





Contract Type	Contract for Services
Funding Period	1 st October 2022 – 30 th September 2024
Between	the Secretary of State for Education (acting through the Department for Education)
And	Prospects Services
Funding for	National Careers Service – Community Based Service – West Midlands
Contract Number	Con_14705

ACCEPTANCE BY PRIME CONTRACTOR

By accepting this contract the person taking this action on behalf of the Prime Contractor represents and warrants that the Prime Contractor has read and understood this Contract, the Prime Contractor agrees to be bound by this Contract and that he/she is duly authorised to accept this Contract and legally bind the Prime Contractor.

	For and on behalf of the Supplier:	For and on behalf of the Buyer:
Signature:		
Name:		
Role:	Company Secretary	Deputy Director – Head of Commercial – Skills Category
Date:	08/07/2022	08/07/2022

CONTRACT FOR THE COMMUNITY BASED SERVICE OF THE
NATIONAL CAREERS SERVICE -
LONDON
TERMS AND CONDITIONS

Terms and Conditions

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Terms and Conditions

This Contract is made on the date the Agreement is digitally signed by the Contractor between:

- (1) THE SECRETARY OF STATE FOR EDUCATION acting through the Department for Education of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (**DFE**); and
- (2) Prospects Services a company registered in England and Wales under Company Registration Number 3042176, whose registered office is at Black Country House, Rounds Green Road, Oldbury B69 2DG (the **Prime Contractor**)

GENERAL TERMS AND CONDITIONS

It is agreed as follows:

1. Definitions

"Acceptance Criteria"	the acceptance criteria in respect of each Milestone, as specified in Appendix 5.
"Achieve"	in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone by the DFE and "Achieved" and "Achievement" shall be construed accordingly.
"Acquired Rights Directive"	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Affected Party"	the Party seeking to claim relief in respect of a Force Majeure Event.
"Affiliate"	means in relation to a body corporate, any other entity which directly or indirectly Controls, or is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Area"	means the area of West Midlands in respect of which the Prime Contractor is appointed to supply the Services, as more particularly described in the map set out in Schedule 1.
"Baseline Personnel Security Standard (BPSS)"	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>“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>“Certified Professional (CCP)”</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>“Certified Cyber Security Consultancy (CCSC)”</p>	<p>is NCSC's 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>“Change of Control”</p>	<p>a change of control within the meaning of Section 450 of the Corporation Tax Act 2010.</p>
<p>“Code of Connection”</p>	<p>the document that outlines the conditions that must be met and the information that must be provided in order to use the National Careers Service Data Sharing Service.</p>
<p>“Commencement Date”</p>	<p>means the date on which the Prime Contractor is to start the Implementation Services being 4th July 2022.</p>
<p>“Confidential Information”</p>	<p>means any information, including Personal Data, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Prime Contractors of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential"). Confidential Information does not include such information which:</p> <ul style="list-style-type: none"> a) is or becomes public knowledge (other than by breach of Clauses 6.2.2 and 6.2.4); b) was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party; or c) must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
<p>“Contract”</p>	<p>means the contract between the DFE and the Prime Contractor governing the supply of the Community Based Service, as comprised of the Terms and Conditions (and all schedules, appendices and attachments thereto), the Code of Connection, the Funding Rules, the ITT and the Prime Contractor's response to it.</p>
<p>“Contract Period”</p>	<p>means the period starting on the Services Start Date and ending on the earlier of the Expiry Date or the Termination Date.</p>
<p>“Contract Year”</p>	<p>means each successive twelve (12) month period commencing on 01 April during the Contract Period and for these purposes the first Contract year shall be the period starting on 01 October 2022 and ending on 31 March 2023.</p>

"Control"	means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly.
"Core Services"	means the services to be provided by the Prime Contractor as set out in the Contract, but shall not include Implementation Services
"Customer"	means Primary Customers and Secondary Customers. For these purposes Primary Customers are adults over 19 (or 18 and over for those who are not in education employment or training) with a focus on the Priority Group Customers.
"Customer Data"	means the data supplied by the Prime Contractor to the DFE in respect of each Customer in support of a claim for payment for an Outcome in relation to that Customer pursuant to the Funding Rules and Clause 21 of these Terms and Conditions and for these purposes an "Outcome" has the meaning specified in the Funding Rules.

"Customer Files"	means all files (whether electronic or otherwise) containing Personal Data gathered or used by the Prime Contractor under or in connection with the supply of the Services to the Customers pursuant to this Contract.
"Customer Satisfaction Outcome Cap"	means the maximum sum which can be invoiced by the Prime Contractor in respect of the Customer Satisfaction Outcome, as specified in the Funding Rules.
"Cyber Essentials" "Cyber Essentials Plus"	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p> <p>There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers: https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</p>
"Data" "Data Controller" "Data Protection Officer" "Data Processor" "Personal Data" "Personal Data requiring Sensitive Processing" "Data Subject", "Process" and "Processing"	shall have the meanings given to those terms by the Data Protection Act 2018/UK GDPR.
"Data Collection Guidance"	means the operational guidance documents issued by the DFE for use with the National Careers Service Data Collection System
"Data Protection Legislation"	means the Data Protection Act 2018 and Electronic Communications (EC Directive) Regulations 2003 and any other data protection Laws and regulations applicable in the UK (or in any relevant part thereof), including, if and when it is in force, the General Data Protection Regulation (EU)

	2016/679 or similar and any codes of practice, guidelines and recommendations issued by the Information Commissioner, any replacement body or other relevant supervisory authority, all of which are current at the time of any Data processing by the Prime Contractor (and in the event of any conflict between the Data Protection Laws and Law, Data Protection Laws shall take precedence).
"Declaration of Subcontractors"	means a document substantially in the format set out in Schedule 5 which shall be supplied by the Prime Contractor to the DfE in accordance with Clause 5.
"Deliverables"	means an item or feature delivered or to be delivered by the Prime Contractor at or before a Milestone Date or at any other stage during the performance of this Contract.
"DfE" or "Department"	means the Department for Education.
"Digital Marketplace / G-Cloud"	means the Digital Marketplace which is the online framework for identifying and procuring cloud technology and people for digital projects.
"Employee Liabilities"	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of parttime workers or fixed term employees; (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; (f) employment claims whether in tort, contract or statute or otherwise; and (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation.
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive.
"End User Devices"	means the personal computer or consumer devices that store or process information.

“DFE Data” or “DFE Information”	<p>is any data or information owned or retained in order to meet DFE business objectives and tasks, including:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) supplied to the Prime Contractor by or on behalf of the DFE; 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 DFE is the Controller;
“DFE Security Standards”	means the DFE’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
“Exempt Information”	means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Contract or otherwise relating to the Prime Contractor, which potentially falls within an exemption to FOIA (as set out therein).
“Exit Plan”	the plan produced and updated by the Prime Contractor during the term of this Contract in accordance with Schedule [3] (Exit Management).
“Expiry Date”	means or such other later date as is notified in writing to the Prime Contractor by the DFE in accordance with Clause 2.2.
“FIPS 140-2”	means the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.
“Force Majeure Event”	<p>means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including without limitation acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding:</p> <ul style="list-style-type: none"> (a) any industrial dispute relating to the Prime Contractor or the Prime Contractor Personnel; (b) any other failure in the Prime Contractor’s or a Sub-Contractor’s supply chain; or (c) any event or other consequence arising as a result of or in connection with the COVID 19 pandemic except for circumstances caused by or related to the COVID-19 pandemic which are changes in applicable Law and/or governmental guidance which mean that the Services cannot be provided as set out in this Contract (in all material respects) without such Laws and/or government guidance being breached, or if the Prime Contractor can reasonably demonstrate that despite all reasonable endeavours, it is unable to secure non-COVID-19 infected personnel to provide the Services due to the levels of COVID-19 infections in the population of the United Kingdom;

“FOIA”	means the Freedom of Information Act 2000 and all regulations made thereunder from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in Clause 6.
“FOIA Notice”	means a decision notice, enforcement notice and/or an information notice.
“Funding Rules”	means the document provided via Schedule 12 which sets out the detailed requirements with which the Prime Contractor must comply in respect of delivery under this Contract and the basis on which the Prime Contractor receives funding, as may be updated and amended from time to time in accordance with their terms.

“Good Industry 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.
“GSC” or “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/governmentsecurity-classifications
“HMG”	means Her Majesty’s Government.
“ICT”	means Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution.
“Implementation Period”	means the period from 4 th July 2022 to 30 th September 2022 (inclusive).
"Implementation Plan"	means the plan developed and revised from time to time in accordance with Schedule 7.
“Implementation Services”	means the services to be provided in accordance with Schedule 7.

<p>“Insolvency Event”</p>	<p>means:</p> <ul style="list-style-type: none"> (a) the Prime Contractor suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> i. (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or ii. (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) the Prime Contractor commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of the Prime Contractor with one or more other companies or the solvent reconstruction of the Prime Contractor; (c) a person becomes entitled to appoint a receiver over the assets of the Prime Contractor or a receiver is appointed over the assets of the Prime Contractor; (d) a creditor or encumbrancer of the Prime Contractor attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the Prime Contractor's assets and such attachment or process is not discharged within 14 days; (e) the Prime Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; (f) where the Prime Contractor is a company, a LLP or a partnership: <ul style="list-style-type: none"> (i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Prime Contractor other than for the sole purpose of a scheme for a solvent amalgamation of the Prime Contractor with one or more other companies or the solvent reconstruction of that the Prime Contractor, (ii) application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the Prime Contractor, (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of the Prime Contractor has become entitled to appoint or has appointed an administrative receiver, or (iv) (being a partnership) the holder of an agricultural floating charge over the assets of the Prime Contractor has become entitled to appoint or has appointed an agricultural receiver; or (g) any event occurs, or proceeding is taken, with respect to the Prime Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above.
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<p>“Intellectual Property”</p>	<p>is any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including, without limitation:</p> <ul style="list-style-type: none"> (a) any renewals, revisions and extensions created or provided by the Laws of any country; (b) all rights of action and remedies (including but not limited to an injunction, damages and/or an account of profits) in relation to past infringements; and (c) the right to apply for registration of any such rights in any country of the world.
<p>“Inspectorates”</p>	<p>means one, any or all of the inspectorates: Office for Standards in Education, Children’s Services and Skills (OFSTED), Her Majesty’s Inspectorate for Education and Training in Wales (Estyn), the Quality Assurance Agency for Higher Education, the Office for Students, and the Care Quality Commission (CQC).</p>
<p>“ISO/IEC 27001” or “ISO 27001”</p>	<p>means the International Standard for Information Security Management Systems Requirements.</p>
<p>“ISO/IEC 27002” or “ISO 27002”</p>	<p>means the International Standard describing the Code of Practice for Information Security Controls.</p>
<p>“ISO 22301”</p>	<p>means the document which specifies requirements to plan, establish, implement, operate, monitor, review, maintain and continually improve a documented management system to protect against, reduce the likelihood of occurrence, prepare for, respond to, and recover from disruptive incidents when they arise.</p>
<p>“IT Health Check (ITHC)” or “IT Security Health Check (ITSHC)” or “Penetration Testing”</p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>
<p>“ITT”</p>	<p>means the Invitation to Tender document incorporated at Schedule 4.</p>
<p>“Key Milestone” (KM)</p>	<p>means a key milestone as set out in the Implementation Plan, being the milestone at which the Prime Contractor has demonstrated that the relevant part of the Implementation Services has been completed.</p>

"Law"	means any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Prime Contractor is bound to comply.
"Local Enterprise Partnership (LEP)"	means a formalised partnership between local authorities to determine local economic priorities and lead economic growth and job creation within its area.
"Losses"	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and are of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.
"Maximum Contract Value"	means, in relation to the Area, the maximum sum which may be invoiced by the Prime Contractor to the DFE in respect of all the Outcomes achieved within any Contract Year, as specified in Schedule 6 and as updated for each Contract Year in accordance with Schedule 6 and which shall be allocated in the manner specified in the Funding Rules.
"Milestone"	means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.
"Milestone Date"	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved.
"Milestone Payment"	means the payment specified in Appendix 6 of Schedule 7.
"Minor Breach"	shall have the meaning given to it in Clause 25.2.
"Month"	means a calendar month.
"National Targets"	means the national targets for the achievement of an Outcome in respect of Customers seen, as specified in the Funding Rules, and as amended from time to time in accordance with the Contract.
"National Careers Service"	means the National Careers Service, which is comprised of the Community Based Services, the Telephone and Webchat Channel and the National Website. For the avoidance of doubt this Contract governs only the Community Based Service and Telephone and Webchat Channels to be provided by the Contractor in the Area.
"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”	means the National Cyber Security Centre (NCSC) formerly CESG which is the UK government's National Technical Authority for Information Assurance. The NCSC website is https://www.ncsc.gov.uk
“OFSTED”	means the Office for Standards in Education, Children's Services and Skills.
“OFFICIAL”	means the baseline level of 'security classification' described within the GSCP.
“OFFICIAL-SENSITIVE”	means 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.
“Outcomes”	means the Outcomes specified in the Funding Rules, against which the Prime Contractor will be paid in consideration of the supply of the Services.
“Partial Termination”	means the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 26.1 (Termination by the DFE) or Clause 26.3 (Termination by the Prime Contractor).
“Parties”	means the DFE acting on behalf of the Crown and the Prime Contractor.
“Performance Standards”	means the Performance Standards which form part of the Contract, as updated and amended from time to time in accordance with their terms.
“Premises”	means the location(s) where the Services are to be performed, as detailed in the Contract.
“Primary Customers”	means adult people who need information, advice and guidance (IAG) for themselves.

"Priority Group Customers"	<p>means:</p> <ul style="list-style-type: none"> (a) Low skilled adults without a Level 3 qualification; (b) People with special educational needs or disabilities; (c) Young people aged 18-24 not in education, employment or training; (d) Adults unemployed for over 12 months; (e) Single parents with at least one dependent child living in the same household; and (f) Adults aged 50 and over who are unemployed or at demonstrable risk of redundancy.
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"Prime Contractor Personnel"	means all persons employed or engaged by the Prime Contractor, including directors, officers and employees, together with the Prime Contractor's servants, agents, consultants and Sub-Contractors (and all persons employed or engaged by any Sub-Contractor, including directors, officers and employees, together with the Sub-Contractor's servants, consultants, agents, Contractor's and Sub-Contractors) engaged in the performance of the Prime Contractor's obligations under this Contract;
"Prime Contractor's Social Media Accounts"	means any Social Media Accounts controlled or administered by or on behalf of the Prime Contractor.
"Quarter"	means a period of three (3) consecutive months and "Quarterly" shall be construed accordingly.
"RBAC" or "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.
"Regulatory Body"	means those government departments 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 or investigate the matters dealt with in this Contract or any other affairs of the Prime Contractor or the DFE, including, without limitation OFSTED.
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies.
"Replacement Prime Contractor"	means any third party service provider of Replacement Services appointed by the DFE from time to time (or where the DFE is providing replacement Services for its own account, the DFE).
"Replacement Services"	means any services which are the same as or substantially similar to any of the Services and which the DFE receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the DFE internally and/or by any third party.
"Replacement Social Media Accounts"	means any Social Media Accounts controlled or administered by or on behalf of the DFE and/or any Replacement Contractor.
"Request for Information"	means a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the Freedom of Information Act or the Environmental Information Regulations.
"Required Action"	has the meaning given to it in Clause 28.

“Secondary Customers”	<p>means people who use the National Careers Service products and tools to support Primary Customers. Secondary Customers will either be:</p> <ul style="list-style-type: none"> (a) Professional Careers Advisers, (b) Intermediaries. This group consists of teachers, parents, advocates, Jobcentre Plus work coaches and others.
“Secure Sanitisation”	<p>means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.</p> <p>NCSC Guidance can be found at: https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</p> <p>The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction.</p>
“Security and Information Risk Advisor (SIRA)” or “CCP SIRA” or “SIRA”	<p>means the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</p>
“Security Readiness Review”	<p>a review of the security controls, practices and policies put in place by Prime Contractors to protect the confidentiality, integrity and availability of the National Careers Service prior to the Services Start Date.</p>
“Security Standards”	<p>means the DfE’s security policy or any standards, procedures, process or specification for security that the Prime Contractor is required to deliver.</p>
“Senior Information Risk Owner” or “SIRO”	<p>means the Senior Information Risk Owner responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arms’ length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.</p>
“Serious Breach”	<p>shall have the meaning given to it in Clause 25.3.</p>
“Services”	<p>means the services to be provided by the Prime Contractor as set out in the Contract.</p>
“Services Start Date”	<p>means in relation to the Core Services, the later of:</p> <ul style="list-style-type: none"> (a) the date identified in the Implementation Plan upon which the Core Services are to commence under Key Milestone 3; and (b) where the Implementation Plan states that the Prime Contractor must have Achieved Key Milestone 3 before it can commence the provision of the Core Services, the date upon which the Prime Contractor Achieves Key Milestone 3
“Social Media Accounts”	<p>means any user account, profile, page or other similar presence on an online communication channel incorporating user-generated content used to promote the National</p>

	Careers Service, including but not limited to Facebook, Twitter, Instagram and LinkedIn.
“SPF” or “HMG Security Policy Framework”	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. https://www.gov.uk/government/publications/security-policy-framework
“Sub-Contract”	means any contract or agreement (or proposed contract or agreement) between the Prime Contractor (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Prime Contractor (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof, which must comply with the terms of Clause 5.

“Sub-Contractor”	any third party with whom: (a) the Prime Contract enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party.
“Subsidy Control Bill”	means Bill 135 2021-22 entitled Subsidy Control Bill introduced in the House of Commons on 30 June 2021;
“Storage Area Network” or “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;
“Step-In Notice”	has the meaning given in Clause 28 (Step-In Rights);
“Step-In Trigger Event”	(a) any event falling within the definition of a Serious Breach by the Prime Contractor; (b) a default by the Prime Contractor that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the DFE considers that the circumstances constitute an emergency despite the Prime Contractor not being in breach of its obligations under this Contract; (d) the DFE being advised by a regulatory body that the exercise by the DFE of its rights under Clause 28 (Step-In Rights) is necessary; (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or (f) a need by the DFE to take action to discharge a statutory duty.
“Step-Out Date”	has the meaning given in Clause 28.4.2 (Step-In Rights);
“Step-Out Notice”	has the meaning given in Clause 28.4 (Step-In Rights);

“Step-Out Plan”	has the meaning given in Clause 28.5 (Step-In Rights);
“Target Customer Volume”	means the target number of Customers which the Prime Contractor is required to engage with, as evidenced by their inclusion on the Prime Contractor’s CRM system as notified by the Prime Contractor to the DFE from time to time, as such target customer volumes are set out in Schedule 6.
“Telephone and Webchat Channel”	means the telephone and webchat channel that is part of the National Careers Service and which provides personalised and responsive careers information, advice and guidance to young people and adults over the telephone, and through other channels including digital and social media platforms, but specifically not face-to face.
“Termination Date”	means any date on which this Contract terminates in accordance with Clause 26.
“Termination Notice”	means a notice to terminate this Contract which may be served by either Party on the other in accordance with the provisions of Clause 26.
“Transferring Former Prime Contractor Employees”	has the meaning given in Schedule 2 (Staff Transfer).
“Work”	means all materials (in whatever format) created by or on behalf of the Prime Contractor as a result of the provision of the Services in the Area including without limitation the Confidential Information and any information relating to the state of the labour market in the Area or in any other location.
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

2. Commencement, and Duration

- 2.1. The Contract shall commence on the Commencement Date and (subject to earlier termination in accordance with these Terms and Conditions), shall expire on the Expiry Date.
- 2.2. The DFE shall have the option, by giving written notice 3 months prior to Contract Expiry to the Prime Contractor, to extend the Contract on up to two occasions for up to twelve months each, up to a maximum of two years from 30th September 2024 (subject to the Prime Contractor’s performance and continuing availability of funding). If the DFE exercises this option, the Prime Contractor shall continue to provide the Services during the relevant extension period on the terms of the Contract.
- 2.3. If the Contract Period is extended in accordance with Clause 2.2, the definition of Expiry Date shall be updated accordingly.

3. Contract Management

- 3.1. The DFE and the Prime Contractor will each nominate a contact for the purpose of dealing with queries and issues under this Contract and advise the other of the contact details.

4. Delivery of the Implementation Services and the Services in the Area

- 4.1. With effect from the Commencement Date and for the duration of the Implementation Period, the Prime Contractor shall provide the Implementation Services in the Area in accordance with the Contract. In providing the Implementation Services the Prime Contractor shall in particular comply with the provisions of Schedule 2 (Staff Transfers).
- 4.2. The Prime Contractor will provide the Core Services from the Services Start Date for the duration of the Contract Period in accordance with the Contract.
- 4.3. The Prime Contractor must provide evidence that it has worked in partnership with the LEP to ensure that the delivery of the Services takes account of the LEP's local economic and skills priorities.
- 4.4. The DFE reserves the right to require the owners of any Prime Contractor to enter into a guarantee of the performance and payment obligations of the Prime Contractor, which guarantee shall be substantially in the form set out in Schedule 9.

5. Assignment, Sub-Contracting and Change of Control

- 5.1. Where the Prime Contractor intends to sub-contract any duties or obligations arising out of this Contract, the Prime Contractor must seek the prior written approval of the DFE.
- 5.2. Where the DFE has given such consent and the Prime Contractor subcontracts the supply of part of the Services under the Contract, the Prime Contractor shall provide the DFE with details of all Sub-Contractors at least twice each year, in the Declaration of Subcontractors available through the Managing your Education and Skills Funding system accessible on Gov.uk. If the Prime Contractor is not sub-contracting any element of the Services, then a nil return must be submitted. The Prime Contractor must notify the DFE of any within- year changes to its Sub-Contractors that take place, including any changes to the role in delivering the Services of any Sub-Contractor or any changes to the percentage of the contractual obligations assigned to the Sub-Contractor. The DFE reserves the right to require the Prime Contractor:
 - 5.2.1. not to change the role in delivering the Services of any Sub-Contractor;
 - 5.2.2. not to change the percentage of the contractual obligations assigned to any Sub-Contractor;
 - 5.2.3. not to enter into any Sub-Contract to deliver the Services under this Contract; and/or
 - 5.2.4. to terminate any Sub-Contract to deliver the Services under this Contract.
- 5.3. The Prime Contractor must comply with the requirements on sub-contracting delivery of the Services set out in the Contract. Sub-contracting any part of the Contract shall not relieve the Prime Contractor of any obligation or duty attributable to him under the Contract. The Prime Contractor is responsible for all the actions and omissions of its Sub-Contractors connected to or arising out of the delivery of the Services which it sub-contracts as if they were its own.
- 5.4. Where the Prime Contractor has sub-contracted any duties or obligations arising out of this Contract, the Prime Contractor shall ensure that there is in place a legally binding Sub-Contract which incorporates all the terms of the Contract and shall send copies of the Sub-Contract to the DFE if requested in writing to do so. Where the Prime Contractor enters into a Sub-Contract for the purpose of performing the Contract, the Prime Contractor shall ensure that the Sub-Contract includes any additional terms applicable to the Sub-Contractor specified in the Contract.

- 5.5. The Prime Contractor shall ensure that Sub-Contractors are selected fairly following an open and competitive tendering process and have sufficient capacity, capability, quality and financial standing to deliver the Services.
- 5.6. The Prime Contractor shall ensure that any Sub-Contract entered into for the purpose of delivering the Services under this Contract contains a term providing that the DFE has the right to enforce the terms of the Sub-Contract. For the avoidance of doubt, the DFE will be a third party within the meaning of the Contracts (Third Party Rights) Act 1999 in respect of any Sub-Contract.
- 5.7. The Prime Contractor shall make payment to any Sub-Contractor within 30 days of receiving a valid claim for payment and ensure that any Sub-Contract entered into for the purpose of delivering the Services under this Contract contains a term giving effect to this requirement.
- 5.8. The Services under this Contract may only be sub-contracted to one level unless the Prime Contractor obtains the prior written consent of DFE. Where the DFE consents to the sub-contracting of any part of the Services by the Sub-Contractor, the provisions of Clauses 5.2 to 5.7 shall apply in respect of any such sub-contract.
- 5.9. The Prime Contractor may not assign any rights, duties or obligations under this Contract without the prior written consent of the DFE.
- 5.10. The Prime Contractor must notify the DFE in writing if there is a change in its name at least one month prior to the change taking effect.
- 5.11. The Prime Contractor must notify the DFE in writing if there is a change of Control of the Prime Contractor at least 12 weeks prior to the change taking effect. The DFE shall have the right to terminate this Contract on a Change of Control of the Prime Contractor in accordance with Clause 26 (Termination).
- 5.12. The Prime Contractor shall not without the prior written consent of the DFE assign, novate or otherwise dispose of or deal in any other manner with (including by means of a change of Control of the Prime Contractor) any or all of its rights, obligations or liabilities under this Contract. The Prime Contractor shall give the DFE at least 12 weeks' notice of any such plans. The DFE reserves the right to refuse consent under this Clause at its absolute discretion, in particular (but not limited to) if it considers that any, or any proposed, assignment, novation, disposal or other dealing, including any change of Control of the Prime Contractor, may or would:
- 5.12.1 put public funds at risk; or
- 5.12.2 put at risk the delivery of the Services to Customers.
- 5.13. The DFE further reserves the right to make it a condition precedent of any consent under Clause 5.12 that any proposed new owner of the Prime Contractor shall enter into a guarantee of performance and payment obligations in accordance with Clause 4.4.
- 5.14. The Prime Contractor shall give to the DFE if so requested a list of all parties who are or may be at any time directly concerned with the performance of the Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the DFE may reasonably require.
- 5.15. The DFE may at any time:

- 5.15.1 assign, novate or otherwise dispose of any or all of its rights and obligations under the Contract and any associated third party licences to any other Central Government Body;
- 5.15.2 novate the Contract and any associated third party licences to any other body which substantially performs any of the functions that had previously been performed by the DFE.

6. Freedom of Information and Confidentiality

6.1. Freedom of Information

- 6.1.1. The Prime Contractor acknowledges and agrees that the DFE is subject to legal duties under FOIA, which may require the DFE to disclose on request information relating to this Contract or otherwise relating to the Prime Contractor.
- 6.1.2. The Prime Contractor acknowledges and agrees that the DFE is required by Law to consider each and every request made under FOIA for information.
- 6.1.3. The Prime Contractor acknowledges and agrees that all decisions made by the DFE pursuant to a request under FOIA are solely a matter for and at the discretion of the DFE.

- 6.1.4. Notwithstanding anything in this Contract to the contrary (including without limitation any obligations of confidentiality), the DFE shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the DFE shall use reasonable endeavours (but shall not be obliged) to consult the Prime Contractor and shall not:

- a) confirm or deny that information is held by the DFE; or

- b) disclose the information requested

to the extent that in the DFE's opinion the information is eligible in the circumstances for an exemption and therefore the DFE may lawfully refrain from doing either of the things described in parts (a) and (b) of this Clause.

- 6.1.5. In relation to information relating to the Prime Contractor or the Contract which the Prime Contractor requests should be exempt under the FOIA, the Prime Contractor shall indemnify the DFE for any and all costs (including legal fees) incurred by the DFE in:

- a) assessing the application of any exemption under FOIA; and/or

- b) responding to any FOIA notice; and/or

- c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

where such costs are incurred pursuant to efforts by the DFE to withhold Exempt Information.

- 6.1.6. The DFE shall in no event be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any Exempt Information or other information whether relating to this Contract or otherwise relating to the Prime Contractor.
- 6.1.7. The Prime Contractor must notify the DFE within 48 hours if the Prime Contractor directly receives a Request for Information.
- 6.1.8. The Prime Contractor shall assist the DFE as reasonably necessary to enable the DFE to comply with its obligations under FOIA.

6.2. Confidentiality

- 6.2.1. In this Clause 6.2 the "Disclosing Party" means a Party that directly or indirectly discloses or makes available Confidential Information and the "Receiving Party" means the Party which directly or indirectly receives or obtains Confidential Information.
- 6.2.2. In consideration of the Disclosing Party providing Confidential Information, at its discretion, to the Receiving Party, the Receiving Party shall ensure that any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall:
 - a) treat all Confidential Information as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract; and
 - b) not disclose any Confidential Information to any third party without prior written consent of the Disclosing Party, except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 6.2.3. Nothing in this Clause 6 shall be deemed or construed to prevent the DFE from disclosing any Confidential Information obtained from the Prime Contractor:
 - a) to any other Central Government Body, Non-Departmental or Quasi Government Body or agency, central or local;
 - b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - c) to any professional adviser, consultant, Prime Contractor or other person engaged by the DFE directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, Prime Contractor or any other person;
 - d) on a confidential basis to any proposed successor body in connection with any assignment, disposal of its rights, obligations or liabilities under this Contract.
- 6.2.4. The Receiving Party undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice in order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the Services.

- 6.2.5. The Receiving Party will immediately notify the Disclosing Party of any breach of security in relation to Confidential Information and all data obtained in the course of the relevant breach or breaches and will keep a record of such breach(es). The Receiving Party will use its best endeavours to recover such Confidential Information or data however it may be recorded.
- 6.2.6. The Prime Contractor will co-operate with the DFE in any investigation that the DFE considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 6.2.7. The Prime Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the DFE's request if the DFE reasonably believes the Prime Contractor has failed to comply with Clause 6.2.4.
- 6.2.8. The DFE reserves the right to publish details of this Contract and the payments made under it to comply with the Government's transparency requirements.
- 6.2.9. The provisions of this Clause 6 will apply for the duration of the Contract or after its termination until the Confidential Information ceases to be confidential, whichever is the later.
- 6.2.10. The Prime Contractor's failure to comply with the provisions of this Clause 6 shall constitute a Serious Breach under Clause 25 of the Contract.

7. Intellectual Property Rights and phone numbers

- 7.1 The Prime Contractor hereby grants to the DFE (and, where relevant, shall procure from any necessary third parties the grant to the DFE of) a nonexclusive, irrevocable, perpetual, worldwide, royalty-free licence (with the right to sub-license to third parties including to any replacement Prime Contractor) of any and all Intellectual Property contained within the Work or which is required for the enjoyment and use of the Services and the Implementation Services.
- 7.2 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.
- 7.3 The Prime Contractor shall on request by the DFE at any time and subject only to the consent of the relevant telecommunications provider(s) take all necessary steps to effect the transfer to the DFE of any telephone numbers associated with the Services and/or the National Careers Service. The Prime Contractor shall, in addition, co-operate fully with the DFE with respect to such transfer where requested and shall not in any way obstruct any request made by the DFE to the relevant telecommunications service provider(s).

8. Marketing and Communications

- 8.1. The Prime Contractor shall comply with the requirements of the endorsement identity, issued by the Department for Education on all and any promotional materials or activities in relation to the Services. This shall include but not be limited to direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 8.2. The Prime Contractor shall be given access to any logos and statements and / or trademarks, which it is required to use. The Prime Contractor will be required to use such logos and statements and trademarks in accordance with the relevant terms of use (as made available

to it) and should not alter or amend such logos or statements or trademarks. Logos and statements and trademarks are only to be used in relation to the Services or Implementation Services under this Contract. Any breach of this Clause 8 or the requirements or terms of use of which the Prime Contractor is made aware shall constitute a Serious Breach under Clause 25 of the Contract.

