

Contract for the delivery of Temporary Worker Visa Sponsorship (Tier 5) Services for the Erasmus+ and ESC Government Authorised Exchange Programmes

This contract is made on 19th day of January 2022

- 1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and
- 2 ECORYS UK LIMITED - registered in England and Wales under number 1650169 whose registered office is Albert House, Quay Place, 92-93 Edward Street, Birmingham, B1 2RA¹ (the "**Contractor**")

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

It is agreed that:

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

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

Authorised to sign for and on behalf of ECORYS UK LIMITED

Signature: [REDACTED]
Name: [REDACTED]
Position: **Managing Director**
Date: Jan 17, 2022

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

Signature: [REDACTED]
Name: [REDACTED]
Position: Deputy Director - HEFE Commercial
Date: Jan 19, 2022

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Temporary Worker Visa Sponsorship Services (Tier 5)

**For the Erasmus+ and European Solidarity Corps (ESC)
Government Authorised Exchange Programmes (GAE)**

OFFICIAL-SENSITIVE

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DEFINITIONS

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

Service Levels	Service levels (as set out in Table 2 of Schedule 4 of the Contract) means: a formal statement of performance requirements, specifying the nature and level of service to be provided by a supplier. The purpose of a service level within the specification and agreement is to define the Departments minimum level needs and secure commitment from the supplier to meeting those needs to measure actual performance with agreed service levels, within performance meetings.
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1. SUMMARY

Worker Visa Sponsorship Services for the Erasmus+ and ESC programmes. 1.1
This document sets out the Service Requirement related to delivery of the Temporary

1.2 Erasmus+ is the European Union programme for education, training, youth and sport. It aims to modernise these sectors across Europe, including the UK, and offers opportunities for organisations to collaborate to improve the quality of provision. Learners can study, volunteer and gain work experience abroad, to develop new skills, gain vital international experience and boost their employability. Staff can teach or train abroad, to develop their professional practice, build relationships with international peers, and gain fresh ideas. Moreover organisations can engage in innovative projects to [improve practice](#) and [influence policy](#).

1.3 The European Solidarity Corps is a European Union initiative, managed in the UK by the Erasmus+ National Agency. It funds projects open to the participation of young people between 18 and 30 years old to take part in projects that benefit communities either abroad or within their own country. It aids to develop skills whether in traineeships & volunteering.

1.4 Erasmus+ and the ESC are [approved GAE programmes](#). The [Temporary Worker – Government Authorised Exchange visa \(T5\)](#) provides entry to individuals coming to the United Kingdom through approved schemes that aim to share knowledge, experience and best practice.

1.5 The Contractor will fulfil the role of Sponsor for Erasmus+ and ESC programme participants who enter the United Kingdom under the conditions of a Temporary Worker – Government Authorised Exchange (T5) Visa.

2. TEMPORARY WORKER VISA SPONSORSHIP SERVICES - POST 1 JANUARY 2021

2.1 From the 1st January 2021, EU nationals are subject to the points-based immigration system and the immigration requirements for Erasmus+ and ESC will vary by the type of activity. Those taking part in work mobilities (e.g. some HE traineeships, FE work experience, staff exchanges, etc.) need a Temporary Worker Government Approved Exchange (T5) Visa, save for limited circumstances where their activities are permissible through the Visit Rules, the Paid Permitted Engagement visa or the Charity Worker visa. Research placements lasting under 6 months qualify as “study” and do not need a Temporary Worker or any other kind of Visa.

2.2 Information about the Visit rules, permitted paid engagement rules and Charity Worker visa can be found in the following GOV.UK links. The Contractor shall be familiar with to inform delivery of their sponsorship role.

[2.2.1 Standard Visitor visa - GOV.UK \(www.gov.uk\)](#)

2.2.2 [Permitted Paid Engagement visa - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/permitted-paid-engagement-visa)

2.2.3 <https://www.gov.uk/temporary-worker-charity-worker-visa>

3. TEMPORARY WORKER VISA : SPONSORSHIP ROLE

3.1 It is estimated there will be up to 10,000 participants in each of the financial years 2022/2023 and 2023/2024 who apply for entry into the United Kingdom under the conditions of a Temporary Worker – Government Authorised Exchange (T5) Visa. In the event that the number of applications exceeds 10,000 in any financial year, the parties may exercise their rights under paragraph 4 of Schedule 3 of the Contract to request a variation to the Contract.

3.2 The Contractor, as the Temporary Worker Visa Sponsor for the Erasmus+ and ESC programmes will accept and be responsible for delivering all necessary obligations and activities associated with receiving and processing applications for Certificates of Sponsorship (CoS) and monitoring those CoS that are issued.

3.3 Live CoS can be transferred to a new Sponsor provided that the new Sponsor take responsibility for being the CoS holder, and where the

previous Sponsor completes a Change of Circumstance application. The Contractor will be required to take responsibility for relevant CoS that are live on 1 April 2022.

3.4 As a licensed Sponsor, the Contractor will help to ensure that the immigration system is not abused by fulfilling certain oversight duties. The objectives of these duties include, but are not limited to:

3.4.1 preventing abuse of immigration laws and sponsorship arrangements;

3.4.2 capturing early any patterns of behaviour that may cause concern;

3.4.3 addressing possible weaknesses in process which can cause those patterns;

3.4.4 monitoring compliance with the Immigration Rules, all parts of the Worker and Temporary Worker sponsor guidance, and wider UK law (such as employment law); and

3.4.5 ensuring sponsors do not behave in a way that is detrimental to the wider public good.

3.5 In the role as the licensed sponsor, the Contractor's responsibilities start on the day a sponsorship licence is granted and will continue until:

3.5.1 the Contractor [surrenders its licence](#)

3.5.2 the UK Visas and Immigration (UKVI) make the Contractor's licence dormant (for example, when you have been taken over by another organisation)

3.5.3 the UKVI [revoke the licence](#)

3.6 UKVI reserve the right to take into account actions or behaviours (including immigration abuse, criminal conduct, or behaviour not conducive to the public good) that have occurred outside of the life-cycle of the licence.

3.7 The Contractor's responsibility for each Temporary Worker being sponsored starts on the day the Contractor assigns a CoS to the worker and ends as soon as any of the following events occurs (and the Contractor has reported the relevant event via the Sponsorship Management System):

- 3.7.1 The worker leaves the UK and their entry clearance or permission expires or lapses
- 3.7.2 The workers application for entry clearance or permission is refused, or is cancelled, and any administrative review or appeal rights have been exhausted
- 3.7.3 The worker is granted entry clearance or permission to work for a different sponsor
- 3.7.4 The worker is granted settlement (indefinite leave to remain), or permission to stay on an immigration route that does not require sponsorship on the Worker or Temporary Worker routes
- 3.7.5 The Contractor informs UKVI that it is no longer sponsoring the worker for any other reason – for example, you have dismissed them or they have resigned

4. TEMPORARY WORKER VISA SPONSORSHIP - GENERAL DUTIES

- 4.1 The general duties of the Contractor in their sponsorship role are to:
 - 4.1.1 Receive applications for CoS from the sending organisation or participants of the Erasmus+ and ESC programmes;
 - 4.1.2 Process CoS applications, assessing the migrant's documents and details about their address in the UK and duration of stay;
 - 4.1.3 Where applicable, processing payment for CoS with UKVI;
 - 4.1.4 Issuing CoS to successful applicants;
 - 4.1.5 Fulfil reporting duties that are specific to the role of a Government Authorised Exchange programme sponsor.
 - 4.1.6 Ensure compliance with agreed UK Home Office procedures – bringing into the UK the migrants that are qualified for the volunteering job and that do not fill in a genuine vacancy. For any illegal workers that are brought into the UK, the sponsor is liable for a fine of up to £20,000.
- 4.2 Further information and guidance about the role and obligations of a Temporary Worker – Government Authorised Exchange (T5) Visa Sponsor, which the Contractor must comply with when fulfilling their sponsorship role for the Erasmus+ and ESC programmes, are provided by the Home Office on GOV.UK at:
 - 4.2.1 <https://www.gov.uk/government/publications/workers-andtemporary-workers-guidance-for-sponsors-sponsor-a-governmentauthorised-exchange-worker>
 - 4.2.2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/946060/2020-12-17_Sponsorguidance-Part-3compliance-12-20_v1.0.pdf
 - 4.2.3 <https://www.gov.uk/government/publications/workers-andtemporary-workersguidance-for-sponsors-part-2-sponsor-a-worker>
- 4.3 The Contractor will ensure that it maintains its knowledge and understanding of all information and guidance, including any new iterations or updates of the guidance, provided by the Home Office to ensure it is properly and compliantly delivering its obligations and duties as the sponsor for the Erasmus+ and ESC Programme. The Contractor will ensure that it monitors the available sponsorship guidance and keeps up to date with all requirements issued by Home Office.

4.4 The Contractor is responsible for securing from the Home Office, and maintaining their receipt of, the licences required by law to give it authority to carry out its sponsorship duties.

Further detail regarding sponsor licences is provided at this link:

<https://www.gov.uk/government/publications/workers-and-temporaryworkers-guidance-for-sponsors-part-1-apply-for-a-licence>

4.5 The Contractor will ensure that it engages with, and maintains effective relationships, with the Home Office and UK Visas and Immigration to inform its delivery of sponsorship obligations and duties. As outlined in the Home Office guidance : [Workers and Temporary Workers: guidance for sponsors part 3: sponsor duties and compliance \(accessible version\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/workers-and-temporaryworkers-guidance-for-sponsors-part-3-sponsor-duties-and-compliance-accessible-version)

4.6 The Contractor will appropriately engage with and utilise systems, and specifically the Sponsorship Management System, provided by Home Office as necessary to undertake their sponsorship duties.

4.7 The Contractor will comply with the retention periods set by Home Office associated with keeping records for sponsorship.

5. MANAGING SERVICE ACTIVITY AND VOLUMES

5.1 The Contractor will be required to deliver all necessary sponsorship duties and ensure in doing so these are relevant being a Government Authorised Exchange sponsor. The Contractor will understand and be cognisant of the different roles, responsibilities and duties of the Sponsor, the applicant and other stakeholders, and use this knowledge to ensure the appropriate sponsorship service activity delivery solution is in place.

5.2 The Contractor is required to apply a deliver approach that enables it to:

5.2.1 Respond to the expected increase in demand for Temporary Worker Visa sponsorship applications, processing and reporting.

5.2.2 Effectively manage expected fluctuations in demand over the term of fulfilling the sponsorship role.

5.2.3 Triage and manage applications and work on the basis of priorities, relevant targets/standards that must be met and effectively utilise available resource.

5.2.4 Secure “Premium Customer Service” status from Home Office (including payment of the necessary fee, which will be included in the DfE budget made available for the service). The premium customer service offers an enhanced level of support for organisations employing foreign workers. Each premium customer has their own dedicated account manager who provides tailored advice and support with all their immigration needs.

5.3 To meet the requirement set out at 5.2, the Contractor will apply the following principles to their resourcing/staffing approach:

5.3.1 An appropriate blend of management and operational resource to both control and deliver sponsor obligations.

5.3.2 An appropriate and justified approach for using permanent and/or temporary staff to ensure delivery of obligations whilst responding to both fluctuations in demand and achieving value for money.

