training records Management decisions better informed through greater staff input |
| HR policies and practices | British Council | Human resource policies and practices reviewed, revised and undergo equality screening and impact assessment to ensure they promote inclusion and anti-racist principles | Apr-Jun 2022 | Jan-Mar 2023 Jan-Mar 2024 | Jan-Feb 2025 | <ul style="list-style-type: none"> Senior staff ensure greater compliance with revised HR processes Increased satisfaction and trust with outcomes of grievance process, in leadership & HR. | <ul style="list-style-type: none"> Staff survey results Equality data Grievances, disciplinaries and complaints tracked by EDI |
| Programmes, products and services that are antiracist | British Council | Audit of current programmes from EDI/anti-racism perspective. EDI and anti-racism planning tools and approaches piloted in development of Cultural Engagement programmes for 2022/23 | Q1 2022 | Jan-Mar 2023 Jan-Mar 2024 | Jan-Feb 2025 | <ul style="list-style-type: none"> EDI and anti-racism planning tools fully embedded in Cultural Engagement programmes Products and programmes across Cultural Engagement are deliberately anti-racist | <ul style="list-style-type: none"> Feedback from partners, beneficiaries Impact data created from programming |
| Leadership and organizational culture | British Council | Leaders identify barriers to progression for ME staff. | Apr-Jun 2022 | Jan-Mar 2023 Jan-Mar 2024 | Jan-Feb 2025 | <ul style="list-style-type: none"> Leaders demonstrate critical reflection and insight in tackling racism in the workplace | <ul style="list-style-type: none"> Staff survey results Increased diversity in recruitment and workforce Improved lived experience for |

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| | | | | | | | ME colleagues |
| Establish a race and ethnicity taskforce | Ecorys | Establish meeting schedule and agenda Agree terms of reference | Sep-Dec 2021 | Jan-Mar 2023 | Jan-Feb 2025 | Taskforce established, leadership established, meeting schedule established | <ul style="list-style-type: none"> Establish a race and ethnicity taskforce |
| Review and publish the ethnicity pay gap | Ecorys | Review ethnicity pay gap analysis Publish on UK website | Sep-Dec 2021 | Oct-Dec 2023 | Jan-Feb 2025 | Published report | <ul style="list-style-type: none"> Review and publish the ethnicity pay gap report |
| Develop a race equality action plan | Ecorys | Brainstorm actions Prioritise most impactful actions | Apr-Jun 2022 | Jan-Mar 2023 | Jan-Feb 2025 | Action plan developed /communicated to staff | <ul style="list-style-type: none"> Develop a race equality action plan |

Schedule 11

Data Handling and Systems Assurance (Security)

Definitions

1. Departmental Security Standards for Business Services and ICT Contracts

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| <p>“BPSS” “Baseline Personnel Security Standard”</p> | <p>means the Government’s HMG Baseline Personal Security Standard. Further information can be found at: https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</p> |
| <p>“CCSC” “Certified Cyber Security Consultancy”</p> | <p>is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC’s standards. See website: https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</p> |
| <p>“CCP” “Certified Professional”</p> | <p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website: https://www.ncsc.gov.uk/information/about-certified-professional-scheme</p> |
| <p>“CPA” “Commercial Product Assurance” formerly called “CESG Product Assurance”</p> | <p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. See website: https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</p> |
| <p>“Cyber Essentials” “Cyber Essentials Plus”</p> | <p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme. There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers: https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</p> |
| <p>“Data” “Data Controller” “Data Protection Officer” “Data Processor” “Personal Data” “Personal Data requiring Sensitive</p> | <p>shall have the meanings given to those terms by the Data Protection Act 2018</p> |

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| Processing” “Data Subject”, “Process” and “Processing” | |
| “Department’s Data” “Department’s Information” | is any data or information owned or retained in order to meet departmental business objectives and tasks, including: (a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Department; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Department is the Data Controller; |
| “DFE” “Department” | means the Department for Education |
| “Departmental Security Standards” | means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver. |
| “Digital Marketplace / G-Cloud” | means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. |
| End User Devices | means the personal computer or consumer devices that store or process information. |
| “Good Industry Practice” “Industry Good Practice” | means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| “Good Industry Standard” “Industry Good Standard” | means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector. |
| “GSC” “GSCP” | means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications |
| “HMG” | means Her Majesty’s Government |
| “ICT” | means Information and Communications Technology (ICT) and is used as an extended synonym for |