- 8.3. The Prime Contractor may also be required to use logos from other co-branding or co-funding participants and must comply with any terms which apply to the use of such logos.
- 8.4. The Prime Contractor must ensure that the terms of this Clause 8 are contained in any Sub-Contract of the Services or Implementation Services.
- 8.5. The Prime Contractor must participate in national marketing and branding activities and initiatives as required under the National Career Service and comply with all aspects of the brand to ensure consistency of delivery.
- 8.6. The Prime Contractor is required to promote and advertise the National Careers Service digital service and the National Careers Telephone and Webchat Channel.
- 8.7. The Prime Contractor should direct Customers to the appropriate National Careers Service resources and services and promote messages about the impact and benefits of career management on success in work and life.
- 8.8. The Prime Contractor must produce an annual marketing strategy in line with GCS guidelines for the Services, reflective of local needs.
- 8.9. As part of the local strategy, the Prime Contractor can design and produce local materials which must adhere to the National Careers Service brand guidelines.
- 8.10. The Prime Contractor must nominate an appropriate marketing and communications lead who will act as a direct contact for the National Careers Service marketing and communications team. The marketing and communications lead will attend regular meetings and contribute to joint working activities including promoting the National Careers Service brand and supporting national campaigns.
- 8.11. The Prime Contractor and Sub-Contractors must act as ambassadors and advocates for the Services, particularly in relation to their local partnership activity, encouraging staff and Customers to recommend the National Careers Service to others.
- 8.12. The Prime Contractor and Sub-Contractors must promote the Services in line with the National Careers Service brand guidelines and any other related brand values and guidelines.
- 8.13. All marketing and promotional materials must comply with the brand guidelines and must be approved by the DFE marketing and communications team. The Prime Contractor should submit any draft materials and any branding-related queries by email to National.CareersService@education.gov.uk or otherwise agreed contacts.
- 8.14. All marketing and promotional materials must include the National Careers Service website address and national number. Marketing and promotional materials must not include a local website address or telephone numbers.
- 8.15. The Prime Contractor and Sub-Contractors must promote the National Careers Service brand and must ensure that high-profile National Careers Service branding is deployed at every delivery location.

- 8.16. The Prime Contractor and Sub-Contractors must immediately remove or amend any promotional, marketing or communication material that the DFE deems to be detrimental to the National Careers Service (or DFE) brand or reputation. The Prime Contractor must report any instances of brand misuse by third parties by email to National.CareersService@education.gov.uk
- 8.17. The Prime Contractor must participate in local, regional and national events, campaigns and marketing activity as required by the DFE.
- 8.18. The Prime Contractor must be proactive in engaging with major local and regional events that provide opportunities to reach Customers, employers, schools and stakeholders.
- 8.19. The Prime Contractor must participate in and engage with specific marketing and PR campaigns as directed by the DFE in the delivery of national messages.
- 8.20. The Prime Contractor must have additional resource available to support participation in national marketing and communications activity and any anticipated increases in demand as notified by the DFE.
- 8.21. The Prime Contractor must provide evaluation data for campaigns and other national marketing and PR activity (including the evaluation and response data) as requested by the DFE.
- 8.22. The Prime Contractor must have suitable Prime Contractor Personnel to participate in media training and subsequent media activity, including radio and press interviews.
- 8.23. The Prime Contractor must provide written material for use in media activity, including but not limited to CV and interview tips and quotes for regional media outlets, as requested by the DFE.
- 8.24. The Prime Contractor must actively pursue a local PR and media strategy and ensure that local PR and media activity supports national activity.
- 8.25. The Prime Contractor and Sub-Contractors must always refer to themselves as the National Careers Service when engaging in local PR and media activity.
- 8.26. The Prime Contractor must produce and submit a minimum of two, high-quality case studies each month using the DFE PR template and send on the ninth working day of each Month to National.CareersService@education.gov.uk. The case studies must include examples of good practice and demonstrate the impact of the activity and provide a clear outcome.
- 8.27. The Prime Contractor must also support ad hoc requests for case studies in relation to specific PR or media campaigns.
- 8.28. The Prime Contractor undertakes to cease accessing and using any Prime Contractor's Social Media Accounts with immediate effect on the earlier of the Termination Date or Expiry Date.
- 8.29. The Prime Contractor acknowledges and accepts that from the earlier of the Termination Date or Expiry Date, the DFE and any Replacement Prime Contractor may set up any Replacement Social Media Accounts as they may in their absolute discretion determine. The Prime Contractor shall not object to such Replacement Social Media Accounts being set up with the same or similar handles to those used previously by the Prime Contractor in relation to the Prime Contractor's Social Media Accounts.

9. Equality of Opportunity

- 9.1. The Prime Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services. The Prime Contractor shall take all reasonable steps to ensure the observance of these provisions by all of the Prime Contractor Personnel and all Sub-Contractors employed in the execution of the Contract. The Prime Contractor will comply with the detailed requirements in relation to equality of opportunity set out in Clauses 9.2 to 9.4.
- 9.2. The Prime Contractor will, in delivering the Services under this Contract, demonstrate that it has had regard to the duties placed on the DFE and the Prime Contractor by the Equality Act 2010. The Prime Contractor will take all reasonable steps to ensure the observance of these provisions by all of the Prime Contractor Personnel and all Sub-Contractors employed to deliver the Services.
- 9.3. The Prime Contractor shall ensure that equality of opportunity is built into all aspects of Services; the business planning process; and the self-assessment process. The Prime Contractor shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The Prime Contractor shall use appropriate, specific and measurable objectives. These will be proportionate, relevant and aligned to the Services the Prime Contractor is funded to deliver.
- 9.4. The DFE may use a variety of equality information and data to support judgements about quality and eligibility for funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of Customers.

10. Customer Health, Safety & Welfare

- 10.1. The Prime Contractor must perform its obligations meeting the requirements of:
 - 10.1.1 all applicable Law regarding health and safety
 - 10.1.2 DFE's current health and safety policy while at DFE's Premises, as provided to the Prime Contractor.
- 10.2. The Prime Contractor must as soon as possible notify the DFE of any health and safety incidents or material hazards of which it is aware at any of the Premises that relate to the performance of the Contract.
- 10.3. Where part of the Services take place in an environment outside the direct control of the Prime Contractor, the Prime Contractor shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of the Customers.
- 10.4. The Prime Contractor must carry out appropriate disclosure and barring service checks on all applicants for employment where such applicants would be employed to work in regulated activity relating to vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct.

- 10.5. In working with other organisations/bodies, the Prime Contractor shall make arrangements to co-ordinate and co-operate effectively for reasons of Customer health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 10.6. In providing the Services, the Prime Contractor must ensure it actively promotes the values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs, and promote principles that support equality of opportunity for all.
- 10.7. In providing the Services, the Prime Contractor must comply with the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and must have regard to statutory guidance issued under section 29 of the Counter-Terrorism and Security Act 2015. Failure to do so may constitute a Serious Breach of this Contract.
- 10.8. In providing the Services, the Prime Contractor must comply with the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (Channel co-operation duty). Failure to do so may constitute a Serious Breach of this Contract.
- 10.9. The Prime Contractor shall, in circumstances where it sub-contracts the management and/or delivery of the Services under this Contract, ensure that all the provisions in respect of Customer Health, Safety and Welfare in this Clause 10 are included in its Sub-Contract with Sub-Contractors.
- 10.10. The Prime Contractor shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate or assess the circumstances of all Customer incidents within the scope of RIDDOR and follow HSE guidance 'Investigating accidents and incidents: A workbook for employers, unions, safety representatives and safety professionals' (HSG245) ISBN 0717628272. The Prime Contractor shall only use persons competent to investigate/assess Customer incidents with a view to identifying the causes of any incident and lessons to be learned.
- 10.11. The Prime Contractor shall also monitor, and act on, any other harm to Customers to the extent that the Prime Contractor could reasonably be expected to do so and/or where the harm could affect the quality of the experience. Harm includes (but is not limited to) incidents that cause any loss to the Customer of any physical or mental faculty or any disfigurement and incidents of bullying and harassment.
- 10.12. Not Used.
- 10.13. The Prime Contractor and/or the Prime Contractor Related Parties must be able to demonstrate that they have robust record-keeping procedures in respect of health, safety and safeguarding through checks on record keeping undertaken. Failure to do so will constitute a Serious Breach.
- 10.14. Where the Prime Contractor or one of its Sub-contractors refer:
- 10.14.1 a safeguarding concern related to sexual violence to Local Authority children's social care/adult social care and/or the police, or
 - 10.14.2 an allegation of abuse made against a teacher or other member of staff to the designated officer(s) (at the local authority),

the Prime Contractor must, as soon as practicable, inform the DFE via email to Enquiries.EFA@education.gov.uk. Such notification must include the name of the Prime Contractor, a high level summary of the nature of the incident (without sharing personal information about victims or alleged perpetrators) and confirmation of whether it is, or is scheduled to be, investigated by the Local Authority and/or the police.

- 10.15. Where the Prime Contractor makes a referral of an individual for the purposes of determining whether that individual should be referred to a panel for the carrying out of an assessment under section 36 of the Counter-Terrorism and Security Act 2015 of the extent to which that individual is vulnerable to being drawn into terrorism, the Prime Contractor shall ensure it notifies the DFE that a referral has been made.
- 10.16. Where the Prime Contractor has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the Body under the Safeguarding Vulnerable Groups Act 2006, the Prime Contractor shall ensure that it informs the DFE that a referral has been made / information has been provided.

11. Liability

11.1. Neither Party limits its liability:

- 11.1.1. for death or personal injury cause by the negligence of itself or of any of its servants, employees to agents acting in the course of their employment; or
- 11.1.2. in respect of fraud, fraudulent misrepresentation or fraudulent concealment; or
- 11.1.3. in respect of the indemnities in Clause 19 (Employment Indemnity), Schedule 2 (Staff Transfer) and the Pensions Annex to Schedule 2 (Staff Transfer).

11.2. Subject to clause 11.5, the Prime Contractor shall indemnify in full on demand and keep indemnified in full on demand the DFE, its servants, employees, and agents against:

- 11.2.1. all Losses, costs and expenses (including legal expenses); and
- 11.2.2. all claims, damages and liabilities,

suffered or incurred by the DFE, its servants, employees, or agents in respect of any loss or damage or personal injury (including death) which arises out of or in the course of or is caused by the negligent act or omission or wilful default of the Prime Contractor, or any Prime Contractor Personnel in the delivery of the Services.

11.3. The Prime Contractor warrants to the DFE that to the best of its knowledge and belief, all Services provided under the Contract will not infringe, in whole or in part, any copyright or any other Intellectual Property right of any person and agrees to indemnify the DFE in full on demand and to keep the DFE fully indemnified on demand from and against any and all:

- 11.3.1. Losses, costs, damages and expenses (including legal expenses); and
- 11.3.2. All claims, demands, and proceedings,

including (in each case) any of a consequential nature, arising directly or indirectly out of any claim that the results of the Services in any way infringe the Intellectual Property right(s) of any third party. This warranty and indemnity shall survive the termination of the Contract and shall exist for the life of the copyright or other Intellectual Property right.

- 11.4. The Prime Contractor shall indemnify the DFE on demand, and shall keep the DFE fully indemnified on demand from and against all claims made against the DFE by any third party as a result of the acts or omission of the Prime Contractor in the course of the supply of the Services.
- 11.5. Subject to Clause 11.1 and to Clause 11.7 in respect of the DFE, the maximum aggregate liability of each Party to the other Party in any Contract Year for all claims (whether made in contract, tort, under statute or otherwise (including in each case negligence)) arising under or in connection with this Contract during that Contract Year shall not exceed the total amount paid or payable by DFE to the Prime Contractor pursuant to this Contract during the Contract Year in which the event or series of events giving rise to the claim occurred.
- 11.6. [NOT USED]
- 11.7. The DFE's maximum aggregate liability to make payment to the Prime Contractor in respect of the Services during any Contract Year shall be limited to the Maximum Contract Value.

12. Insurance

- 12.1. The Prime Contractor shall maintain at its own cost a policy or policies of insurance in accordance with Schedule 10 to cover the liability of the Prime Contractor in respect of any act or default for which it may become liable to indemnify the DFE under this Contract and for any claims made against it by any third party or Customer in respect of the supply of the Services.
- 12.2. The DFE reserves the right to require the Prime Contractor to insure against any act or default which arises as a result of fraud or other criminal activity by the Prime Contractor, the Prime Contractor Personnel or Sub-Contractors.
- 12.3. The Prime Contractor shall take out and maintain all required insurances listed in Appendix 1 of Schedule 10.
- 12.4. The Prime Contractor shall provide copies of any insurance certificates to the DFE within five (5) Working Days following a written request from the DFE.

13. Access and Monitoring

- 13.1. When appropriate the DFE shall give the Prime Contractor reasonable advance notice in writing of proposed visits to the Prime Contractor or its Sub-Contractors, to observe the delivery of the Services, by any person who has taken or will take no direct part in the conduct or content of the Services.
- 13.2. For monitoring and evaluation purposes, the DFE or its representatives, the Secretary of State or their representatives, the National Audit Office, the Inspectorates and HM Treasury shall have the right to visit all or any site(s) and view operations relating to the provision and to inspect relevant documents and interview Customers and the Prime Contractor Personnel during these visits in order to:
- 13.2.1. examine, audit or take copies of any original or copy documentation, accounts, books and records of the Prime Contractor and its Sub-Contractors that relate to the Contract;

- 13.2.2. visit, view or assess the design, management and delivery relating to the Contract at any Premises where those operations are carried out (including those of Sub-Contractors) and conduct relevant interviews, including interviews with Customers, during these visits at any reasonable time;
- 13.2.3. carry out examinations into the economy, efficiency and effectiveness with which the Prime Contractor has used the DFE's resources in the performance of the Contract.
- 13.3. The Prime Contractor shall, if required by any of the representatives stated at Clause 13.2 provide appropriate oral or written explanations.
- 13.4. The DFE reserves the right, at any reasonable time, and as it may deem necessary to require the Prime Contractor at its own cost to:
 - 13.4.1. provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Contract;
 - 13.4.2. provide such assurance as the DFE may require that the delivery of the Services complies with the requirements of the Contract;
 - 13.4.3. obtain a report by an independent accountant of the DFE's choice on:
 - a) the financial systems and controls operated by the Prime Contractor or its Sub-contractors,
 - b) the accuracy and regularity of funding claims in respect of payments claimed or received under the Contract, or
 - c) the evidence held by the Prime Contractor or its Sub-Contractors to support delivery of the Services in accordance with the terms of the Contract.

The Prime Contractor must agree the instructions for any report to be obtained under clause 13.4.3 with the DFE and this may include the DFE discussing the terms of reference directly with the independent accountant where necessary. The report and the work required in order to produce the report shall be carried out to the satisfaction of the DFE, and the DFE must be able to place reliance on it. The Prime Contractor shall provide a copy of any draft report at all stages of reporting and the final report to the DFE as soon as they are available. The DFE reserves the right to require the Prime Contractor to publish the final report;

- 13.4.4. provide a copy of the Prime Contractor's latest audited Accounts and submit further copies of the audited Accounts as they become available;
- 13.4.5. submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the DFE; or
- 13.4.6. provide any additional evidence to support payments made under this Contract, as the DFE shall reasonably require.
- 13.5. The Prime Contractor shall in performing the Services comply fully with all relevant rules and regulations of the DFE in force.

- 13.6. Where the DFE has undertaken an investigation or received a report from an independent accountant or otherwise, in relation to the Prime Contractor, it may, as a consequence of that investigation or report, impose additional Contract obligations upon the Prime Contractor.
- 13.7. The Prime Contractor must comply with any additional Contract obligations imposed under clause 13.6
- 13.8. If the DFE assesses that the Prime Contractor has failed to comply with any additional Contract obligations imposed under clause 13.6 within such time as the DFE deems reasonable, the DFE may take such actions as it deems appropriate which may include, but are not limited to, under Clause 25.2 Minor Breach or Clause 25.3-25.4 Serious Breach.
- 13.9. In addition to the other requirements to provide information set out in this Contract the DFE reserves the right to request information from the Prime Contractor in order to exercise its responsibilities and/or to fulfil requirements to provide information to the Secretary of State and to account to Parliament for so long as these apply. On occasion, the DFE will require urgent information from the Prime Contractor.
- 13.10. The Prime Contractor shall provide the DFE or agents acting on its behalf with the information it requires under Clauses 13.4 and 13.9 at the times and in the formats specified. This information shall be of sufficient quality to meet the purposes for which it has been requested.

14. Funding and Payment

- 14.1. In consideration of the supply of the Services by the Prime Contractor in accordance with this Contract, the DFE agrees to pay the Prime Contractor the amounts set out in the Funding Rules, in the manner set out in the Funding Rules, but subject to the terms of this Clause 14.
- 14.2. The DFE reserves the right to withhold or suspend payment of any sum due under the Funding Rules:
 - 14.2.1. Where the Prime Contractor fails to meet the evidence requirements for the relevant Outcome set out in the Funding Rules;
 - 14.2.2. Where the Prime Contractor is assessed by the DFE as being at serious risk of failure to deliver the Services following any review of the quality of the Services in accordance with Clause 22.5;
 - 14.2.3. Where all or part of the Customer Data provided by the Prime Contractor to the DFE in accordance with the Funding Rules is of a quality which leads the DFE to be concerned about the accuracy of the Customer Data provided by the Prime Contractor as a whole; or
 - 14.2.4. In any other circumstance provided for by the Contract.
- 14.3. The Prime Contractor shall comply with the Funding Rules published by the DFE as amended from time to time in accordance with the Contract. The DFE may change the Funding Rules in the manner specified therein. Additionally:
 - 14.3.1. the DFE shall be entitled to reduce the Maximum Contract Value at any time on giving three months' notice to the Prime, and for the avoidance of doubt, shall be entitled to terminate the Contract pursuant to Clause 26.1.1; and / or

14.3.2. If the DFE wishes to make any additional changes to the Funding Rules which are not specified in the Funding Rules, the DFE may do so, provided that the DFE agrees to be responsible for meeting any reasonable incremental costs incurred by the Prime Contractor as a result of such changes.

14.4. Payment by the DFE of sums invoiced by the Prime Contractor under the Contract shall be without prejudice to any claims or rights, which the DFE may have against the Prime Contractor and shall not constitute any acceptance by the DFE as to the performance by the Prime Contractor of its obligations hereunder. Prior to any such payment, the DFE shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Prime Contractor, arising from this Contract or any other Contract between the Prime Contractor and the DFE relating to the National Careers Service.

14.5. Where the DFE carries out a review, investigation or audit of a sample of the evidence which the Prime Contractor is required to provide under the Funding Rules to support the payment claims issued to the DFE and the DFE identifies errors in that evidence which it (acting reasonably) deems are material, the DFE reserves the right at its absolute discretion to require the Prime Contractor to carry out a fuller audit of all or part of the payment claims made in respect of the Services and/or to recover from the Prime Contractor an amount based on the error rate identified and then applied to the total value of the Contract for the relevant Contract Year. Such amounts may be recovered by making adjustments to payment claims submitted by the Prime Contractor under the Contract, or by raising an invoice for payment by the Prime Contractor, or making deductions from future payments due to the Prime Contractor under the Contract. Failure to settle such amounts by the Prime Contractor will constitute a Serious Breach under Clause 25 of the Contract.

14.6. The Prime Contractor shall submit requests for payment, together with the relevant supporting information required by the Funding Rules monthly in arrears. All payments by the DFE will be made via BACS within 30 days of receipt of the relevant payment claim.

14.7. Where (as envisaged in the Specification), the DFE requests that the Prime Contractor carries out a pilot or a standalone project (for example in response to a local event in the Area), the Prime Contractor shall be required to issue separate invoices to the DFE for such pilot or project. Projects are defined as bespoke pieces of work resulting from recommendations and findings by the DFE. Projects are time limited activities in line with the requirements of the Service to deliver a specific aim.

14.8. The Prime Contractor is responsible for its own VAT obligations and where VAT is chargeable, must include VAT within all invoices submitted to the DFE. VAT is not included within the Maximum Contract Values.

15. Review of sums invoiced and reconciliation against Maximum Contract Value

15.1. A review will take place on the 8th day of each Month in respect of payment claims issued by the Prime Contractor in respect of the Services. The DFE will compare the payment claims issued by the Prime Contractor against the Maximum Contract Value and against any caps on spending which may be included in the Funding Rules. At this stage a reconciliation will take place. Any overpayment made to the Prime Contractor by the DFE will be repayable by the Prime Contractor within 30 days of receiving a request from the DFE. The DFE reserves the right to reduce future payments to recover any overpayments.

15.2. The evidence required in respect of each element of the Services is set out in the Funding Rules and the Prime Contractor must retain such evidence for inspection on demand in accordance with the provisions of the Funding Rules.

16. Prohibited Activities

- 16.1. The Prime Contractor shall not offer or give, or agree to give, to any member, employee or representative of the DFE any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the DFE or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The Prime Contractor's attention is drawn to the criminal offences created by the Bribery Act 2010. Any offence by the Prime Contractor or its employees or by anyone acting on its behalf under the Bribery Act 2010 in relation to this or any Contract with the DFE or HMG shall entitle the DFE to terminate the Contract and recover from the Prime Contractor the amount of any loss resulting from such termination and/or to recover from the Prime Contractor the amount of value of any gift, consideration or commission.
- 16.2. The Prime Contractor shall not enter into any Sub-Contract with any political or religious organisation using any funding provided by the DFE under this Contract if the effect of that Sub-Contract would be to promote a particular political or religious point of view.
- 16.3. The Prime Contractor shall not hold itself out as acting on behalf of the DFE without the DFE's permission.

17. Data Protection and Protection of Personal Data

- 17.1. In this Clause 17, the following words and expressions shall be defined as follows:
 - 17.1.1. 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 Prime Contractor is bound to comply;
 - 17.1.2. Prime Contractor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Prime Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;
 - 17.1.3. Data Protection Legislation: (i) the UK GDPR, the Law Enforcement Directive (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;
 - 17.1.4. Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
 - 17.1.5. Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the UK GDPR;
 - 17.1.6. Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Prime Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

- 17.1.7. Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
 - 17.1.8. DPA 2018: Data Protection Act 2018;
 - 17.1.9. EU GDPR: the General Data Protection Regulation (EU) 2016/679;
 - 17.1.10. GDPR: the UK GDPR or the EU GDPR (as applicable);
 - 17.1.11. LED: Law Enforcement Directive (Directive (EU) 2016/680);
 - 17.1.12. 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;
 - 17.1.13. Sub-processor: any third Party appointed to process Personal Data on behalf of the Prime Contractor related to this Contract; and
 - 17.1.14. UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 17.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Secretary of State for Education on behalf of the DFE is the Controller and the Prime Contractor is the Processor. The only processing that the Prime Contractor is authorised to do is listed in Schedule 8 by the DFE and may not be determined by the Prime Contractor.
- 17.3. The Prime Contractor shall notify the DFE immediately if it considers that any of the DFE's instructions infringe the Data Protection Legislation.
- 17.4. The Prime Contractor shall provide all reasonable assistance to the DFE in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the DFE, include:
- 17.4.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 17.4.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 17.4.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 17.4.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.5. The Prime Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 17.5.1. process that Personal Data only in accordance with Schedule 8, unless the Prime Contractor is required to do otherwise by Law. If it is so required the Prime Contractor shall promptly notify the DFE before processing the Personal Data unless prohibited by Law;

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

- a) nature of the data to be protected,
- b) harm that might result from a Data Loss Event,
- c) state of technological development, and
- d) cost of implementing any measures;

17.5.3. ensure that:

- a) the Prime Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 8),
- b) it takes all reasonable steps to ensure the reliability and integrity of any Prime Contractor Personnel who have access to the Personal Data and ensure that they,
 - A. are aware of and comply with the Prime Contractor's duties under this Clause;
 - B. are subject to appropriate confidentiality undertakings with the Prime Contractor or any Sub-processor;
 - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the DFE or as otherwise permitted by this Contract; and
 - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and

17.5.4. not transfer Personal Data outside of the UK unless the prior written consent of the DFE has been obtained and the following conditions are fulfilled:

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

- 17.5.5. at the written direction of the DFE, delete or return Personal Data (and any copies of it) to the DFE on termination of the Agreement unless the Prime Contractor is required by Law to retain the Personal Data.
- 17.6. Subject to Clause 17.7, the Prime Contractor shall notify the DFE immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:
 - 17.6.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 17.6.2. receives a request to rectify, block or erase any Personal Data;
 - 17.6.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 17.6.4. receives any communication from the Information Commissioner or any other regulatory authority;
 - 17.6.5. 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
 - 17.6.6. becomes aware of a Data Loss Event.
- 17.7. The Prime Contractor's obligation to notify under Clause 17.6 shall include the provision of further information to the DFE in phases, as details become available.
- 17.8. Taking into account the nature of the processing, the Prime Contractor shall provide the DFE with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 17.6 (and insofar as possible within the timescales reasonably required by the DFE) including by promptly providing:
 - 17.8.1. the DFE with full details and copies of the complaint, communication or request;
 - 17.8.2. such assistance as is reasonably requested by the DFE to enable the DFE to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 17.8.3. the DFE, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 17.8.4. assistance as requested by the DFE following any Data Loss Event;
 - 17.8.5. assistance as requested by the DFE with respect to any request from the Information Commissioner's Office, or any consultation by the DFE with the Information Commissioner's Office.
- 17.9. The Prime Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 17. This requirement does not apply where the Prime Contractor employs fewer than 250 staff, unless:
 - 17.9.1. the DFE determines that the processing is not occasional;

- 17.9.2. the DFE determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- 17.9.3. the DFE determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.10. The Prime Contractor shall allow for audits of its Data Processing activity by the DFE or the DFE's designated auditor.
- 17.11. The Prime Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 17.12. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Prime Contractor must:
 - 17.12.1. notify the DFE in writing of the intended Sub-processor and processing;
 - 17.12.2. obtain the written consent of the DFE;
 - 17.12.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 17 such that they apply to the Sub-processor; and
 - 17.12.4. provide the DFE with such information regarding the Sub-processor as the DFE may reasonably require.
- 17.13. The Prime Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 17.14. The DFE 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).
- 17.15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The DFE may on not less than thirty (30) Working Days' notice to the Prime Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 17.16. Where the Prime Contractor is providing the Services to Customers claiming out of work benefits, the Secretary of State for Work and Pensions (or their successor) is the Controller in relation to Personal Data which the Prime Contractor is required to provide to the Secretary of State for Work and Pensions.
- 17.17. Insofar as the Prime Contractor processes Personal Data for its own administrative purposes, whilst undertaking this Contract, the Prime Contractor must comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Department of Education or the DFE to breach any of their applicable obligations under the Data Protection Legislation.
- 17.18. The Prime Contractor's failure to comply with the provisions of this Clause 17 will constitute a Serious Breach under Clause 25 of the Contract.
- 17.19. This Clause 17 shall apply during the Contract Period and indefinitely after its expiry.

18. Staff Transfer

18.1. The Parties agree that:

- 18.1.1. where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 2 (Staff Transfer) shall apply as follows:
 - a) where the Relevant Transfer involves the transfer of Transferring Former Prime Contractor Employees, Part A of Schedule 2 (Staff Transfer) and the Pensions Annex to Schedule 2 (Staff Transfer) shall apply; and
 - b) Part B of Schedule 2 (Staff Transfer) shall not apply;
- 18.1.2. where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part B of Schedule 2 (Staff Transfer) shall apply and the Pensions Annex to Schedule 2 (Staff Transfer) shall apply and Part A of Schedule 2 (Staff Transfer) shall not apply;
- 18.1.3. whether neither Parts A or B of Schedule 2 (Staff Transfer) apply because the Former Prime Contractor becomes the Prime Contractor, the Pensions Annex to Schedule 2 (Staff Transfer) shall apply; and
- 18.1.4. Part C of Schedule 2 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services as shall the relevant parts of the Pensions Annex to Schedule 2 (Staff Transfer).

19. Employment Indemnity

19.1. The Parties agree that:

- 19.1.1. the Prime Contractor shall both during and after the Contract Period indemnify the DFE against all Employee Liabilities that may arise as a result of any claims brought against the DFE by any person where such claim arises from any act or omission of the Prime Contractor or any Prime Contractor Personnel; and
- 19.1.2. the DFE shall both during and after the Contract Period indemnify the Prime Contractor against all Employee Liabilities that may arise as a result of any claims brought against the Prime Contractor by any person where such claim arises from any act or omission of the DFE or any of the DFE's employees, agents, consultants and contractors.

20. Security Standards

- 20.1. The Prime Contractor shall be aware of and comply with the relevant HMG security policy framework, NCSC guidelines and where applicable DFE Security Standards for Contractors which include but are not constrained to the following clauses.
- 20.2. Where the Prime Contractor will provide products or services or otherwise handle information at OFFICIAL for the DFE, 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 Plus

certification at the appropriate level for the Contract Period. The certification scope shall be relevant to the services supplied to, or on behalf of, the DFE.

- 20.3. Where clause 20.2. above has not been met, the Prime Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements).
- 20.4. The Prime Contractor shall follow the GSCP in respect of any DFE 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 Prime Contractor has an existing Protective Marking Scheme then the Prime Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the DFE Data.
- 20.5. DFE Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Prime Contractor's or Sub-Contractor's own IT equipment to protect the DFE Data and enable the data to be identified and securely deleted when required in line with clause 20.14.
- 20.6. The Prime 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.
- 20.7. The Prime 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 DFE Data. This policy should include appropriate segregation of duties and if applicable Role Based Access Controls. User credentials that give access to DFE Data or systems shall be considered to be sensitive data and must be protected accordingly.
- 20.8. The Prime Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect DFE Data, including but not limited to:
 - 20.8.1 physical security controls;
 - 20.8.2 good industry standard policies and processes;
 - 20.8.3 malware protection;
 - 20.8.4 boundary access controls including firewalls, application gateways, etc;
 - 20.8.5 maintenance and use of fully supported software packages in accordance with vendor recommendations;
 - 20.8.6 use of secure device configuration and builds;
 - 20.8.7 software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
 - 20.8.8 user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
 - 20.8.9 any services provided to the DFE must capture audit logs for security events in an electronic format at the application, service and system level to meet the DFE's logging and auditing requirements, plus logs shall be:

- (a) retained and protected from tampering for a minimum period of six months;
- (b) made available to the DFE on request.

- 20.9. The Prime Contractor shall ensure that any DFE 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.
- 20.10. The Prime Contractor shall ensure that any EFSA 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 DFE except where the DFE has given its prior written consent to an alternative arrangement.
- 20.11. The Prime Contractor shall ensure that any device which is used to process DFE 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>.
- 20.12. Whilst in the Prime Contractor's care all removable media and hardcopy paper documents containing DFE 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".
- 20.13. When necessary to hand carry removable media and/or hardcopy paper documents containing DFE 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.
- 20.14. In the event of termination of this Contract due to expiry, liquidation or non-performance, all information assets provided, created or resulting from the Services shall not be considered as the Prime Contractor's assets and must be returned to the DFE 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 20.15.
- 20.15. In the event of termination, equipment failure or obsolescence, all DFE Data, in either hardcopy or electronic format, that is physically held or logically stored by the Prime 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.
- 20.16. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network or on shared backup tapes, then the Prime Contractor or Sub-Contractor shall protect the DFE Data until such time, which may be long after the Expiry Date or Termination Date, when it can be securely cleansed or destroyed. Evidence of secure destruction will be required in all cases.
- 20.17. Access by Prime Contractor or Sub-Contractor staff to DFE 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; or hold an appropriate National Security Vetting clearance as required by the DFE.