5.3.3 Responds to increasing evidence of service volumes that will require processing, monitoring and reporting.

5.4 The Contractor is responsible for ensuring it introduces and maintains the required internal controls and systems to enable it to meet its sponsorship obligations. The Contractor will ensure, and demonstrate, that the systems and controls drive the most effective and efficient (value for money) approach to it achieving its obligations, whilst also meeting applicant expectations and needs.

5.5 The Contractor will ensure that in delivering its sponsorship obligations it complies with its Data Protection obligations as provided at Clause 13 and in Schedule 8 of the Contract for Delivery of Temporary Worker Visa Sponsorship Services.

5.6 The Contractor must ensure that any systems, controls and procedures it is responsible for when fulfilling its sponsorship obligations and the requirements of this Service Requirement, are compliant with the Departmental Security Standards for Business Services and ICT Contracts (refer to Annex A, document 1), and as provided at Clause 13 and in Schedule 11 of the Contract for Delivery of Temporary Worker Visa Sponsorship Services. The Department will assess compliance against the service standard.

6. GOVERNANCE AND SERVICE MONITORING

6.1 The Contractor will be required to adopt its own robust governance strategy for the purpose of overseeing, managing, and providing assurance over delivery of this Service Requirement. The Contractor will have in place:

6.1.1 Appropriate **Senior Management Oversight and Monitoring** of the sponsorship services being delivered, to ensure requirements and standards are achieved and there is effective, timely and appropriate decision making.

6.1.2 An **Operational and Resource Plan**: that provides an up-to-date forward look of planned activities and key milestones during the lifetime of the contract, including any dependencies between these activities. The Operational and Resource Plan will form the basis for tracking delivery of this Service Requirement over the duration of the contract.

6.1.3 A **Risks and Issues Controls** log: that embeds robust risk and issue management. The controls will identify the key risks to service delivery, their impact, owners, and the proposed mitigations via a risk register. An issues log will contain new issues, matters for escalation, and resolution progress.

6.1.4 A **Quality Management Approach**: that sets out the standards, procedures, and responsibilities to ensure the Service Requirements are delivered to the required quality.

6.1.5 A **Business Continuity Plan**: that ensures essential and time-critical Service Requirements can be continued in the event of foreseen or unforeseen disruption, including disaster recovery.

6.1.6 A service **Expiry / Exit Management** approach, that is compliant with the provisions set out in the contractual terms and conditions.

6.1.7 A service **measuring and reporting approach** which focuses on user/ customer satisfaction surveys. The Contractor will measure customer satisfaction with key aspects of their experience of the Services provided, including:

6.1.7.1 The handling of their enquiries about CoS and the application process;

6.1.7.2 The CoS application submission and decision making process;

7. PERFORMANCE MANAGEMENT REVIEW

7.1 The Contractor will engage in monthly Performance Management Review Meetings with the Department for the purpose of, as a minimum:

7.1.2 Reviewing the general position of the Temporary Worker Visa Sponsorship services. For example, reflecting on Home Office requirements, volumetrics, external influences and influencing risks and issues.

7.1.3 Reviewing the Contractor's delivery of the sponsorship services against the requirements set out in this document.

7.1.4 Reviewing the current and projected resourcing requirements, assessing the influence and impact of significant or sustained changes in demand of applications for CoS (for the avoidance of doubt this includes increases and decreases), to enable the identification of priorities, adoption of flexibilities and enable any necessary resourcing decisions.

7.1.5 To review performance against Key Performance Indicators and Service Levels and, where appropriate, discuss and agree any actions (and associated timescales) to improve performance against any relevant Key Performance Indicators or Service Levels

7.1.6 Approving Contractor invoices for payment.

7.1.7 On a quarterly basis, use an extended monthly Performance Management Review Meeting to also review and discuss the contract matters, and in particular controls associated with Business Continuity Plans, Expiry/Exit Management and Social Value.

7.2 The Contractor will support the monthly Performance Management Review Meetings by:

7.2.2 Providing to the Department information, data and reports that will allow an informed review of and discussion about the service delivery. That information to be provided 7 (seven) working days after the end of the month where performance is being reviewed.

7.2.3 Maintain a record of key discussion points, actions and decisions.

7.3 Specifically, the Contractor will maintain and utilise quantifiable data to monitor and control delivery of the sponsorship services, and which will support discussions at the Performance Management Review Meetings. It is expected that, as a minimum, this would include:

7.3.2 Information about enquires received and processed about applications for CoS.

7.3.3 Information about actual applications for CoS, to include as a minimum:

7.3.3.1 Number of applications received

7.3.3.2 Number of applications being processed

- 7.3.3.3 Number of applications being held for processing
- 7.3.3.4 Number of accepted and complete applications
- 7.3.3.5 Number of declined applications
- 7.3.4 Forecast information, to include as a minimum:
 - 7.3.4.1 Forecast of upcoming activity, considering applications being held for processing
 - 7.3.4.2 Forecast of new applications that may be received
- 7.3.5 Information about live CoS, to include as a minimum:
 - 7.3.5.1 Number of live CoS that are subject to monitoring
 - 7.3.5.2 Detail of key monitoring activity that has been undertaken
 - 7.3.5.3 Projection of key monitoring activity to take place
 - 7.3.5.4 Number of CoS that have ceased (including appropriate categories)

8. SOCIAL VALUE

- 8.1 The Contractor is requested to support Government and the Department in the achievement of Social Value policies (see [Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/procurement-policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts)).
- 8.2 One of the Department's key strategic objectives is to drive economic growth through improving the skills pipeline, levelling up productivity and supporting people to work. Aligned with this strategic objective, a key Departmental policy relates to apprenticeships, with a focus on widening participation in apprenticeships and creating progression for apprentices. Both the strategic objective and apprenticeship policy relate to the Social Value themes of "COVID-19 Recovery" and "Tackling Economic Inequality".
- 8.3 A further key Departmental initiative relating to "Project Race", which concerns creating a race-inclusive culture for all employees, regardless of their ethnicity, and improve the process of creating a level playing field for Black, Asian, and Minority Ethnic staff. This initiative is closely aligned with the Social Value theme of "Equal Opportunity".
- 8.4 The Contractor's organisation is requested to have in place its own policies and initiatives that support progression towards and achievement of these key Social Value themes, objectives and initiatives.
- 8.5 The Contractor's organisation is requested to prepare, monitor and progress a Social Value Action Plan(s) which:
 - 8.5.1 Demonstrates a proactive approach to support alignment with the DFE strategy and vision of recruitment, training and support of employees and increasing apprenticeship opportunities.
 - 8.5.2 Demonstrates a proactive approach to support alignment with the DFE initiative to create a race-inclusive culture for all employees, regardless of their ethnicity;

and improve the process of creating a level playing field for Black, Asian, and Minority Ethnic staff.

8.5.3 Focuses on achieving the Social Value themes, objectives and

initiatives in the performance of the contract and gives confidence the approach is being adopted across its wider business.

8.5.4 Explains how progression will be monitored and how success of the plan will be measured (including KPIs), with mechanisms which help to drive identified improvements.

8.6 The Contractor's will report to / update the Department on the delivery of its Social Value Action Plan(s) as part of the quarterly Performance Management Review Meetings.

8.7 As requested by the Department, the Contractor will provide information about its relevant Social Value policies and Social Value Action Plans, to enable the Department (if required) to demonstrate progression towards and achievement of Social Value policies.

9. TRANSITION AND MOBILISATION

9.1 The Contractor is responsible for ensuring it is ready to fulfil the role of Temporary Work Visa Sponsor for the Erasmus+ and ESC Government Authorised Exchange programme, and to deliver the Services in accordance with the requirements set out in this document.

9.2 The Contractor will apply robust planning and management controls to ensure their solution for delivering the Services is introduced within specified time limits, in a controlled manner, and to an acceptable level of quality.

9.3 The Contractor will apply robust internal governance arrangements, which include clear roles and accountabilities, to control delivery of Transition and Mobilisations, manage risks and ensure effective and timely decision making.

9.4 The Contractor will prepare and deliver their final Transition and Mobilisation Plan to the Department for approval within 10 working days of entering into contract for delivery of the Services. The plan will, as minimum:

9.4.1 Identify all workstreams and deliverables considered necessary to achieve successful to transition to and mobilisation of their solution.

9.4.2 Include a timeline, that provides clarity in respect of key milestones, that will be used to measure performance towards achieving successful mobilisation.

9.4.3 Include a resourcing plan, setting out the critical roles, type and amount of resource used at each stage.

9.4.4 Include a register identifying the key risks associated with its transition and mobilisation solution, an impact assessment of identified risks, risk owners and proposed mitigations and contingencies.

9.4.5 Details of contingency that has been allowed.

9.4.6 A clear statement of reasonable and appropriate Departmental and Home Office dependencies applicable to each transition/mobilisation stage or activity.

9.5 The Contractor will:

9.5.1 Have in place a person responsible for the overall delivery of the Transition and Mobilisation plan;

9.5.2 Ensure that all key personnel responsible for the management and undertaking of transition and mobilisation activity are suitably qualified.

9.6 The Contractor will engage in and fully support Transitional and Mobilisation governance arrangements with the Department. The Contractor will attend monthly Transition and Mobilisation meetings with the Department, and for each meeting provide updates that enable the parties to (updates to be provided 48hrs in advance of the relevant meeting):

9.6.1 Review the transition/mobilisation period until that point, detailing activity delivered and notable achievements.

9.6.2 Provides information on the progress against the Transition and Mobilisation Plan and the achievement of key milestones set out within it.

9.6.3 Provides information on mitigating actions where key milestones could not be achieved.

9.6.4 An update on existing risks/issues, how they are being mitigated and managed, and raise issues for escalation.

9.6.5 A review of relevant Milestone Payments due, supported by relevant evidence to inform decisions on payment.

9.6.6 A view of the next four weeks of the implementation period, including a review of upcoming Departmental dependencies.

9.7 In addition, the Contractor will attend other meetings as necessary with the Department to discuss and review pertinent deliverables, risks and issues associated with Transition and Mobilisation.

9.8 The Contractor is responsible for securing Authority to Operate from the Department, where the Department will seek assurance that:

9.8.1 Relevant work process and procedures have been prepared and ready for use;

9.8.2 Resources are in place and ready to deliver the services, with relevant security and training needs complete;




9.8.3 Testing demonstrates the readiness of the overall technical solution, and this is in line with the Department data protection and security standards.

9.8.4 Other supporting documentation provides assurance of readiness;

9.8.5 If applicable, demonstrate an effective process of handover from the transition/mobilisation team to the relevant service delivery teams.

Annex A - Temporary Worker Visa Sponsorship Services (Tier 5)

#	Product Description	Product
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1	Temporary Worker Services – Data Log	 Temporary Work Services T5 – Data Log
2	Visa Sponsorship Assets Register	 Visa Sponsorship Assets Register.pdf
3	Guide to sponsorship management system	 Guide to Sponsorship manage

Schedule 2

Terms and Conditions

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BACKGROUND

- (A)** The DfE issued an invitation to tender (ITT) on 20 July 2021 to seek a supplier(s) to deliver the Temporary Worker Visa Sponsorship Services (Tier 5) for the Erasmus+ and ESC Government Authorised Exchange Programmes

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

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

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

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

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

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

The Authority notified the successful tenderer, Ecorys UK Limited, on 15 November 2021 to confirm they wish to accept their offer and enter into the contract

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

1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

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

“Confidential Information”

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

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

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

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

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

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

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

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

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

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

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

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

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

"DPA" means the Data Protection Act 2018.