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| | information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution |
| “ISO/IEC 27001” “ISO 27001” | is the International Standard for Information Security Management Systems Requirements |
| “ISO/IEC 27002” “ISO 27002” | is the International Standard describing the Code of Practice for Information Security Controls. |
| “ISO 22301” | is the International Standard describing for Business Continuity |
| “IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing” | means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system. |
| “Need-to-Know” | means the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties. |
| “NCSC” | The National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for Information Assurance. The NCSC website is https://www.ncsc.gov.uk |
| “OFFICIAL” “OFFICIAL-SENSITIVE” | the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP). the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP. |
| “RBAC” “Role Based Access Control” | means Role Based Access Control. A method of restricting a person’s or process’ access to information depending on the role or functions assigned to them. |
| “Storage Area Network” “SAN” | means an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage. |
| “Secure Sanitisation” | means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. NCSC Guidance can be found at: https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction |

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| <p>“Security and Information Risk Advisor”</p> <p>“CCP SIRA”</p> <p>“SIRA”</p> | <p>means the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:</p> <p>https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</p> |
| <p>“Senior Information Risk Owner”</p> <p>“SIRO”</p> | <p>means the Senior Information Risk Owner (SIRO) responsible on behalf of the DFE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arm's length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.</p> |
| <p>“SPF”</p> <p>“HMG Security Policy Framework”</p> | <p>means the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government's Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.</p> <p>https://www.gov.uk/government/publications/security-policy-framework</p> |

- 1.1 The Contractor shall be aware of and comply the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable DFE Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2 Where the Contractor will provide products or services or otherwise handle information at OFFICIAL for the Department, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14](#) dated 25 May 2016, or any subsequent updated document, are mandated, namely that “contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials certification at the appropriate level for the duration of the contract. The certification scope shall be relevant to the services supplied to, or on behalf of, the Department.
- 1.3 Where clause 1.2 above has not been met, the Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements).
- The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4 The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service and will handle all data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 1.5 Departmental Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Contractor's or sub-contractor's own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required in line with clause 1.14.

- 1.6 The Contractor shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.
- 1.7 The Contractor shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Departmental Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Departmental Data or systems shall be considered to be sensitive data and must be protected accordingly.
- 1.8 The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to:
- physical security controls;
 - good industry standard policies and processes;
 - malware protection;
 - boundary access controls including firewalls, application gateways, etc;
 - maintenance and use of fully supported software packages in accordance with vendor recommendations;
 - use of secure device configuration and builds;
 - software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
 - user identity and access controls including the use of multi-factor authentication for sensitive data and privileged account accesses;
 - any services provided to the department must capture audit logs for security events in an electronic format at the application, service and system level to meet the department's logging and auditing requirements, plus logs shall be:
 - retained and protected from tampering for a minimum period of 6 months;
 - made available to the department on request.
- 1.9 The contractor shall ensure that any departmental data (including email) transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 1.10 The contractor shall ensure that any departmental data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the department except where the department has given its prior written consent to an alternative arrangement.
- 1.11 The contractor shall ensure that any device which is used to process departmental data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>.
- 1.12 Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".
- 1.13 When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and

transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.

The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.

- 1.14 In the event of termination of contract due to expiry, liquidation or non-performance, all information assets provided, created or resulting from the service shall not be considered as the Contractor's assets and must be returned to the department and written assurance obtained from an appropriate officer of the supplying organisation that these assets regardless of location and format have been fully sanitised throughout the organisation in line with clause 1.15.

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- 1.15 In the event of termination, equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored by the Contractor must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC approved product or method.

Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until such time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.

Evidence of secure destruction will be required in all cases.

- 1.16 Access by Contractor or sub-contractor staff to Departmental Data, including user credentials, shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor staff must complete this process before access to Departmental Data is permitted. Any Contractor or sub-contractor staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact.
- 1.17 All Contractor or sub-contractor employees who handle Departmental Data shall have annual awareness training in protecting information.
- 1.18 The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the Contractor will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.19 Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data, including user credentials, used or handled in the course of providing this service shall be recorded as an incident. This includes any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution.