- 20.18. All Prime Contractor Personnel must complete this process before access to DFE Data is permitted. Any Prime Contractor Personnel 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.
- 20.19. All Prime Contractor Personnel who handle DFE Data shall have annual awareness training in protecting information.
- 20.20. The Prime 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 performance of its obligations under this 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 Prime Contractor will provide evidence of the effectiveness of its ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Prime Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 20.21. Any suspected or actual breach of the confidentiality, integrity or availability of DFE Data, including user credentials, used or handled in the course of providing the Services shall be recorded as an incident. This includes any non-compliance with these DFE Security Standards for Contractors, or other Security Standards pertaining to the solution.
- 20.22. Incidents shall be reported to the DFE 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 Prime Contractor should provide an explanation about the delay.
 - 20.22.1 Incidents shall be reported through the DFE's nominated system or service owner.
 - 20.22.2 Incidents shall be investigated by the Prime Contractor with outcomes being notified to the DFE.
- 20.23. The Prime Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process DFE Data shall be subject to independent IT Health Checks using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the Services being provided are to be shared with the DFE and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 20.24. The Prime Contractor or Sub-Contractors providing the service will provide the DFE with full details of any actual or future intent to develop, manage, support, process or store DFE Data outside of the UK mainland. The Prime Contractor or Sub-Contractor shall not go ahead with any such proposal without the prior written agreement of the DFE.
- 20.25. The DFE reserves the right to audit the Prime Contractor or Sub-Contractors providing the Services within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the Services being provided and

the Prime Contractor's, and any Sub-Contractors', compliance with the clauses contained in this Section.

- 20.26. The Prime 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 DFE. This will include obtaining any necessary professional security resources required to support the Prime Contractor's and Sub-Contractor's security assurance activities such as: a Security and Information Risk Advisor certified to NCSC Certified Cyber Security Consultancy or NCSC Certified Cyber Professional schemes.
- 20.27. Where the Prime Contractor is delivering an ICT solution to the DFE it 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 DFE Policy. The Prime Contractor will provide the DFE with evidence of compliance for the solutions and services to be delivered. The DFE's expectation is that the Prime Contractor shall provide written evidence of:
- 20.27.1 Compliance with HMG Minimum Cyber Security Standard.
- 20.27.2 Any existing security assurance for the services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification.
- 20.27.3 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.
- 20.27.4 Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Prime Contractor shall provide details of who the awarding body or organisation will be and date expected.
- 20.28. The Prime Contractor shall contractually enforce all these DFE Security Standards for Contractors onto any third-party Prime Contractors, Sub-Contractors or partners who could potentially access DFE Data in the course of providing the Services.

21. Submission of Customer Data

- 21.1. The Prime Contractor must supply to the DFE the Customer Data, in accordance with the instructions contained within the Funding Rules.
- 21.2. The Prime Contractor must maintain Customer Files as specified in the Funding Rules and must comply with the Code of Connection. The DFE reserves the right to make changes to the Code of Connection provided that the DFE agrees to be responsible for meeting any reasonable incremental costs incurred by the Prime Contractor as a result of any changes that are substantial.
- 21.3. Customer Data collected must be transmitted to the DFE through the DFE's web portal <https://hub.fasst.org.uk/Pages/default.aspx>. Access to the DFE's web portal is restricted and the Prime Contractor agrees to comply with the conditions of use regarding the supply of data to the DFE set out in this Clause 21 and in the relevant Data Collection Guidance document as amended and updated and which is available on the DFE's website.
- 21.4. Where the DFE is concerned about the quality of the Customer Data, including the completeness or accuracy of the data, provided by the Prime Contractor, the DFE may require the Prime Contractor to supply a data quality improvement plan for how it will rectify

the concerns. The DFE reserves the right to require the Prime Contractor, at its own cost, to carry out such work as the DFE deems necessary to improve the quality of Customer Data.

- 21.5. Where the Prime Contractor is providing the Services to Customers claiming out of work benefits, it must provide Customer Data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the Prime Contractor.
- 21.6. Failure to transmit complete and accurate Customer Data in accordance with this Clause 21 will constitute a Serious Breach of Contract in accordance with Clause 25 and may result in payments for this part of the Services being delayed or withheld.
- 21.7. As specified in Clause 14, the DFE reserves the right to suspend payments to the Prime Contractor under the Contract where the quality of the Customer Data gives rise to concern about the accuracy of the data provided by the Prime Contractor.
- 21.8. The Prime Contractor shall register with UKRLP and maintain contact details on an on-going basis. (<http://www.ukrlp.co.uk/>).

22. Quality Assurance and Raising Standards

- 22.1. The Prime Contractor undertakes to the DFE that it has the resources and skills necessary to carry out the Prime Contractor's obligations pursuant to this Contract.
- 22.2. The Prime Contractor shall ensure that all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of the DFE and shall provide such documentation to them as the DFE shall request from time to time.
- 22.3. The Prime Contractor shall continuously seek to improve the Services and raise standards to benefit the Customer. The Prime Contractor shall have the primary responsibility for improving standards and will need to demonstrate to the DFE satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The DFE reserves the right to require the Prime Contractor to provide the DFE or OFSTED with evidence to support the quality improvement processes.
- 22.4. The Prime Contractor shall:
 - 22.4.1. ensure minimum levels of performance against agreed profiles, National Targets and KPIs within agreed tolerance levels that apply to the Services, as defined in Annex A of Schedule 6 and Service Levels set out in Schedule 14;
 - 22.4.2. at least meet the standards as set out in the Quality section of Part C of the Specification;
 - 22.4.3. ensure competent and appropriately qualified staff deliver the Services;
 - 22.4.4. be responsible for the professional development and training of its staff and for meeting any legal requirements to ensure that they are appropriately qualified and trained;
 - 22.4.5. use all reasonable endeavours to offer equality of access to the Services;

- 22.4.6. provide a safe, healthy and supportive environment for Customers and its staff;
 - 22.4.7. provide good management and leadership of the Services;
 - 22.4.8. deliver value for money and financial probity (working with the DFE on continuous improvement and value for money initiatives); and
 - 22.4.9. ensure all Sub-Contractors delivering Services under the Contract on behalf of the Prime Contractor comply with the requirements set out in Clauses 22.4.1 to 22.4.8 above.
- 22.5. The DFE may assess the quality and delivery of the Services and the Prime Contractor's compliance with the requirements in Clause 22.4.1 to 22.4.9 during the Contract Period. The Prime Contractor will be informed of the outcome of that process.
- 22.6. Failure by the Prime Contractor to meet the requirements set out in Clauses 22.4.1 to 22.4.9 will result in the Prime Contractor being in Serious Breach of Contract in accordance with Clause 25.

OFSTED Inspection

- 22.7. When the Prime Contractor receives notification from OFSTED that the Services are to be inspected, the Prime Contractor shall on request provide the DFE with details of its quality improvement activity, and any other relevant information required by OFSTED in accordance with the required timescale of OFSTED. The Prime Contractor must notify the DFE of the date of the meeting at which OFSTED gives feedback on the inspection and allow the DFE's nominated representative to attend the meeting. The Prime Contractor must confirm to the DFE in writing the outcome of the inspection within five (5) Working Days of receiving the feedback from OFSTED.
- 22.8. OFSTED may, at any time during the term of this Contract, undertake an inspection of the Prime Contractor. The DFE will consider the outcome of any such inspection as follows:

Inadequate in part

- 22.8.1. Where OFSTED has assessed the Services to be inadequate in any part, the Prime Contractor will be in Serious Breach of Contract.

Inadequate overall

- 22.8.2. Where the DFE is made aware that OFSTED has provisionally assessed the Services to be inadequate overall, the DFE may, at its absolute discretion take one or more of the following actions:
- a) require the Prime Contractor to accept and comply with temporary additional Contract obligations relating to the improvement of the overall Services, including but not limited to, requiring the Prime Contractor to temporarily suspend provision of the Services; and
 - b) commence discussions with the Prime Contractor and relevant stakeholders, either with OFSTED or not, as part of considering what actions as specified in Clause 25.3 and 25.4 may be taken.

- 22.8.3. Where OFSTED has confirmed its assessment that the Services are inadequate overall, the Prime Contractor will be in Serious Breach of Contract.
- 22.8.4. The DFE will take action based on OFSTED's provisional and confirmed outcomes in accordance with the provisions of Clauses 25.3 and 25.4 (Serious Breach). Where the DFE is made aware that the Prime Contractor has made a complaint about the graded outcome of the overall assessment by OFSTED, the DFE will continue to progress action under Clauses 25.3 or 25.4 but will be mindful of the implications arising from the outcome of a complaint. The DFE will review any decisions made at such time as outcomes of any complaint are made known.

23. Fraud and Irregularity

- 23.1. The Prime Contractor shall notify the DFE immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Contract including, but not limited to, cases of:
 - 23.1.1. collusion with members of the staff of the DFE or employees of the Department for Education;
 - 23.1.2. computer fraud;
 - 23.1.3. the submission to the DFE of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for funding;
 - 23.1.4. fraud involving awarding organisations; or
 - 23.1.5. fraud involving Sub-Contractors,provided that nothing in this Clause 23 shall require the Prime Contractor to do anything, which may cause it to infringe any Law.
- 23.2. Where the DFE has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract and payments made hereunder, the DFE shall have the right of access to the Prime Contractor's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records and to interview the Prime Contractor's servants or agents engaged with the delivery of the Contract.
- 23.3. Where the DFE has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Contract or any other contract between the DFE and the Prime Contractor and payments made thereunder it shall have the right to:
 - 23.3.1. suspend payments;
 - 23.3.2. require the Prime Contractor to cease offering the Services to new Customers under this Contract and any other contract between the Parties; and/or
 - 23.3.3. terminate this Contract in whole or in part.
- 23.4. The Parties shall co-operate in the identification of Customers who may be unlawfully claiming benefits. The DFE may from time to time brief the Prime Contractor as to the co-operation and assistance it reasonably requires including the provision of information

regarding fraud by Customers. The DFE shall provide a named contact or telephone answering machine for receiving such information.

24. Other Sources of Funding

- 24.1. Where the Prime Contractor or any of its Sub-Contractors have access to other funding streams, the Prime Contractor or any of its Sub-Contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of the DFE or any other body undertaking the audit or monitoring), to the DFE and anybody set out in Clause 13.2 that no double funding has occurred in respect of the Services delivered under the Contract.
- 24.2. Where the DFE identifies double funding in respect of the Services, or any part thereof, the Prime Contractor shall repay to the DFE any sums paid, or part thereof, by the DFE in respect of the Services for which the Prime Contractor, or any Sub-Contractor (as the case may be), has received funding from another source and the DFE reserves the right to deduct such sums from any monies owed to the Prime Contractor under the Contract or any subsequent Contract.

25. Breach

- 25.1. For the purpose of this Clause 25, the following definitions shall have the meanings set out below:
- 25.1.1. "Minor Breach" shall mean a delay or non-performance by either Party of its obligations under the Contract which does not materially, adversely or substantially affect the performance or delivery of the Services (or Implementation Services);
- 25.1.2. "Serious Breach" shall mean any breach defined as a Serious Breach in the Contract or any breach or breaches which adversely, materially or substantially affect the performance or delivery of the Services (or Implementation Services) or compliance with the terms and conditions of the Contract. Failure to comply with legislation, or actions or omissions by the Prime Contractor that endanger the health or safety of Customers would constitute a Serious Breach.

Minor Breach

- 25.2. Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:
- 25.2.1. The Party not in breach shall be entitled to serve written notice on the Party in breach, giving full details of the breach and requiring the other Party to remedy the breach within a specified period; and
- 25.2.2. If the Party in breach fails to remedy the Minor Breach within the time specified in the notice served under Clause 25.3.1 or such other period as may be agreed between the Parties it shall constitute a Serious Breach which is irremediable by the Party in breach and the Party not in breach shall be entitled to terminate the Contract with immediate effect on notice in writing to the other Party.

Serious Breach

- 25.3. Without prejudice to any other remedy, in the event of a Serious Breach which is capable of remedy, the Parties shall adopt the following procedure:

25.3.1. The Party not in breach shall be entitled to serve written notice on the other Party giving full details of the breach and requiring the Party in breach to remedy the breach within a specified time period; and

25.3.2. Where the DFE issues a notice in accordance with Clause 25.3.1, that notice may require the Prime Contractor to do any one or more of the following:

- a) meet improvement indicators to improve the quality of its Services. In which case, the DFE will meet with the Prime Contractor to discuss and reach agreement on implementation of these actions and improvement indicators and to agree arrangements for monitoring and reviewing progress. In such cases reviews will take place at the frequency specified by the DFE and in agreement with the Prime Contractor,
- b) require the Prime Contractor to accept and comply with additional Contract obligations relating to the improvement of financial health and/or control arrangements,
- c) require the Prime Contractor to accept and comply with additional Contract obligations relating to the improvement of the Services,
- d) require the Prime Contractor to accept and comply with additional Contract obligations relating to the improvement of the Services assessed as inadequate where OFSTED has assessed the Services to be inadequate in any Part,
- e) require the Prime Contractor to accept and comply with additional Contract obligations relating to the improvement of the overall Services where OFSTED has confirmed its assessment that the Services is inadequate overall,
- f) agree on detailed improvement plans and measures that set out clearly the expected timescale for improvement,
- g) agree on arrangements for more frequent monitoring of quality improvement plans.
- h) exercise the step-in rights set out in Clause 28, and / or
- i) suspend all or part of the Services.

25.4. In the event that a Serious Breach of the Contract by the Prime Contractor is irremediable or cannot be remedied within the period specified in the notice served under Clause 25.3.1 (or such other period as may be agreed between the Parties) the DFE may do either or both of the following:

25.4.1 cease, reduce or suspend funding to the Prime Contractor, or recover funding paid to the Prime Contractor, in respect of that part of the Services to which the Serious Breach relates; and

25.4.2 at its sole discretion terminate the Contract (in whole or in part) with immediate effect on notice in writing to the other Party.

26. Termination

26.1. The DFE may terminate this Contract (in whole or in part) by issuing a Termination Notice to the Prime Contractor:

- 26.1.1. with 3 months' notice at any time;
- 26.1.2. with immediate effect where the Contract should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
- 26.1.3. with immediate effect where the DFE has become aware that the Prime Contractor should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- 26.1.4. with immediate effect where there is a failure by the Prime Contractor to comply in the performance of the Services (or Implementation Services) with legal obligations in the fields of environmental, social or labour Law;
- 26.1.5. with immediate effect where specified in Clause 25 (Breach);
- 26.1.6. with immediate effect where the Prime Contractor has:
 - a) breached the Code of Connection three times in any rolling six month period, provided that the DFE shall advise the Prime Contractor in writing of the occurrence of each such breach of the Code of Connection,
 - b) failed, for any three months in a rolling six month period, to achieve the Customer Volume Target,
 - c) committed any three Minor Breaches of the Contract during any rolling nine month period,
 - d) failed, for any three months in a rolling nine month period, to achieve the National Targets,
 - e) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Prime Contractor of a serious breach of the TFEU or the Regulations,
 - f) the Prime Contractor or its Affiliates or any of its Sub-Contractors embarrass or bring the DFE into disrepute or diminish the public trust in it.
- 26.1.7. with immediate effect where otherwise specified in this Contract including pursuant to:
 - a) Clause 16 (Prohibited Activities), and
 - b) Clause 23 (Fraud and Irregularity).

- 26.1.8. with immediate effect where the Prime Contractor commits a Serious Breach under:
- a) Clause 6 (Freedom of Information and Confidentiality),
 - b) Clause 17 (Data Protection and Protection of Personal Data), and/or
 - c) Clause 20 (Security Standards);
- 26.1.9. with immediate effect if the Prime Contractor suffers an Insolvency Event or a Change of Control (unless the DFE has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed);
- 26.1.10. with immediate effect if a Change of Control of a Sub-Contractor occurs unless, within 6 months of being notified by the DFE that it objects to such change of Control, the Prime Contractor terminates the relevant Sub-contract and replaces it with a comparable Sub-Contract which is approved by the DFE pursuant to Clause 5;
- 26.1.11. with immediate effect if a Force Majeure Event affecting the Prime Contractor endures for a continuous period of more than 90 days; or
- 26.1.12. with immediate effect if the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,
- 26.1.13. with immediate effect if the Prime Contractor has failed to achieve Key Milestone 3 within a period of [thirty (30)] days of its Milestone Date

and this Contract shall terminate on the date specified in the Termination Notice.

- 26.2. Where the DFE is terminating this Contract under Clause 26.1.5 it may rely on a single Serious Breach or on a number of Serious Breaches or repeated Serious Breaches (whether of the same or different obligations and regardless of whether such breaches are remedied) which taken together constitute a Serious Breach.
- 26.3. The Prime Contractor may, by issuing a Termination Notice to the DFE, terminate this Contract if the DFE fails to pay an undisputed sum due to the Prime Contractor under this Contract which in aggregate exceeds £150,000 and such amount remains outstanding thirty (30) Working Days after the receipt by the DFE of a notice of non-payment from the Prime Contractor
- 26.4. If the Prime Contractor notifies the DFE pursuant to Clause 26.3 (Termination by the Prime Contractor) that it intends to terminate this Contract in part and the DFE, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the DFE requirements, then the DFE shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice on the Prime Contractor within 1 month of receiving the Prime Contractor's Termination Notice. For the purpose of this Clause 26.4, in assessing the significance of any part of the DFE requirements, regard shall be had not only to the proportion of that part to the DFE requirements as a whole, but also to the importance of the relevant part to the DFE.
- 26.5. The Parties shall agree the effect of any change necessitated by a Partial Termination, including the effect the Partial Termination may have on any other Services.

- 26.6. Where the DFE issues a Termination Notice to the Prime Contractor, the termination will take effect on the date specified in the Termination Notice.

27. Consequences of Expiry or Termination

- 27.1. The provisions of Clauses 6 (Confidentiality and Freedom of Information), 7 (Intellectual Property Rights), 11 (Limitations on Liability), 17 (Protection of Personal Data), 19 (Employment Indemnity), 27 (Consequences of Expiry or Termination), 34 (Third Party Rights), 36 (Governing Law and Jurisdiction), 37 (Disputes), 42 (Severance) and 43 (Entire Agreement), and the provisions of Schedules 2 (Staff Transfers) and 3 (Exit Management) shall survive the termination or expiry of this Contract.
- 27.2. Termination under Clause 26 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Contract.
- 27.3. The Prime Contractor shall upon termination of the Contract immediately deliver up to the DFE all correspondence, documents, specification papers and other property belonging to the DFE, which may be in its possession or under its control.
- 27.4. The Prime Contractor must not offer the Services to new Customers after notice of termination of the Contract has been given under Clauses 26. The DFE will not be liable to make payments in respect of any Customers recruited in breach of this Clause.
- 27.5. The Parties shall comply with the provisions of Schedule 2 (Staff Transfer), Schedule 3 (Exit Management), and any current Exit Plan in relation to orderly transition of the Services to the DFE or a Replacement Prime Contractor.
- 27.6. The Prime Contractor shall notify the DFE in writing immediately upon the occurrence of an Insolvency Event.
- 27.7. In the event of a termination by DFE under Clause 26.1.1, DFE shall pay to the Prime Contractor any reasonable committed and unavoidable Losses incurred by the Prime Contractor subject to the Prime Contractor providing to DFE fully itemised, costed and substantiated evidence of such Losses and provided that the maximum value of this payment is limited to the total sum payable to the Prime Contractor if the Contract had not been terminated.
- 27.8. The Prime Contractor shall take all reasonable steps to minimise and mitigate the Losses referred to in Clause 27.7 and provide to the DFE such evidence as the DFE may reasonably require in order to demonstrate that it has complied with this Clause 27.8.

28. Step-in Rights

- 28.1.1. On the occurrence of a Step-In Trigger Event, the DFE may serve notice on the Prime Contractor (a "Step-In Notice") that it will be taking action under this Clause 28 (Step-in Rights), either itself or with the assistance of a third party (provided that the Prime Contractor may require any third parties to comply with a confidentiality undertaking equivalent to Clause 6 (Confidentiality)). The Step-In Notice shall set out the following:
- a) the action the DFE wishes to take and in particular the Services that it wishes to control (the "Required Action");

- b) the Step-In Trigger Event that has occurred and whether the DFE believes that the Required Action is due to the Prime Contractor's default;
- c) the date on which it wishes to commence the Required Action;
- d) the time period which it believes will be necessary for the Required Action;
- e) whether the DFE will require access to the Prime Contractor's Premises; and
- f) to the extent practicable, the impact that the DFE anticipates the Required Action will have on the Prime Contractor's obligations to provide the Services during the period that the Required Action is being taken.

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

- 28.2.1. 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;
- 28.2.2. keep records of the Required Action taken and provide information about the Required Action to the Prime Contractor;
- 28.2.3. co-operate wherever reasonable with the Prime Contractor in order to enable the Prime Contractor to continue to provide the Services in relation to which the DFE is not assuming control; and
- 28.2.4. act reasonably in mitigating the cost that the Prime Contractor will incur as a result of the exercise of the DFE's rights under this Clause 28.

28.3. For so long as and to the extent that the Required Action is continuing, then:

- 28.3.1. the Prime Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
- 28.3.2. no deductions shall be applicable in relation to funding in respect of Services that are the subject of the Required Action.

28.4. Before ceasing to exercise its step in rights under this Clause 28 the DFE shall deliver a written notice to the Prime Contractor (a "Step-Out Notice"), specifying:

- 28.4.1. the Required Action it has actually taken; and
- 28.4.2. the date on which the DFE plans to end the Required Action (the "Step-Out Date") subject to the DFE being satisfied with the Prime Contractor's ability to resume the provision of the Services and the Prime Contractor's plan developed in accordance with Clause 28.5 below.

28.5. The Prime Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the DFE's approval a draft plan (a "Step-Out Plan") relating to the resumption by the Prime Contractor of the Services, including any action the Prime Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

28.6. If the DFE does not approve the draft Step-Out Plan, the DFE shall inform the Prime Contractor of its reasons for not approving it. The Prime Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the DFE for the DFE's approval. The DFE shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

28.7. The Prime Contractor shall bear its own costs in connection with any step-in by the DFE under this Clause 28, provided that the DFE shall reimburse the Prime Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the DFE as a result of:

28.7.1. Point (c) of the definition of a Step-In Trigger Event; or

28.7.2. Points (d), (e) and (f) of the definition of a Step-in Trigger Event

(insofar in each case as the primary cause of the DFE serving the Step-In Notice is identified as not being the result of the Prime Contractor's default).

29. Force Majeure

29.1. Subject to the remaining provisions of this Clause 29, a Party may claim relief under this Clause 29 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Prime Contractor in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or Prime Contractor shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or Prime Contractor is itself impeded by a Force Majeure Event from complying with an obligation to the Prime Contractor.

29.2. The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

29.3. If the Prime Contractor is the Affected Party, it shall not be entitled to claim relief under this Clause 29 to the extent that consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

29.4. Subject to Clause 29.5 below, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

29.5. The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Prime Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

29.6. Where, as a result of a Force Majeure Event:

29.6.1. an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

- a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 26.1.11 (Termination by the DFE) or Clause 26.3.2 (Termination by the Prime Contractor); and
- b) neither Party shall be liable for any default arising as a result of such failure;

29.6.2. the Prime Contractor fails to perform its obligations in accordance with this Contract:

- a) the DFE shall not be entitled during the continuance of the Force Majeure Event to exercise its rights under Clause 28 (Step-in Rights) as a result of such failure;
- b) the Prime Contractor shall be entitled to receive payment of the funds (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

29.7. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

29.8. Relief from liability for the Affected Party under this Clause 29 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 29.7.

30. Public Reputations of the Parties/Press Releases

30.1. Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall not compromise the public reputation or legal responsibilities of the other and will not participate in or endorse any activity which would harm or compromise these.

30.2. The text of any press release or other communication to be published by or in the media concerning the subject matter of this Contract shall require the approval of each Party which shall not be unreasonably withheld or delayed.

31. Retention of Documents

31.1. The Prime Contractor and its Sub-Contractors shall maintain original invoices; management information returns and all other documents necessary to verify the Services in relation to this Contract for 6 years from the end of the financial year in which the last payment is made.

31.2. The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.

32. Status of Contract

32.1 Nothing in this Contract shall have the effect of making the Prime Contractor the servant or agent of the DFE.

33. Waiver

- 33.1. No failure or delay on the part of either Party hereto to exercise any right or remedy under this Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Contract are cumulative and are not exclusive of any rights or remedies provided by Law.

34. Third Party Rights

- 34.1. The provisions of Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part A, Paragraphs 2.1 and 2.3 of Part B, Paragraphs 1.4, 2.3 and 2.8 of Part C and the Pensions Annex to Schedule 2 (Staff Transfer) (together "Third Party Provisions") confer benefits on persons named in such provisions other than the Parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contract (Rights of Third Parties) Act 1999 ("CRTPA").
- 34.2. Subject to Clause 34.1 above, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 34.3. No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the DFE, which may, if given, be given on and subject to such terms as the DFE may determine.
- 34.4. Any amendments or modifications to this Contract may be made, and any rights created under Clause 34.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

35. Notices

- 35.1. Any notice or other document to be given under this Contract shall be in writing and shall be deemed to have been duly given if left at or sent by first class post by Royal Mail Special Delivery or other fast postal service or by facsimile or other electronic media to a Party at the address or relevant telecommunications number for such Party or such other address as the Party may from time to time designate by written notice to the other.
- 35.2. All such notices and documents shall be in the English language. Any notice or other document shall be deemed to have been received by the addressee two (2) Working Days following the date of despatch of the notice or other document by post or, where the notice or other document is sent by hand or on the day of delivery or where notice is given by facsimile or other electronic media, on the working day following the delivery or transmission provided that a printed report is obtained confirming successful transmission or if the addressee acknowledges receipt. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.

36. Governing Law and Jurisdiction

- 36.1. This Contract and any issues, disputes or claims (whether contractual or noncontractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 36.2. Subject to Clause 37 (Dispute Resolution), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or

non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

37. Dispute Resolution

- 37.1. If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.
- 37.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 37.3 to 37.5.
- 37.3 Unless the DFE refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- 37.3.1 determine the Dispute
 - 37.3.2 grant interim remedies
 - 37.3.3 grant any other provisional or protective relief.
- 37.4 The Prime Contractor agrees that the DFE has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 37.5 The DFE has the right to refer a Dispute to arbitration even if the Prime Contractor has started or has attempted to start court proceedings under Clause 37.3, unless the DFE has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 37.4.
- 37.6 The Prime Contractor cannot suspend the performance of the Contract during any Dispute.

38. Feedback and Complaints

- 38.1. The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services shall rest with the Prime Contractor. The Prime Contractor shall have procedures in place, which are acceptable to the DFE, to gather and act upon feedback and complaints from Customers and/or their representatives and employers and the wider community.
- 38.2. The Prime Contractor must ensure that Customers are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Customers who wish to complain.
- 38.3. The Prime Contractor shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the DFE.

- 38.4. Where a complaint has not been resolved to the satisfaction of the complainant, the Prime Contractor will advise the complainant of his or her right to complain to the DFE and co-operate with any investigation carried out by the DFE and act on any recommendations made by the DFE following the investigation.

39. State Aid/Subsidy Control

- 39.1. The Prime Contractor should satisfy itself, if the European rules on State Aid and/or the UK's international commitments on subsidy control and/or the rules set out in the Subsidy Control Bill apply to the Services delivered under this Contract.
- 39.2. Where the rules on State Aid or Subsidy Control apply, the DFE will supply to the Prime Contractor details of the records that the Prime Contractor will need to collect and retain.
- 39.3. The DFE reserves the right to require the Prime Contractor to obtain a contribution towards the cost of the Services delivered under this Contract from the employer of any participant. Where a contribution is required, the DFE will confirm to the Prime Contractor in writing the exact percentage of the contribution.
- 39.4. Where DFE requires the Prime Contractor to obtain a contribution towards the cost of the Services under Clause 39.3 above, the Prime Contractor must provide evidence that the contribution has been received.
- 39.5. In the event that any funding paid under this Contract is deemed to constitute unlawful state aid (as that term is understood under the European rules on State Aid) and/or is deemed not to comply with the subsidy control principles applicable to subsidies granted by public authorities in the UK, the DFE reserves the right to require immediate repayment of any such funding.

40. Warranties

- 40.1. Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the maximum extent permitted by Law.

41. Interpretation

- 41.1. In this Contract where the context admits:
- 41.1.1. The singular includes the plural and vice versa;
 - 41.1.2. Reference to a gender includes the other gender and the neuter;
 - 41.1.3. References to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central government body;
 - 41.1.4. A reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 41.1.5. The words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";

- 41.1.6. References to “writing” including typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 41.1.7. The headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 41.1.8. References to clauses and schedules are to clauses and schedules of these Terms and Conditions, and references in any schedule to paragraphs are references to the paragraphs of the schedules to these Terms and Conditions;
- 41.1.9. References to the Funding Rules are references to the Funding Rules document as amended from time to time.
- 41.1.10. References to this Contract are references to this Contract as amended from time to time.
- 41.2. Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the relevant hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Prime Contractor shall notify the DFE and the parties shall update the Contract with a reference to the replacement hyperlink.
- 41.3. In entering into this Contract the DFE is acting as part of the Crown.

42. Severance

- 42.1. If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.

43. Entire Contract / Amendments

- 43.1. The Contract shall comprise the following (listed in order of precedence):
 - 43.1.1. Terms and Conditions and Schedules to them;
 - 43.1.2. Funding Rules; and
 - 43.1.3. Code of Connection.
- 43.2. In the event of (and to the extent of) any material conflict or inconsistency between the Contract documents listed above, the terms of the document placed higher in the list will prevail.
- 43.3. This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 43.4. This Contract may not be varied except by an instrument in writing signed by the Parties.

- 43.5. Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation (whether made innocently or negligently) other than those expressly set out in this Contract.
- 43.6. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 43.7. Nothing in this Clause 43 shall operate to limit the liability of either party for fraud, fraudulent misrepresentation or fraudulent concealment.

SCHEDULE 1

AREA: West Midlands



[1] The geographical areas cover all unitary upper tier local authorities in England. Whilst some have similar names they do differ from local authority areas.

Area Name	Geographical Area Covered
West Midlands including Staffordshire	Telford & Wrekin, Shropshire, Herefordshire, Worcestershire, Warwickshire, Coventry, Birmingham, Sandwell, Dudley, Walsall, Wolverhampton, Solihull, Staffordshire, Stoke on Trent.

^[1] The geographical areas cover all unitary upper tier local authorities in England. Whilst some have similar names they do differ from local authority areas.

SCHEDULE 2

Staff Transfers

1. DEFINITIONS

1.1. The definitions in the Contract and this Schedule shall apply to this Schedule and Pensions Annex:

"Former Prime Contractor"	a Prime Contractor supplying services to the DFE before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such Prime Contractor (or any Sub-Contractor of any such Sub-Contractor);
"HMRC"	HM Revenue & Customs
"New Fair Deal"	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 any amendments to that document immediately prior to the Relevant Transfer Date;
"Notified Subcontractor"	a Sub-Contractor identified in the Annex to this Schedule to whom Transferring Former Prime Contractor Employees will transfer on a Relevant Transfer Date;
"Prime Contractor's Final Prime Contractor Personnel List"	a list provided by the Prime Contractor of all Prime Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

“Prime Contractor's Provisional Prime Contractor Personnel List”	a list prepared and updated by the Prime Contractor of all Prime Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Prime Contractor;
“Replacement Subcontractor”	a Sub-Contractor of the Replacement Prime Contractor to whom Transferring Prime Contractor Employees will transfer on a Service Transfer Date (or any subcontractor of any such Sub-Contractor);
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Prime Contractor or any Sub-Contractor to a Replacement Prime Contractor or a Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

<p>“Staffing Information”</p>	<p>in relation to all persons identified on the Prime Contractor's Provisional Prime Contractor Personnel List or Prime Contractor's Final Prime Contractor Personnel List, as the case may be, such information as the DFE may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries, bonuses and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
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	<p>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</p> <p>(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and</p> <p>(j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;</p>
“Transferring Former Prime Contractor Employees”	in relation to a Former Prime Contractor, those employees of the Former Prime Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Prime Contractor Employees”	those employees of the Prime Contractor and/or the Prime Contractor’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

2.1. Where a provision in this Schedule imposes an obligation on the Prime Contractor to provide an indemnity, undertaking or warranty, the Prime Contractor shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the DFE, Former Prime Contractor, Replacement Prime Contractor or Replacement Subcontractor, as the case may be.