"Effective Date" means the date of this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

"General Anti-Abuse Rule" means:

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

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

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

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

"ICT" means information and communications technology.

"Implementation Services Commencement Date" means 1 January 2022

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

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

"Initial Term" means the period from the Effective Date to 30 June 2024.

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

"IP Materials" means any and all materials in digital or physical format developed, used or supplied for use by any party in the course of or for the purposes of the Contract, including but not limited to any programme materials, guidance, papers and research data, results,

specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs.

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

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

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

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

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

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

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

"NICs" means National Insurance Contributions.

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Services Commencement Date or to a civil penalty for fraud or evasion.

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

- (a) the Contractor's costs broken down against each Service, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:

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

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

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

"Overheads" means those amounts which are intended to recover a proportion of the Contractor's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of the Staff.

"Prohibited Act" means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the DfE a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) the defrauding, attempting to defraud or conspiring to defraud the DfE;

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

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

“Reimbursable Expenses” means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the DFE's expenses policy current from time to time, but not including:

- (a) travel expenses incurred as a result of Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the DFE otherwise agrees in advance in writing; and
- (b) subsistence expenses incurred by Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed.

“Regulations” means the Public Contract Regulations 2015.

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

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

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

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

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

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

“Services” means the services described in the Specification.

“Services Commencement Date” means 1 April 2022.

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

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

“Service Period” means the following:

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

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

“Service Users” means those receiving the Services.

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

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

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

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

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

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

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

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

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

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

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

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

- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;
- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;

- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; and
- 1.2.7 the schedules and appendices form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.

2. TERM

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

3. THE SERVICES

- 3.1 The Contractor shall from the Services Commencement Date provide the Services in accordance with the Specification and undertake and be responsible for all obligations of the Contractor in respect of the Services.
- 3.2 The DFE may appoint other contractors for the Services.
- 3.3 The Contractor shall, in performing its obligations under the Contract:
 - 3.3.1 conform to the requirements of the Specification and the Contractor's Solution or as otherwise agreed in writing between the Parties;
 - 3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the DFE specified by the DFE from time to time;
 - 3.3.3 comply with Good Industry Practice;
 - 3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;
 - 3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - 3.3.6 comply with the KPIs, Service Levels and Service Credit requirements set out in schedule 4;
 - 3.3.7 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within fourteen (14) days of the same being brought to the attention of the Contractor by the DFE;
 - 3.3.8 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
 - 3.3.9 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Staff, employees of the DFE, the Service Users and all other persons including members of the public; and
 - 3.3.10 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it and procure that the Staff also comply.

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

4. NOT USED

5. TRANSFER AND SUB-CONTRACTING

- 5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer, charge the benefit and/or delegate the burden of the whole or any part of the Contract (a **"Transfer"**) without the prior written consent of the DFE.
- 5.2 If the DFE consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.
- 5.4 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE's prior written consent.
- 5.5 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE's right of termination pursuant to clause 24 unless the Sub-Contractor can remedy the breach to the DFE's satisfaction within twenty one (21) days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.6 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.7 If the DFE believes there are:
 - 5.7.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
 - 5.7.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DFE may require the Contractor to replace or not appoint the SubContractor and the Contractor shall comply with such requirement.

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

- 5.8 The Contractor shall:

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

6. STAFF

- 6.1 The DFE may refuse admission to DFE Premises and/or direct the Contractor to end the involvement in the Services of any Staff whom the DFE believes is a security risk.
- 6.2 If the DFE require the removal of any Staff pursuant to clause 6.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor's cost.
- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Staff and to ensure that the turnover rate of Staff is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the DFE's prior written consent.

- 6.5 For each of the Staff who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any SubContractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.
- 6.6 The Contractor acknowledges that Key Staff and Key Sub-Contractors are essential to the proper provision of the Services. The Parties have agreed to the appointment of Key Staff and Key SubContractors listed in schedule 7 as at the Effective Date.
- 6.7 Key Staff shall not be released from supplying the Services without the DFE's consent except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar reason.
- 6.8 Any replacements of Key Staff shall be subject to DFE consent and shall be of at least equal status, experience and skills to Key Staff being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.9 The DFE shall not unreasonably withhold consent under clauses 6.7 or 6.8. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on Services which could be caused by a change in Key Staff or Key SubContractors.
- 6.10 DFE may require the Contractor to remove any Key Staff who the DFE considers in any respect unsatisfactory.
- 6.11 The DFE shall not be liable for the cost of replacing any Key Staff and the Contractor shall indemnify the DFE against all Employment Liabilities that may arise in this respect.
- 6.12 Except in respect of any transfer of staff under TUPE, for the Term and for twelve (12) months after the Term neither Party shall (except with the prior written consent of the other) solicit the services of any staff of the other Party who have been engaged in providing the Services or the management of the Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at staff of the other Party.
- 6.13 The Contractor shall comply with all statutory pension obligations in respect of all Staff.

7. TUPE

- 7.1 The Parties agree and acknowledge that the arrangements pursuant to this Contract may give rise to a relevant transfer under TUPE on commencement. Accordingly the Contractor will indemnify the DfE and/or any Outgoing Contractor (for itself and on behalf of any Outgoing Contractor Agent) against all Employment Liabilities arising from the Contractor's failure to perform and discharge any obligation and against any Employment Liabilities in respect of the Incoming Employees arising from or as a result of:
- 7.1.1 any act or omission by the Contractor relating to an Incoming Employee occurring on or after the Effective Date;
- 7.1.2 all and any Employee Liabilities in respect of all emoluments and outgoings in relation to the Incoming Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contribution and otherwise) payable on or after the Services Commencement Date;
- 7.1.3 any claim arising out of the provision of, or proposal by the Contractor to make any change to any benefit, term or condition or working condition of any Incoming Employee in respect of the period on or after the Services Commencement Date; and/or

- 7.1.4 any failure by the Contractor to comply with the obligations imposed on a transferee by Regulation 13(4) of TUPE in respect of the transfer of any Incoming Employees except to the extent such failure is caused by or related to an act or omission of the Outgoing Contractor and/or any Outgoing Contractor Agent as appropriate.
 - 7.1.5 any statement communicated to or action done by the Contractor, to or in respect of, any Incoming Employee during any period, whether before, on or after the Services Commencement Date, which has not been agreed in advance with the Outgoing Contractor in writing.
- 7.2 No later than six (6) months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE (providing anonymised information where necessary), within thirty (30) days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:
- 7.2.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;
 - 7.2.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.2.1;
 - 7.2.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.2.1, their job titles and qualifications;
 - 7.2.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - 7.2.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union

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

- 7.3 At intervals determined by the DFE (which shall not be more frequent than once every thirty (30) days) the Contractor shall give the DFE updated TUPE Information.
- 7.4 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.5 The DFE may use TUPE Information for the purposes of any retendering process.
- 7.6 If TUPE applies or is alleged to apply to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the DFE, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which they may suffer or incur as a result of or in connection with:
 - 7.6.1 the provision of TUPE Information;
 - 7.6.2 any claim or demand by or in respect of any Transferring Employee (whether in contract, tort, under statute, pursuant to EU law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Transferring Employee on or before the end of the Term;

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

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

7.6.5 any claim by or demand by or in respect of any person who is transferred by or is alleged to be transferred (or in respect of whom any liability transfers or is alleged to transfer) the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Transferring Employees.

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

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

7.9 The Contractor undertakes to the DFE that, during the twelve (12) months prior to the end of the Term, or at any time after any Party has given notice to terminate this Contract (in whole or in part) or after the Contractor shall have otherwise been notified by the DFE of the proposed termination of this Contract or the provision by it of the Services in whole or in part for whatever reason, the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):

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

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

7.9.3 transfer away, remove, reduce or vary (including, but not limited to, varying the proportion of time spent on the Services) the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal:

- (i) was planned as part of the individual's career development;
- (ii) takes place in the normal course of business; and

(iii) will not have any adverse effect on the delivery of the Services,

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

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

7.10 The Contractor shall comply with the schedule 12 and any requirement notified to it by the DFE relating to pensions in respect of any Incoming Employees as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.

8. CHARGES

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

8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with schedule 3 subject to the receipt of correct invoices pursuant to clause 8.8 being issued by the Contractor.

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

8.4 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Initial Term.

8.5 The Charges are exclusive of Value Added Tax ("**VAT**") and all other taxes, duties and levies, but shall be inclusive of all charges, costs and expenses of whatever nature the Contractor incurs in providing the Services, and performing all other obligations of the Contractor, under the Contract (unless expressly stated otherwise in the Contract). The Contractor should notify the DFE of any direct VAT charges for the delivery of the Contract. The Contractor shall identify VAT and other applicable taxes, duties and levies separately on invoices, including identifying the elements of the Charges that are subject to VAT at the standard rate or at any other rates and that are zero rated or exempt from VAT.

8.6 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.

8.7 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.

8.8 Invoices shall be submitted electronically by email to accountspayable.OCR@education.gov.uk within thirty (30) days of the end of the relevant invoicing date. To request a statement, please email accountspayable.BC@education.gov.uk. An invoice is a "**Valid Invoice**" if it is legible and includes:

8.8.1 the date of the invoice;

8.8.2 Contractor's full name and address;

- 8.8.3 Contract reference number;
 - 8.8.4 the charging period;
 - 8.8.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
 - 8.8.6 days and times worked (if applicable);
 - 8.8.7 Service Credits (if applicable); and
 - 8.8.8 VAT if applicable.
- 8.9 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.10 The DFE intends to pay Valid Invoices within five (5) days of receipt but shall make payment to the Contractor no later than thirty (30) days of verifying that the invoice is a Valid Invoice. Valid Invoices paid later than such thirty (30) days are subject to interest at the rate of two per cent (2%) above the base rate from time to time of Barclays Bank, but at two per cent (2%) for any period when that base rate is below zero per cent (0%). This clause 8.10 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.11 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within ten (10) Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.12 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE ("**Final Invoice**"). The Final Invoice shall be submitted not later than thirty (30) days after the end of the Term.
- 8.13 The DFE shall not be obliged to pay the Final Invoice until the Contractor has carried out all of the Service.
- 8.14 The Contractor shall ensure that a clause is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within thirty (30) days from the receipt of a valid invoice.
- 8.15 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within ten (10) Business Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending resolution of the dispute.
- 8.16 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within ten (10) Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 37.
- 8A. OPEN BOOK DATA**
- 8A.1 The Contractor acknowledges the importance to the DFE and the DFE's need for complete transparency in the way in which the Charges are calculated.

8A.2

Financial Transparency Objectives

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

8A.2.1 Understanding the Charges

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

8A.2.2 Agreeing the impact of Change

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

8A.2.3 Continuous improvement

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

8A.3

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

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

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

8A.4

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

8B. FINANCIAL STANDING

8B.1

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

8B.2

The Contractor shall promptly notify the DFE in writing if any of the following “**Financial Distress Events**” occurs in respect of the Contractor or a Key Sub-Contractor:

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

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

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

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

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

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

9. TAX AND VAT

- 9.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- 9.2 If the Services are liable for VAT the Contractor shall comply with HMRC rules and regulations. The Contractor will be liable for paying to HMRC any identified VAT including those which may fall due.
- 9.3 If the Contractor is liable to NICs in respect of consideration received under the Contract it shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- 9.4 The DFE may ask the Contractor to provide information which demonstrates how the Contractor complies with clauses 9.1 to 9.3 or why those clauses do not apply to it.