Incidents shall be reported to the department immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If incident reporting has been delayed by more than 24 hours, the contractor should provide an explanation about the delay.

Incidents shall be reported through the department's nominated system or service owner.

Incidents shall be investigated by the contractor with outcomes being notified to the Department.

- 1.20 The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.21 The Contractor or sub-contractors providing the service will provide the Department with full details of any actual or future intent to develop, manage, support, process or store Departmental Data outside of the UK mainland. The Contractor or sub-contractor shall not go ahead with any such proposal without the prior written agreement from the Department.
- 1.22 The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven (7) days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor's, and any sub-contractors', compliance with the clauses contained in this Section.
- 1.23 The Contractor and sub-contractors shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the department. This will include obtaining any necessary professional security resources required to support the Contractor's and sub-contractor's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes.
- 1.24 Where the Contractor is delivering an ICT solution to the Department they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Departmental Policy. The Contractor will provide the Department with evidence of compliance for the solutions and services to be delivered. The Department's expectation is that the Contractor shall provide written evidence of:
 - Compliance with HMG Minimum Cyber Security Standard.
 - Any existing security assurance for the services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification.
 - Any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.
 - Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Contractor shall provide details of who the awarding body or organisation will be and date expected.
- 1.25 The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.

Schedule 12

Pensions

1. Definitions

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| "Actuary" | a Fellow of the Institute and Faculty of Actuaries; |
| "Broadly Comparable" | (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department, and "Broad Comparability" shall be construed accordingly; |
| "CSPS" | the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014; |
| "CSPS Admission Agreement" | an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services; |
| "CSPS Eligible Employee" | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement; |
| "Fair Deal Employees" | those Incoming Employees to whom TUPE and/or the Acquired Rights Directive apply on the Relevant Transfer Date to transfer their employment to the Contractor, and who at the Relevant Transfer Date are or become entitled to New Fair Deal protection; |
| "Relevant Transfer" | a transfer of employment to which TUPE and/or the Acquired Rights Directive applies; |
| "Relevant Transfer Date" | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of this schedule, shall include the Effective Date, where appropriate; |
| "Service Transfer Date" | the date upon which the Transferring Employees transfer to a Replacement Contractor. |

2. ACCESS TO AN EQUIVALENT PENSION SCHEME AFTER A RELEVANT TRANSFER

- 2.1 The Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.
- 2.2 The Contractor undertakes to do all such things and execute any documents (including any relevant CSPA Admission Agreement, if necessary) as may be required to enable the Contractor to participate in the CSPA in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Contractor undertakes:
- 2.3.2 to pay to the CSPA all such amounts as are due under the relevant CSPA Admission Agreement or otherwise and shall deduct and pay to the CSPA such employee contributions as are required; and
- 2.3.3 to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the CSPA.
- 2.4 The Contractor undertakes that should it cease to participate in the CSPA for whatever reason at a time when it has CSPA Eligible Employees, that it will, at no extra cost to the DFE, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPA Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPA on the date the CSPA Eligible Employees ceased to participate in the CSPA in accordance with paragraph 9 of this schedule 12.

3. INDEMNITIES THE CONTRACTOR MUST GIVE

- 3.1 The Contractor undertakes to the DFE to indemnify and keep indemnified DFE and/or any Replacement Contractor on demand from and against all and any Employment Liabilities whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Contractor of this schedule, and/or the CSPA Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the CSPA.
- 3.2 The Contractor hereby indemnifies the DFE and/or Replacement Contractor from and against all Employment Liabilities suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Contractor and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Employment Liabilities:
- 3.2.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
- 3.2.2 arise out of the failure of the Contractor and/or any relevant Sub-contractor to comply with the provisions of this schedule 12 before the date of termination or expiry of this Contract.
- 3.3 The indemnities in this schedule 12 shall survive termination of this Contract.