PART A: TRANSFERRING FORMER PRIME CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The DFE and the Prime Contractor agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Prime Contractor Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Prime Contractor and the Transferring Former Prime Contractor Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if

originally made between the Prime Contractor and/or Notified Sub-Contractor and each such Transferring Former Prime Contractor Employee.

- 1.2 The DFE shall procure that each Former Prime Contractor shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Prime Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Prime Contractor shall make, and the DFE shall procure that each Former Prime Contractor makes, any necessary apportionments in respect of any periodic payments.

2 FORMER PRIME CONTRACTOR INDEMNITIES

- 2.1 Subject to Paragraph 2.2, the DFE shall procure that each Former Prime Contractor shall indemnify the Prime Contractor and any Notified Subcontractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Former Prime Contractor in respect of any Transferring Former Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Prime Contractor Employee arising before the Relevant Transfer Date;
 - (b) the breach or non-observance by the Former Prime Contractor arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Prime Contractor Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Prime Contractor Employees which the Former Prime Contractor is contractually bound to honour;
 - (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Prime Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Prime Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Prime Contractor to the Prime Contractor and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

- (d) a failure of the Former Prime Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Prime Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Prime Contractor other than a Transferring Former Prime Contractor Employee for whom it is alleged the Prime Contractor and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Prime Contractor Employee relating to any act or omission of the Former Prime Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Prime Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Prime Contractor or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Prime Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Prime Contractor or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Prime Contractor and/or any Subcontractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the DFE as a Transferring Former Prime Contractor Employee claims, or it is determined in relation to any person who is not identified by the DFE as a Transferring Former Prime Contractor Employee, that his/her contract of employment has been transferred from a Former Prime Contractor to the Prime Contractor and/or any Notified Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Prime Contractor shall, or shall procure that the Notified Subcontractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the DFE and, where required by the DFE, to the Former Prime Contractor; and
- (b) the Former Prime Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Prime Contractor and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Prime Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Prime Contractor and/or the DFE, the Prime Contractor shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or (c) the situation has not otherwise been resolved,

the Prime Contractor and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Prime Contractor and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the DFE shall procure that the Former Prime Contractor indemnifies the Prime Contractor and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Prime Contractor takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Prime Contractor and/or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Prime Contractor and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Prime Contractor and/or any Notified Sub-Contractor (as appropriate) to the DFE and, if applicable, the Former Prime Contractor, within 6 months of the Commencement Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Prime Contractor nor dismissed by the Prime Contractor and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall

be treated as having transferred to the Prime Contractor or Notified Sub-Contractor and the Prime Contractor shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 PRIME CONTRACTOR INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2 below, the Prime Contractor shall indemnify the DFE and/or the Former Prime Contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Prime Contractor or any Sub-Contractor in respect of any Transferring Former Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Prime Contractor Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Prime Contractor or any Subcontractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Prime Contractor Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Prime Contractor Employees which the Prime Contractor or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Prime Contractor Employees arising from or connected with any failure by the Prime Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Prime Contractor or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Prime Contractor Employees to their material detriment on or after their transfer to the Prime Contractor or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Prime Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Prime Contractor or a Sub-Contractor to, or in respect of, any Transferring Former Prime Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the DFE and/or the Former Prime Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Prime Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other

statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Former Prime Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Prime Contractor to the Prime Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Prime Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Prime Contractor Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Prime Contractor Employee relating to any act or omission of the Prime Contractor or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Prime Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Prime Contractor or any Sub-Contractor to comply with its obligations under Paragraph 2.8above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Prime Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Prime Contractor's failure to comply with its obligations under the Employment Regulations.

3.3 The Prime Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Prime Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Prime Contractor and the Former Prime Contractor.

4 INFORMATION

- 4.1 The Prime Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the DFE and/or at the DFE's direction, the Former Prime Contractor, in writing such information as is necessary to enable the DFE and/or the Former Prime Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The DFE shall procure that the Former Prime Contractor shall promptly provide to the Prime Contractor and each Notified Sub-Contractor in writing such information as is necessary to enable the Prime Contractor and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Prime Contractor shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the DFE relating to pensions in respect of any Transferring Former Prime Contractor Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2013;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - (d) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in writing between the parties by way of a variation to the Contract.

6 PROCUREMENT OBLIGATIONS

- 6.1 Notwithstanding any other provisions of this Part A, where in this Part A the DFE accepts an obligation to procure that a Former Prime Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the DFE's contract with the Former Prime Contractor contains a contractual right in that regard which the DFE may enforce, or otherwise so that it requires only that the DFE must use reasonable endeavours to procure that the Former Prime Contractor does or does not act accordingly.

7 PENSIONS

- 7.1 The Prime Contractor shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Pension Annex.

PART B: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1. The DFE and the Prime Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the DFE and/or any Former Prime Contractor.
- 1.2. If any employee of the DFE and/or a Former Prime Contractor claims, or it is determined in relation to any employee of the DFE and/or a Former Prime Contractor, that his/her contract of employment has been transferred from the DFE and/or the Former Prime Contractor to the Prime Contractor and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - (a) the Prime Contractor shall, and shall procure that the relevant Subcontractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the DFE and, where required by the DFE, give notice to the Former Prime Contractor; and
 - (b) the DFE and/or the Former Prime Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Prime Contractor or the Sub-Contractor (as appropriate) or take such other reasonable steps as the DFE or Former Prime Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3. If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the DFE and/or the Former Prime Contractor), the Prime Contractor shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4. If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or (c) the situation has not otherwise been resolved,the Prime Contractor and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1. Subject to the Prime Contractor and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.1 to 1.4 and in accordance with all applicable employment procedures set out in applicable

Law and subject also to Paragraph 2.4 below, the DFE shall:

- (a) indemnify the Prime Contractor and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the DFE referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Prime Contractor takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - (b) procure that the Former Prime Contractor indemnifies the Prime Contractor and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Prime Contractor referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Prime Contractor takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2. If any such person as is described in Paragraph 1.2 is neither re-employed by the DFE and/or the Former Prime Contractor as appropriate nor dismissed by the Prime Contractor and/or any Sub-Contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Prime Contractor and/or the Subcontractor (as appropriate) and the Prime Contractor shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law and where relevant shall comply with the following Pensions Annex.
- 2.3. Where any person remains employed by the Prime Contractor and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Prime Contractor and/or the Sub-Contractor and the Prime Contractor shall indemnify the DFE and any Former Prime Contractor, and shall procure that the Sub-Contractor shall indemnify the DFE and any Former Prime Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Prime Contractor and/or employees of the Subcontractor.
- 2.4. The indemnities in Paragraph 2.1:
 - (a) shall not apply to:
 - (i) any claim for:
 - A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - in any case in relation to any alleged act or omission of the Prime Contractor and/or any Sub-Contractor; or
 - (ii) any claim that the termination of employment was unfair because the Prime Contractor and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
 - (iii) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Prime Contractor and/or any Sub-Contractor to the

DFE and, if applicable, Former Prime Contractor within 6 months of the Commencement Date.

3. PROCUREMENT OBLIGATIONS

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

PART C: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Prime Contractor agrees that within twenty (20) Working Days of the earliest of:

- (a) receipt of a notification from the DFE of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- (c) the date which is 12 months before the end of the Contract Period; and
- (d) receipt of a written request of the DFE at any time (provided that the DFE shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Prime Contractor's Provisional Prime Contractor Personnel List, together with the Staffing Information in relation to the Prime Contractor's Provisional Prime Contractor Personnel List and it shall provide an updated Prime Contractor's Provisional Prime Contractor Personnel List at such intervals as are reasonably requested by the DFE.

1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Prime Contractor shall provide to the DFE or at the direction of the DFE to any Replacement Prime Contractor and/or any Replacement Sub-Contractor:

- (a) the Prime Contractor's Final Prime Contractor Personnel List, which shall identify which of the Prime Contractor Personnel are Transferring Prime Contractor Employees; and
- (b) the Staffing Information in relation to the Prime Contractor's Final Prime Contractor Personnel List (insofar as such information has not previously been provided).

1.3 The DFE shall be permitted to use and disclose information provided by the Prime Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Prime Contractor and/or Replacement Subcontractor.

1.4 The Prime Contractor warrants, for the benefit of the DFE, any Replacement Prime Contractor, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Prime Contractor agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Prime Contractor's Provisional Prime Contractor Personnel List and shall not without the approval of the DFE (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Prime Contractor Personnel listed on the Prime Contractor Provisional Prime Contractor Personnel List other than where

any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Prime Contractor Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Prime Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Prime Contractor's Provisional Prime Contractor Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Prime Contractor's Provisional Prime Contractor Personnel List save by due disciplinary process; and;
- (g) shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the DFE or, at the direction of the DFE, any Replacement Prime Contractor and any Replacement Sub-Contractor of any notice to terminate employment given by the Prime Contractor or relevant Sub-Contractor or received from any persons listed on the Prime Contractor's Provisional Prime Contractor Personnel List regardless of when such notice takes effect.

1.6 During the Contract Period, the Prime Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to the DFE any information the DFE may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any Public Sector Pension Scheme, the Prime Contractor's Scheme or any broadly comparable scheme set up pursuant to the provisions of the Pensions Annex of this Schedule (as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Prime Contractor shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the DFE, any Replacement Prime Contractor and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Prime Contractor Employees on the Service

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

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The DFE and the Prime Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Prime Contractor and/or a Replacement Sub-Contractor. Such change in the identity of the Prime Contractor of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The DFE and the Prime Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Prime Contractor and the Transferring Prime Contractor Employees (except in relation to any contract terms misapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Prime Contractor and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Prime Contractor Employee.
- 2.2 The Prime Contractor shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Prime Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Prime Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Former Public Sector Employee's participation in any Public Sector Pension Scheme or THE PRIME CONTRACTOR'S Scheme which in any case are attributable in whole or in part to the period ending on (and including) the Service

Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Prime Contractor and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Prime Contractor and/or Replacement Sub-Contractor.

2.3 Subject to Paragraph 2.4, the Prime Contractor shall indemnify the DFE and/or the Replacement Prime Contractor and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Prime Contractor or any Sub-Contractor in respect of any Transferring Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Prime Contractor Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Prime Contractor or any Subcontractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Prime Contractor Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Prime Contractor Employees which the Prime Contractor or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Prime Contractor Employees arising from or connected with any failure by the Prime Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Prime Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not identified in the Prime Contractor's Final Prime Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Prime Contractor to the DFE and/or Replacement Prime Contractor and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Prime Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Prime Contractor Employees in respect of the period up to (and including) the Service Transfer Date);

- (f) any claim made by or in respect of any person employed or formerly employed by the Prime Contractor or any Sub-Contractor other than a Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List for whom it is alleged the DFE and/or the Replacement Prime Contractor and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Prime Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Prime Contractor Employee relating to any act or omission of the Prime Contractor or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the DFE and/or Replacement Prime Contractor to comply with regulation 13(4) of the Employment Regulations.

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

- (a) arising out of the resignation of any Transferring Prime Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Prime Contractor and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Prime Contractor's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Prime Contractor's Final Prime Contractor Personnel List claims, or it is determined in relation to any person who is not identified in the Prime Contractor's Final Prime Contractor Personnel List that his/her contract of employment has been transferred from the Prime Contractor or any Sub-Contractor to the Replacement Prime Contractor and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the DFE shall procure that the Replacement Prime Contractor shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Prime Contractor; and
- (b) the Prime Contractor may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Prime Contractor and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Prime Contractor or a Sub-Contractor, the DFE shall procure that the Replacement Prime Contractor shall, or procure that the Replacement Subcontractor shall, immediately

release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Replacement Prime Contractor and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Prime Contractor and/or Replacement Subcontractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Prime Contractor shall indemnify the Replacement Prime Contractor and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Prime Contractor takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - (ii) in any case in relation to any alleged act or omission of the Replacement Prime Contractor and/or Replacement Sub-contractor; or
 - (iii) any claim that the termination of employment was unfair because the Replacement Prime Contractor and/or Replacement Subcontractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Prime Contractor and/or Replacement Subcontractor to the Prime Contractor within 6 months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Prime Contractor or any Sub-Contractor nor dismissed by the Replacement Prime Contractor and/or Replacement Sub-Contractor within the time scales set out in

Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Prime Contractor Employee.

- 2.11 The Prime Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Prime Contractor's Final Prime Contractor Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Former Public Sector Employee's participation in any Public Sector Pension Scheme and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Prime Contractor and/or any Sub-Contractor; and
 - (b) the Replacement Prime Contractor and/or the Replacement Subcontractor.
- 2.12 The Prime Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to the DFE and any Replacement Prime Contractor and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the DFE, the Replacement Prime Contractor and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The DFE shall procure that the Replacement Prime Contractor and/or Replacement Sub-Contractor, shall promptly provide to the Prime Contractor and each Sub-Contractor in writing such information as is necessary to enable the Prime Contractor and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14 below, the DFE shall procure that the Replacement Prime Contractor indemnifies the Prime Contractor on its own behalf and on behalf of any Replacement Sub-Contractor and its Sub-Contractors against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Prime Contractor and/or Replacement Sub-Contractor in respect of any Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Prime Contractor Employee;
 - (b) the breach or non-observance by the Replacement Prime Contractor and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Prime Contractor Employees identified in the Prime Contractor's Final Prime Contractor Personnel List ; and/or
 - (ii) any custom or practice in respect of any Transferring Prime Contractor Employees identified in the Prime Contractor's Final Prime Contractor Personnel List which the Replacement Prime

Contractor and/or Replacement Sub-Contractor is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing any Transferring Prime Contractor Employees identified in the Prime Contractor's Final Prime Contractor Personnel List arising from or connected with any failure by the Replacement Prime Contractor and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Prime Contractor and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Prime Contractor Employees identified in the Prime Contractor's Final Prime Contractor Personnel List on or after their transfer to the Replacement Prime Contractor or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Prime Contractor's Final Prime Contractor Personnel List who would have been a Transferring Prime Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Prime Contractor or Replacement Sub-Contractor to, or in respect of, any Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Prime Contractor in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Prime Contractor or Sub-Contractor, to the Replacement Prime Contractor or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Prime Contractor or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Prime Contractor Employees

identified in the Prime Contractor's Final Prime Contractor Personnel List in respect of the period from (and including) the Service Transfer Date; and

- (h) any claim made by or in respect of a Transferring Prime Contractor Employee identified in the Prime Contractor's Final Prime Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Prime Contractor Employee relating to any act or omission of the Replacement Prime Contractor or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 above shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Prime Contractor and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Prime Contractor and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

Pension Annex

Pensions Annex

1.1. Definitions

The definitions in the Contract, Schedule 2 and this Pensions Annex shall apply to this Pensions Annex:

- 1.1.1. "Admission Agreement" means the CSPS Admission Agreement and/or the LGPS Admission Agreement as the context requires;
- 1.1.2. "Broadly Comparable" means (i) 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 demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate relating to the Public Sector Pension Scheme at the Commencement Date; and (ii) 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;
- 1.1.3. "COSOP" means the Cabinet Office Statement of Practice: Staff Transfers in the Public Sector 2013;
- 1.1.4. "CSPS Admission Agreement" means an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date or Commencement Date to be entered into by the Prime Contractor under which it agrees to participate in the CSP Schemes in respect of the Services;
- 1.1.5. "CSP Schemes" means 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; the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
- 1.1.6. "Former Prime Contractor's Scheme(s)" means any pension scheme established by the Former Prime Contractor which has been certified as Broadly Comparable to the relevant Public Sector Pension Scheme;
- 1.1.7. "Former Public Sector Employees" means any of the following:
 - 1.1.7.1. Transferring Former Prime Contractor Employee, and/or
 - 1.1.7.2. anyone who transfers under Part B and whose employment is not terminated in accordance with paragraph 1.4 of Part B, and/or

1.1.7.3. where the Former Prime Contractor becomes the Prime Contractor those employees working on the Services who immediately before the Relevant Transfer Date or Commencement Date as appropriate, was either:

- a) Participating or eligible to participate in a Public Sector Pension Scheme; or
- b) Participating or eligible to participate in a pension scheme Broadly Comparable to the Public Sector Pension Scheme; and in every case above where such employee is entitled to New Fair Deal or COSOP protection;

1.1.8. "LGPS" means the Local Government Pension Scheme as governed by the Local Government Pension Scheme Regulations 2013 (SI 2013/2356), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;

1.1.9. "LGPS Admission Agreement" means the admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013 (SI 2013/2356);

1.1.10. "The Prime Contractor's Scheme" means the Prime Contractor's Broadly Comparable pension scheme referred to in paragraph 1.3.1.3 below, or a Broadly Comparable scheme that replaces it;

1.1.11. "Public Sector Pension Scheme" means:

- a) The Teachers' Pension Scheme (TPS), and/or
- b) The LGPS, and/or
- c) The CSP Schemes, and/or
- d) Such other public sector pension scheme as DFE may notify to the Prime Contractor.

1.2. Protection of Pensions – General

The Prime Contractor shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

1.3. Protection of Pensions – Former Public Sector Employees

1.3.1. The Prime Contractor shall:

1.3.1.1. In respect of all Former Public Sector Employees, ensure that from the Relevant Transfer Date or Commencement Date, they:

1.3.1.2. Participate in the relevant Public Sector Pension Scheme, and do all such things and execute such documents as may be required to enable participation including any

Admission Agreement required to enable the Prime Contractor to be able to provide membership of, a Public Sector Pension Scheme, where permissible by the rules of that scheme or in accordance with New Fair Deal or COSOP, or

- 1.3.1.3. offer a pension scheme Broadly Comparable to the relevant Public Sector Pension Scheme (the Prime Contractor's Scheme"), if participation in the relevant Public Sector Pension Scheme is not possible and/or DFE has expressly agreed in writing to the use of the Prime Contractor's Scheme. Such Prime Contractor's Scheme must be capable of receiving a transfer payment in respect of past pensionable service on terms set by DFE; or
- 1.3.1.4. Establish, or have become party to an employee's retirement benefit scheme that makes retirement provision which is accepted in writing by each individual Former Public Sector Employee as being adequate for their personal retirement provision.

1.3.2 Provision of information

1.3.2 The Prime Contractor undertakes to DFE:

- 1.3.2.1. to provide all information which DFE reasonably requires relating to matters referred to in this Pensions Annex as soon as reasonably practicably and in any event within 3 months of request by DFE;
- 1.3.2.2. within 3 months of the Relevant Transfer Date or Commencement Date to provide to DFE in respect of any Former Public Sector Employee whom the Prime Contractor considers is entitled to (i) NFD or COSOP pension protection and (ii) bulk transfer past pensionable service on preferential non statutory terms, all relevant information DFE reasonable requires to assess such entitlements including without limitation (i) such employee's full employment and pension history (ii) details of the pension schemes the employee participated in and why they participated, and (iii) the reasons the Prime Contractor considers such employee has such entitlements with any supporting evidence; and
- 1.3.2.3. not to issue any announcements to Former Public Sector Employees relating to any of the employees' pension entitlements referred to in paragraph 1.3.2.2 above, without DFE's prior written consent, such consent not to be unreasonably withheld or delayed.

1.3.3 Admission of the Former Public Sector Employees into a Public Sector Pension Scheme

- 1.3.3.1 Where the option set out in 1.3.1.1. applies the Prime Contractor shall ensure that each Former Public Sector Employee may participate, or continue to participate in their respective Public Sector Pension Scheme.
- 1.3.3.2 The Prime Contractor shall comply with any direction from DFE in respect of inviting those Former Public Sector Employees who (i) immediately before the Relevant Transfer Date or Commencement Date participated or were eligible to participate in a Former Prime Contractor's Scheme; and (ii) DFE have confirmed in writing are both entitled to New Fair Deal or COSOP pension protection and are entitled to a bulk transfer of past pensionable service; and (iii) who elect to join a Public Sector Pension Scheme, to request that a payment is made from the Former Prime Contractor's Scheme to Public Sector Pension Scheme in respect of the retirement benefits accrued in the Former Prime Contractor's Scheme on behalf of those Former Public Sector Employees and further comply with any requirements necessary to effect such bulk transfer that DFE reasonably requires;
- 1.3.3.3 Where the option set out in 1.3.1 applies and any Former Public Sector Employee participates, or continues to participate, in their respective Public Sector Pension Scheme, the Prime Contractor shall ensure that it pays such Public Sector Pension Scheme all such amounts as are due. The Prime Contractor shall be solely liable for all costs, contributions, payments and other amounts relating to participation in such Public Sector Pension Scheme for the period of the Former Public Sector Employee(s) admission to such scheme(s) from the Relevant Transfer Date or Commencement Date to the Service Transfer Date and shall indemnify DFE for any liability arising in respect of all such funding requirements.

Admission of the Former Public Sector Employees to the Prime Contractor's Scheme

- 1.3.4.1 Where the Prime Contractor has set up a Prime Contractor's Scheme under Paragraph 1.3.1.3 above, the Prime Contractor shall procure that the Former Public Sector Employees shall be automatically admitted to the Prime Contractor's Scheme with effect from the Relevant Transfer Date or Commencement Date unless any of the Former Public Sector Employees elect within three (3) months of the Relevant Transfer Date or Commencement Date by notice in writing not to become members of the Prime Contractor's Scheme from such date;

The Prime Contractor shall additionally:

- 1.3.4.2 Supply to DFE details of its Prime Contractor's Scheme and provide a valid certificate of Broad Comparability covering all relevant Former Public Sector Employees;

- 1.3.4.3 fully fund any such Broadly Comparable pension scheme (which for the avoidance of doubt includes the Prime Contractor's Scheme) in accordance with the funding requirements set by the Prime Contractor's Scheme Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 1.3.4.4 procure that an amendment shall only be made to the Prime Contractor's Scheme which could reduce the value of the benefits of any Former Public Sector Employee which have accrued to the date upon which the power to amend is exercised, if any such amendment is required by legislation or is made with the written consent of the Former Public Sector Employee. The value of the benefits shall make explicit allowance for expected future salary growth as determined by the actuary of the Prime Contractor's Scheme as if the Former Public Sector Employee had continued in employment with the Prime Contractor;
- 1.3.4.5 provide a replacement Broadly Comparable pension scheme with immediate effect for those Former Public Sector Employees who are still employed by the Prime Contractor and are still eligible for New Fair Deal or COSOP protection in the event that the Prime Contractor's Scheme is terminated;
- 1.3.4.6 Comply with any direction from DFE to invite those Former Public Sector Employees who (i) immediately before the Relevant Transfer Date or Commencement Date either participated or were eligible to participate in a Former Prime Contractor's Scheme or a Public Sector Pension Scheme; and (ii) DFE have confirmed in writing are both entitled to New Fair Deal or COSOP pension protection and are entitled to a bulk transfer of past pensionable service; and (iii) who elect to join the Prime Contractor's Scheme, to request that a payment is made from the Former Prime Contractor's Scheme to the Prime Contractor's Scheme in respect of the retirement benefits accrued in the Former Prime Contractor's Scheme or Public Sector Pension Scheme (whichever is applicable) on behalf of those Former Public Sector Employees on the terms confirmed by DFE pursuant to paragraph 1.3.4.8 below;
- 1.3.4.7 Procure that the Prime Contractor's Scheme will accept a transfer value from either a Public Sector Pension Scheme or the Former Prime Contractor's Scheme on terms determined by DFE;
- 1.3.4.8 Ensure that on a full or partial wind-up of the Prime Contractor's Scheme, the benefits of any Former Public Sector Employee who is currently employed by the Prime Contractor and accruing benefits immediately before such winding up have been increased to those which could be provided by a 'past service reserve'. The 'past service reserve' is to be calculated in accordance with the provisions of Annex B of New Fair Deal and with regard to projected final pensionable pay at the earlier of (i) assumed date of retirement, or (ii) death, or (iii) leaving service, and not the final pensionable pay at the date of either (i) the

winding-up of the pension scheme or (ii) ceasing to be an active participant in the Prime Contractor's Scheme, and each reserve is to be calculated on a basis determined by the actuary of the Prime Contractor's Scheme.

Pension provisions on exit

1.4 At the expiry or termination of this Contract, where Former Public Sector Employees participate in the Prime Contractor's Scheme, the Prime Contractor shall:

1.4.1 instruct the Prime Contractor's Scheme actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Prime Contractor and/or DFE may reasonably require, to enable the Replacement Prime Contractor to participate in the appropriate Public Sector Pension Scheme in respect of any Former Public Sector Employee that remains eligible for New Fair Deal or COSOP protection following a Service Transfer; and

1.4.2 procure that the Prime Contractor's Scheme shall offer members of Prime Contractor's Scheme who were Former Public Sector Employees and who remain eligible for New Fair Deal or COSOP protection following a Service Transfer to the Replacement Prime Contractor, the option to transfer their accrued pension rights to either the appropriate Public Sector Pension Scheme or any Broadly Comparable pension scheme set up by the Replacement Prime Contractor ("Successor Contractor's Scheme") on an actuarial basis certified by the actuary as no less favourable than the transfer value which applied at the start of this contract. If no such transfer value applied then in accordance with the provisions of Annex B of New Fair Deal the bulk transfer value offered should be based on a 'past service reserve' basis to be calculated allowing for projected final salary. The value of such accrued pension rights shall not be reduced because of inadequate funds being available in the Prime Contractor's Scheme and the Prime Contractor shall ensure the full transfer value as calculated in accordance with this paragraph 1.4.2 is paid.

Sub-Contractors

1.5 Where any Former Public Sector Employee transfers to a Sub-Contractor engaged in the provision of the Services, the Prime Contractor shall ensure that in any such transfer, the Sub-Contractor shall comply with the provisions of this Pensions Annex.

Former Prime Contractor becomes the Prime Contractor

1.6 For the avoidance of doubt, should the Former Prime Contractor become the Prime Contractor, the Prime Contractor shall comply with the provisions of this Pensions Annex from the Commencement Date.

Indemnity

- 1.7. The Prime Contractor undertakes to DFE to indemnify and keep indemnified DFE and any Replacement Prime Contractor on demand from and against all and any Losses whatsoever arising out of or in connection with service arising on and after the Relevant Transfer Date or Commencement Date which arise from a breach by the Prime Contractor or any Sub-Contractor of this Pensions Annex.

ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

-TO BE CONFIRMED-

SCHEDULE 3

Exit Management

1. Definitions

Exclusive Assets	Prime Contractor Assets used exclusively by the Prime Contractor [or a Key Subcontractor] in the provision of the Deliverables
Exit Information	has the meaning given to it in Paragraph 3.0 of this Schedule
Exit Manager	the person appointed by each Party to manage their respective obligations under this Schedule
Net Book Value	the current net book value of the relevant Prime Contractor Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Prime Contractor (which the Prime Contractor shall ensure is in accordance with Good Industry Practice);
Non-Exclusive Assets	Those Prime Contractor Assets used by the Prime Contractor in connection with the Deliverables but which are also used by the Prime Contractor for other purposes;
Registers	the register and configuration database referred to in Paragraph 2.2 of this Schedule;
Replacement Deliverables	any goods which are substantially similar to any of the Deliverables and which the DFE receives in substitution for any of the Deliverables following the End Date, whether those goods are provided by the DFE internally and/or by any third party;
Replacement Services	any services which are substantially similar to any of the Services and which the DFE receives in substitution for any of the Services following the End Date, whether those goods are provided by the DFE internally and/or by any third party;

Termination Assistance	the activities to be performed by the Prime Contractor pursuant to the Exit Plan, and other assistance required by the DFE pursuant to the Termination Assistance Notice;
Termination Assistance Notice	has the meaning given to it in Paragraph 5.1 of this Schedule;
Termination Assistance Period	the period specified in a Termination Assistance Notice for which the Prime Contractor is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
Transferable Assets	Exclusive Assets which are capable of legal transfer to the DFE;
Transferable Contracts	Sub-Contracts, licences for Prime Contractor's Software, licences for Third Party Software or other agreements which are necessary to enable the DFE or any Replacement Prime Contractor to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
Transferring Assets	has the meaning given to it in Paragraph 8.1 of this Schedule;
Transferring Contracts	has the meaning given to it in Paragraph 8.1 of this Schedule.

2.0. The Prime Contractor shall within 30 days from the Start Date provide to the DFE a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.1. During the Contract Period, the Prime Contractor shall promptly:

2.1.1. create and maintain a detailed register of all Prime Contractor Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and

2.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Prime Contractor provides the Deliverables

("Registers").

- 2.2 The Prime Contractor shall:
 - 2.2.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
 - 2.2.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the DFE) at the request of the DFE to the DFE (and/or its nominee) and/or any Replacement Prime Contractor upon the Prime Contractor ceasing to provide the Deliverables (or part of them) and if the Prime Contractor is unable to do so then the Prime Contractor shall promptly notify the DFE and the DFE may require the Prime Contractor to procure an alternative Subcontractor or provider of Deliverables.
- 2.3 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.
- 3. The Prime Contractor shall, on reasonable notice, provide to the DFE and/or its potential Replacement Prime Contractors (subject to the potential Replacement Prime Contractors entering into reasonable written confidentiality undertakings), such information (including any access) as the DFE shall reasonably require in order to facilitate the preparation by the DFE of any invitation to tender and/or to facilitate any potential Replacement Prime Contractors undertaking due diligence (the "Exit Information").
 - 3.1 The Prime Contractor acknowledges that the DFE may disclose the Prime Contractor's Confidential Information (excluding the Prime Contractor's or its Subcontractors' prices or costs) to an actual or prospective Replacement Prime Contractor to the extent that such disclosure is necessary in connection with such engagement.
 - 3.2 The Prime Contractor shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the DFE within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the DFE in relation to any such changes).
 - 3.3. The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Prime Contractor.
- 4. The Prime Contractor shall, within three (3) Months after the Start Date, deliver to the DFE an Exit Plan which complies with the requirements set out in Paragraph 4.2 of this Schedule and is otherwise reasonably satisfactory to the DFE.
 - 4.1. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.0, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
 - 4.2. The Exit Plan shall set out, as a minimum:

- 4.2.1. a detailed description of both the transfer and cessation processes, including a timetable;
 - 4.2.2. how the Deliverables will transfer to the Replacement Prime Contractor and/or the DFE;
 - 4.2.3. details of any contracts which will be available for transfer to the DFE and/or the Replacement Prime Contractor upon the Expiry Date together with any reasonable costs required to effect such transfer as agreed by the DFE;
 - 4.2.4. proposals for handover to key members of the Replacement Prime Contractor's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
 - 4.2.5. proposals for providing the DFE or a Replacement Prime Contractor copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
 - 4.2.6. proposals for the assignment or novation of all services utilised by the Prime Contractor in connection with the supply of the Deliverables;
 - 4.2.7. proposals for the identification and return of all DFE Property in the possession of and/or control of the Prime Contractor or any third party;
 - 4.2.8. proposals for the disposal of any redundant Deliverables and materials;
 - 4.2.9. how the Prime Contractor will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
 - 4.2.10. any other information or assistance reasonably required by the DFE or a Replacement Prime Contractor.
- 4.3. The Prime Contractor shall maintain and update the Exit Plan (and risk management plan) no less frequently than:
- 4.3.1. every six (6) months throughout the Contract Period; and
 - 4.3.2. no later than twenty (20) Working Days after a request from the DFE for an up-to-date copy of the Exit Plan;
 - 4.3.3. as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
 - 4.3.4. as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and
- 4.4. The Prime Contractor shall jointly review and verify the Exit Plan if required by the DFE and promptly correct any identified failures.