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

10. PREVENTION OF CORRUPTION

- 10.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Effective Date:
- 10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or

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

11. DISCRIMINATION

- 11.1 The Contractor shall perform its obligations under the Contract in accordance with all applicable equality law.
- 11.2 The Contractor shall comply with the equality and diversity policies of the DFE as given to the Contractor from time to time and any other requirements and instructions which the DFE reasonably imposes in connection with any equality obligations imposed on the DFE at any time under equality law.

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

12. INTELLECTUAL PROPERTY

12.1 All Intellectual Property Rights in IP Materials:

- 12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the "**DFE IP Materials**") shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown); and
- 12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with (including the performance of) the Contract (the "**Service Specific IP Materials**") shall vest in the DFE (save for any Copyright and Database Rights which vest automatically in the Crown).

- 12.2 The Contractor shall not, and shall ensure that Staff shall not, use or disclose DFE IP Materials nor Service Specific IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.

- 12.3 The Contractor hereby assigns, and undertakes to procure any relevant third party (including Staff and Sub-Contractors) assigns, to the DFE all existing and future Intellectual Property Rights in the Service Specific IP Materials, save for Copyright and Database Rights which the Contractor hereby assigns, and undertakes to procure any relevant third party (including Staff and Sub-Contractors) assigns, to the Crown. These assignments:

- 12.3.1 are, and shall be, given with full title guarantee;
- 12.3.2 take effect on the Services Commencement Date (if existing at such date) or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials; and
- 12.3.3 include, and shall include, without limitation, an assignment to the DFE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world including the right to bring, make, oppose, defend and appeal proceedings, claims and actions, and to obtain relief (including damages and other remedies for infringement) occurring prior to, on or after the date of the assignment.

- 12.4 The Contractor shall, and shall procure that any relevant third party (including Staff and SubContractors) shall, execute all documents and do all other acts requested by the DFE and as necessary to execute and perfect the assignments at clause 12.3 and to otherwise evidence the DFE's or the Crown's ownership of such rights, including but not limited to providing all assistance requested by the DFE to register any Intellectual Property Rights (including trade marks and domain names) in the name of the DFE (or any third party nominated by the DFE) with the relevant authorities.

- 12.5 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in the Service Specific IP Materials (in accordance with the Copyright, Designs and Patents Act 1988 or any similar legislative provision).

- 12.6 In the event that any Intellectual Property Rights belonging to any party other than the Contractor or Sub-Contractors ("**External IP**") are integrated into the Service Specific IP Materials or otherwise provided to the DFE, and the DFE would be obligated to accept and be bound by any additional licensing terms and conditions to use such External IP, the following shall apply:

- 12.6.1 the Contractor shall specifically identify in writing all External IP before such External IP is used, provided or integrated;
- 12.6.2 the Contractor shall provide written copies or details (in writing) of all External IP licence agreements or terms which would be applicable to the DFE;
- 12.6.3 the Contractor warrants that:
- (a) to the best of Contractor's knowledge, the External IP does not and will not, and the use of the External IP by the DFE as contemplated by the Contract will not, infringe any Intellectual Property Rights of any other third party;
 - (b) any such licence is non-exclusive, perpetual, worldwide and irrevocable, permits the DFE to use, reproduce, modify and develop the External IP (for any purpose), and permits the DFE to sub-license, transfer, assign or novate such rights (including to any Replacement Contractor);
 - (c) unless specifically provided otherwise herein or following termination, the DFE (and any sub-licensee of the DFE, including any Replacement Contractor) shall have no obligation to pay any fees, royalties, or other payments for use of any External IP in accordance with the terms of the Contract; and
 - (d) to the extent permitted by law or contract, the Contractor shall pass through to the DFE the same warranties for the External IP, that the Contractor has received;
- 12.6.4 the Contractor shall, wherever possible, ensure that the External IP shall be licensed on standard, commercially available terms as appropriate in the marketplace for such External IP; and
- 12.6.5 upon termination and as far as possible, the Contractor will negotiate a right to assign the licences for any External IP to the DFE.
- 12.7 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 12, except to the extent that any such claim arises from:
- 12.7.1 the use of the DFE IP Materials; or
 - 12.7.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.
- 12.8 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in respect of Service Specific IP Materials or any other materials supplied by or on behalf of, and/or licensed by, the Contractor.
- 12.9 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in respect of Service Specific IP Materials or any other materials supplied by or on behalf of, and/or licensed by, the Contractor to the DFE, provided always that the Contractor shall:
- 12.9.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 12.9.2 take due and proper account of the interests and concerns of the DFE; and
 - 12.9.3 not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).

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

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

13. DATA

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

14. NOT USED

15. PUBLICITY, PUBLICATION AND PROMOTION

- 15.1 Subject to clause 16.2, without prejudice to the DFE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- 15.2 The Contractor shall use reasonable endeavours to ensure its Staff comply with clause 15.1.
- 15.3 Without prejudice to the generality of clauses 12.19 and 15.1, the Contractor shall not itself use the name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.
- 15.4 It is acknowledged and agreed between the parties that, subject to clauses 12 and 16, the DFE may disclose, copy and otherwise distribute to the public (including but not limited to, by way of the Open Government Licence) any information arising out of the Services or comprised in any work relating to the Services, and the publication of any such materials shall be at the sole discretion and direction of the DFE.
- 15.5 Where the Contractor, other than in its performance of the Services, wishes to release publicly any information arising out of the Services or comprised in any work relating to the Services, or issue any public commentary, press notice or publicity materials thereupon, the Contractor must provide details of the proposed dissemination and seek prior approval from the DFE, which shall have absolute discretion to decide whether it grants permission and to set any conditions for any permission granted.

16. CONFIDENTIALITY

- 16.1 Except to the extent set out in this clause 16 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's written consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- 16.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract but excluding the Commercially Sensitive Information.
- 16.3 The Contractor may only disclose the DFE's Confidential Information with the DFE's prior written consent (such consent not to be unreasonably withheld) or to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Staff are aware of and shall comply with these obligations as to confidentiality.
- 16.4 The Contractor shall not, and shall procure that Staff do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 16.5 Clause 16.1 shall not apply to the extent that:
- 16.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - 16.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 16.5.3 such information was obtained from a third party without obligation of confidentiality;
 - 16.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 16.5.5 it is independently developed without access to the other Party's Confidential Information.
- 16.6 Nothing in clause 16 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
- 16.6.1 for the purpose of the examination and certification of the DFE's accounts;
 - 16.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;
 - 16.6.3 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
 - 16.6.4 to any consultant, contractor or other person engaged by the DFE
- provided that in disclosing information under clauses 16.6.3 and 16.6.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 16.7 Nothing in clauses 16.1 to 16.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

- 16.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 16.6 is made aware of the DFE's obligations of confidentiality.
- 16.9 If the Contractor does not comply with clauses 16.1 to 16.5 the DFE may terminate the Contract immediately on notice to the Contractor.

17. FREEDOM OF INFORMATION

- 17.1 The Contractor acknowledges that the DFE is subject to the requirements of the FOIA and the EIR.
- 17.2 The Contractor shall transfer to the DFE all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receipt:
- 17.2.1 give the DFE a copy of all Information in its possession or control in the form that the DFE requires within five (5) Business Days (or such other period as the DFE may specify) of the DFE's request;
 - 17.2.2 provide all necessary assistance as reasonably requested by the DFE to enable the DFE to comply with its obligations under the FOIA and EIR; and
 - 17.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.
- 17.3 The DFE shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

18. OFFICIAL SECRETS ACTS AND FINANCE ACT

- 18.1 The Contractor shall comply with the provisions of:
- 18.1.1 the Official Secrets Acts 1911 to 1989; and
 - 18.1.2 section 182 of the Finance Act 1989.

19. LIABILITY

- 19.1 Neither Party excludes or limits its liability (if any) to the other:
- 19.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - 19.1.2 for personal injury or death resulting from its negligence;
 - 19.1.3 under section 2(3) Consumer Protection Act 1987;
 - 19.1.4 any breach of clause 13 (Data), clause 16 (Confidentiality), schedule 8 (Processing Data (Data Protection Act)) or schedule 11 (Data Handling and Systems Assurance (Security));
 - 19.1.5 for its own fraud; or
 - 19.1.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
- 19.2 Subject to clauses 19.1 and 19.3, the Contractor shall indemnify the DFE and keep the DFE indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or

- the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Staff on the DFE Premises, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- 19.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 7 (TUPE), 9 (Tax) and 12 (Intellectual Property).
- 19.4 Subject to clauses 19.1, 19.3 and 19.7, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:
- 19.4.1 for any losses of an indirect or consequential nature;
- 19.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
- 19.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 19.5 Subject to clauses 19.1 and 19.3, the maximum liability of the Contractor to the DFE under the Contract, whether in contract, tort (including negligence) or otherwise in each calendar year shall not exceed the greater of two million pounds (£2,000,000) and one hundred and fifty per cent (150%) of the sum of the Charges payable in that calendar year.
- 19.6 Subject to clauses 19.1, the maximum liability of the DFE to the Contractor under the Contract, whether in contract, tort (including negligence) or otherwise is limited in each calendar year in aggregate to one hundred per cent 100% of the sum of the Charges payable in that calendar year.
- 19.7 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:
- 19.7.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
- 19.7.2 any wasted expenditure or charges;
- 19.7.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- 19.7.4 any compensation or interest paid to a third party by the DFE; and
- 19.7.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 19.8 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 19.9 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 19.10 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one claim in the case of employer's liability insurance and £5,000,000 in the case of public liability insurance, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than

£1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of six (6) years following the end of the Term.

19.11 The Contractor shall supply to the DFE on demand copies of the insurance certificates and policies maintained under clause 19.10.

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

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

20. WARRANTIES AND REPRESENTATIONS

20.1 The Contractor warrants and represents that:

- 20.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 20.1.2 in entering the Contract it has not committed any fraud;
- 20.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;
- 20.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;
- 20.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 20.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 20.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any SubContractor); and
- 20.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 20.1.8 in the three (3) years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

- 20.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- 20.1.10 it has notified the DFE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax NonCompliance.