4. OTHER PEOPLE'S RIGHTS

- 4.1 The Parties agree clause 33 of schedule 2 (Contracts (Rights Of Third Parties) Act 1999) does not apply and that the CRTPA applies to this schedule 12 to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by

the Contractor under this schedule 12, in his or her or its own right under section 1(1) of the CRTPA.

- 4.2 Further, the Contractor must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her or its own right under section 1(1) of the CRTPA.

5. WHAT HAPPENS IF THERE IS A BREACH OF THIS SCHEDULE

- 5.1 The Contractor agreed to notify the DFE should it breach any obligations it has under this schedule 12 and agrees that the DFE shall be entitled to terminate its Contract for material Default in the event that the Contractor:

- 5.1.1 commits an irremediable breach of any provision or obligation it has under this schedule 12; or
- 5.1.2 commits a breach of any provision or obligation it has under this schedule 12 which, where capable of remedy, it fails to remedy within a reasonable time and in any event within twenty eight (28) days of the date of a notice from the DFE giving particulars of the breach and requiring the Contractor to remedy it.

6. TRANSFERRING NEW FAIR DEAL EMPLOYEES

- 6.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under TUPE) the Contractor shall and shall procure that any relevant Sub-Contractor shall:

- 6.1.1 consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
- 6.1.2 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this schedule 12 provided that references to the "Contractor" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

7. BROADLY COMPARABLE PENSION SCHEMES

- 7.1 If either:

- 7.1.1 paragraph 2.4 applies; and/or
- 7.1.2 the DFE agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Contractor (and/or its Sub-contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the CSPS;

the Contractor must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the CSPS until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant section of the CSPS, and then on such terms as may be decided by the DFE.

- 7.2 Where the Contractor has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 7.1, the Contractor shall (and shall procure that any of its Sub-contractors shall):

- 7.2.1 supply to the DFE details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Service Transfer Date;
- 7.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 7.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Contractor and/or CSPS and/or the DFE may reasonably require, to enable the Replacement Contractor to participate in the CSPS in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following the Service Transfer Date;
- 7.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Contractor and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Contractor and/or Sub-contractor's Broadly Comparable pension scheme is terminated;
- 7.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following the Service Transfer Date, the bulk transfer of past service from any such Broadly Comparable pension scheme into the CSPS and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate CSPS to fund day for day service ("**Shortfall**"), the Contractor or the Sub-contractor (as agreed between them) must pay the CSPS, as required, provided that in the absence of any agreement between the Contractor and any Sub-contractor, the Shortfall shall be paid by the Contractor; and
- 7.2.6 indemnify DFE and/or CSPS on demand for any failure to pay the Shortfall as required under Paragraph 7.2.5 above.

8. CONTRACTOR OBLIGATIONS

- 8.1 The Contractor shall, unless otherwise instructed by the DFE (acting reasonably):
 - 8.1.1 not make, promise, propose, permit or implement any material changes to the terms and conditions of pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Incoming Employees (including any payments connected with the termination of employment);
 - 8.1.2 provide all information which the DFE may reasonably request concerning matters referred to in this schedule 12 as expeditiously as possible;
 - 8.1.3 not to issue any announcements to any Fair Deal Employee prior to the Service Transfer Date concerning the matters stated in this schedule 12 without the consent in writing of the DFE (such consent not to be unreasonably withheld or delayed).
 - 8.1.4 co-operate with the DFE and the Replacement Contractor to ensure an effective consultation process and smooth transfer in respect of Transferring 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;

- 8.1.5 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 8.1.6 fully fund any Broadly Comparable pension schemes set up by the Contractor;
- 8.1.7 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 Contractor 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); and
- 8.1.8 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Contractor relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract.

9. STAFF TRANSFER WHEN THE CONTRACT ENDS

- 9.1 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 TUPE will apply. The DFE and the Contractor agree that where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Employee.
- 9.2 The Contractor shall comply with all its obligations in respect of the Transferring Employees arising under TUPE 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 CSPA and/or Broadly Comparable scheme.
- 9.3 Subject to Paragraph 9.4, the Contractor shall indemnify the DFE and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission of the Contractor or any Sub-contractor in respect of any Transferring Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Employee whether occurring before, on or after the Service Transfer Date.
- 9.4 The indemnity in Paragraph 9.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date.