- 4.5. Only if (by notification to the Prime Contractor in writing) the DFE agrees with a draft Exit Plan provided by the Prime Contractor under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.6. A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Prime Contractor.
5. The DFE shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Prime Contractor (a "Termination Assistance Notice") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- i) the nature of the Termination Assistance required; and
 - ii) the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Prime Contractor ceases to provide the Deliverables.
- 5.1 The DFE shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) Months beyond the end of the Termination Assistance Period and provided that it shall notify the Prime Contractor of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The DFE shall have the right to terminate its requirement for Termination Assistance by serving not less than twenty (20) Working Days' written notice upon the Prime Contractor.
- 5.2. In the event that Termination Assistance is required by the DFE but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Prime Contractor will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last DFE approved version of the Exit Plan (insofar as it still applies).
6. Throughout the Termination Assistance Period the Prime Contractor shall:
- i) continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the DFE, provide the Termination Assistance;
 - ii) provide to the DFE and/or its Replacement Prime Contractor any reasonable assistance and/or access requested by the DFE and/or its Replacement Prime Contractor including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the DFE and/or its Replacement Prime Contractor;
 - iii) use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the DFE;
 - iv) subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Key Performance Indicators (KPI's) or Service Levels, the provision of the Management Information or any other

reports nor to any other of the Prime Contractor's obligations under this Contract;

- v) at the DFE's request and on reasonable notice, deliver up-to-date Registers to the DFE;
 - vi) seek the DFE's prior written consent to access any DFE Premises from which the de-installation or removal of Prime Contractor Assets is required.
- 6.1. If it is not possible for the Prime Contractor to reallocate resources to provide such assistance as is referred to in Paragraph 6 without additional costs to the DFE, any additional costs incurred by the Prime Contractor in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.2. If the Prime Contractor demonstrates to the DFE's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Prime Contractor's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.
7. The Prime Contractor shall comply with all of its obligations contained in the Exit Plan when the contract is terminated
- 7.1. Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Prime Contractor's performance of the Deliverables and the Termination Assistance), the Prime Contractor shall:
- i) vacate any DFE Premises;
 - ii) remove the Prime Contractor Equipment together with any other materials used by the Prime Contractor to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Prime Contractor is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Prime Contractor;
 - iii) provide access during normal working hours to the DFE and/or the Replacement Prime Contractor for up to twelve (12) Months after expiry or termination to:
 - a) such information relating to the Deliverables as remains in the possession or control of the Prime Contractor; and
 - b) such members of the Prime Contractor Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Prime Contractor, provided that the DFE and/or the Replacement Prime Contractor shall pay the reasonable costs of the Prime Contractor actually incurred in responding to such requests for access.
- 7.2. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the DFE to the Prime Contractor in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

8. Following notice of termination of this Contract and during the Termination Assistance Period, the Prime Contractor shall not, without the DFE's prior written consent:

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

8.1. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Prime Contractor, the DFE shall notify the Prime Contractor setting out:

- i) which, if any, of the Transferable Assets the DFE requires to be transferred to the DFE and/or the Replacement Prime Contractor ("Transferring Assets");
- ii) which, if any, of
 - a) the Exclusive Assets that are not Transferable Assets; and
 - b) the Non-Exclusive Assets,

the DFE and/or the Replacement Prime Contractor requires the continued use of; and

- iii) which, if any, of Transferable Contracts the DFE requires to be assigned or novated to the DFE and/or the Replacement Prime Contractor (the "Transferring Contracts"),

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

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

8.3. Risk in the Transferring Assets shall pass to the DFE or the Replacement Prime Contractor (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

8.4. Where the DFE and/or the Replacement Prime Contractor requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Prime Contractor shall as soon as reasonably practicable:

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

- ii) procure a suitable alternative to such assets, the DFE or the Replacement Prime Contractor to bear the reasonable proven costs of procuring the same.
- 8.5. The Prime Contractor shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the DFE and/or the Replacement Prime Contractor. The Prime Contractor shall execute such documents and provide such other assistance as the DFE reasonably requires to effect this novation or assignment.
- 8.6. The DFE shall:
 - i) accept assignments from the Prime Contractor or join with the Prime Contractor in procuring a novation of each Transferring Contract; and
 - ii) once a Transferring Contract is novated or assigned to the DFE and/or the Replacement Prime Contractor, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Prime Contractor does the same.
- 8.7. The Prime Contractor shall hold any Transferring Contracts on trust for the DFE until the transfer of the relevant Transferring Contract to the DFE and/or the Replacement Prime Contractor has taken place.
- 8.8. The Prime Contractor shall indemnify the DFE (and/or the Replacement Prime Contractor, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the DFE (and/or Replacement Prime Contractor) pursuant to Paragraph 8.5 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.8 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the Contract Rights of Third Parties Act 1999.
- 9. Unless otherwise stated, the DFE shall not be obliged to pay for costs incurred by the Prime Contractor in relation to its compliance with this Schedule.
- 10. All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the DFE and/or the Replacement and the Prime Contractor as follows:
 - i) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - ii) the DFE or Replacement Prime Contractor (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - iii) the Prime Contractor shall be responsible for or entitled to (as the case may be) the rest of the invoice.

SCHEDULE 4

ITT and Prime Contractor's response

The bid submitted on 17th February 2022 in Jaggaer and all its supporting documents forms part of this Contract. The Prime Contractor shall retain a copy of each document to verify Services.

Copies of these documents are available by zip file and provided to the Prime Contractor alongside the Contract.

List of documents provided by DFE:

1. Invitation to Tender (ITT)
2. Specification
3. Funding Rules
4. Code of Connection
5. Customer Charter

List of documents provided by the Prime Contractor include:

1. All completed question response templates and all compliant supporting documents
2. Completed Subcontractor pro forma
3. Completed Volumes and Costs bid pro forma
4. Completed Outline Implementation plan
5. Completed Supplier Security Questionnaire
6. Completed Standard Selection Questionnaire
7. Completed Financial Viability Risk Assessment Tool

SCHEDULE 5
DECLARATION OF SUBCONTRACTORS – WEST MIDLANDS



SCHEDULE 6

Maximum Contract Value, Target Customer Volumes and Pricing Schedule

Maximum Contract Value

1. In this Schedule, where the context admits, defined terms shall have the meaning given to them in Clause 1 of the Terms and Conditions.
2. This Schedule sets out the Maximum Contract Value for the supply of the Services under the Contract from 1st October 2022. Delivery against this Contract shall start on 1st October 2022. For the avoidance of doubt, the Prime Contractor may not seek to invoice the DFE in respect of any Core Services supplied prior to the Services Start Date.
3. The Maximum Contract Value in the Area for the period 1st October 2022 – 31st March 2023 is £4,127,821. The Maximum Contract Value must be allocated in accordance with the principles set out in the Funding Rules.
4. Costs for the delivery of the service are VAT recoverable by the DFE. Prime Contractors must submit invoices including VAT to the DFE through the usual accounting procedures and following the submission of evidence.
5. The Maximum Contract Value has been calculated to include inflation during the Contract Period and will not be increased to reflect inflationary rate rises during the Contract Period.
6. The Maximum Contract Value in the Area for the Contract Year starting on 1st April 2023, and for each subsequent anniversary thereof, shall be as notified by the DFE to the Prime Contractor as soon as is practicable prior to each Contract Year.
7. This Schedule supplements the obligations on the Prime Contractor in the Terms and Conditions and the Funding Rules.

Target Customer Volumes

8. The Target Customer Volumes are as follows:

Contract Year	Target Customer Volumes
01/10/2022 – 31/03/2023	41,733
01/04/2023 – 31/03/2024	83,465
01/04/2024 – 30/09/2024	41,733

These target customer volumes are taken from the Prime Contractor's bid and will be subject to the performance management regime set out in the Funding Rules. The aggregate of the payments payable by the DFE to the Prime Contractor during the full contract term (including extension options) under this Contract shall not exceed the sum of £31,752,466 unless otherwise permitted under Public Contract Regulations 2015 and as agreed by the DFE.

Prime Contractor Outcome Values:

9. The Prime Contractor will attract the following payments for achieving Outcomes in line with the evidence and requirements set out in the Funding Rules:

Outcome	Priority Group Customer	Non-Priority Group Customer
Career Management Outcome		£15
Career Management Outcome (volume based discount rate, applying where over 80% of forecasted outcomes in a contract year is achieved)		NA
Learning Outcome	£60	£20
Job Outcome	£90	£32

Service Fee Payments:

10. The Prime Contractor will attract the following payments as a monthly Service Fee for delivery of the Contract. The Service Fee will equate to [REDACTED] of the Contract value for each Financial Year and paid in line with the below profiles:

Financial Year	% of total paid for FY 22-23 per month	Financial Year	% of total paid for FY 23-24 per month	Financial Year	% of total paid for FY 24-25 per month
Oct-22	22.0%	Apr-23	8.3%	Apr-24	16.7%
Nov-22	22.0%	May-23	8.3%	May-24	16.7%
Dec-22	18.0%	Jun-23	8.3%	Jun-24	16.7%
Jan-23	14.0%	Jul-23	8.3%	Jul-24	16.7%
Feb-23	12.0%	Aug-23	8.3%	Aug-24	16.7%
Mar-23	12.0%	Sep-23	8.3%	Sep-24	16.7%
		Oct-23	8.3%		
		Nov-23	8.3%		
		Dec-23	8.3%		
		Jan-24	8.3%		
		Feb-24	8.3%		
		Mar-24	8.3%		
Total	100%	Total	100%	Total	100%

11. Service Fee Payments will be subject to Service Levels set out in Schedule 14 which will be measured Monthly. Failure to achieve the Minimum Performance Level for each Service Level will result in monthly Service Fee payments for the following Month being reduced by the amount outlined under % Monthly Service Fee reduction as set out in Schedule 14.

SCHEDULE 7

Implementation Services

1. Definitions

In this Schedule 7 where the context admits:

2. Background

2.1. The Implementation Services are required to allow the Prime Contractor to start the supply of the Services on the Services Start Date. The Services are part of the wider National Careers Service that includes the National Careers Helpline, the web-based digital service and, connecting all of these to act as a single service, a data exchange service. In order to function as part of a wider National Careers Service, the transition has to include integration with the data exchange capability and this has to be coordinated across all participating organisations which comprise the National Careers Service.

3. Implementation Services

3.1. The Prime Contractor will provide the following Implementation Services during the Implementation Period:

- 3.1.1. Commercials: any partner or Sub-Contractor commercial arrangements to deliver the Services will be finalised and entered into early in the Implementation Period;
- 3.1.2. Staffing: A transition manager and any supporting team will be put in place to undertake the setting up of the Services;
- 3.1.3. A resource plan will be developed to enable recruitment of staff and specialist advisers in time to provide appropriate training;
- 3.1.4. Ways of working: plans will be developed prior to the Services Start Date to define Prime Contractors ways of working and key contact personnel;
- 3.1.5. Staff Transfer arrangements (where applicable): the Prime Contractor will commence Staff Transfer arrangements immediately after Contract award. This will be reviewed and monitored by the DFE during the Implementation Period;
- 3.1.6. Facilities: the locations and equipment needed to provide the Services will be put in place in time for staff to undertake the training necessary to support the Services;
- 3.1.7. Infrastructure: network connections and telephone services will be established;

- 3.1.8. Knowledge base: the capability to transition knowledge and best practice from previous service providers and update it for the new operating model and procedures will be put in place to support training, including any staff who may transition under TUPE;
- 3.1.9. Data: A data dictionary to support operational handovers, reporting and customer journeys across the wider service will be issued prior to contract award. This will be incorporated into the Prime Contractor's own data handling and management process. Appropriate data protection controls will be put in place. Plans for migrating data from outgoing service providers will also be put in place and the Prime Contractor will work with outgoing contractors to transfer operational services as required;
- 3.1.10. Processes: The business and operating processes for providing the Services will be put in place to support staff training;
- 3.1.11. Systems: The systems needed to support the Services will to be developed/configured to support the staff delivering the service, align to the business processes established and manage the data being collected and used;
- 3.1.12. Cooperation: the Prime Contractor will liaise and cooperate with outgoing contractors as required in order to ensure a smooth transition of the Services.

4. Implementation Plans

- 4.1. The Prime Contractor shall appoint an Implementation Manager who will act as the main point of contact with the DFE's Implementation Manager and the Implementation Managers for other service providers within the National Careers Service.
- 4.2. The Implementation Plan which will set out how the Prime Contractor will provide the Implementation Services to ensure that all measures are in place for the Services to start on the Services Start Date.
- 4.3. The Parties shall comply with the provisions of Appendix 1.1 to Schedule 4 (Implementation Plan) in relation to the agreement and maintenance of the Implementation Plan.
- 4.4. The Prime Contractor shall:
 - 4.4.1. comply with the Implementation Plan; and
 - 4.4.2. ensure that each Milestone is Achieved on or before its Milestone Date.
- 4.5. If the Prime Contractor becomes aware that there is, or there is reasonably likely to be, a delay to the Completion of any Milestone it shall notify DFE within Five (5) Working Days setting out how it intends to address the impact of the delay or anticipated delay.
- 4.6. The Prime Contractor shall use all reasonable endeavours to eliminate or mitigate the consequences of any delay or anticipated delay.

5. Achievement of Milestones and payment

- 5.1. The Parties shall carry out appropriate testing to determine whether a Milestone has been Achieved.
- 5.2. Where a Milestone has been Achieved, the DFE shall issue to the Prime Contractor a Milestone Achievement Certificate substantially in the form set out in Appendix 4.
- 5.3. Where a Milestone has been Achieved by the relevant Milestone Completion Date, the DFE shall make payment to the Prime Contractor of a Milestone Payment in the amount set out in the table set out in Appendix 6.
- 5.4. Where the Prime Contractor does not achieve a Milestone by the relevant Milestone Completion Date, and in the DFE's view there are mitigating circumstances for this failure, the DFE may, at its discretion, giving brief reasons only, make payment of all or part of the Milestone Payment to the Prime Contractor.

Appendix 1

IMPLEMENTATION PLAN

1. INTRODUCTION

1.1. This Appendix:

- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Implementation Plan; and
- (b) identifies the Milestones which are required to be Achieved as part of the Implementation Services.

2. OUTLINE IMPLEMENTATION PLAN

2.1. The Outline Implementation Plan is set out in Appendix 2.

2.2. All changes to the Outline Implementation Plan shall be subject to agreement in writing between the parties and shall be recorded in a Change Control Note (in the form set out in Appendix 3) signed by both parties before being effective.

3. APPROVAL OF THE IMPLEMENTATION PLAN

3.1. The Prime Contractor shall submit a draft of the Implementation Plan to the DFE for approval within ten (10) Working Days of the Effective Date.

3.2. The Prime Contractor shall ensure that the draft Implementation Plan:

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- (b) includes (as a minimum) the Prime Contractor's proposed timescales in respect of the following for each of the Key Milestones:
 - (i) Systems, facilities and infrastructure in place and working (KM1);
 - (ii) Integration testing completed successfully (KM2);
 - (iii) All operational readiness complete and services ready to go live (KM3); and
 - (iv) Post live successful running of the Services with all remedial actions identified by the DFE at KM3 having been completed.
- (c) clearly outlines all the steps required to implement the Milestones in conformity with the DFE's requirements; and

- (d) clearly outlines the required roles and responsibilities of the Prime Contractor, and any dependencies on the DFE, including (in both cases) staffing requirements.
- 3.3. Prior to the submission of the draft Implementation Plan to the DFE in accordance with Paragraph 3.1, the DFE shall have the right:
 - (a) to review any documentation produced by the Prime Contractor in relation to the development of the Implementation Plan, including:
 - (i) details of the Prime Contractor's intended approach to the Implementation Plan and its development;
 - (ii) copies of any drafts of the Implementation Plan produced by the Prime Contractor; and
 - (iii) any other work in progress in relation to the Implementation Plan; and
 - (b) to require the Prime Contractor to include any reasonable changes or provisions in the Implementation Plan.
- 3.4. Following receipt of the draft Implementation Plan from the Prime Contractor, the DFE shall:
 - (a) review and comment on the draft Implementation Plan as soon as reasonably practicable; and
 - (b) notify the Prime Contractor in writing that it approves or rejects the draft Implementation Plan no later than twenty (20) Working Days after the date on which the draft Implementation Plan is first delivered to the DFE.
- 3.5. If the DFE rejects the draft Implementation Plan:
 - (a) the DFE shall inform the Prime Contractor in writing of its reasons for its rejection; and
 - (b) the Prime Contractor shall then revise the draft Implementation Plan (taking reasonable account of the DFE's comments) and shall re-submit a revised draft Implementation Plan to the DFE for the DFE's approval within ten (10) Working Days of the date of the DFE's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Implementation Plan.
- 3.6. If the DFE approves the draft Implementation Plan, it shall replace the Outline Implementation Plan from the date of the DFE's notice of approval.
- 3.7. Save for any amendments which are of a type identified and notified by the DFE (at the DFE's discretion) to the Prime Contractor in writing as not requiring approval, any amendments to the Implementation Plan shall be subject to agreement in writing signed by both parties as a Change Control Note

Appendix 2

OUTLINE IMPLEMENTATION PLAN

The Final Implementation Plan submitted and all its supporting documents forms part of the contract.

The Prime Contractor shall retain a copy of each document to verify Services.

List of documents supplied by the Prime Contractor include:

Outline Implementation Plan

Final Implementation Plan

Supporting documents to implementation plan (if applicable)

Copies of these documents are available by zip file and provided to the Prime Contractor on [1].

Appendix 3

Change Control Note

CR NO.:	TITLE:	DATE RAISED:
		REQUIRED BY DATE:
DESCRIPTION OF CHANGE		
REASON FOR CHANGE:		
SIGNED ON BEHALF OF THE DFE:		SIGNED ON BEHALF OF THE PRIME CONTRACTOR:
Signature:_____		Signature:_____
Name:_____		Name:_____
Position:_____		Position:_____
Date:_____		Date:_____

Appendix 4

Milestone Acceptance Certificate

To:
FROM: DFE
[Date]
Dear Sirs,

MILESTONE ACCEPTANCE CERTIFICATE

Milestone [KM1 / KM2 / KM3 / KM4]

We refer to the agreement (the “Agreement”) relating to the provision of the Services between the Department for Education (the “DFE”) and [I] (the Prime Contractor”) dated [date].

Capitalised terms used in this Certificate have the meanings given to them in the Contract.

We confirm that the Milestones listed above have been Achieved successfully in accordance with the Contract.

Yours faithfully

Appendix 5

Milestones and Acceptance Criteria

Acceptance Criteria to be Achieved in order to Achieve the Key Milestones:

Milestones	Test Success Criteria/Milestone Acceptance Criteria	Milestone Date
<p>Key Milestone 1 - Systems, facilities and infrastructure services in place. Contract inception meetings arranged. Contract transition plan in place ready for implementation managed by Prime Contractor Transition Manager. Contracts signed.</p>	<ol style="list-style-type: none"> 1. All systems are in place, have been tested and the aggregate remaining defects comply with the following criteria: No severity 1 defects; No more than one severity 2 defect for which the impact can be accommodated; no more than three severity 3 defects. 2. The facilities to be used for delivering the service are in place, accessible and ready to use. All safety certificates / compliance documentation for use of facilities is in place. Where customers are to be on-site, the signage and decoration is in place ready for customer access. Appropriate furnishing and seating for service delivery is in place. 	<p>02/08/22</p>

	3. All services, including communications services are in place, tested and working. Advisers should be able to access the systems and any necessary digital tools and products to enable them to deliver careers IAG.	
Key Milestone 2 - Technical readiness, including data sharing service, security processes in place and all technical compliance complete for Prime Contractors and Sub-Contractors.	1. Testing with Data Sharing service test stub completed successfully (no severity 1 defects, no severity 2 defects, up to 3 severity 3 defects); Testing with data sharing service test service completed successfully (no severity 1 defects, no severity 2 defects, up to 3 severity 3 defects); Successful integration testing reported by Future Data Sharing services team. 2. Data extract successfully submitted, passed validation checks and successful outcome reported by Data Collections team.	07/09/22
Key Milestone 3 - All operational	1. Essential operational readiness criteria	22/09/22

<p>readiness complete and services ready to go live, including premises and co-locations, staff in place. Subcontractor arrangements completed. Transition from incumbent to new provider completed. Stakeholder strategy in place. Communications mechanisms in place.</p>	<p>are met and this is evidenced, confirmed by National Careers Service Transition Manager and approved by DFE governance board. This may be a conditional acceptance that is subject to remedial actions. These have to be completed within agreed timescales.</p> <p>2. A stakeholder strategy in place to engage with key local and regional stakeholders to extend the awareness and reach of the Service, with particular emphasis on the requirements set out in the ITT (e.g. Careers Hubs, JCPs, voluntary sector bodies)</p> <p>3. Communications mechanisms in place to swiftly disseminate key information and updates received from the centre to ensure a quick response to disseminate messages from the Prime Contractor Bulletin regarding policy updates or key government</p>	
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	<p>announcements to ensure stakeholder awareness.</p> <p>4. A contact to participate in the DFE-led employer engagement group has been confirmed.</p> <p>5. Strategy in place to deliver high quality case studies and respond to ad hoc requests.</p> <p>6. Strategy in place to respond quickly to support government-led approaches to sudden economic shock and/or labour market shortages.</p> <p>7. Fully developed marketing strategy in place.</p>	
<p>Key Milestone 4 - Go Live and post-live successful running of the Services with all remedial actions identified</p>	<p>1. No P1 problems during first two months and no P2 problems lasting more than 24 hours.</p> <p>2. If KM3 was achieved conditionally on specific remedial actions being taken, then those actions have been completed and accepted by the Authority</p>	<p>01/12/22</p>

* Note: The Pre-Conditions are that e.g. the Success Criteria for the previous Key Milestone must be satisfied before next Key Milestone tests are commenced.

Appendix 6

Milestone Payment and Delay Payments

Milestone	Milestone Payment (GBP Sterling)
KM1	£10,000
KM2	£10,000
KM3	£10,000
KM4	£10,000

1. Where the successful Prime Contractor is an incumbent Prime Contractor, the payment for KM2 will be reduced to £5000.
2. Where the Prime Contractor for this Contract has also been awarded a Contract for another Area, all Milestone payments for both Contracts will be reduced by 25%.

SCHEDULE 8

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:

██████████

2. The contact details of the Processor's Data Protection Officer are: ██████████ –
Data Protection Officer

██████████

3. The Processor shall comply with any further written instructions with respect to processing by the Controller. 4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Data Controller is the Department for Education, The Data Processor is Prospects.
Subject matter of the processing	Individuals seeking information, advice and guidance from the National Careers Service
Duration of the processing	From commencement date of the contract, until the expiry date

Nature and purposes of the processing	<p>Collection Recording Organisation Structuring Storage Use Disclosure by transmission Dissemination Combination Erasure Retrieval Consultation</p> <p>In order for the following purposes: To provide personalised careers advice to individuals, Creation of Customer Files, Recording of Outcomes against Customer Files, Verification of claimed identity, Provision of claims for funding, Provision of business and management information, To support audit activities</p>
Type of Personal Data	<p>As set out in the National Careers Service DSS API specification documentation, which may be amended from time to time,</p> <p>or as agreed separately and explicitly with the data processor,</p>
Categories of Data Subject	Members of the public in England seeking careers information, advice and guidance from the National Careers Service
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>As detailed in the National Careers Service retention document;</p> <p>and for audit purposes; up to 6 years from the end of the financial year in which the last payment is made,</p> <p>after which the data must be destroyed in accordance with the arrangements described in paragraph 20.15 unless notified otherwise in writing by the DFE.</p>

SCHEDULE 9

The Shaw Trust Ltd

- and -

Prospects Services

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the first day of October 2022.

BETWEEN:

- (1) The Shaw Trust Ltd a company incorporated in England and Wales with number 01744121 whose registered office is at Black Country House, Rounds Green Road, Oldbury, B69 2DG ("Guarantor"); in favour of
- (2) THE SECRETARY OF STATE FOR EDUCATION acting through the Department for Education of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (**DFE**) ("Beneficiary")

WHEREAS:

- (A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Prime Contractor, to guarantee all of the Prime Contractor's obligations under the Guaranteed Agreement.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows: 1 Definitions and Interpretation

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
 - (a) "Insolvency Event" has the meaning given in the Guaranteed Agreement;
 - (b) "Guaranteed Agreement" means the National Careers Service made between the Beneficiary and the Prime Contractor on 1 October 2022;

- (c) “Guaranteed Obligations” means all obligations and liabilities of the Prime Contractor to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Prime Contractor to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
 - (d) “Prime Contractor” means Prospects Services a company incorporated in England and Wales with number 3042176 whose registered office is at Black Country House, Rounds Green Road, Oldbury B69 2DG; and
 - (e) “Prime Contractor Default” means any act or omission (or series of acts or omissions by the Prime Contractor) which would entitle the Beneficiary to terminate the Guaranteed Agreement in accordance with Clause 26.1 of the Guaranteed Agreement.
- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
 - 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
 - 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
 - 1.6 the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
 - 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
 - 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
 - 1.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
 - 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
 - 1.11 references to liability are to include any liability whether actual, contingent, present or future.
- 2 Guarantee and indemnity**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Prime Contractor duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Prime Contractor to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Prime Contractor to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Prime Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- (a) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - (b) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Prime Contractor to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Prime Contractor under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Prime Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
- 2.5 The indemnities set out in this Clause 2 are subject to the provisions of Clause 11.

3 Obligation to enter into a new contract

- 3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Prime Contractor, or if the Guaranteed Agreement is disclaimed by a liquidator of the Prime Contractor or the obligations of the Prime Contractor are declared to be void or

voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4 Demands and Notices

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

Shaw Trust Limited
Black Country House
Rounds Green Road,
Oldbury,
England,
B69 2DG

For the attention of [REDACTED]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- (a) if delivered by hand, at the time of delivery; or
- (b) if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
- (c) if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5 Beneficiary's protections

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Prime Contractor and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- (a) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Prime Contractor of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - (b) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Prime Contractor, the Beneficiary, the Guarantor or any other person;
 - (c) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Prime Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
 - (d) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Prime Contractor of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Prime Contractor or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Prime Contractor or any third party, or to take any action whatsoever against the Prime Contractor or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6 Guarantor intent

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7 Rights of subrogation

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Prime Contractor and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
- (a) of subrogation and indemnity;
 - (b) to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Prime Contractor's obligations; and (c) to prove in the liquidation or insolvency of the Prime Contractor, only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "Guarantee Estimate Amount") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Prime Contractor (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until Beneficiary receives

all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8 Deferral of rights

- 8.1 Until all amounts which may be or become payable by the Prime Contractor under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- (a) claim any contribution from any other guarantor of the Prime Contractor's obligations under the Guaranteed Agreement; or
 - (b) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.
- 8.2 Until all amounts which may be or become payable by the Prime Contractor under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Financial Distress Event or Prime Contractor Default:
- (a) exercise any rights it may have to be indemnified by the Prime Contractor;
 - (b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Prime Contractor; or
 - (c) claim any set-off or counterclaim against the Prime Contractor.
- 8.3 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9 Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10 Payments and set-off

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11 Limit of the Guarantor's Liability

- 11.1 The liability of the Guarantor in respect of each claim made by the Beneficiary under an indemnity set out in this Deed shall not exceed the Cap (the "Cap"). For these purposes the Cap in relation to each indemnity claim made under this Deed shall be a sum equal to the Relevant Percentage (as defined below) of the total amount paid or payable to the Beneficiary in respect of the relevant claim (whether paid or payable under this Deed or otherwise and whether paid or payable by the Guarantor or by a third party). The Relevant Percentage is the percentage shareholding of the Guarantor in the Prime Contractor as at the date the event or first event in a series of events giving rise to the claim took place.

12 Guarantor's acknowledgement

- 12.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or

on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

13 Assignment

13.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

13.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

14 Severance

14.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

15 Third party rights

15.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

16 Governing Law

16.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

16.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

16.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

EXECUTED as a DEED by

The Shaw Trust acting by

Director:[Insert/print name]

Signature:

Director/Secretary: [Insert/print name]

Signature:

SCHEDULE 10

Insurance Requirements

- 1.1. The Prime Contractor shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in Appendix 1 to this Schedule and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Prime Contractor shall ensure that each of the Insurances is effective no later than the Services Start Date in respect of those Insurances set out in the Appendix to this Schedule and those required by applicable Law; and
- 1.2. The Insurances shall be:
 - 1.2.1. maintained in accordance with Good Industry Practice;
 - 1.2.2. (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time
 - ;
 - 1.2.3. taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
 - 1.2.4. maintained for at least six (6) years after the End Date.
- 1.3. The Prime Contractor shall ensure that the public and products liability policy contain an indemnity to principals clause under which the DFE shall be indemnified in respect of claims made against the DFE in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Prime Contractor is legally liable.
- 2.1 Without limiting the other provisions of this Contract, the Prime Contractor shall:
 - 2.1.1. take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2. promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Prime Contractor is or becomes aware; and

- 2.1.3. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
- 3.1. The Prime Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2. Where the Prime Contractor has failed to purchase or maintain any of the Insurances in full force and effect, the DFE may elect (but shall not be obliged) following written notice to the Prime Contractor to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Prime Contractor.
- 4.1. The Prime Contractor shall upon the Services Start Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the DFE, that the Insurances are in force and effect and meet in full the requirements of this Schedule.
- 5.1. The Prime Contractor shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Prime Contractor shall notify the DFE and provide details of its proposed solution for maintaining the minimum limit of indemnity.
- 6.1. The Prime Contractor shall notify the DFE in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2. The Prime Contractor shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Prime Contractor shall use all reasonable endeavours to notify the DFE (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
- 6.3. The Prime Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Insurances. In the event that the DFE receives a claim relating to or arising out of this Contract or the Deliverables, the Prime Contractor shall co-operate with the DFE and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.1. Except where the DFE is the claimant party, the Prime Contractor shall give the DFE notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would

be made on any of the Insurances and (if required by the DFE) full details of the incident giving rise to the claim.

- 7.2. Where any Insurance requires payment of a premium, the Prime Contractor shall be liable for and shall promptly pay such premium.
- 7.3. Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Prime Contractor shall be liable for such excess or deductible. The Prime Contractor shall not be entitled to recover from the DFE any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

Appendix 1

Required Insurances

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

SCHEDULE 11

Specification

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PART A: Introduction

Purpose of this document

1. The contracting authority is the Secretary of State for Education, acting through the Department for Education (the “DFE”).
2. In this Specification you, along with other organisations participating in this Procurement, are referred to as Prime Contractors.
3. This ITT will procure Prime Contractors to be accountable and responsible for the delivery of the community based National Careers Service in nine areas of England (see Appendix A) from 01 October 2022. This is one contracted part of a series of components that together will form the National Careers Service.
4. This document sets out the expectations for the services to be delivered. This specification provides a strategic framework within which Prime Contractors will be required to work. How the service delivery requirements set out in PART B are met will be a matter for each Prime Contractor, providing the mandatory requirements set out in PART C are fully met as specified. Capitalised terms used in this Specification are as defined in the Glossary set out in Appendix D.