21. FORCE MAJEURE

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

22. MONITORING AND REMEDIATION

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

- 22.5 The DFE may review from time to time the progress of the Contractor against the Specification and the Contractor's Solution. The Contractor shall cooperate with the DFE in this regard and provide any information and evidence reasonably required by the DFE.
- 22.6 The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that any part of the Specification or the Contractor's Solution is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

23. STEP IN RIGHTS

- 23.1 Without prejudice to DFE's rights of termination under clause 24 the DFE may exercise one or more of the rights set out in this clause 23 ("**Step In Rights**") if:
- 23.1.1 there is a Default by the Contractor which materially prevents or materially delays performance of the Services or any part of the Services;
 - 23.1.2 an event of Force Majeure occurs which materially prevents or materially delays the performance of the Services or any part of the Services;
 - 23.1.3 a Regulatory Body has advised the DFE that exercise by the DFE of its rights under this clause 23 is necessary;
 - 23.1.4 a serious risk exists to the health and safety of persons, property or the environment;
 - 23.1.5 it is necessary to discharge a statutory duty; or
 - 23.1.6 the DFE, in its absolute discretion, deems it is necessary for the effective performance of the Services;
 - 23.1.7 the Contractor becomes insolvent.
- 23.2 If the DFE has a Step In Right it may serve notice on the Contractor (a "**Step-In Notice**") that it will take action under this clause 23 either itself or with the assistance of a third party.
- 23.3 The Step-In Notice shall set out:
- 23.3.1 the action the DFE wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
 - 23.3.2 the event triggering the Step In Rights and whether the DFE believes that the Required Action is due to the Contractor's Default;
 - 23.3.3 the date on which it wishes to commence the Required Action;
 - 23.3.4 the time period which it believes will be necessary for the Required Action;
 - 23.3.5 whether the DFE will require access to the Contractor's premises; and
 - 23.3.6 to the extent practicable, the effect the DFE anticipates the Required Action will have on the Contractor's obligations to provide the Services during the period that the Required Action is being taken.
- 23.4 Following service of a Step-In Notice, the DFE shall:
- 23.4.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 23.4.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;
 - 23.4.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor

- to continue to provide those Services of which the DFE is not assuming control; and
- 23.4.4 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Step In Rights.
- 23.5 For as long as and to the extent that the Required Action continues:
 - 23.5.1 the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action; and
 - 23.5.2 the DFE shall pay the Contractor the Charges after subtracting any applicable Service Credits and the DFE's costs of taking the Required Action.
- 23.6 If the Contractor demonstrates to the DFE's reasonable satisfaction that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the DFE not taken the Required Action, the DFE may adjust the Charges.
- 23.7 Before ceasing to exercise its Step In Rights the DFE shall deliver a written notice to the Contractor (a **"Step-Out Notice"**), specifying:
 - 23.7.1 the Required Action it has taken; and
 - 23.7.2 the date on which the DFE plans to end the Required Action subject to the DFE being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 23.8.
- 23.8 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Business Days prior to the date specified in clause 23.7.2, develop for the DFE's approval a draft plan relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- 23.9 If the DFE does not approve the draft plan, it shall inform the Contractor of its reasons for not approving it and the Contractor shall then revise the draft plan taking those reasons into account and shall re-submit the revised plan to the DFE for approval. The DFE shall not withhold or delay its approval of the draft plan unreasonably.
- 23.10 The Contractor shall bear its own costs in connection with any Step-In under this clause 23, provided that the DFE shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any Step-In action taken by the DFE under clauses 23.1.2 to 23.1.5 (insofar as the primary cause of the DFE serving the Step In Notice is identified as not being the result of a Contractor's Default).

24. TERMINATION

- 24.1 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
 - 24.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - 24.1.2 a shareholders' or members' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 24.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

- 24.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 24.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 24.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 24.1.7 being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 24.1.8 any event similar to those listed in clauses 24.1.1 to 24.1.7 occurs under the law of any other jurisdiction.
- 24.2 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“**Change of Control**”). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:
- 24.2.1 being notified that a Change of Control has occurred; or
 - 24.2.2 where no notification has been made, the date that the DFE becomes aware of the Change of Control
- but shall not be permitted to terminate where approval was granted prior to the Change of Control.
- 24.3 Not used.
- 24.4 Not used
- 24.5 Not used.
- 24.6 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 24.6.1 the Contractor has not remedied the Default to the satisfaction of the DFE within twenty one (21) Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
 - 24.6.2 the Default is not, in the opinion of the DFE, capable of remedy; or
 - 24.6.3 the Default is a Material Breach.
- 24.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 24.7.1 the Contractor’s warranty in clause 20.1.10 is materially untrue;
 - 24.7.2 the Contractor commits a material breach of its obligation to notify the DFE of any Occasion of Non-Tax Compliance;
 - 24.7.3 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 24.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:

- 24.8.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
 - 24.8.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
 - 24.8.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
- 24.9 If the DFE terminates the Contract under clauses 24.6, 24.7 or 24.8:
- 24.9.1 and makes other arrangements for the supply of the Services, the DFE may recover from the Contractor the cost reasonably incurred by itself of making those other arrangements; and
 - 24.9.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 24.
- 24.10 The DFE may terminate the Contract (or any part of it) at any time by giving at least three (3) months' prior written notice to the Contractor.
- 24.11 Not used.
- 24.12 If the DFE terminates the Contract under clauses 24.8.1 or 24.8.3 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavoidability of such costs.
- 24.13 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 24.14 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within thirty (30) Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clause 8.7 or to Force Majeure.
- 24.15 Save as otherwise expressly provided in the Contract:
- 24.15.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - 24.15.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the DFE or the Contractor under clauses 8 (Charges), 9 (Tax and VAT), 10 (Prevention of Corruption), 12 (Intellectual Property), 13 (Data), 16 (Confidentiality), 17 (Freedom of Information), 18 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 19 (Liability), 20 (Warranties and Representations), 24 (Termination) 25 (Retendering and Handover), 26 (Exit Management), 27 (Audit) and 38 (Governing Law and Jurisdiction).

25. RETENDERING AND HANDOVER

- 25.1 Within thirty (30) days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the DFE to engage in a procurement exercise for the future provision of replacement services, including but not limited to the issue of tender documents, pre-procurement engagement activity and soft market testing.
- 25.2 The DFE shall require that all potential contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender or similar document issued by the DFE or otherwise engaging with DFE in any other form of procurement exercise; and that they shall not use it for any other purpose.
- 25.3 The Contractor shall allow access to its premises in the presence of DFE's authorised representative, to any person representing any potential contractor whom the DFE in any other form of procurement exercise has selected to tender for the future provision of the Services.
- 25.4 If access is required to the Contractor's premises for the purposes of clause 27.4, the DFE shall give the Contractor seven (7) days' notice of a proposed visit together with the names of all persons who will be visiting.
- 25.5 The Contractor shall co-operate fully with the DFE during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 25.6 Within ten (10) Business Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the DFE.

26. EXIT MANAGEMENT

- 26.1 If the DFE requires a continuation of all or any of the Services at the end of the Term or as a result of the early termination of this Contract, either by performing them itself or by engaging a third party or third parties to perform them, the Contractor shall co-operate fully with the DFE and any such third party or third parties and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- 26.2 The Contractor will, within three (3) months of the Effective Date or within a time period otherwise approved by the DFE, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its or their Replacement Contractor at the end of the Term or in the event of early termination of this Contract (an "**Exit Plan**"), which will, as a minimum, include details of the following:
- 26.2.1 sets out the Contractor's proposed methodology for achieving such orderly transition of the Services;
 - 26.2.2 details of how the Exit Information will be provided;
 - 26.2.3 a mechanism for dealing with any partial termination on the assumption that the Contractor will continue to provide the remaining Services under this Contract;
 - 26.2.4 the management structure to be employed during both transfer and cessation of the Services;

- 26.2.5 the management structure to be employed whilst carrying out the activities to be performed by the Contractor as identified in the Exit Plan;
- 26.2.6 a detailed description of both the transfer and cessation processes, data and information technology, including a timetable;
- 26.2.7 how the Services will transfer to the Replacement Contractor and/or the DFE, including details of the processes, documentation, data transfer, systems migration, security and the segregation of DFE technology components from any technology components operated by the Contractor or its Sub-Contractors (where applicable);
- 26.2.8 details of contracts (if any) which will be available for transfer to DFE and/or the Replacement Contractor upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Contractor agrees that all assets and contracts used by the Contractor in connection with the provision of the Services will be available for such transfer);
- 26.2.9 proposals for the training of key personnel of the DFE or any Replacement Contractor in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
- 26.2.10 proposals for providing the DFE or a Replacement Contractor copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use of the DFE or a Replacement Contractor, in which the Intellectual Property Rights are owned by the Contractor; and
 - (b) relating to the use and operation of the Services;
- 26.2.11 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Contractor in connection with the performance of the supply of the Services;
- 26.2.12 proposals for the disposal of any redundant Services and materials;
- 26.2.13 procedures to:
 - (a) deal with requests made by the DFE and/or a Replacement Contractor for Staffing Information pursuant to clause 7 (TUPE);
 - (b) determine which Contractor Personnel are or are likely to become Transferring Employees; and
 - (c) identify or develop any measures for the purpose of TUPE envisaged in respect of Transferring Employees;
- 26.2.14 how each of the issues set out in this clause 26.2 will be addressed to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or DFE with the aim of ensuring that there is no disruption to or degradation of the Services;
- 26.2.15 proposals for the supply of any other information or assistance reasonably required by the DFE or a Replacement Contractor in order to affect an orderly handover of the provision of the Services.
- 26.3 Within thirty (30) days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 37.
- 26.4 The Contractor will review and (if appropriate) update the Exit Plan every six (6) months during the Term to reflect changes to the Services or, in the event of no changes to the Services, notify

the DFE that no updates are required to the Exit Plan. Following such update (if applicable) the Contractor will submit the revised Exit Plan to the DFE for review. Within thirty (30) days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within thirty (30) days, such dispute shall be referred to the dispute resolution procedure in clause 37.

- 26.5 Within twenty (20) Working Days after notification of termination by either Party or six (6) months prior to the expiry of this Contract, the Contractor will submit for the DFE's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Contract and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed. The Parties will meet and use their respective reasonable endeavours to finalise and agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the DFE, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Contractor shall provide Exit Management services in accordance with the principles set out in this Contract and the last approved version of the Exit Plan (insofar as relevant).
- 26.6 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.
- 26.7 Within one (1) month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 26.8 Without prejudice to any other provision of this Contract, the Contractor shall maintain and update the following material and information in order to facilitate the preparation by the DFE of any retender activity, facilitate any potential Replacement Contractor's undertaking due diligence and/or transfer of the services to the DFE and/or Replacement Contractor:
- 26.8.1 details of the Service(s);
 - 26.8.2 a copy of the Register, updated by the Contractor up to the date of delivery of such Registers;
 - 26.8.3 an inventory of DFE data in the Contractor's possession or control;
 - 26.8.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 26.8.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 26.8.6 to the extent permitted by applicable law, all information relating to Transferring Employees or those who may be Transferring Employees required to be provided by the Contractor under this Contract such information to include the TUPE Information as defined in clause 7; and
 - 26.8.7 such other material and information as the DFE shall reasonably require,
- (together, the "**Exit Information**").
- 26.9 If the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:
- 26.9.1 the provision of the Services; and/or
 - 26.9.2 the delivery of the exit services/exit plan; and/or
 - 26.9.3 any re-tender exercise by the DFE.

then the Contractor shall notify the DFE within a reasonable period of time shall consult with the DFE regarding such proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the DFE.

- 26.10 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the

DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than fifteen (15) Business Days from the date that that request was made.

- 26.11 Not used.

- 26.12 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to enable a third party to:

26.12.1 prepare an informed offer for those Services; and

26.12.2 not be disadvantaged in any subsequent procurement process compared to the Contractor.

- 26.13 On reasonable notice at any point during the Term, the Contractor shall provide to the DFE and/or its potential Replacement Contractor (subject to the potential Replacement Contractor entering into reasonable written confidentiality undertakings), the Exit Information in order to facilitate the preparation by the DFE of any invitation to tender and/or to facilitate any potential Replacement Contractor's undertaking due diligence.

27. AUDIT

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

28. ENTIRE AGREEMENT

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

29. PARTNERSHIP

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

30. WAIVER

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

31. CHANGE CONTROL

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

32. COUNTERPARTS

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

33. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

34. CONFLICTS OF INTEREST

- 34.1 The Contractor shall:
- 34.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and
 - 34.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Staff is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Staff and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 34 as a “**Conflict of Interest**”.
- 34.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 34 the Contractor shall forthwith provide full particulars to the DFE.

- 34.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.
- 34.4 Without prejudice to the foregoing provisions of this clause 34, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:
- 34.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and
 - 34.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.
- 34.5 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).
- 34.6 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing breach by the Contractor of the provisions of this clause 34.

35. FURTHER ASSURANCE

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

36. NOTICES

- 36.1 Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail or e-mail, addressed to the recipient at its registered office or its address (or such other address or e-mail address as may be notified in writing from time to time).
- 36.2 The notice, demand or communication shall be deemed to have been duly served:
- 36.2.1 if delivered by hand, when left at the proper address for service; or
 - 36.2.2 if given or made by prepaid first class post forty eight (48) hours after being posted or in the case of airmail fourteen (14) days after being posted.
 - 36.2.3 if given or made by e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within twenty four (24) hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
- 36.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

37. DISPUTE RESOLUTION

- 37.1 Any Dispute shall be dealt with in accordance with this clause 37.
- 37.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within fifteen (15)

days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.

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

38. GOVERNING LAW AND JURISDICTION

- 38.1 The Contract and any non-contractual obligations arising out of or connection with it will be governed by and construed in accordance with English Law.
- 38.2 The courts of England shall have exclusive jurisdiction to settle any dispute which arises out of or in connection with the Contract.
- 38.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.

Schedule 3

Financials

1. DEFINITIONS

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

2. SET-UP COSTS MILESTONE PAYMENTS

Provided that the Contractor has demonstrated to the DFE's reasonable satisfaction that they have achieved the relevant Milestone then the DFE shall pay to the Contractor the relevant Milestone Payment one (1) month in arrears in accordance with Clause 8 (Charges) of Schedule 2 (Terms and Conditions). Please see Annex A for a breakdown of the Set-up Costs Milestone Payments.

3. MONTHLY CHARGE

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

"Monthly Charge" means the sum of:

(FSF+VOP) - SC

where :

FSF = the fixed service fee of [REDACTED]¹

VOP = the volumetric output payment calculated in accordance with the table set out at Annex B below

SC = Service Credits

4. VOLUMETRIC OUTPUT PAYMENT FOR VOLUMES GREATER THAN TEN THOUSAND

- 4.1 In the event that either party reasonably believes that the volume of Visa Sponsorships to be processed by the Contractor in any Financial Year will or is likely to exceed a total of ten

¹ The Contractor's guaranteed monthly fee calculated as 60% of the bid total price (less set up costs) spread equally over the period 1 April 2022 to 30 June 2024

thousand (10,000) (**Excess Visa Volumes**) then such party may request a Variation provided that such Variation shall be solely for the purposes of agreeing or otherwise determining the Volumetric Output Payment to be paid by DFE to the Contractor in respect of such Excess Visa Volumes (**Excess Volumetric Output Payment**).

- 4.2 In the event that a party requests a Variation pursuant to 4.1 above the provisions of Schedule 6 shall apply in respect of such Variation save that in the event that the parties are unable to agree such Excess Volumetric Output Payment then either party may refer the matter to be determined in accordance with clause 37.

Annex A: Set-Up Costs Milestone Payments

Milestone number	Milestone description	Milestone Date	Milestone Payment (£)
1	Delivery Milestone 1 - as per pricing schedule	January 2022	
2	Delivery Milestone 2 - as per pricing schedule	February 2022	
3	Delivery Milestone 3 - as per pricing schedule	March 2022	

Annex B: Volumetric Output Payment

Volume Band	Volume of Visa Sponsorships Per Financial Year	Fee per Visa Sponsorship in Volume Band (£)
1	0-5,000	N/A – included in FSF
2	5,001-6,000	
3	6,001-8,000	
4	8,001-10,000	

Annex B: Summary of total costs submitted by Ecorys UK Limited for delivering the Temporary Worker Visa Sponsorship Services (Tier 5)

Please note this summary is the total cost for the delivery of 10,000 units per annum based on the Payment Mechanism for this Contract. The Fixed Service Fee makes up 60% of the total price (excluding Set Up costs) and the volumetric payment makes up 40% of the total price (excluding Set Up costs)

Cost Line	Set Up <i>Jan 22 - March 22</i>	Year 1 <i>April 22 - March 23</i>	Year 2 <i>April 23 - March 24</i>	Year 3 <i>April 24 - June 24</i>	Total
2.1 Direct Staff Costs					
2.2 Indirect Staff Costs					
2.3 Staff Related Expenses					
2.4 Staff Training					
2.5 Staff Recruitment					

2.6 Other Staff Costs					
TOTAL STAFF COSTS					
3.1 Rent/ Lease/ Mortgage Costs					
3.2 Fit Out Costs					
3.3 Rates					
3.4 Facilities Management Costs					
3.5 Premise Security Costs					
3.6 Other Accommodation Costs					
TOTAL ACCOMMODATION COSTS					
4.1 IT Hardware					
4.2 IT Software					
4.3 IT Maintenance					
4.4 IT Security Costs					
4.5 Telephony and Communications					
4.6 Other IT Costs					
TOTAL TECHNOLOGY COSTS					
5.0 Subcontractor Costs					
TOTAL SUBCONTRACTOR COSTS					
6.1 Printing and Stationery					

6.2 Office Equipment					
6.3 Postage and Courier					
6.4 Marketing Costs					
6.5 Storage Costs					
6.6 Other Operating Costs					
TOTAL OTHER OPERATING COSTS					
7.1 Legal Fees					
7.2 Auditing Fees					
7.3 Other Professional Services					
TOTAL CONSULTANCY SERVICE COSTS					
8.0 Other Costs					
TOTAL OTHER COSTS					
9.1 HR Support Costs					
9.2 Finance Support Costs					
9.3 Financing Costs					
9.4 Other Corporate Overhead Costs					
TOTAL CORPORATE OVERHEAD COSTS					
TOTAL PROVIDER DELIVERY COSTS					

10.0 Profit/ Operating Surplus					
11.1 Risk Premium					
TOTAL					

Tendered Price

Total Contract Value	£6,235,879
Minus 75% of implementation costs	-£132,964
*Tendered Price	£6,102,916

* As outlined in the ITT (Invitation to Tender), the Total Contract Value submitted is used to generate Tenderers' 'Tendered Price'. The 'Tendered Price' was used for the purpose of the Price Evaluation which is inclusive of all service delivery costs submitted and exclusive of 75% of a Tenderer's implementation costs, if applicable. This is in recognition of the fact that Tenderers may have implementation costs that an incumbent Provider will not have.

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

- Ecorys UK Limited's fully completed revised pricing schedule: "2.c) Pricing Schedule - Tier 5 FINAL Updated 7.12.21", submitted on 07 December 2021
- "Lot 2 - Tier 5 Clarifications for Ecorys response 13.9.21" document, submitted on 13 September 2021

Schedule 4

KPIs, Service Levels and Service Credits

1. DEFINITIONS

Performance Period means the relevant time period set out in Table 1 of Schedule 4. **Monitoring**

Target Performance Level means the relevant performance level for each KPI set out in Table 1 of this Schedule 4.

2. OVERVIEW

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

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

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

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

4. TARGET PERFORMANCE LEVEL

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

KPI	Performance Monitoring Period
KPI 1	Quarterly 1 April – 31 June 1 July – 31 September 1 October – 31 December 1 January – 31 March
KPI 2	Quarterly 1 April – 31 June
	1 July – 31 September 1 October – 31 December 1 January – 31 March
KPI 3	Quarterly 1 April – 31 June 1 July – 31 September 1 October – 31 December 1 January – 31 March

4.2 If during a Performance Monitoring Period the Contractor achieves a KPI, no Service Credit will accrue to the Contractor in respect of that KPI.

4.3 The Contractor confirms that it has taken the Target Performance Levels and Service Credits into account in calculating the Charges. Both Parties agree that the Target Performance Level and Service Credits are a reasonable method of adjusting the Charges to reflect poor Contractor performance.

4.4 The Contractor will be expected to meet/comply with all Service Levels as set out within Table 2 below.

5. CONSEQUENCES OF FAILURE TO MEET KPIS

5.1 A failure to meet the required Target Performance Level will be considered a “Service Failure” in respect of the KPIS set out in Table 1 below.

5.2 In the event that there is a Service Failure of one or more of the KPIS listed in Table 1 in any given Performance Monitoring Period, the DFE will be entitled at its sole discretion, to reduce the total amount of charges payable to the Contractor by the relevant Service Credit as set out in Table 1

5.3 Any relevant Service Credits will be applied in the month immediately following the relevant Performance Monitoring Period.

5.4 A failure to meet the Target Performance Level for the Service Levels will not be considered a Service Failure in the context of paragraph 4 but the DFE expects the Contractor to meet the Target Performance Levels and will consider repeated failures as breaches of this Contract.

Table 1 KPIs

KPI No.	KPI (Desired Outcome)	Relevant Service Requirements	Target Performance Levels	Performance Monitoring Period	Performance Evidence	Measurement Methodology	Service Credits
1	<p>Performance Management Reviews</p> <p>The Contractor will provide information, data and evidence to enable the DfE to review delivery of the Erasmus+ and ESC Temporary Worker Sponsorship services and associated service contract.</p>	Section 6, paragraph 6.2.6 of the Specification	The Performance Management Report is submitted to the DfE by the 7th working day following conclusion of the relevant quarterly reporting period.	<p>Quarterly</p> <p>1 April 2022 to 30 June 2024, measured on a quarterly basis</p> <p>Measured in the month following Performance Monitoring Period</p>	<p>The quarterly Performance Management Report is issued to the DfE Contract Manager in the required timescales.</p> <p>The Performance Management Report responds to the minimum requirements set out in the Relevant Service Requirement.</p> <p>For the avoidance of doubt, a correct quarterly Performance Management Report will respond to the minimum requirement stipulated for relevant monthly Performance Management Reports in the Relevant Service Requirement.</p>	Review of report against Relevant Service Requirement	<p>2.0%</p> <p>(0.222% per Quarter across the Performance Monitoring Period)</p>

2	Securing sufficient Certificates of Sponsorship (CoS) and timely issue to an	Section 4, paragraphs 4.2, 4.3, 4.4 and 4.5 of the Specification	The Contractor ensures they have secured sufficient CoS from Home Office, to avoid a delay in issuing a CoS to all accepted applications.	Quarterly 1 April 2022 to end of 30 June 2024, measured on a quarterly basis, commencing July 2022.	The Performance Management Report to be supplied by the Contractor provides evidence of compliance with the Relevant Service Requirement and Target Performance Levels, and confirms no applicant experiences a delay in	Contractor to validate compliance in quarterly report.	1.5% (0.167% per quarter across the Performance Monitoring Period.)
KPI No.	KPI (Desired Outcome)	Relevant Service Requirements	Target Performance Levels	Performance Monitoring Period	Performance Evidence	Measurement Methodology	Service Credits
	accepted applicant			Measured in the month following Performance Monitoring Period	receiving their CoS when their application has been accepted.		
3	Sponsorship Reporting Duties To report sponsorship information or events in the Home Office Sponsorship Management System.	Section 4, paragraph 4.1.5 and 4.1.6 of the Specification	100% compliance with obligations, process and timescales stipulated in the Home Office Workers and Temporary Workers Guidance for Sponsors - section C1.11 – Reporting Duties	Quarterly 1 April 2022 to end of 30 June 2024, measured on a quarterly basis Measured in the month following Performance Monitoring Period	The relevant quarterly Performance Management Report to be supplied by the Contractor provides evidence of compliance with the Relevant Service Requirement and Target Performance Levels for each month covered by the report.	Contractor to validate compliance in quarterly report, supplemented as necessary with outcomes of any internal or external audit reports.	1.5% (0.167% per quarter across the Performance Monitoring Period.)