The National Careers Service Vision and Ambition

5. The National Careers Service provides free careers information, advice, and guidance to both young people (from the age of 13) and adults through a website, webchat, and telephone helpline. The Service, delivered by local community based careers advisers, can be accessed face-to-face, by telephone, webchat and online. Young people aged 13 and over can access ongoing in-depth information, advice, and guidance from the service via telephone, webchat or the National Careers Service website. Face-to-face careers information and advice in the community is available to adults aged 19 (and over 18 if Not in Employment Education or Training (NEET)).
6. A thriving careers system, accessible to everyone, is at the heart of the focus on social mobility, offering opportunity to everyone, making Britain fairer. The [2017 Careers Strategy](#) which we continue to build on, set out the desire for every person, no matter their background, to be able to build a rewarding career, ending the generational cycle of disadvantage with people from poorer backgrounds earning significantly less than those with wealthier parents, even with the same job, experience and qualifications. The Careers Strategy references the barriers that too many people in our country face and the need to break these down to give everyone equal opportunity, unlocking potential and transform lives. The careers provision will also play a pivotal role in meeting the Government's ambition for Levelling Up.
7. In the [Skills for Jobs White Paper](#) (published January 2021) the government set out a vision for creating a careers system that provides impartial, lifelong careers advice and guidance to people when they need it, regardless of age, circumstance, or background. To do this, the government has committed to improve both local and national alignment between careers support for young people delivered through the Careers & Enterprise Company (CEC) and careers services delivered through the National Careers Service. The CEC is responsible for the network of Careers Hubs to which a growing proportion of schools and colleges belong.
8. The National Careers Service is a major partner in helping to deliver the commitment initially set out in the Careers Strategy and subsequently in the White Paper to ensure that everyone has the appropriate advice and guidance to move into the education, training or employment opportunities that matches their skills, interests and aspirations.
9. The overarching ambition of the National Careers Service is to support increased social mobility, productivity and empowering thousands of customers who need help to navigate the learning, employment and skills landscape. Regardless of a person's background and circumstances, the National Careers Service ensures that customers are:

- i. Informed and aware of the wide range of learning and work opportunities that are available to them;
- ii. Better able to independently manage their careers, identify opportunities and respond to challenges in the employment and training market;
- iii. Are aware of and able to access accurate and up to date information about careers and learning from the National Careers Service whenever they need it; and
- iv. Are guided and supported to use a range of high-quality digital tools that will enable them to further develop their career management skills and progress in learning and work.

The Service vision is for individuals to enjoy more rewarding working lives and to create a culture where career development and acquiring new skills are the norm. This will improve the lives of individuals and in turn increase productivity and boost the economy.

10. The six principles of the Service are that: -

- i. **It is an economic tool** that helps excluded people back into the workforce; helps adults and young people consider their learning, training and retraining options; and it allows people losing their jobs to bounce back.
- ii. **It is a universal service** delivering the most intense service to priority groups with a flexible approach to change with economic conditions.
- iii. **It is a single service** delivery through a variety of channels available to optimise and simplify customer access to the service.
- iv. **It is a content rich service** imparting up to date knowledge, intelligence and advice about careers, the labour market and learning and training opportunities and using labour market intelligence to help inform local and national skills needs and raise aspirations and ambitions.
- v. **It is a dynamic, evolving service** building responsiveness, dynamism and change into regular, stable operations (through more automation) to meet customers changing needs, and the economic context.
- vi. **It is a personal service** highly tailored and individualised service providing in-depth, needs-led, customer driven conversations between adviser and the customer, drawing on local labour market information as appropriate.

11. The National Careers Service plays a critical role in empowering and engaging unemployed adults and adults at a distance from the labour market. It supports individuals in transitions to and within the labour market, and helps them to make

effective use of their skills and be resilient in the face of change, in particular post Covid-19 and the unprecedented challenges this has brought. The evidence suggests that career guidance is effective in re-engaging unemployed people in work.

12. Case study and independent research evidence has demonstrated that intervention by the National Careers Service can aid social mobility by reducing churn, improving career management skills and repositioning National Careers Service customers onto a fundamentally different labour market trajectory.
13. The future National Careers Service will be characterised by and emphasise the following elements:
 - i. Customer focus – a greater reliance on user research and empirical data about customer needs and experiences to drive continuous improvement;
 - ii. Digital First – the development of intuitive, customer friendly digital tools that enable customers to navigate a greater part of their journey into learning and work independently; (to note, the Digital elements of the Service are out of scope of this contract)
 - iii. Analytics – more intelligent and precise use of data to drive improvements and make the service more responsive;
 - iv. Enabling partnerships – the National Careers Service will continue to play a key enabling, facilitating and engagement role in the employment and skills market; and
 - v. Research and evaluation – the DFE will continue to conduct research and evaluation to ensure the quality, impact and effectiveness of the service is maintained and built on.

Background

14. This section describes the entire National Careers Service in which the Community based service plays a key role. Whilst this Specification relates to the Community based service (as defined below) only, information on the entire offering of the National Careers Service is included for information and context for bidding organisations.

The National Careers Service

15. The National Careers Service is a government funded service operating in nine Areas of England that provides free, up to date, impartial information advice and guidance on careers, skills and the labour market in England to anyone aged 13 years and upwards.

16. The National Careers Service is a professional service delivered through community-based contractors, who provide impartial personalised careers information, advice, and guidance services face-to-face, over the telephone, webchat and email support delivered by qualified careers advisers. There is a webchat facility and customers have 24/7 access to the National Careers Service website where they can use online tools and make contact with the Community based service.
17. Over the last three years the National Careers Service has demonstrated consistent improvements in key areas, providing locally tailored provision and delivering positive outcomes for all customers (as defined below) particularly those who are most disadvantaged in the labour market. From April 2018 to March 2021, Prime Contractor data showed that the community-based element of the National Careers Service delivered information, advice and guidance to more than 1 million customers. The number of Job and Learning Outcomes achieved increased from 20% in 2015-16 to over 42% in 2019-20.
18. The National Careers Service serves and supports two distinct customer groups:
- i. **Primary customers** - people who need information, advice and guidance (IAG) for themselves;
 - ii. **Secondary customers** - people who use our products and tools to support primary customers. Secondary customers will either be:
 - Professional Careers Advisers; or
 - Intermediaries. This group consists of teachers, parents, advocates, careers leaders, enterprise advisers, Jobcentre Plus work coaches and others.
19. The National Careers Service works closely with other organisations, programmes and policies such as the Careers & Enterprise Company, the Department for Work and Pensions, Jobcentre Plus and the Lifelong Learning Guarantee to provide information, advice and guidance that is complementary to, and aligns with other support available to citizens. The National Careers Service will continue to do this and will also complement and support other key government programmes and priorities such as the National Skills Fund, Skills for Jobs and the FE Skills White Paper.
20. The Community based service will continue to deliver a targeted blend of customer-focused digital tools and professional careers adviser interventions to help customers achieve positive learning and work-focused Outcomes. Through effective partnership working with employers, further education and the third sector, combined with the systematic collection and use of local labour market intelligence, the Community based service will play a direct, enabling role in connecting people to learning, skills, apprenticeship and work opportunities.
21. The National Careers Service will continue to offer a universal service for all Customers, through:

- i. A **national website**, providing a personalised online experience and information/tools to enable Customers to self-serve their own careers support, and to enable advisers and intermediaries to support the Customer. Customers will be able to store and access their careers and learning information online. The website is hosted and continuously improved by the DFE. **This is out of scope of this specification.**
 - ii. A **community based service** (the subject of this specification), providing personalised careers information, advice, and guidance services via: individual and group face-to-face sessions; over the telephone; and through digital and social media platforms. Delivery will be based on Customer needs and can be undertaken via a combination of channels until there is agreement by the customer that their needs have been met. Further detail on the Community based service are set out in PART B of this document.
22. Adults 19 years and over (or 18 year olds who are not in education, employment or training (NEET)) can access the service via all channels of delivery. Young people aged 13 and over can access ongoing in-depth information, advice and guidance from the service via local telephone-based career advisers or the National Careers Service website where the webchat functionality is also provided by locally based careers advisers. The provision of local, **face-to-face** information, advice, and guidance for young people under the age of 19 that are in full time education or training is out of scope for this contract.
23. The National Careers Service is also supported by:
- i. A **bespoke data collection and performance management system (the Data Sharing Service)**, with which Prime Contractors will need to work to ensure local data systems can integrate; and
 - ii. An **Outcome based funding model** that will focus funding on the achievement of positive Outcomes for each Customer. These are defined as Career Management, Learning, and Job Outcomes. Each of these Outcomes are defined in detail in PART D of this document ('Measurement, Payment and Performance Management') and the Funding Rules. The funding model also includes a 33% Service Fee.
24. This document sets out the services Prime Contractors will be required to deliver as part of the Community based service in order to support the objectives of the National Careers Service. Appendices are provided and contain additional supporting information.

PART B: Community based service Delivery Requirements

25. This section sets out the DFE's requirements for the Community based service part of the National Careers Service from 1st October 2022. How you meet these will be a matter for your Prime Contractor business model, providing the mandatory requirements set out in PART C are fully met, as specified.
26. The DFE welcomes Prime Contractors seeking to deliver in more than one of the Areas defined in Appendix A of this specification. However, Prime Contractors will need to demonstrate to the DFE that they have the capacity and capability to successfully and innovatively deliver all aspects of the Community based service in each Area for which they bid and can offer value for money, whilst maintaining the highest quality standards.
27. Subject to consultation, Prime Contractors will be required to ensure that the Community based service they deliver meets the needs of current and future Government strategies including tailoring the Community based service as appropriate.

Customers and Priority Groups

28. For the purposes of the community based service:

- i. **Primary Customers** are adults living or working in England, aged 19 or over (or aged 18 for those who are not in education employment or training) with a focus on the following Priority Group Customers:
- 18-24 year olds not in education, employment or training (NEETs);
 - Low-skilled adults without a Level 3 qualification.
 - Adults who have been unemployed for more than 12 months.
 - Single parents with at least one dependent child living in the same household.
 - Adults with special educational needs and/or disabilities; and
 - Adults aged 50 years and over who are unemployed or at demonstrable risk of unemployment.

Adults 19 years and over (or 18 and over or out of work and on benefits) can access the service via all 3 channels of delivery.

Young people aged 13 to 18 can access ongoing in-depth information, advice and guidance from the service via local telephone-based advisers or the National Careers Service website.

- ii. **Secondary Customers** - people who support Primary Customers (Intermediaries). This group includes but is not limited to teachers, parents, advocates, careers leaders, enterprise advisers, Jobcentre Plus work coaches and others.

29. The DFE reserves the right to change the priority groups throughout the course of this contract. Changes may be required, for example, to respond to national economic 'shocks' and their implications, such as changes to particular industry sectors. The DFE will work with Prime Contractors on its approach to handling these situations. Subject to consultation, Prime Contractors are also expected to respond to local economic 'shocks', for example the closure of a large local employer and prioritising those affected.

Customer Outcomes

30. Prime Contractors will take responsibility for the achievement of careers Outcomes by Customers. They shall be remunerated by reference to the achievement of those Outcomes as specified in the Funding Rules. The Outcomes are:
- i. Career Management Outcome;
 - ii. Learning Outcome;
 - iii. Job Outcome.
31. The DFE encourage the use of digital channels in achieving outcomes. It is expected that the Outcomes to be achieved are relevant to the Customer's needs and based on the Customer having received appropriate careers advice.
32. Decisions about the method of delivery should always be driven by the individual needs of the Customer.
33. Further detail on Outcomes can be found in:
- i. PART D: Measurement, Payment and Performance Management; and
 - ii. The Funding Rules Document (also provided as part of this ITT).

Community based service

Face to Face Channel

34. Prime Contractors will be required, under the National Careers Service brand, to support the needs of Customers, that are not best met via self-serve. This support, as a minimum, will require providing Customers with access to a careers service that:
- i. Is locally based, universal and provides impartial careers information, advice and guidance that supports career management and development, enabling individuals to flourish in life and work;

- ii. Helps Customers, whatever their circumstances to achieve positive career and work-related Outcomes;
- iii. Is tailored to the needs of the individual and delivered locally
- iv. Is able to accommodate increased customer demand at certain times of the year, for example pre-planned campaigns, events etc.;
- v. Is open during periods that take into account the requirements of the different Customer groups accessing the service e.g. ensuring those in work are able to access the service outside of their working hours;
- vi. Is available in local and accessible venues e.g. community-based, and at times that are convenient to the Customer, including co-location with Jobcentre Plus, and other relevant local business and community organisations;
- vii. Is available on employers' premises to support employees, for example, those facing redundancy or those with low skills;
- viii. Is informed by the latest national and local labour market information (LMI), thereby optimising the Prime Contractor's ability to support individuals to enter into sustainable employment;
- ix. Is equipped to support individuals to choose courses and other learning opportunities that will enable them to realise their career ambitions;
- x. Ensures Customers have a jointly agreed Careers and Skills Action Plan that is relevant and sets out the next steps for the individual;
- xi. Promotes a digital first approach for Customers to independently manage their careers; and
- xii. Responds to local economic or labour market activity such as inward investment, employment shocks or industrial change.

Telephone and Webchat Channels

- 35. The Prime Contractor must operate a telephone and webchat channel for the Area in which they are operating that provides Careers Information Advice and Guidance from qualified Careers Advisers (as defined in the Workforce Development section).
- 36. The Prime Contractor must have a telephony system that is compatible with the central IVR telephony system for the National Careers Service managed by the DFE.
- 37. The DFE provides a cloud-based webchat system which Prime Contractors must use to deliver webchat support to customers.

38. The Prime Contractor must at all times have sufficient resource and appropriately qualified staff at its disposal to ensure that it is capable to receive and support Customers calling from the National number (0800 100 900) from 8am – 8pm Monday to Friday; 10am – 5pm Saturday, 10am – 5pm Bank Holidays (excluding Christmas Day, Boxing Day and New Year's Day).
39. The Prime Contractor must put in place and maintain the resources necessary to deliver the Telephone and Webchat Capability to Customers, including but not limited to the resources enabling it to:
- i. handle inbound telephone/voice calls;
 - ii. receive and respond to e-mail queries;
 - iii. triage Customer needs against the Services available;
 - iv. capture Customer details during the interaction;
 - v. provide Digital Assistance to use digital services to self-serve when required;
 - vi. provide Careers Information, Advice and Guidance from a qualified Careers Adviser (as defined in the Workforce Development section of this Specification);
 - vii. make a booking for a Careers Information Advice and Guidance session with an Adviser (see Exceptions for Young People at paragraph 46 for further detail). Careers Information Advice and Guidance can only be offered to a Young Person over the telephone and email channels which could be more than a one-off session however a face to face interaction must not be offered);
 - viii. make a booking for a call-back appointment from a Careers Adviser who can provide Careers Information Advice and Guidance;
 - ix. make outbound contact to action Customer call back requests;
 - x. handle transfers from other Areas and the Digital Assistance Service (DAS);
 - xi. schedule follow-up contacts to check Customers' progress and offer revised support;
 - xii. signpost to local partners able to offer support, including but not limited to local employers, local providers, local colleges and careers hubs, s/college advisers, charities.

40. Without prejudice to any of the other requirements, the Prime Contractor must comply with the following requirements whenever delivering the telephone and webchat channel to a Young Person;
- I. The Service must be delivered by qualified Careers Advisers operating the Telephone and Webchat Capability;
 - II. The Outcome Based Model is not applicable;
 - III. Face to face services will not be available to Young People under 19 or 18 if NEET;
 - IV. Where telephone Careers Information Advice and Guidance is provided, the Prime Contractor should offer the Young Person a digital Careers and Skills Action Plan, which it should then send to the Young Person in draft for comment, revision and further discussion;
 - V. Ensure that young people are aware of how to access further careers information and advice from their school, college or local authority.
41. The Prime Contractor must ensure that the telephone and webchat capability is suitably provided during peak periods of demand such as August or during specific campaigns, in accordance with all the requirements (in particular, following the issuing of exam results).
42. The telephone and webchat channel must be locally focused, open to all and provide impartial careers support to help individual Customers understand their career options and manage their own careers.
43. Without prejudice to the general requirement, in providing the telephone and webchat channel, the Prime Contractor must:
- a. provide the services specified regardless of the category of Customer (whether they are a Priority Group Customer or not);
 - b. tailor the services to the needs of each individual Customer;
 - c. enable individual Customers to make informed decisions about other learning, training and employment opportunities that will enable them to progress towards their work or learning goal;
 - d. promote career management skills using a digital first approach to help Customers to independently manage their careers;
 - e. work closely with existing local provision to
 - i. respond to economic shock, sector trends and local investment;

- ii. accommodate increased customer demand at certain times of the year;
 - f. be informed by the latest national and local labour market information (LMI), and local educational intelligence, to enhance the Service provided.
44. The Prime Contractor must ask Customers to take part in post-service research and record it in the Data Sharing Service.
45. The Prime Contractor must take all necessary steps and take advice where necessary to apply appropriate safeguarding policies, procedures, and protocols for dealing with Young People and Adults.
46. Out of scope for the telephone and webchat channel in relation to Young People:
- i. Physical face to face support to Young People in schools is not available from the National Careers Service;
 - ii. Outcomes for Young People in line with National Careers Service Funding Model i.e. Young People will not receive a CMO, LO or JO outcome;
 - iii. Direct representation or advocacy for a Young Person in conversations with their school or college;
 - iv. 'Video calls' into classrooms requested by schools to provide support to a group of students.

National Telephone and Webchat Channel Technology Requirements

47. The Prime Contractor must provide their own operational IT systems to support the delivery of the telephone and webchat channel. This includes, but is not limited to, software for receiving, managing and recording incoming calls and interactions, cyber security for defence in depth, email and telephony systems in accordance with the requirements as to security of information (including data security) set out in the Contract.
48. The Prime Contractor must integrate its own operational IT systems with the DFE's data sharing mechanism in line with DFE requirements as to security of information (including data security) as set out in the Contract.
49. The Prime Contractor must provide the necessary contact points for the National Channels, e.g. telephone number for direct contact to the Careers Advisers providing the Telephone and Webchat Capability and monitored email addresses to receive emails routed from the National Website, respectively.

50. The Prime Contractor must maintain records of all interactions, including voice recordings and digital interactions, e.g. email, chat, text, to support the DFE's monitoring and audit requirements.
51. The Prime Contractor's telephony system must provide the following queueing capability to Customers:
- i. Queueing of Inbound Telephone Customers, with the Customer being informed of their position and expected wait time;
 - ii. Queue facility for the Customer to leave a recorded message to request a call back;
 - iii. The Prime Contractor must continue to provide Customer Data to the Data Sharing Service and include Customers receiving the telephone and webchat channel Services.

Working with the National Careers Service's digital products and tools

52. The National Careers Service digital products and tools currently comprise the following:
- i. National Careers Service website responsive to mobile and desktop use;
 - ii. Social Media Channels (Twitter, Facebook, Linked-In, YouTube);
 - iii. Web chat (live chat with an adviser);
 - iv. Virtual chat bot assistant; and
 - v. Options for emailing.
53. The National Careers Service's digital products and tools will be further developed. As the service evolves, the requirements on Prime Contractors to support this may change.
54. Prime Contractors will be required to support service design and improvement activities with the DFE.
55. The digital platform for the National Careers Service contributes to the Careers Strategy (2017) and the 'Skills for Jobs' White Paper - [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#) and the Lifetime Skills Guarantee announcement from the Prime Minister during the covid pandemic. The Careers strategy promised:

- i. An improved and interactive course directory to clearly explain routes to a wide range of vocational and academic learning opportunities, including apprenticeships, degrees and basic skills courses:
 - ii. The National Careers Service will be the single government funded service that provides careers information, advice and guidance. Young people and adults will be able to access this online via a new, improved National Careers Service website, alongside a range of tools that individuals, parents and schools can use.
- 56. Prime Contractors will be required to support the DFE in this. The possibility of using existing available 'best in class' digital products and tools will also be considered as part of this work.
- 57. The emphasis for Customers will be for them to self-serve through the National Careers Service's website and accompanying digital products and tools. Prime Contractors will be expected to introduce the use of digital as part of the Community based service in order to improve Customer confidence and leave them with the ability to self-serve. Prime Contractors will be expected to signpost, encourage and support Customers to self-serve using these digital products and tools, and provide assistance with local tailored support as needed.
- 58. Prime Contractors will be required to explain and encourage Customers to manage their career journey through the products and tools available from the National Careers Service.
- 59. Prime Contractors will be required to integrate their service delivery with the National Careers Service's digital products and tools, including but not limited to, enabling the ability to automatically evidence Outcomes, where possible.
- 60. Examples of when the National Careers Service's digital products and tools are used as part of delivery:
 - i. Create, update, and acceptance of a Careers and Skills Action Plan;
 - ii. Self-serve and career management activity using digital products and tools;
 - iii. Request digital account for migrated Customer.
- 61. Prime Contractors will be required to make Customers aware of how their information will be stored by both the Prime Contractor and the National Careers Service, and of their rights associated with UK GDPR (General Data Protection Regulations).

Partnerships

- 62. Prime Contractors are required to work in partnership to support economic growth and social mobility, including supporting local initiatives designed to connect

people and communities to careers opportunities that motivate and inspire them to take career planning actions.

63. Prime Contractors are required to develop relationships to meet the needs of the communities they serve. Where co-location is required to do this, supporting information can be found in the Appendix C.
64. Prime Contractors will be required to work with local partners to shape, align and focus the delivery of the Community based service on individuals who will benefit the most. This will include but is not limited to working with employers, Jobcentre Plus, local authorities, Local schools Partnerships, Careers Hub Leads, Combined Authorities, Chambers of Commerce, skills networks, as well as further education and higher education institutions, Training Providers and other key local partners. Prime Contractors should also work in partnership with local organisations involved in the development of Local Skills Improvement Plans where relevant.
65. Effective partnership working should enable the National Careers Service to:
 - i. Adopt a local leadership role by representing careers information, advice and guidance in local strategic partnerships that support strategies for economic growth, skills development, employment, and business and community enhancement;
 - ii. Work collaboratively with other providers in ways which add value and depth to the National Careers Service, giving individuals access to separate specialised information, advice, guidance and resources, that, when offered in partnership, can provide a seamless experience for the Customer thereby helping them to overcome barriers and move on with their career plans;
 - iii. Provide motivating and inspiring experiences for Customers by helping them connect to relevant career opportunities supported by practical information advice and guidance;
 - iv. Provide support and adviser input to local programmes such as World Skills UK events, virtual careers fairs, other career/job fairs and events as well as helping to bring together local employers (and other key local partners such as training and education providers, trade and industry organisations, Jobcentre Plus, recruitment and other support agencies) with local people;
 - v. Extend the reach of the National Careers Service, helping the National Careers Service to reach Customers through local organisations with whom the individual regularly interacts and/or trusts.
66. Prime Contractors are expected to work with the following partners:

- a. **Employers and employer organisations** - to ensure that careers advice and guidance is well informed by locally identified skills needs and local employer needs. To provide careers information and advice to employers and their employees to support skills gaps and support career progression;
- b. **Careers Hub Leads, and through them, Careers Leaders in schools and colleges** – working proactively to identify opportunities for local collaboration such as working together to identify high-quality sources of local labour market intelligence;
- c. **Combined Authorities** – working proactively taking into account devolution agreements relating to careers information, advice and guidance and locally developed skills plans and strategies ensuring the National Careers Service is embedded in wider delivery and plans;
- d. **Local Enterprise Partnerships (LEPs)** - working proactively to ensure that service delivery is tailored to respond to existing and/or emerging LEP priorities for skills and growth;
- e. **Chambers of commerce/other employer responsible bodies** to understand local labour market needs and to inform the development of Local Skills Improvement Plans where relevant.
- f. **Local authorities and wider employment and skills networks** to ensure links are made with the range of employment, economic development and skills initiatives at local authority, sub-regional and regional level, to ensure alignment of the careers, skills and advice services with wider employment and skills policy and provision. Also to better meet the needs of Customer groups by improving local authority awareness of the National Careers Service offer, particularly for young people aged 18-24 who are NEET;
- g. **Jobcentre Plus** to ensure effective signposting and referral of Jobcentre Plus Customers in receipt of benefits, including referral to bespoke skills provision. There is an agreed policy between the Department for Work and Pensions (DWP) and the Department for Education (DfE) to co-locate with the National Careers Service where possible and appropriate. This requires as a minimum:
 - i. Agreement of the frequency of National Careers Service presence in Jobcentres including compliance with the specific DWP requirements for delivery on Jobcentre Plus premises as part of an integrated service offer;
 - ii. Agreement of referral and signposting arrangements, based on nationally agreed Principles and Ways of Working Support for joint initiatives, for example “Fuller

Working Lives”, “In Work Progression” and the “Mid-life MOT”;

- h. **Charitable Organisations** who specifically focus on supporting young vulnerable adults, to ensure these Customers are able to access the National Careers Service;
- i. **Probation Service:** to provide careers information advice and guidance to offenders or ex-offenders in the community;
- j. **Further education Colleges and Training Providers** to build links and effective ways of working with specialist guidance and admissions staff in further education Colleges and Training Providers to ensure that signposting and referral and information sharing between them and the National Careers Service works effectively for the benefit of Customers;
- k. **Higher education Institutions and services** to draw on information, support and services provided by higher education institutions in delivering careers and skills advice where this matches the needs of the individual; and to build links and effective ways of working with specialist guidance and admissions staff in higher education institutions to ensure that signposting and information sharing between these services works effectively. The National Careers Service must not duplicate the service offered by higher education careers services;
- l. **Third Sector Organisations** that offer the National Careers Service a unique opportunity to access hard to reach Customers and deliver information and advice in locations and places where Customers feel most comfortable – for example Housing Associations, Citizens Advice Bureau. The third sector can also provide National Careers Service with access to specialist services that can assist Customers to overcome a wider range of barriers that may need to be addressed before they can enter work or undertake learning or training.

67. Prime Contractors will be expected to have significant knowledge of and draw on:

- i. Comprehensive local labour market information;
- ii. Details of relevant local service delivery and its outlets;
- iii. Local events, campaigns and initiatives;
- iv. Strategies and priorities published by local strategic authorities;
- v. Local options and opportunities for experiencing careers first hand that motivate and inspire Customers to make better decisions about their future plans; and

- vi. Case studies showing how and when young people and adults are motivated and inspired to realise their goals and aspirations.

PART C: Mandatory Requirements

68. The following are the mandatory requirements with which all Prime Contractors must comply in order to deliver the Community based service.

Subcontractors

69. To deliver the community based National Careers Service, Prime Contractors may wish to appoint subcontractors to operate across the area for which they are accountable. This may include for the purpose of delivering information, advice, guidance services as well supporting services such as technology, telephony, marketing, advertising, administration and finance.
70. Prime Contractors are solely responsible and accountable for all subcontracted provision. Any failure on behalf of a subcontractor to meet any of the requirements of the Community based service will be treated as a failure by the Prime Contractor.
71. The appointment and use of any subcontractor must be agreed with the DFE prior to appointment who reserves the right to refuse any appointment.
72. As a minimum, Prime Contractors will:
- i. Ensure subcontractors are appointed through a fair and open competitive process;
 - ii. Ensure subcontracts adhere to the terms and conditions of the Contract between the Prime Contractor and the DFE for the Community based service;
 - iii. Ensure subcontractor activity supports the overall delivery model for an integrated service;
 - iv. Ensure subcontractor delivery is focussed on providing or supporting *impartial* careers advice and guidance and does not replicate, duplicate or provide funding for careers advice and guidance that the subcontractor should fund through another funding stream;
 - v. Ensure supply chain relationships with subcontractors relating to the contract will be collaborative, fair and responsible;

- vi. Ensure subcontracting relationships are used to maximise the reach of the service, maximising the amount of funding contributing directly to careers information, advice and guidance;
 - vii. Use subcontractors to support the delivery of the Contract and not wholly or largely fulfil it – the Service should be a balance between subcontracting and direct delivery (DFE are not looking for a Prime Contractor to act as a managing agent for the Service);
 - viii. Request, obtain and collate management information from subcontractors;
 - ix. Manage the performance of subcontractors, including checking they meet quality and service standard requirements and have processes to deal with poor performance;
 - x. Ensure subcontractors always have suitably qualified staff (that comply with the mandatory requirements) to provide the services funded;
 - xi. Ensure that Customers know about the subcontractor's roles and responsibilities in providing the service;
 - xii. Ensure that subcontractors have the appropriate arrangements in place to collect and store Customer information securely;
 - xiii. Ensure that subcontractors are Cyber Essentials Plus certified and aware of and comply with UK Data Protection Legislation obligations and responsibilities;
 - xiv. Ensure that there is continuity of service if the subcontract ends for any reason informing the DFE of any changes and seeking approvals for new subcontractors they wish to appoint; and
 - xv. Ensure subcontractors adhere to national and regional marketing requirements and brand guidelines.
73. Prime Contractors must provide details of their subcontractors before contract award and then at least twice yearly through the MyESF system, as a means of managing performance, quality and risk.
74. At tender stage, Bidders will be required to supply details of the organisations with whom they intend to subcontract. Prime Contractors will be required as a condition of the award of their contract to provide further details on the subcontractors they will be working with, this will include but is not restricted to:
- i. Details of the organisation;
 - ii. The proportion of the overall Outcomes they will be delivering, or the value of award if the organisation is providing a supporting service;

- iii. Providing an indication of the proposed period of contract;
 - iv. A letter of intent to confirm the subcontractor is on board and committed to delivering their part of the provision and;
 - v. Evidence of holding Cyber Essentials Plus certification, or a clear commitment to achieve this prior to go-live.
75. Further details on the appointment and use of subcontractors can be found in the Terms and Conditions for the Contract.