Table 2 Service Levels

SL No.	Service Level (Desired Outcome)	Relevant Service Requirements	Target Performance Levels	Performance Monitoring Period	Performance Evidence	Measurement Methodology
4	Departmental Security Standards Ensure that the services are performing to required standards.	Section 5, paragraphs 5.6	The IT service provided meets the required data protection and security standards.	Monthly 1 April 2022 to end of 30 June 2024, measured on a monthly basis Measured in the month following Performance Monitoring Period	The Performance Management Report provides evidence of compliance with the Service Requirement and Target Performance Levels for each month covered by the report.	Contractor to test conformance against standards.
5	Customer Satisfaction Survey.	Section 6, paragraph 6.1	The Customer Satisfaction survey shall: Ensure all applicants are sent a customer satisfaction survey to assess their satisfaction with their experience of the Services including but not limited to: (i) The handling of their enquiries about CoS and the application process; (ii) The CoS application submission and decision making process; (iii) To achieve a Customer Satisfaction Score (CSAT) of at least 70%.	Annual 1 April 2022 to 31 March 2024, but performance measured on an Annual basis. Measured in the month following Performance Monitoring Period (April 2023 and April 2024)	A report to be produced following completion of the survey period and shared with the Contractor	Online questionnaire to beneficiaries. This survey should achieve a minimum response rate of 50% of those surveyed to be valid. Formula to produce CSAT score = (Total No. of 4 or 5 scores ÷ total no of responses) x 100

SL No.	Service Level (Desired Outcome)	Relevant Service Requirements	Target Performance Levels	Performance Monitoring Period	Performance Evidence	Measurement Methodology
			Scale of rating to be used: 5 = very satisfied 4 = satisfied 3 = neither satisfied or dissatisfied 2 = dissatisfied 1= very dissatisfied			

Schedule 5

Not Used

Schedule 6

Change Control Procedure

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

Change Control Note

:

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

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

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

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

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


Schedule 7

Key Staff and Key Sub Contractors³

Key Staff

The individuals listed in the table below are Key Staff:

Name	Role	Period of Involvement
------	------	-----------------------

	Contract Director	01/01/2022-30/06/2024

Key Sub-Contractors

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

Key Sub-Contractor Name and Address (if not the same as the registered office)	Registered Office and Company Number	Related Product/Service Description	Sub-contract Price expressed as a percentage of total projected Charges over Term	Role in delivery of the Services

<p>British Council Wales 1 Kingsway, 2nd floor Cardiff CF10 3AQ UK</p> <p>Contact [REDACTED]</p>	<p>The British Council</p> <p>1 Redman Place, Stratford, London, E20 1JQ, UK</p> <p>incorporate d by Royal Charter and registered as a charity (under number 209131 in England & Wales and number SC037733 in Scotland),</p>	<p>Delivering full CoS sponsorship for HE sector applications;</p> <p>management of Equiniti – Toplevel Computing Ltd</p>	49%	<p>Delivering full CoS sponsorship for HE sector applications;</p> <p>management of Equiniti – Toplevel Computing Ltd</p>
<p>Equiniti - Toplevel Computing Limited* Highdown House Yeoman Way Worthing, West Sussex BN99 3HH United Kingdom</p> <p>Contact: [REDACTED]</p> <p><i>* Ecorys do not have the contractual relationship with Equiniti. Equiniti are contracted and managed by British Council.</i></p>	<p>Toplevel Computing Limited Highdown House Yeoman Way Worthing, West Sussex BN99 3HH United Kingdom</p> <p>Company number 02341302</p>	<p>Provision of T5 Grant Management Tool, hosting, maintenance and exit</p>	3.5%	<p>Provision of T5 Grant Management Tool, hosting, maintenance and exit</p>

Schedule 8

Processing Data (Data Protection Act)

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

after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those set out in the Contract;

"Sub-processor"

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

"UK GDPR"

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

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

- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex 1 of this Schedule 8);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this paragraph;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

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

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under paragraph 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
 - (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
 - (a) notify the Controller in writing of the intended Sub-processor and processing;

- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 1 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

- 1.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Controller may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Schedule 8 – Annex 1

Processing, Personal Data and Data Subjects

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

- 1 The contact details of the Controller's Data Protection Officer are: [REDACTED], Departmental Data Protection Officer, Department for Education, 2 Rivergate, Temple Quay, Bristol, BS1 6AL
- 2 The contact details of the Processor's Data Protection Officer are: [REDACTED]
- 3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Visa sponsorship applications under Tier 5 for international students coming to the UK for Erasmus+ placements. Covering the remainder of the 2014-2020 Erasmus+ programme
Duration of the processing	Sponsorships applications: On-going - until end of the Term
Nature and purposes of the processing	Sponsors: Processing information relating to the visa's of workers on an on-going basis. Data to be retained securely within the UK.
Type of Personal Data	All: names including title and gender, addresses, date of birth, passport copies and details, placement details, contact details.
Categories of Data Subject	Staff, students/ members, Government Departments and their staff, members of the public who enquire.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Data retention measures will be put in place to hold application and visa details inline with the Home Office requirements as set out in Section 4 of the Specification.

Schedule 9

Commercially Sensitive Information

PART C: CONFIDENTIAL INFORMATION (as per “2. g) Tender Response Documents - Tier 5”)

NO/Information (cross reference to Tender)	Reasons for Exemption	Exemption to be applied	Duration period for exemption
2.b) Q2 Delivery Solution	It would be anticompetitive if such information were freely available to our competitors	S(2) 41 Information provide in confidence S(2) 43 commercial interest	6 years post tender / unless contracted and then 6 years post contract.
2.b) Q3 Internal systems, controls and governance	It would be anticompetitive if such information were freely available to our competitors	S(2) 41 Information provide in confidence S(2) 43 commercial interest	6 years post tender / unless contracted and then 6 years post contract.
2.b) Q5 Implementation and Mobilisation	It would be anticompetitive if such information were freely available to our competitors	S(2) 41 Information provide in confidence S(2) 43 commercial interest	6 years post tender / unless contracted and then 6 years post contract.
2.c) Pricing Schedule – Tier 5	It would be anticompetitive if such information were freely available to our competitors	S(2) 41 Information provide in confidence S(2) 43 commercial interest	6 years post tender / unless contracted and then 6 years post contract.
2. a) Ecorys Financial Rent Viability Risk Assessment Tool (FVRAT) -Tier 5	It would be anticompetitive if such information were freely available to our competitors	S(2) 41 Information provide in confidence S(2) 43 commercial interest	6 years post tender / unless contracted and then 6 years post contract.
2. a) British Council's Financial Viability Risk Assessment Tool (FVRAT)	It would be anticompetitive if such information were freely available to our competitors	S(2) 41 Information provide in confidence S(2) 43 commercial	6 years post tender / unless contracted and then 6 years post contract.

- Tier 5		interest	
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PART D: COMMERCIALLY SENSITIVE INFORMATION (as per “2. g) Tender Response Documents - Tier 5”)

Commercially Sensitive Information	For period ending on date below
2.b) Q2 Delivery Solution	6 years post tender / unless contracted and then 6 years post contract.
2.b) Q3 Internal systems, controls and governance	6 years post tender / unless contracted and then 6 years post contract.
2.b) Q5 Implementation and Mobilisation	6 years post tender / unless contracted and then 6 years post contract.
2.c) Pricing Schedule – Tier 5	6 years post tender / unless contracted and then 6 years post contract.
2.a) Ecorys Financial Viability Risk Assessment Tool (FVRAT) -Tier 5	5 years post tender / unless contracted and then 5 years post contract.
Ecorys audited accounts	5 years post tender / unless contracted and then 5 years post contract.
2.a) British Council's Financial Viability Risk Assessment Tool (FVRAT) -Tier 5	5 years post tender / unless contracted and then 5 years post contract.
The British Council audited accounts	5 years post tender / unless contracted and then 5 years post contract.
The British Council excel document – Year ended March 2021 Primary statements	5 years post tender / unless contracted and then 5 years post contract.
Qualification Envelope/ responses to Part 3 – 1.9, 1.10, 1.16 and 1.17	5 years post tender / unless contracted and then 5 years post contract.

Schedule 10

The Contractor's Solution

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

Ecorys UK Limited's response to Q1 - Understanding of the obligations of Tier 5 Temporary Worker Visa Sponsor Role

Question 1: Understanding of the obligations of Tier 5 Temporary Worker Visa Sponsor Role

This response explains and demonstrates our in-depth understanding of the role and obligations of the Tier 5 Temporary Worker Visa Sponsor Role. Ecorys and the British Council have successfully operated in an unincorporated consortium as the appointed Temporary Worker Visa sponsor for the Erasmus+ and ESC programmes since 2014.

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

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

- 1.1. A high-level overview of the role of a Home Office Temporary Worker Visa Sponsorship Role.
- 1.2. Our understanding of the Sponsorship activities and tasks that would be entrusted to us, and which are specific to the Erasmus+ and ESC in the context of a Tier 5 Government Authorised Exchange Programme.
- 1.3. An assessment of key risks and issues that we will need to manage in delivering the Sponsorship role, including how our organisations will mitigate these.
- 1.4. Reference to previous experience of delivering similar Sponsorship roles / service activities.

Before outlining our responses on each of the above areas, it is worth noting the general advantages to DfE of Ecorys and the British Council continuing as the appointed Temporary Worker Visa sponsor for the Erasmus+ and ESC programmes in relation to service delivery requirements:

- We have been the appointed Temporary Worker Visa sponsor for the Erasmus+ and ESC programmes since 2014 and we are an approved Category 'A' Sponsoring organisation under T5 Government Authorised Exchanges.
- We are currently in the process of securing Premium Customer Service status from the Home Office and expect to have this in place upon contract commencement in November 2021.
- We have established strong stakeholder relationships within our consortium and externally with the EC, other National Agencies and DfE at all levels. We also have wide-ranging networks across the UK in the sectors covered by the Erasmus+ and ESC programmes; we are on the ground in all four Home Nations
- Our teams are in place, highly skilled, well-trained and have extensive knowledge of the sponsorship requirements and UKVI Sponsorship Management System (SMS)
- We have a strong track record of programme and contract delivery as evidenced by audits and assessments
- We have the necessary skills, structures, relationships, systems and processes in place to mobilise immediately and provide continuity of service to Erasmus+ and ESC stakeholders and beneficiaries.

Consequently, we expect our implementation and start up work for transition to the new contract will be minimal as detailed in our response to Q5. This significantly reduces the need for any duplication of effort,

expenditure, or management time for handover to a new supplier and ensures that the delivery of the Tier 5 service will continue seamlessly from 1 April 2022.