Quality

76. Prime Contractors must ensure that they (and their subcontractors) meet the minimum quality requirements for the delivery of impartial careers information, advice and guidance as part of the core offer of the National Careers Service. These are:
- i. Holding and retaining the [Matrix Standard](#). 100% of organisations delivering the Community based service (contractors and sub-contractors) to be accredited to the Matrix Standard within six months of the start of the Contract;
 - ii. Being subject to and complying with the Ofsted Inspection Requirements;
 - iii. Compliance and full participation with any DFE initiatives, research or programmes to assess, measure and improve the quality of the National Careers Service; and
 - iv. The production of an evidence-based self-assessment review each year, which must be shared with the DFE when requested.
77. Organisations involved in the delivery of the National Careers Service (including subcontractors) who have not yet previously achieved Matrix Standard accreditation must have achieved Matrix Standard accreditation within six months of the start of the Contract.
78. Prime Contractors must ensure that, as a minimum, appropriate policies and strategies are in place to ensure continuous quality improvement in the following six core professional delivery activities:
- i. Customer interviewing and diagnostic skills;
 - ii. Expert use and understanding of local and national LMI;
 - iii. Motivating and moving Customers on towards desired Outcomes;
 - iv. Effective partnership working and referral activities;

- v. Effective caseload management and appropriate Customer follow up; and
 - vi. Ability to identify and use digital resources effectively.
79. Prime Contractors must have arrangements in place to gather feedback from Customers on an ongoing basis as part of their continuous quality improvement measures. As a minimum, feedback should be gathered on Customer satisfaction regarding:
- i. The appointment booking process;
 - ii. Customer views on how much the Customer Charter helped to shape their expectations of the Community based service;
 - iii. Whether learning and work needs and aspirations were understood;
 - iv. Practical support/advice in developing career management/job search skills; and
 - v. Usefulness of the Careers and Skills Action Plan.
80. Prime Contractors must hold Prime Contractor and subcontractor sourced Customer feedback data in a digital format that enables the data to be aggregated and analysed.
81. Prime Contractors must share Customer feedback data and results with the DFE, when requested.
82. The feedback process relating to Customer satisfaction for an individual Customer must not be led or managed by the adviser(s) who interviewed the Customer.
83. Prime Contractors must ensure their advisers have the relevant skills to tailor advice and guidance to meet the specific needs of the many different communities they serve. Staff should have access to appropriate, up to date information and advice resources. They should ensure they are embedded in their communities in terms of being part of the local employment and skills agenda. This may be achieved through building effective relationships and links with local employers, learning providers and key agencies.
84. Prime Contractors will also be required to integrate key operational activities with the wider National Careers Service. This will enable evidence gathering for Outcomes from the digital products and tools and a single Customer view for the service. Activities to be integrated will include but will not necessarily be limited to:
- i. Creation and maintenance of a Customer record/account;
 - ii. Sharing adviser session availability;

- iii. Creation of, or update to, an Outcome;
- iv. Customer transfers between touchpoints;
- v. Key service activities carried out with that Customer;

Workforce Development

- 85. It is recognised that the provision of high quality impartial careers information, advice and guidance is underpinned by the service having a well-qualified and professional workforce.
- 86. Prime Contractors will be required to demonstrate that they have an efficient and effective workforce development strategy, policy and procedures in place for the Community based service that reflect this ambition.
- 87. Prime Contractors must demonstrate within their workforce development strategy that they are committed to employing competent staff in line with the standards set by the Career Development Institute. For example, Prime Contractors must have in place a staff competency framework which includes:
 - i. Arrangements to map existing staff competencies against the Community based service requirements, including when changes are introduced; and
 - ii. Plans for continuous professional development.
- 88. Prime Contractors must ensure that all advisers involved in the delivery of the National Careers Service (or delivering IAG under the National Careers Service brand) hold careers information, advice and guidance qualifications appropriate to their role.
- 89. The minimum acceptable qualification for staff delivering careers information, advice and guidance is a Level 3 award in Careers Information, Advice and Guidance. Prime Contractors must commit to ensuring that all careers advisers hold a Level 4 or 6 Careers IAG qualification within 12 months of the commencement of the Contract or the start date of the adviser's employment (whichever comes later).
- 90. Prime Contractors must ensure that the core professional development areas listed in the previous section ('Quality') are included in their learning and development programmes and resource plans for advisers.
- 91. Prime Contractors will be responsible for training for their subcontractors and their careers advisers.
- 92. Prime Contractors must support any National Careers Service Workforce development strategy and work with the DFE to ensure that it is successfully implemented. The support must include:

- i. Ensuring that staff are released to attend appropriate training or allowed time to complete online training;
 - ii. Ensuring the participation of staff in nationally agreed training initiatives; and
 - iii. Co-ordination and compilation of Prime Contractor and subcontractor staff data for National Careers Service workforce audits.
- 93. Prime Contractors must comply with the DFE's National Careers Service induction and continuing professional development (CPD) programmes and ensure that Prime Contractor's own in-house induction and staff registration schemes complement and support the delivery of these programmes.
- 94. Prime Contractors must support any national and regional development objectives for improving the competence and capacity of the workforce. This will include employing and supporting apprentices in the delivery of the Contract. It is a requirement that the Prime Contractor agrees with the DFE the number of apprentices they will recruit and train during the lifetime of the Contract.
- 95. Prime Contractors must comply with the requirements set out in both the Funding Rules and Customer Charter (both supplied as part of this ITT).

Safeguarding

- 96. Prime Contractors must demonstrate that they have robust policies and procedures in place to safeguard Customers using face to face and telephone and webchat channels.
- 97. Prime Contractors are accountable for ensuring that all staff (whether employed directly or indirectly via a subcontractor) involved in the delivery of the National Careers Service (including non-delivery staff who have access to personal data) are subject to and comply with the safeguarding policy and procedures.
- 98. The policy should as a minimum:
 - i. Set out what arrangements are in place to minimise risk;
 - ii. Detail how Customer health and safety will be ensured; and
 - iii. Detail Prime Contractor security and confidentiality arrangements.
- 99. Prime Contractors must comply with the requirements outlined in the Protection of Freedoms Act 2012.

Data Security

100. In conformance with the Government Security Classification (GSC) scheme, data held by Prime Contractors will by default be classified as 'OFFICIAL' and move to 'OFFICIAL–SENSITIVE' where the number of Customer records stored or processed exceeds 1,000 individual records. If this information is compromised, it would have serious consequences and could result in considerable detrimental impact to individuals as well as damage to the reputation of the DFE, the National Careers Service and the Prime Contractor.
101. Prime Contractors are required to ensure that they and their subcontractors have Cyber Essentials Plus certification in place to conform to government security and procurement standards. All personal data that is transmitted (sent by email, sent by post, the internet or removable media) must be appropriately protected and stored in accordance with the terms and conditions of the Contract.
102. Prime Contractors are required to ensure that they and their subcontractors comply with the Data Protection Act 2018 and the United Kingdom General Data Protection Regulations as well as the DFE guidance on Data Security.
103. Further detailed requirements with regards to data security are set out in the Terms and Conditions for the Contract.

Equality and Diversity

104. The Prime Contractor has a duty to ensure that, in addition to the identified Priority Group Customers, the Community based service is also accessible to individuals and groups that share the 'protected characteristics' as defined in the Equality Act 2010. The protected characteristics under the Act are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.
105. The Prime Contractor is required to comply with all relevant legislation and must develop strategies to encourage people from the identified Priority Groups, including those with learning difficulties or disabilities to use the Community based service and ensure they meet the specific needs of these Customers.
106. The Prime Contractor should strive to ensure that its workforce is diverse and reflects the communities served in terms of background, language, age, location or culture.
107. The Prime Contractor must develop and implement strategies and monitoring arrangements that enable comparative analysis of the experiences of different Customer groups in terms of their:
- i. Awareness of the community based service;

- ii. Access to the community based service;
 - iii. Usage of the community based service;
 - iv. Satisfaction with the quality of the Community based service; and
 - v. Relative Outcomes in terms of moving into learning or work.
108. The Prime Contractor should take all necessary steps to address any significant differences in the experiences or Outcomes for particular Customer groups or communities using the Community based service.

Marketing and Communications

109. Prime Contractors will be required to support national marketing and branding activities and collaborate in the delivery of national messages to raise awareness of the Community based service, create strong brand awareness and offer consistent key messages. Activity by the Prime Contractor will be subject to Cabinet Office spending controls and must be agreed with the DFE.
110. Prime Contractors will be required to promote usage of the National Careers Service digital service and the National Contact Centre national number and ensure customers accessing the Service are exclusively dealt with using the National Careers Service brand. Contractors will be required to obtain clearance from the National Careers Service communications team on all applications of its brand for external use
111. Prime Contractors should direct Customers to the appropriate National Careers Service resources and services as well as promoting messages about the impact and benefits of career management on success in work and life.
112. Prime Contractors will be required to produce and submit their own quarterly local marketing strategy and will be required to develop community based materials in line with the national brand guidelines and promote the local service proactively, consistent with national messaging, strategies and standards.
113. Marketing strategies must set out activity/key campaigns for the coming months detailing:
- i. Objectives/KPIs;
 - ii. Audiences, including insight that both informs the marketing strategy and provides intelligence back to the National Careers Service
 - iii. Strategy/Implementation (e.g. channels);
 - iv. Metrics for evaluation (aligned with DfE evaluation guidance e.g. inputs/outputs)

- v. Maximum potential budget allocated to the activity (subject to DFE approval and Cabinet Office spending controls);

114. Prime Contractors are required to have:

- i. One or more nominated media-trained careers adviser(s) to participate in media opportunities;
- ii. One or more nominated careers adviser(s) to participate in promotional opportunities eg videos etc.

115. Prime Contractors are able to have the same nominated careers adviser for both activities. Prime Contractors are responsible for all media training of nominated staff.

116. Prime Contractors should submit a monthly forward look and evaluation of marketing and communications activity measured against designated metrics (detailed by the DFE) and marketing strategy. Subsequent quarterly plans should build upon learnings and customer feedback from the previous quarter to ensure exemplary customer service.

117. Prime Contractors (and their subcontractors) must ensure compliance with the national brand for the National Careers Service and any related brand values and guidelines. This will include:

- i. Ensuring that all organisations delivering services under the brand fully understand and comply with the brand and its values;
- ii. Ensuring that all National Careers Service activities, including regular communications, are clearly identified and branded as National Careers Service;
- iii. Using National Careers Service branding and not Prime Contractors' own branding when delivering the National Careers Service;
- iv. Ensuring that advisers understand and recognise the importance of the National Careers Service's service offer, its brand values and the Customer Charter;
- v. Ensure that the Customer Charter is clearly displayed and visible; and
- vi. Ensuring customers are aware of their rights and responsibilities when accessing the Community based service, as set out in the Customer Charter.

118. Prime Contractors will be required to submit at least two **high quality** case studies with accompanying video/photo content each month (this being defined

as a first hand testimonial or story which demonstrates the positive impact of the service in terms of outcomes on an individual(s), which can then be used to further promote the service, together with response and conversion data, as requested). Permission to use these case studies must be attained from the individuals by the Prime Contractor.

119. Prime Contractors must promote the National Careers Service brand including (but not exclusively) deploying high profile National Careers Service branding at every delivery location and using it in all promotional activity and advertising delivered locally.
120. Prime Contractors will be required to act as advocates and ambassadors of the National Careers Service especially in their local partnership activity. This includes encouraging all advisers and other staff to speak about and advocate on behalf of the National Careers Service encouraging Customers to recommend the National Careers Service to others.
121. Prime Contractors will also be required to source and publish local content via social media channels e.g. Twitter, Facebook , LinkedIn and YouTube and other social media platforms introduced by the Service.
122. The National Careers Service Prime Contractors are required to demonstrate that they have the capability to support a nationally co-ordinated social media strategy for the Service. This will entail:
 - i. Producing content tailored to specified audiences, areas and social media platforms;
 - ii. Utilising and supporting with content to a central social media platform;
 - iii. Engaging with specific social media channels to connect specific audiences;
 - iv. Providing regular free or low cost content from frontline staff, including text, photographs and videos which exemplify the National Careers Service;
 - v. Ensuring staff adhere to the National Careers Service social media guidelines;
 - vi. Ensuring that all social media activity complies with National Careers Service brand guidelines; and
 - vii. Providing content for the professional careers advice community, including examples of good practice.
123. The Prime Contractor (and/or their subcontractors), careers advisers and operational staff will be required to participate in nationally organised events, as appropriate.

Information Technology (IT) Systems

124. Prime Contractors must provide their own operational IT systems to support the delivery of the Community based service. This includes, but is not limited to, software for managing and recording Customer details and interactions, cyber security for defence in depth, email and telephony systems.
125. Prime Contractors are expected to integrate their own operational IT systems with the DFE's data sharing service to facilitate the sharing of Customer and non-Customer data across the National Careers Service, and changes in reference data and data schema.
126. The Action Plan data from the mediated journey is available to the customer through the National Careers Service website. The Prime Contractor is required to cooperate with the DFE in the provision of any further data as the digital service develops during the course of the Contract and ensure that their CRM solutions are updated to accept the latest APIs. It is therefore vital that any data shared is of a high quality. It is the responsibility of the Prime Contractor to ensure Customer data is of the requisite quality prior to submission to the DFE
127. Further detail on IT systems and integration can be found in the Data Sharing System Details Document (provided as part of the ITT).

Communication with the DFE

128. Prime Contractors will take responsibility for all communication with the DFE in relation to all aspects of the Contract and the delivery of the Community based service. The Prime Contractor will be required to nominate contacts with relevant expertise to liaise with the DFE. Areas where the DFE will require engagement are:
 - i. Service development and improvement;
 - ii. Marketing and Communications including social media delivery;
 - iii. Quality, Training and Development, and Workforce issues;
 - iv. Feedback and Complaints;
 - v. Security and Data;
 - vi. Service Transition and Readiness (to include Information Technology, Systems and Testing);
 - vii. Performance and Contract Management; and
 - viii. Partnership working.

129. The DFE reserves the right to change the way it communicates with Prime Contractors as it deems necessary.
130. Prime Contractors will be required to read and note the information and requests for action in the regular Prime Contractor bulletin (or similar electronic publication), to respond in a timely fashion to any calls to action, and to disseminate the contents of the Prime Contractor Bulletin throughout their organisation, including to Subcontractors.
131. Prime Contractors will be required to attend face to face meetings (or virtual, as advised by the DFE for each session) with the DFE, these are likely to be quarterly, and subject to availability of DFE staff and resources.
132. Prime Contractors will be required to support effective communication with the DFE which will be reviewed from time to time to ensure effective dissemination of information and best value use of resources.

Collaboration with other National Careers Service Prime Contractors

133. Prime Contractors will be expected to initiate, develop and maintain effective collaborative working relationships with other Prime Contractors who supply services that together form the National Careers Service. The purpose of this collaborative working is to:
- i. Strengthen and raise awareness of the National Careers Service brand as a trusted first point of contact for Customers seeking information, advice and guidance on all aspects of careers;
 - ii. Ensure the orderly provision of seamless end-to-end services to the DFE and customers of the National Careers Service;
 - iii. Avoid any unnecessary duplication of effort;
 - iv. Undertake all such tasks and activities that may be necessary to integrate their systems and services with all other relevant systems and services of other National Careers Service contractors and the DFE;
 - v. Signpost Customers to other Prime Contractors, and relevant partners of the National Careers Service, where appropriate; and
 - vi. Continuously improve the service offer and delivery approach by sharing information and best practice. This may include, but is not limited to:
 - Regular meetings of marketing leads and employer engagement leads between Prime Contractors;

- Sharing of best practice with other Prime Contractors through documentation and either face to face or virtual sessions;
- Cooperating with the DFE in progressing best practice approaches to be implemented across all Prime Contractors.

Transition

134. The Prime Contractor is responsible for developing an outline implementation plan that must set out how it will establish and deliver a live service and coordinate testing and integration activities with other service organisations within the National Careers Service.
135. Successful bidders will be required as a condition of their award to elaborate the outline implementation plan into a more detailed implementation plan.
136. Prime Contractors are expected to designate a transition manager to manage the transition into live service to an agreed timescale. The transition will need to include, as a minimum:
 - i. Confirming any subcontract / partner commercials required to deliver the community based service;
 - ii. Establishing facilities, infrastructure and systems needed to deliver the community based service (including compatibility with DFE national telephone and webchat systems);
 - iii. Staffing and resourcing of the community based service;
 - iv. Establishing the business processes, ways of working and data needed to deliver the community based service;
 - v. Complying with the Code of Connection for integrating systems / sharing data with the wider National Careers Service; and
 - vi. Participating in integration testing and operational end-to-end testing aligned to a timetable managed centrally in the later stages of transition.
137. Prime Contractors will be expected to deliver a transition into live service operation that meets specified key milestone dates (as specified in the implementation schedule to the Terms and Conditions). The timely achievement of each milestone date will result in a payment to acknowledge an achievement that minimises risk to the wider service being established. Late delivery of a milestone will cause the related payment to be lost (as specified in the Terms and Conditions).

PART D: Measurement, Payment and Performance Management

Outcomes for Customers

138. The funding system (supported by comprehensive funding rules which form part of the contract) for the National Careers Service is aimed at ensuring Prime Contractors (and subcontractors) support Customers to achieve the Outcomes and deliver a high quality, impartial Community based service that meets the needs of the Customer. Prime Contractors must ensure that the Outcome achieved is relevant to the Customer's circumstances and aspirations.
139. Prime Contractors will be able to earn up to three separate payments within a 12-month period for each Customer. The payments are for the following Outcomes:
- i. Career Management;
 - ii. Learning;
 - iii. Job. (To note, the period runs to 13 months for Job Outcomes)
140. The DFE reserves the right to change the terms of the Funding Rules subject to prior consultation with the Prime Contractor.
141. The definition for each Outcome is set out briefly in the following sections, with fuller evidence requirements contained within the Funding Rules.

Career Management Outcomes

142. Career Management Outcomes are defined as the provision of high quality, impartial careers information, advice, and guidance. This will include providing the Customer with relevant information and clear steps to advance their career planning, development and achievement of their short-, medium- and long-term goals. It will also help Customers understand the value and importance of managing their own careers, the value of improving their skills and encouraging them to continue to manage their career on their own initiative throughout their lifetime.
143. Prime Contractors must do the following to achieve this Outcome:
- i. Demonstrate customer acceptance that the careers advice provided met the Customer's needs, in line with the Customer Charter. The careers advice provided to each Customer must include the provision of a Careers and Skills Action Plan that provides clear steps on how the Customer can advance his/her career planning and development;

- ii. Measure the satisfaction of the Customer with the Community based service independently of the careers advice session, ideally via digital means;
 - iii. Ask Customers to participate in independent customer satisfaction and progression surveys that will follow Customers up at least one and six months after using the Service.
144. Demonstrate that the Customer is actively managing their career in line with the next step actions detailed in the Customer's Careers and Skills Action Plan.

Jobs and Learning Outcomes

145. The ultimate aim of careers information, advice and guidance is to support Customers to progress into appropriate learning and work relevant to their individual needs and circumstances. A Job or Learning Outcome is defined as: "progress made in a Customer's learning or working life". It may constitute starting a formal learning programme, or completing an accredited course, starting a job or securing a promotion.
146. A customer may achieve both a Job and a Learning Outcome and Prime Contractors may claim both these outcomes.
147. Job and Learning outcomes can each be claimed independently and as such must be evidenced separately.

Learning Outcomes

148. In order to earn a Learning Outcome, the Customer must have attended one learning or training course (which could include traineeships, providing the course(s) started as part of the traineeship meet(s) the required criteria set out in this paragraph) that:
- i. Is clearly appropriate to the Customers personal situation and the activity agreed in the Careers and Skills Action Plan; and
 - ii. Delivers a qualification or certification that is listed on the OFQUAL register and is accredited by an education institution that is officially recognised in the UK; or
 - iii. Is an academic course or learning opportunity that is provided, endorsed, or accredited by a recognised academic organisation within the UK; or
 - iv. Is a professional course or learning opportunity provided by a recognised established professional organisation within the UK.

149. A Learning Outcome can be claimed at the start of the attendance of the accredited learning. If the duration of learning is between one and six hours the course must be completed before the outcome can be claimed.
150. Referral onto a Skills Bootcamp (free, flexible courses of up to 16 weeks for adults aged 19 or over and who are either in work, self-employed, recently unemployed or returning to work after a break) can be claimed as a Learning Outcome. Claimable outcomes can only be made if a customer fulfils the entry requirements for the Skills Bootcamp.
151. A Learning Outcome cannot be claimed in the following circumstances:
- i. For any training or qualification that is linked to statutory employer requirements and/or is linked to a licence to practice. With the exception of:
 - a) Forklift truck;
 - b) food hygiene;
 - c) health and safety;
 - d) security guarding, door supervision and CCTV operations (public space surveillance), needed to obtain a Security Industry Authority (SIA) licence;
 - ii. Learning or courses that are related to the following activities:
 - a) Inductions for college, or for other learning and training;
 - b) CV writing;
 - c) Job search activities;
 - d) Participating in interviews or interview skills;
 - e) Study skills;
 - f) Activity related solely to confidence, motivation and resilience building.
152. A Learning Outcome can only be claimed for the following if it clearly meets the requirements of paragraph 148:
- a) Employability skills;
 - b) Digital literacy or basic IT courses, such as learning to use computers or the internet.

Job Outcomes

153. In order to earn a Job Outcome, the Customer must have secured employment or an apprenticeship that is at least 16 hours a week for a minimum of four consecutive weeks or demonstrated career progression.
154. Career progression is classed as:
- i. an increase in earnings;
 - ii. progression at work via promotion and/or increased responsibilities; or
 - iii. undertaking a career change.
155. The minimum of 16 hours a week employment can consist of more than one job.
156. A Job Outcome cannot be claimed until four weeks after the start of the employment or the start date of the promotion.

Budget

157. The budget is set in line with the financial year. The DFE will confirm the budget for October 2022 to March 2023 prior to contract signature. Budgets beyond this round of the Spending Review and business planning have not yet been allocated, so DFE can only include indicative delivery budgets until final budgets have been agreed through business planning.
158. As part of the bidding process, potential Prime Contractors will be required to submit an indication of the volumes they will deliver for each of the agreed Outcomes within the overall budget allocated for the Area for which they are bidding (see table 1 below). Bidders will be required to provide a profile for 2 years of delivery based on the indicative figures given in Table 1 below. These volumes will be included in the Contract.
159. Table 1 below sets out an indicative annual delivery budget allocation for each financial year.

Table 1

	Indicative annual delivery budgets - Oct 22 - Mar 23	Indicative annual delivery budgets - Apr 23 - Mar 24	Indicative annual delivery budgets - Apr 24 - Sep 24	TOTAL
East Midlands	£1,904,290	£3,662,097	£1,757,807	£7,324,194
East of England	£1,714,907	£3,297,897	£1,582,991	£6,595,794

London	£3,634,079	£6,988,614	£3,354,535	£13,977,228
North East	£1,971,054	£3,790,489	£1,819,435	£7,580,979
North West	£3,276,633	£6,301,218	£3,024,584	£12,602,435
South East	£2,429,784	£4,672,661	£2,242,877	£9,345,321
South West	£2,193,025	£4,217,355	£2,024,330	£8,434,710
West Midlands	£4,127,821	£7,938,117	£3,810,296	£15,876,233
Yorkshire and Humber	£2,959,608	£5,691,553	£2,731,945	£11,383,106
OVERALL	£24,211,200	£46,560,000	£22,348,800	£93,120,000

160. Budgets for subsequent financial years will be made available each financial year only after it has been confirmed as part of the DFE business planning process. Indicative allocations for each financial year will be notified to Prime Contractors as soon as is practicable, with final allocations (adjusted by a performance factor based on the previous financial year's delivery) confirmed prior to the next Financial Year.

Funding Methodology

161. The budget allocation for the Community based service is calculated based on data from previous years of the service operating.
162. In subsequent years, allocations will be issued based on performance in the previous Contract Year.

Unit Price

163. Unit prices for each Outcome (for Priority and Non-Priority Group Customers) are:

Outcome	Priority Group Customer	Non-Priority Group Customer
Career Management Outcome	As submitted by suppliers. Will not exceed £55	£15
Learning Outcome	£60	£20
Job Outcome	£90	£32

164. As a part of the tender process, Primes will be asked to submit two prices for the Career Management Outcome - a base price and a volume discount price. The volume discount price will apply to all Career Management Outcomes claimed above the ceiling of 80% of forecast volumes for each contract year. Volume forecasts will be made by Prime Contractors and agreed by the DFE as a part of the tender process. There will be the opportunity for forecasts to be revised as part of Performance Management.

Service Fee

165. Prime Contractors will be paid a monthly Service Fee which will equate to a total of 33% of the Maximum Contract Value.
166. In order to attract the Service Fee payment, Prime Contractors must continually comply with the Mandatory Requirements set out in Part C of the Specification. Compliance with these requirements will be reviewed as part of quarterly performance reviews. Service Fee payments will be subject to performance against the Service Levels set out in Schedule 6 of the Contract with reductions in payments for underperformance against the measures set out. This will be discussed in the Performance Management Point review meetings, as will evidence that the roles, responsibilities and activities set out in the Specification Document are being adhered to.
167. Service Fee payments in the first Contract Year will be tapered, allowing for higher payments in the first 3 months of the Contract to support Prime Contractors with set up costs and mobilisation. Service Fee payments in the remaining Contract Years (and any subsequent years if extended) will be a flat monthly rate which will be a % of the total Service Fee for each Financial Year (as detailed in Schedule 6 of the Contract).
168. The Telephone/Webchat (including email and post) Channel is not funded on Outcomes, but via the Service Fee.

Payment

169. Prime Contractors will be paid on actuals for the Career Management Outcome, Job Outcome and Learning Outcome.
170. Service Fee payments will be paid in line with the above referenced profile. Service Fee payments will be subject to performance against Key Performance Indicators set out in Schedule 14 of the Contract.
171. Payments will be made monthly in arrears via invoice. Reconciliation will take place quarterly with monthly profiles being adjusted depending on performance.
172. Further information regarding payments will be provided within the Funding Rules.

Maximum Contract Values

173. It is the Prime Contractor's responsibility to deliver to their annual Maximum Contract Value (MCV) and not exceed it. The DFE accepts no liability for payment of any delivery that exceeds the MCV.

174. The DFE applies performance factors to the allocation of budgets. Further information is provided in the Funding Rules.

Performance Management

175. The DFE operates a comprehensive performance management system to ensure the National Careers Service is delivered by Prime Contractors to a high quality and with the intended high impact in terms of Customer Outcomes.
176. Where the Prime Contractor is found not to be meeting the requirements of the Contract, including achievement of National Targets and Community based Key Performance Indicators (KPIs), the DFE will take action, including, but not restricted to:
- i. Seeking action plans from Prime Contractors to address failure;
 - ii. Reduced funding allocated in year through quarterly review;
 - iii. Reduced future allocations according to a performance factor;
 - iv. Withholding payments on Outcomes; and/or
 - v. Recovery of funds.
177. Where this does not result in an improvement in performance, the breach/termination provisions of the Contract may be invoked.
178. As a minimum, performance management will be informed by:
- i. monthly, quarterly and annual performance monitoring against agreed National Profiles, agreed National Targets and Target Customer Volumes;
 - ii. regular performance assessments against contribution to agreed whole-service KPIs introduced in accordance with the Specification;
 - iii. financial health, management and control mechanisms;
 - iv. Ofsted inspection outcomes;
 - v. achievement and retention of Matrix Standard accreditation;
 - vi. compliance with changing Government policy;
 - vii. partnership activity as referenced in the Specification;
 - viii. risk management, via a monthly submitted risk register;
 - ix. performance against Key Performance Indicators and/or service level agreements introduced in discussion with the Prime Contractor;
 - x. data quality and security requirements as set out in the Funding Rules and the Terms and Conditions; and
 - xi. continuous improvement initiatives.
179. The DFE will operate a quarterly performance management process where the value of allocations will be reviewed. The DFE reserves the right to

adjust budget allocation for Prime Contractor's that are underperforming. The DFE will also solicit plans for successful Prime Contractors to seek additional funding.

180. Prime Contractors' performance will be assessed against the following:
- i. Achievement of Career Management, Jobs Outcomes and Learning Outcomes compared to agreed profiles;
 - ii. Achievement of Service Levels related to Service Fee;
 - iii. Evidence of partnership activity;
 - iv. Achievement of National Targets;
 - v. Achievement of area KPIs; and
 - vi. Any evidence that suggests the behaviour of the Prime Contractor or funding claimed is not shown to be in the interests of Customers or employers.

The National Targets

181. Prime Contractors will be expected to achieve the following targets and Outcomes:
- i. **Career Management:** 95% of Customers to actively manage their careers;
 - ii. **Jobs or Learning:** 45% of customers to achieve a job or learning Outcome;
182. National targets may be subject to change during the lifetime of the Contract.

Key Performance Indicators (KPIs) for Partnership Working

183. The DFE expects the Prime Contractor to agree KPIs with Combined Authorities (where applicable), Local Enterprise Partnerships (LEPs) and other local partners where applicable, ensuring that wherever possible local priorities and the development of Local Skills Improvement Plans can be addressed within a national contracting framework.
184. These Partnership KPIs will be SMART meaning they will be Specific, Measurable, Attainable, Realistic and Time-based, and they should be agreed in place within 3 months of contract award.

185. KPIs will reflect both local and partners' priorities to enable the Community based service to play its part in creating a skilled, flexible workforce and able to drive forward national initiatives for skills growth such as the levelling up agenda.
186. KPIs for Partnership Working will be reviewed on an annual basis (as a minimum) to ensure they reflect local and regional needs within the national contracting framework.

Management Information

187. For Prime Contractors to demonstrate they are meeting the community based service requirements set out above as well as meeting the needs of their Customers, Prime Contractors will be required to:
- i. Provide robust management information on finance, volumes, progress towards national targets and KPIs, service levels, Outcomes and other required outputs;
 - ii. Provide information that adheres to the requirements set out within the Funding Rules;
 - iii. Ensure tracking systems are in place to identify and monitor the impact of the Community based service and performance against National Targets and KPIs;
 - iv. Conduct surveys and evaluations and provide support and contribution to regional and national evaluations;
 - v. Fulfil requirements for the recording of customer's unique learner numbers (ULNs); and
 - vi. Have the capability to provide additional operational and transactional data as requested by the DFE.
188. All Management Information should be provided in a timely manner.

APPENDICES: Supporting Information

Appendix A – Geographical areas

189. The following pages offer demographic data for each geographical area, along with a high level overview of some of the key local partners - local authorities, Local Enterprise Partnerships (LEPs) and current details of Combined Authorities.
190. Local landscapes and priorities will evolve over the lifetime of the contract and the Prime Contractor will be expected to adapt accordingly as a priority. We

expect bidders to have a strong awareness of local partners and priorities and to demonstrate their capacity to forge strong relationships that can quickly respond to existing and emerging locally defined priorities, including pilot programmes.

191. Note that for the Priority Group Profile estimated numbers, the sum of the individual priority groups may add up to more than the total for the area as a result of some customers being present in more than one priority group category.

Geographic Areas



Area Name	Geographical Area Covered
West Midlands including Staffordshire	Telford & Wrekin, Shropshire, Herefordshire, Worcestershire, Warwickshire, Coventry, Birmingham, Sandwell, Dudley, Walsall, Wolverhampton, Solihull, Staffordshire, Stoke on Trent.

Area Demographic Data - Definitions and Data Sources

192. The following paragraphs set out the Demographic data and Data Sources for each of the 9 geographical areas

193. For each area **Employment Profiles** data is shown for the number of individuals **aged 16 to 64** who are:

- In employment, along with the % of employed people in the age group
- Unemployed, and as a % of individuals in the age group
- Economically inactive, divided into 5 subcategories, each as a % of people in the age group

194. For each area the **Priority Group Profiles**, data is given for:

- 1) The number of citizens aged 18 to 24 who are not in education, employment or training (NEET) as a % of population **in this age group**.
- 2) The number of citizens aged 16 to 64 without a level 3 qualification as a % of the population, aged 16 to 64.
- 3) The number of citizens aged 16-64 unemployed for 1 year or longer, estimated as % of those economically active, aged 16 to 64.
- 4) The number of lone parent households with dependent children as a % of all households.
- 5) The number of adults with special educational needs and/or disabilities as a % of population, aged 18 to 64.
- 6) The number of citizens aged 50 to 64, unemployed excluding those at risk of redundancy as a % of those economically active aged 50 to 64.

195. In arriving at the profiles for the priority groups we have used the following data sources

- 1) NEET annual brief, Calendar Year 2020 (estimates from Labour Force Survey, average of Q1 to Q4 2020).
- 2) Qualifications, ONS Annual Population Survey, Jan to Dec 2020 (aged 16 to 64, not 18 to 24).
- 3) Duration of unemployment by region (estimates from Annual Population Survey, Apr 2020 to Mar 2021).
- 4) Households by type of household and family, regions of England (estimates from Labour Force Survey, 2019).
- 5) National Careers Service research © CACI Ltd 2017.
- 6) HI01 to HI09 Regional labour market: Headline indicators (Annual Population Survey, Jul 2020 to Jun 2021).

West Midlands

Employment Profile

Unitary Authorities/Local Authorities Birmingham, Bromsgrove, Cannock Chase, Coventry, Dudley, East Staffordshire, Herefordshire, County of Lichfield, Malvern Hills, Newcastle-under-Lyme, North Warwickshire, Nuneaton and Bedworth, Redditch, Rugby, Sandwell, Shropshire, Solihull, South Staffordshire, Stafford, Staffordshire Moorlands, Stoke-on-Trent, Stratford-on-Avon, Tamworth, Telford and Wrekin, Walsall, Warwick, Wolverhampton, Worcester, Wychavon, Wyre Forest.
LEPS Black Country, Coventry & Warwickshire, Greater Birmingham & Solihull, Stoke-on-Trent & Staffordshire, The Marches, Worcestershire
Combined Authorities West Midlands

All individuals, aged 16 to 64	3,613,000		
Economically active, aged 16 to 64	In employment	2,657,000	73.5%
	Unemployed	157,000	4.3%
Economically inactive, aged 16 to 64	Student	234,000	6.5%
	Looking after family/home	162,000	4.5%
	Long-term sick	191,000	5.3%
	Retired	101,000	2.8%
	Other Inactive	86,000	2.4%

Source: ONS [Annual Population Survey](#), Jul 2020 to Jun 2021

Appendix B – Related Policy Documents

STRATEGIC OVERVIEW

196. The National Careers Service is a key enabler of social mobility by helping customers navigate the learning, employment and skills landscape. Regardless of a person's background and circumstances, the National Careers Service ensures that customers understand their options and are able to develop the skills, knowledge and confidence to access learning and careers opportunities, including within new and emerging job markets.
197. The information in this section provides an overview of the key strategic priorities for the National Careers Service that must drive the design and delivery of the Prime Contractor activity. The key strategic priorities may change during the period of the contract and, where applicable, Prime Contractors must be able to adapt their service delivery in order to respond to such changes.

Careers Strategy: Making the most of everyone's skills and talents

198. The government published its careers strategy in December 2017, which we continue to build on. The strategy has a clear focus on the role of careers to help improve social mobility. It includes proposals to improve the quality and coverage of careers advice in schools and colleges, and give people the information they need to access training throughout their working lives. The strategy is focused on ensuring that everyone has access to appropriate advice and guidance to move into education, training or employment.
199. The Careers Strategy references the barriers that too many people in our country face and the need to break these down to give everyone equal opportunity, unlocking potential and transform lives.
200. The 2017 Careers Strategy has laid strong foundations, underpinned by the investment in the National Careers Service and The Careers & Enterprise Company.
- The **National Careers Service** provides free careers information, advice and guidance to both young people (from the age of 13) and adults through a website, webchat and telephone helpline. The Service is delivered by local community-based careers advisers. Adults aged 18 and over are also able to access face to face guidance provided by local community-based careers advisers.
 - The **Careers & Enterprise Company** supports schools and colleges to provide young people with meaningful encounters with employers and the workplace and helps open young people's eyes to choice and opportunities, raise aspiration and prepare them for the world of work.

White Paper Skills for Jobs: Lifelong Learning for Opportunity and Growth

201. On 21 January 2021, the Government published the White Paper Skills for Jobs: Lifelong Learning for Opportunity and Growth. The reforms in the white paper will give people a genuine choice between high-quality technical and academic routes, ensure that students and taxpayers are getting value for money, and enable everyone to get the high-quality skills that employers need in a way that suits them.

202. The Skills for Jobs white paper reinforced many of the commitments in the 2017 Careers Strategy to ensure we deliver a high functioning national careers system that is available to all. This includes commitments to:

- Develop a more cohesive careers system through delivering greater alignment between careers services for young people (as delivered through the Careers and Enterprise Company) and the National Careers Service.
- Improve the National Careers Service website to make sure that every young person and adult can access personalised careers information and advice online.
- Complete the national rollout of Careers Hubs, digital support, Careers Leader training and the Enterprise Adviser Network (EAN) to all secondary schools and colleges in England. This will continue to accelerate the progress of all schools and colleges towards achieving the [Gatsby Benchmarks](#) so that all young people are equipped to make informed career and learning decisions.
- Introduce a range of measures to incentivise schools and colleges to prioritise careers guidance and hold them to account for the quality of their careers programmes. This includes delivering a strong statutory framework, tougher enforcement, and an Ofsted review of provision. It also included a commitment to build careers awareness into every stage of teacher professional development and embed careers education into the secondary curriculum.

Supporting the Build Back Better Strategy

203. The Prime Minister's priorities for 2021-22 are clear in setting out how the government will not only beat Covid-19 but enable the country to come back stronger than ever before. The priorities for the government include supporting the economic recovery by increasing job opportunities and levelling up across the country, supporting the disadvantaged and protecting those most vulnerable in the labour market.

- i. The National Careers Service (the Service) makes sure there is equality for all, by providing young people and adults with a full range of opportunities to learn about work and the skills that are valued in the workplace. Careers advisers enable individuals to make informed choices, acquire knowledge and skills and support people to plan their progress through education, training and into the labour market. This

- supports individuals to identify a suitable career path based on their skills and aspirations.
- ii. The National Careers service focuses its support for the most disadvantaged and vulnerable, supporting people on the path to meaningful jobs and careers that allow them to contribute fully to their communities.

Lifetime Skills Guarantee

204. In September 2020, the Prime Minister set out his plans in the Lifetime Skills Guarantee, to transform the training and skills system, making it fit for the 21st century economy, and helping the country build back better. As part of this guarantee, he committed to give adults without a Level 3 (L3) qualification, the chance to benefit from almost 400 free college courses valued by employers: including courses from engineering to healthcare to conservation. To support and align with this guarantee, the National Careers Service will expand existing priority groups¹ to include adults who do not have a L3 qualification.

Appendix C – Co-locating with Partners

205. Co-location refers to the practice of locating multiple complementary businesses in the same venue to enhance the offer to Customers. Priority Groups (and potential Customers) of the National Careers Service are often the hardest to engage with and they are often best reached by delivering from the premises of partners who also serve Priority Groups.
206. The National Careers Service has an excellent track record of partnering and co-locating with organisations that enable them to engage with Customers within the Priority Groups.
207. Prime Contractors of the Community based service are required to develop relationships to meet the needs of the communities that they serve.
208. Co-location in Jobcentre Plus, libraries and other community venues that are already accessed by potential service users has proved to be successful in reaching disadvantaged groups. The current Community based service provides co-located delivery within community venues such as libraries, health centres, children's centres, housing associations, nurseries and pre-schools and places of worship to enable them to engage with those customers that would most benefit from interaction with the Community based service. Prime Contractors of the Community based service will be required to do the same.

¹ Current priority groups: Adults aged 50 and over and who are unemployed, or at demonstrable risk of unemployment, Low skilled adults without a qualification at level 2; People with learning difficulties and disabilities; Adults who have

209. When co-locating, Prime Contractors must ensure that:
- i. The quality and impartiality of the National Careers Service is not compromised;
 - ii. The National Careers Service brand is clearly visible and displayed in compliance with brand guidelines;
 - iii. Customers are clear that they are accessing the National Careers Service, and what they can expect from the National Careers Service; and
 - iv. Arrangements regarding displaying of the brand, the service offer, accommodation suitability of venue, customer referrals and information sharing, are clearly agreed in advance to ensure that both the National Careers Service guiding principles and service standards are not compromised.

Appendix D – Glossary

Term	Definition
Adult	For the purpose of the Community based service, Adults are people aged 19 or over, or aged 18 for those who are not in education employment or training.
Area	Means the nine geographical areas each as listed in Appendix A of this ITT.
Community based service	Means the careers service described specifically in the Community based service section of this ITT and more generally within this ITT to be provided by the Prime Contractor in the relevant Area.
Community based Prime Contractor (Prime Contractor)	The lead contractor delivering the area-based National Careers Service on behalf of the DFE in each Area.
Careers and Skills Action Plan	A written record of an interaction which lists the main points discussed and the actions which the Customer and the adviser have agreed to carry out.
Code of Connection	Means the Code of Connection which forms part of the Contract.
Common inspection framework	The inspection framework for all publicly-funded learning provision administered by the Office for Standards in Education (Ofsted). https://www.gov.uk/government/publications/common-inspection-framework-education-skills-and-early-years-from-september-2015
Contract	Means the contract between the DFE and the Prime Contractor governing the supply of the Community based service, as comprised of the Terms and Conditions (and all schedules, appendices and attachments thereto), the Code of Connection, the Funding Rules, the ITT and the Prime Contractor's response to it.
Customer	An individual or person falling within the definition set out in Paragraph 30 seeking service from the National Careers Service.
Customer Charter	This document represents a starting point for both Prime Contractors, subcontractors and the DFE in terms of helping to create informed, engaged and more demanding and motivated customers who have a clear understanding of what to expect from the service.
Customer record	The mandatory data that must be kept within the Prime Contractor systems to evidence payment and audit requirements; to supply management information and to underpin Customer journeys.

Funding Rules	Means the Funding Rules which form part of the Contract.
Key performance indicators for Partnership working (KPIs)	A set of measures that demonstrate the achievement of the Community based service against the National Targets.
Labour market information (LMI)	National, regional, and local information and analysis about current and future labour markets.
Matrix Standard	The required quality standard for all providers offering funded careers, skills and advice services (http://matrixstandard.com/).
National Targets	See The National Targets section in this ITT.
Outcome	Means either a Career Management Outcome or a Job or Learning Outcome, each as separately defined in PART D, against which payments are released in accordance with the Funding Rules.
Priority Groups	Priority groups identified for the National Careers Service as specified in Paragraph 30 of this ITT.
Service Levels	Means the Service Levels set out in Schedule 14 of the Contract;
Subcontractor	Organisations formally contracted to the Prime Contractor to deliver part of the Community based service on their behalf in accordance with the Terms and Conditions.
Terms and Conditions	Means the Terms and Conditions of the Contract, as made available with this ITT.

SCHEDULE 12

Funding Rules

The most up to date version of the Funding Rules will apply to this Contract. The Funding Rules shared as part of the ITT (version 8) will apply in first instance with any updated versions published at the following address (or any replacement address) to subsequently apply:

[National Careers Service area-based contracts funding rules - GOV.UK](https://www.gov.uk/government/collections/national-careers-service-area-based-contracts-funding-rules)
www.gov.uk

SCHEDULE 13

Contract Variation Procedure

1. Either Party can request a Variation to the Contract which is only effective if agreed in writing and signed by both Parties.
2. The Prime Contractor must provide an Impact Assessment either:
 - 2.1. with the Variation Form, where the Prime Contractor requests the Variation;
 - 2.2. within the time limits included in a Variation Form requested by the DFE.
3. If the Variation to the Contract cannot be agreed or resolved by the Parties, the DFE can either:
 - 3.1. agree that the Contract continues without the Variation;
 - 3.2. terminate the affected Contract, unless the Prime Contractor has already provided part or all of the provision of the Deliverables, or where the Prime Contractor can show evidence of substantial work being carried out to provide them;
 - 3.3. refer the Dispute to be resolved using Clause 37 (Disputes Resolution).
4. The DFE is not required to accept a Variation request made by the Prime Contractor.
5. If there is a General Change in Law, the Prime Contractor must bear the risk of the change and is not entitled to ask for an increase to the Charges.
6. If there is a Specific Change in Law or one is likely to happen during the Contract Period the Prime Contractor must give the DFE notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or the Contract and provide evidence:
 - 6.1. that the Prime Contractor has kept costs as low as possible, including in Subcontractor costs;
 - 6.2. of how it has affected the Prime Contractor's costs.
- 7.0. Any change in the Charges or relief from the Prime Contractor's obligations because of a Specific Change in Law must be implemented using Paragraphs 1 to 4 in this Schedule.

Appendix 1

Contract Variation Form

Contract Details		
This variation is between:	[DFE] ("the DFE") And [insert name of Prime Contractor] ("the Prime Contractor")	
Contract name:	[insert name of contract to be changed] ("the Contract")	
Contract reference number:	[insert contract reference number]	
Details of Proposed Variation		
Variation initiated by:	[delete as applicable: DFE/Prime Contractor]	
Variation number:	[insert variation number]	
Date variation is raised:	[insert date]	
Proposed variation		
Reason for the variation:	[insert reason]	
An Impact Assessment shall be provided within:	[insert number] days	
Impact of Variation		
Likely impact of the proposed variation:	[Prime Contractor to insert assessment of impact]	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: 1. [DFE to insert original Clauses or Paragraphs to be varied and the changed clause]	
Financial variation:	Original Contract Value:	£ [insert amount]
	Additional cost due to variation:	£ [insert amount]
	New Contract value:	£ [insert amount]

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the DFE

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SCHEDULE 14

KPIs and Service Credits

1. Definitions

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

"Critical Service Level Failure"	reaching the Service Level Threshold for 3 or more Service Levels within any 6 month rolling period. A critical Service Level Failure will constitute a Serious Breach under Clause 25 of the Contract;
"Service Credits"	any service credits specified in the Annex to Part A of this Schedule payable by the Prime Contractor to the DFE in respect of any failure by the Prime Contractor to meet one or more Service Levels;
"Service Credit Cap"	10% of the total Service Fee for the applicable Contract Year
"Service Level Failure"	a failure to meet the Service Level Performance Measure in respect of a Service Level;
"Service Level Performance Measure"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule;
"Service Level Threshold"	Service Level Failure against the same Service Level three (3) times within any six (6) month rolling period.

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

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

- exceeds the relevant Service Level Threshold;
- has arisen due to a Prohibited Act or wilful Default by the Prime Contractor;
- results in the corruption or loss of any Government Data; and/or
- results in the DFE being required to make a compensation payment to one or more third parties; and/or

2.4.3 the DFE is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 of the Core Terms (DFE Termination Rights).

2.5 The DFE may, on giving the Prime Contractor at least one (1) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels (either for a fixed period or to be applied going forward) and the Prime Contractor shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:

2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;

2.5.2 the principal purpose of the change is to reflect changes in the DFE's business requirements and/or priorities or to reflect changing industry standards; and

2.5.3 there is no change to the Service Credit Cap.

2.6 Service Credits will not be applied for the first three (3) months from the Core Service Start Date.

3. Critical Service Level Failure

3.1 On the occurrence of a Critical Service Level Failure:

3.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

3.1.2 the DFE shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Prime Contractor in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

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

Part A: Service Levels and Service Credits

1. Service Levels

- 1.1 If the level of performance of the Prime Contractor:
 - 1.1.1 is likely to or fails to meet any Service Level Performance Measure; or
 - 1.1.2 is likely to cause or causes a Critical Service Failure to occur,the Prime Contractor shall immediately notify the DFE in writing and the DFE, in its absolute discretion and without limiting any other of its rights, may:
 - 1.1.3 require the Prime Contractor to immediately take all remedial action that is reasonable to mitigate the impact on the DFE and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
 - 1.1.4 instruct the Prime Contractor to comply with the Rectification Plan Process;
 - 1.1.5 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Prime Contractor to the DFE; and/or
 - 1.1.6 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for Serious Breach under Clause 25 and 26 of the Contract).

2. Service Credits

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

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

Service Level Performance Criterion	Key Indicator	Evidence requirements	Service Level Performance Measure	Service Credit for each Service Period
1. Telephone Reactive Response Rate	Inbound contacts answered within 2 minutes (from the point at which the call is answerable within the Prime Contractor's telephony system) versus total number of inbound contacts answered.	Prime Contractor to submit dataset monthly indicating % achieved.	>80%	1% of monthly Service Fee payment
2. Telephone abandonment rate	Inbound contacts who disconnected themselves before a first response from an adviser and after they had waited a minimum of 2 minutes (from the point at which the call is answerable within the Prime Contractor's telephony system) versus total inbound contacts offered.	Prime Contractor to submit dataset monthly indicating % achieved.	<5%	1% of monthly Service Fee payment
3. Webchat Reactive Response Rate	Inbound contacts answered within 4 minutes (from the point at which the customer clicks 'Contact an adviser' and is linked to their local Area) versus total number of inbound contacts answered.	Prime Contractor to submit dataset monthly indicating % achieved.	>75%	1% of monthly Service Fee payment
4. Webchat abandonment rate	Inbound contacts who disconnected themselves before a first response from an adviser and after they had waited a	Prime Contractor to submit dataset monthly indicating % achieved.	<10%	1% of monthly Service Fee payment

Service Level Performance Criterion	Key Indicator	Evidence requirements	Service Level Performance Measure	Service Credit for each Service Period
	minimum of 4 minutes (from the point at which the customer clicks 'Contact an adviser' and is linked to their local Area) versus total inbound contacts offered.			
5. Email and Voicemail response rate	<p>Email requests' from the National Careers Service website acknowledged by an adviser within 8 working hours with either a resolution or confirmation of further action to be taken versus total number of email requests for careers help from the National Careers Service website.</p> <p>% of voice mail contact requests responded to within 8 working hours versus total voice mail contact requests made</p>	Prime Contractor to submit dataset monthly indicating requests responded to within timeframe and % achieved.	>95%	2% of monthly Service Fee payment
6. Call back request response rate	Call back requests' from the National Careers Service website responded to within the time period the Customer requested versus total 'Call back requests' from the National Careers Service website.	Prime Contractor to submit dataset monthly indicating requests responded to within timeframe and % achieved.	>98%	N/A

Service Level Performance Criterion	Key Indicator	Evidence requirements	Service Level Performance Measure	Service Credit for each Service Period
7. Response to complaints	All customer complaints to the Prime Contractor will be acknowledged within 3 working days with a full response provided within 21 working days.	Log of customer complaints and timescales for acknowledgment and full response (with details of the complaint and responses provided) provided on a monthly basis.	>85%	2% of monthly Service Fee payment
8. Marketing and Communications	<p>Prime Contractors should submit a monthly forward look and evaluation of marketing and communications activity measured against designated metrics (detailed by the DFE) and marketing strategy.</p> <p>Prime Contractors will also be required to produce and submit their own quarterly local marketing strategy.</p>	<p>Provision of a monthly forward look and evaluation of marketing and communications activity as detailed in line with the timescales set out.</p> <p>Provision of a quarterly marketing strategy two weeks prior to the start of each Quarter.</p>	100%	2% of monthly Service Fee payment
9. Submission of monthly reporting	Prime Contractors to submit their monthly reports (Volumes & Costs data, Telephone & Webchat MI and all data and reports related to this Service Levels Schedule) within agreed timescales.	Number of reports correctly submitted within agreed timescales each month.	>80%	2% of monthly Service Fee payment
10. Customer Satisfaction	% of Careers and Skills Action Plans completed each month on which the Customer has indicated	Number of Careers and Skills Action Plans completed each month and number of those on which the	>95%	2% of monthly Service Fee payment

Service Level Performance Criterion	Key Indicator	Evidence requirements	Service Level Performance Measure	Service Credit for each Service Period
	they are satisfied with the service they have received.	Customer has indicated they are satisfied.		

SOCIAL VALUE KPI'S

The following KPIs were submitted as part of the tender process to monitor social value requirements and must be measured as a demonstration of the Prime Contractor meeting the Social Value commitments set out in the bid. These will be measured and monitored in line with the outlined schedule set out. Numbers/%s for the following levels and targets will be set in agreement with the Prime Contractor during the implementation period:

- Good - Contractual target
- Approaching Target - Performance just below contractual target but not a major cause for concern unless underperformance is sustained
- Requires Improvement - Interventions required
- Inadequate - Major interventions or contractual rectification plans required. The Inadequate threshold must be any performance that is worse than Requires Improvement.

KPI	Frequency of measurement	Target

Monitoring metric	Measure	Report	Frequency of measurement	Target

KPI	Frequency of measurement	Target



Part B: Performance Monitoring

1. Performance Monitoring and Performance Review

- 1.1 Within twenty (20) Working Days of the Start Date the Prime Contractor shall agree with the DFE with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Prime Contractor shall provide the DFE with performance monitoring reports ("Performance Monitoring Reports") in accordance with the process and timescales agreed pursuant to paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 1.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 1.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 1.2.3 details of any Critical Service Level Failures;
 - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 1.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 1.2.6 such other details as the DFE may reasonably require from time to time.
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("Performance Review Meetings") on a Quarterly basis. The Performance Review Meetings will be the forum for the review by the Prime Contractor and the DFE of the Performance Monitoring Reports. The Performance Review Meetings shall:
 - 1.3.1 take place within agreed timescales as the DFE shall reasonably require;
 - 1.3.2 be attended by the Prime Contractor's Representative and the DFE's Representative; and
 - 1.3.3 be fully minuted by the Prime Contractor and the minutes will be circulated by the Prime Contractor to all attendees at the relevant meeting and also to the DFE's Representative and any other recipients agreed at the relevant meeting.
- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Prime Contractor's Representative and the DFE's Representative at each meeting.
- 1.5 The Prime Contractor shall provide to the DFE such documentation as the DFE may reasonably require in order to verify the level of the

performance by the Prime Contractor and the calculations of the amount of Service Credits for any specified Service Period.

Code of connection

Data Sharing Service for the National Careers Service

Version 3

This document helps users and organisations understand their obligations in integrating and sharing data with the National Careers Service

January 2022

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Purpose of document

This publication provides non-statutory guidance from the Department for Education, it has been produced to help users and organisations understand their obligations in integrating and sharing data with the National Careers Service.

This document is completed by any organisation wishing to connect to the Data Sharing Service of the National Careers Service. It outlines the conditions that you need to meet and the information that you need to provide. This information will be used to assess whether you may connect/continue to connect to the Data Sharing Service. It may be necessary as part of the process to conduct an onsite assessment.

You must be in possession of a Data Sharing Service connection compliance certificate before you can connect to the service.

Who is this publication for?

This guidance is for:

- Prime Contractors of the National Careers Service;
- Technical staff, integration partners, security and data quality personnel, that need to design, manage and support the interfaces between their own systems and the National Careers Service.

Application process

1. To support your application, or re-submission for a compliance certificate, you must submit the following materials:
2. This Code of Connection document with all fields completed, including the signature of an authorised signatory of your organisation. The authorised signatory must be empowered to make legal commitments of behalf of your organisation;
3. An up to date network diagram, detailing your organisation name, date the diagram was created, local connections with approximate number of users, all external and third-party connections, location of security devices and geographical location of the network;
4. A recent (within the last three months) IT Health Check report and where applicable a remediation plan to address issues found;
5. A plan detailing connectivity and user testing cycles;
6. A recent (within the last three months) Cyber Essentials Plus certificate.

Document structure

7. The document contains the following sections:
 - 7.1. Service responsibilities – The obligations of the organisation to react to actions of the customer and events within the wider service;
 - 7.2. Testing and technical responsibilities – The obligations on the organisation for implementing and testing their connectivity to the service;
 - 7.3. Data controls – The obligations of the organisation for the collection, quality, processing and sharing of information;
 - 7.4. Security – The obligations of the organisation to secure and protect the National Careers Service.

Service responsibilities

8. Your organisation is responsible for the collection, sharing, processing and consumption of information on behalf of the National Careers Service. This responsibility is based on an action or event being undertaken that directly affects the customer or the National Careers Service.
9. To facilitate a single service view of a customer and in support of an automated payment process your organisation is obliged to undertake certain actions when certain events arise. This includes, but not limited to the following scenarios:

- 9.1. Creation of a customer record;
 - 9.2. Update to a customer record;
 - 9.3. Merging of a customer record;
 - 9.4. Deletion of a customer record;
 - 9.5. Request digital account for migrated customer;
 - 9.6. Customer transfers between touchpoints;
 - 9.7. Creation of a careers and skills action plan;
 - 9.8. Updates and acceptance of a careers and skills action plan;
 - 9.9. Sharing adviser session availability;
 - 9.10. Booking, updating and cancelling a careers advice session using adviser session availability;
 - 9.11. Creation or update to an outcome;
 - 9.12. Self-service activity;
 - 9.13. Changes in reference data;
 - 9.14. Changes in data schema.
10. Further details and rules of the obligations will be detailed in document **Error! Reference source not found.**

Testing and technical responsibilities

- 11. Your organisation is responsible for the testing, implementation, monitoring, support, maintenance and changing integration in line with the Data Sharing Service of the National Careers Service.
- 12. Your organisation will be expected to supply documentation and evidence in support of the following activities:
 - 12.1. Integration testing;
 - 12.2. Commitment to business acceptance testing;
 - 12.3. Involvement with end to end business testing;

- 12.4. Business continuity testing;
- 12.5. Active monitoring and alerting;
- 12.6. Implementing a solution that caters for changes.

Data controls

- 13. To comply with the National Careers Service Code of Connection, the organisation must adhere and comply with the data control guidance laid out in this document. T
- 14. The guidance covers the following areas:
 - 14.1. Quality of data;
 - 14.2. Collection of data;
 - 14.3. Sharing and consumption of data;
 - 14.4. Duplication of data;
 - 14.5. Storage and processing of data;

Quality of data

- 15. Your organisation is responsible for the quality of data they manage on behalf of the National Careers Service. Data quality should be defined using clear quality control procedures that seek to actively manage and improve and assure the quality of data collected.

Collection of data

- 16. Customer and customer interaction data collected by your organisation on behalf of the National Careers Service should be proportional to its use. Your organisation should only collect data that is relevant to the user needs and is needed to perform your business function.
- 17. Where customer data is collected, your organisation is required to search existing National Careers Service customer records before creating a new one. All interactions between your organisation and that customer should then be recorded against that record.
- 18. Your organisation should adopt a 'single service' approach to dealing with customers and their data. All material interactions with a customer must be recorded against a customer record along with any resulting actions and responses. Where customers cannot be identified, statistical recording and categorisation of a customer query and response is required.

Sharing and consumption of data

19. Your organisation must share data at the earliest opportunity and no later than 24 hours where that data is relevant to the rest of the National Careers Service or the data is detailed in Appendix C of the Specification.
20. Updates to your organisations records when originating from the Data Sharing Service must be trusted and applied at the earliest opportunity and no later than 24 hours. When updating data in your organisation at a date later than the interaction, it is your responsibility to ensure your records are up to date before committing changes and no subsequent data changes are overwritten. Where data updates are in doubt it is the responsibility of your organisation to raise the appropriate data challenge with the National Careers Service
21. Your organisation will consume reference data from the Data Sharing Service as detailed in document **Error! Reference source not found.**

Duplication of data

22. It is the responsibility of your organisation to identify and merge duplicate records.

Storage and processing of data

23. All processing and storage of data must comply with security and information standards specified in this document and the terms and conditions of the National Careers Service.
24. Customer and service data should only be processed and accessed by staff/subcontractors for the purposes of delivery the National Careers Service.

Security

25. To comply with the National Careers Service Code of Connection, your organisation must have appropriate policies, processes and procedures in place to ensure the operational security of their infrastructure. This includes:

- 25.1. Vulnerability management;
- 25.2. Patch management;
- 25.3. Secure configuration;
- 25.4. Physical security;
- 25.5. Protective monitoring and intrusion detection;
- 25.6. End user devices and bring your own device (BYOD);
- 25.7. Security incidence response;
- 25.8. Authentication and access control;
- 25.9. Boundary protection;
- 25.10. Protection of data at rest;
- 25.11. Protection of data in transit;
- 25.12. User and administration separation;
- 25.13. User management;
- 25.14. Testing your security.

Vulnerability management

26. Your organisation must ensure you have a defined policy and supporting processes to identify, prioritise, resolve and mitigate vulnerabilities. Special consideration should be given for high and critical rated vulnerabilities.

Patch management

27. Your organisation must specify specific patching application and operating system periods along with a process for handling security and critical updates. Where updates cannot be applied mitigating actions must be specified and implemented.

Secure configuration

28. Your organisation must ensure that all IT systems, software and services are appropriately configured to reduce the level of inherent vulnerability. Any applications, services, processes and ports not required should be disabled by default and default passwords should be changed, especially administration access. All configuration changes should be managed through a controlled process where changes are recorded and appropriately approved.
29. All devices, systems and services should have the capability to detect, isolate and respond to malicious software.

Physical security

30. Your organisation will ensure that appropriately secure accommodation and appropriate policies and practices governing its use are in place to protect personnel, hardware, programs, networks and data from loss, damage or compromise.

Protective monitoring and intrusion detection

31. Your organisation must include processes and policies that include the detection and protection of potential and actual technical attacks as well as abuses or exploitation of business processes.

Security incident response

32. Your organisation must be prepared for the occurrence of incidents, clearly demonstrating how the organisation will act to quickly contain the incident, limit harm, escalate where appropriate and learn from the incident.
33. For incidents that affect the wider National Careers Service appropriate reporting and escalation procedures must be defined. To aid investigation your organisation will, upon request provide audit logs, user activity logs, application exceptions and information security events to the National Careers Service.

Authentication and access control

- 34. Your organisation must ensure that user and application service accounts are provisioned with privileges appropriate to the need. The principle of least privilege should be adopted where possible. Administration accounts must not be used to conduct day to day business, and should only be issued to users who need those privileges.
- 35. Your organisation must ensure and clearly demonstrate that all users authenticate themselves to use any devices, applications and systems and that the method of authentication is appropriate to the job they perform.
- 36. Any changes involving new starters, leavers and changes in role must also be catered for.

End user devices and bring your own device (BYOD)

- 37. Your organisation must provide policy that demonstrates any device accessing systems, applications and services are adequately protected, including the use of authentication, intrusion detection and prevention, virus protection, access management, data protection and retention of data. This should include the use of any mobiles, tablets and BYODs.
- 38. The National Cyber Security Centre (NCSC) have published guidance on end user device security and best practice information on BYOD Guidance - device security considerations.

Boundary protection

- 39. Your organisation will ensure that your network has appropriately configured boundary protection between their network and the internet or any other network. Network traffic, services and content should be limited or constrained to your business need via appropriate firewalls and access controls.
- 40. All network traffic should be encrypted and monitored to identify and remove malware. The organisation must ensure that any external connection to their network has an equivalent level of protection.

Protection of data at rest and in transit

- 41. Your organisation will ensure that all data will be protected by default whilst at rest and in transit. Protection covers both physical protection as well as data encryption protection. All OFFICIAL and above data must be encrypted at rest and in transit.

Users

42. Your organisation will ensure that users who have administrative privileges, access to OFFICIAL data or who are able to reconfigure networks undergo appropriate pre-employment checks which are aligned with the Baseline Personnel Security Standard (BPSS). Organisation users must be trained to understand their obligations with regards to system security, data handling, and acceptable use.

Testing your security

43. Your organisation must implement regular IT Health Checks (ITHCs) and provide evidence that any security mechanisms put in place are ongoing and effective. The ITHC should identify any current vulnerabilities and any remediation work needed. Critical and High risks should be resolved immediately or else a viable plan for resolution must be agreed with the National Careers Service. Medium and Low risks may be accepted or subject to remedial action plans.
44. ITHCs will be conducted annually, but the National Careers Service may specify a different frequency of ITHCs where appropriate.

Security gaps

45. If you are not meeting any of the conditions above, please provide details below.
Please also provide details where you are not meeting one of the conditions but are mitigating the associated risk with an alternate arrangement.

Commitment Statement

46. By signing this, you agree to the obligations spelled out in this document to be integrated with the National Careers Service. If you are unable or unwilling to meet any of these, you should inform the National Careers Service team immediately.
47. You agree to meet the Information Assurance (IA) and Security conditions outlined in the Code of Connection (CoCo), subject only to those exceptions specifically identified in your **Security Gaps** (above), and will submit the CoCo to the National Careers Service for a compliance assessment annually, or as required by the National Careers Service. If you have a concern that the conditions are not being met by other suppliers, you have a responsibility to notify the National Careers Service.
48. Upon receipt of a compliance warning notice, you must respond within five working days. You'll undertake suitable remedial action as directed by and agreed with the National Careers Service. If the National Careers Service rescinds your compliance certificate, you'll disconnect from the data sharing service in the timeframe specified.
49. Should the National Careers Service initiate a compliance review, you'll allow reasonable access to your site(s) and personnel within 25 working days of receiving notice of the review.
50. In the event of an incident, you must:
 - 50.1. Conduct initial diagnosis of the incident to determine which service is the cause (or most likely cause of the incident);
 - 50.2. Raise the incident with the National Careers Service;
 - 50.3. If the National Careers Service contacts you to help resolve an incident or problem, you must respond as you would for one of your own customers or users;
 - 50.4. Depending on the nature of the incident, provide audit logs holding user activities, exceptions and information security events to assist in investigations;
 - 50.5. Where your organisation uses subcontractors, you should manage incidents received from those suppliers on their behalf.

Authorised signatory

Name:	
Position:	
Telephone no:	
Email:	
Address:	
Date:	
Signed:	