1.1 High-level overview of the role of a Home Office Temporary Worker Visa Sponsorship Role.

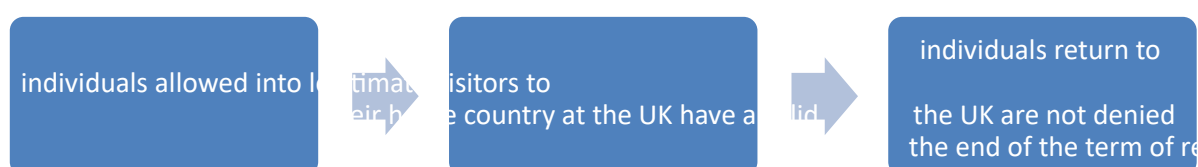
From 1 January 2021, EU nationals have been subject to the points-based immigration system, this includes Erasmus+ and ESC participants taking part in UK based work mobilities, such as Higher Education traineeships, Vocational work experience placements, Youth and ESC volunteering, and staff or teacher exchanges. Most of these participants all now need to apply for a Temporary Worker Government Approved Exchange Tier 5 Visa to complete their mobility placements in the UK. This significantly increases the number of Erasmus+ and ESC participants requiring a Certificate of Sponsorship (CoS) to support their visa application.

The issuing of T5 CoS plays a key role in the UK's immigration system as overseen by the Home Office and managed by UK Visa and Immigration (UKVI). It is estimated that there will be up to 10,000 participants in each of the financial years 2022/2023 and 2023/2024 requiring a Tier 5 CoS and therefore, it is necessary to appoint a supplier to deliver the Tier 5 sponsorship service for the Erasmus+ and ESC programmes until all mobility placements have been concluded in 2024.

Role of a Home Office Temporary Worker Visa Sponsor

The role of a Sponsor is critical in maintaining the integrity of the UK Immigration system and as such is a highly responsible role. For Erasmus+ and ESC, the sponsor role is particularly critical due to the high numbers of participants (up to 10,000 per year) who may apply for certificates. We understand that this would make the Erasmus+ and ESC Tier sponsor one of the largest sponsors in the UK. Each application and supporting documents must be carefully checked before a CoS is issued. Information regarding a participant's identity, their involvement in the Erasmus+ or ESC programmes, where they currently live, where they will be working in the UK, what they will be doing whilst in the UK and their arrival and departure details will be requested and evidenced through the supporting documents. For example, a participant's involvement in the Erasmus+ or ESC programmes will be evidenced by a signed grant agreement between the sending organisation (Erasmus+ or ESC successful applicant) and their National Agency.

The Sponsor duties will ensure that:



It is vital to undertake these critical checks to reduce the likelihood of national security breaches, as well as potential breaches of UK employment law and damage to the UK's international reputation.

Before a temporary worker can make a successful immigration application to enter the UK for their Erasmus+ or ESC activity, a sponsor must assign them a valid Certificate of Sponsorship (CoS). A CoS is not a paper certificate or document, but a database record which confirms details of the worker that the Sponsor intends to sponsor and the job they will do. Certificates are assigned through the UKVI Sponsorship Management System (SMS) account.

It is the sponsors' duty to ensure that all the documentation provided to support a CoS application is correct, and that detailed records are kept. The sponsor is responsible for confirming that the certificate holder has arrived and is attending their place of work as set out in their application, and that any breaches of the terms of the certificates that are made known to the sponsor are reported back to UKVI. The role of sponsor

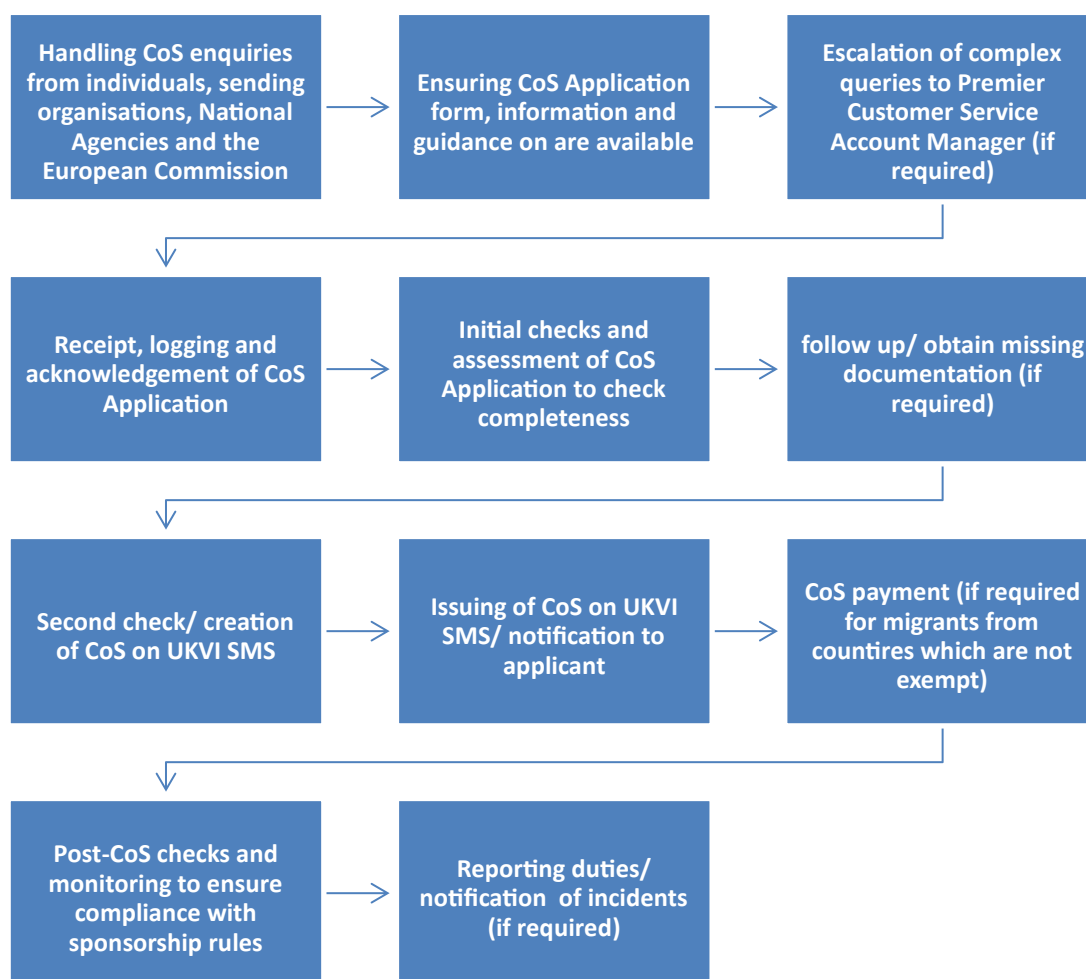
is unusual in Erasmus+ and ESC in that the sponsor would not employ or host the participant directly in the way other sponsors do. They are hosted in various participating UK “Host” organisations. It is therefore a key role of the CoS sponsor to ensure that UK host organisations under Erasmus+ and ESC (such as FE colleges, employers, universities, schools and others) are also fully aware of, and comply with, their obligations as hosts.

1.2 Our understanding of the Sponsorship activities and tasks that would be entrusted to us, and which are specific to the Erasmus+ and ESC in the context of a Tier 5 Government Authorised Exchange Programme– with key milestones identified.

Understanding of the Sponsorship activities and tasks

We will have a range of tasks that we need to undertake to fulfil the Tier 5 sponsor role and to ensure full compliance with Home Office requirements which we have outlined in Figure 1 below:

Figure 1 – CoS processing steps



Specific Sponsorship activities and tasks to the Erasmus+ and ESC Programme

In addition to the general roles and responsibilities of a sponsor covered above, there are some tasks which are specific to the Erasmus+ and ESC sponsor for a Government Authorised Exchange which primarily involves the understanding that:

1. The appointed UK sponsor would not be the hosting organisation at which the participant is based and where the participant will be working. The Hosting Organisation is a separate UK organisation, identified by a Sending Organisation based in another participating Erasmus+ or ESC programme country.
2. The Sending Organisation is approved by, and contracted with, the National Agency in their country to send and fund the Tier 5 applicant. The Sending Organisation recruits and prepares the participant for their placement in the UK and decides on their roles and placement content together with the Hosting Organisation. Ecorys and the British Council do not have direct involvement in this, but the Erasmus+ and ESC programmes provide the rules and framework which organisations need to follow and comply with.
3. The Sending Organisation receives funding from their National Agency (who in turn receives their funding from the European Commission) to cover their overall Project Management costs, as well as Travel and Individual Support (local travel in the UK, food, accommodation) Costs for the participant. This funding is paid to the Participant directly or paid in kind on their behalf. Ecorys and the British Council do not pay the participant, and instead 'certify maintenance' of the participant when assigning certificates.

As a result of the above there are some additional roles Ecorys and the British Council would need to undertake at CoS application stage to ensure eligibility not only under UKV&I and Home Office rules, but also the Erasmus+/ ESC programme rules which requires our staff to have in depth knowledge of both programmes.

These eligibility checks include:

1. Submission at application form stage of a copy of the signed Erasmus+ or ESC Grant Agreement between the National Agency and the Sending Organisation and/ or a signed Learning Agreement
2. A check on the Agreement that it is both in-date and the programme (Erasmus+ or ESC) matches the programme given in the Application Form.
3. A check that the Erasmus+ or ESC programme, field, duration and activity type applied for is eligible for a T5 Certificate

1.3 Key Risks in Managing Sponsorship role

We have identified the following risks and migrations when managing a sponsorship role.

Risk area	Risk Description	Mitigation and Actions Required
Contractual	The proposed 10,000 sponsorship volumes per annum could increase or decrease dependant on how Covid-19 restrictions are lifted across the UK and EU.	<ul style="list-style-type: none"> We can mitigate this risk through regular discussion with DfE and appropriate planning, and monitoring of volumes. Through the use of a unit rate above 10,000, financial measures have also been put in place in the event of increased volumes. Cost model for the service has a fixed element for first 5,000 CoS issued and a variable element for 500110,000 CoS. which allows for some management of volumes Monthly performance review meetings allow the opportunity to review volumes and forecasted activity. Contract change control mechanism allows for variations in volumes to be managed.
Contractual	Changes to compliance requirements due to changes in UKVI or HO rules.	<ul style="list-style-type: none"> Changes to compliance requirements due to changes in UKVI or HO rules. Regular review of T5 guidance on gov.uk, in particular the SMS User Guides, and the SMS Message User Board, as well as any other messages we receive either through our regular discussions with the DfE or through UK V&I Compliance Visits/ Compliance Officers.
Contractual	Insufficient UKVI allocation	<ul style="list-style-type: none"> Work proactively with UKVI to provide data on expected applications and make any requests for new allocation as early as possible.
Contractual	Risk that the Erasmus+ and ESC T5 sponsorship process is being used fraudulently (i.e. to fill a genuine vacancy). For any illegal worker brought into the UK, the sponsoring organisation is liable for a fine of up to £20,000.	<ul style="list-style-type: none"> Undertake specific Erasmus+/ESC eligibility tasks including obtaining a copy of the signed Erasmus+ or ESC Grant Agreement and/ or a signed Learning Agreement, and cross checking with the CoS application form. Ensure copies of Visas and/ or Biometric Permits are submitted by all approved participants. Requesting email confirmation from the UK Host Organisation and participant that they have read and understood the guidance document provided to them on their responsibilities under the Sponsorship. Providing an Incident Report form for UK Host organisations to report any changes linked to issued CoS Undertaking compliance checks/ visits to UK Host organisations to ensure compliance to Host responsibilities and compliance to UK VI rules. Reporting incidents on the SMS Risk premium applied to our Pricing schedule for any fines imposed on Ecorys/ the British Council for sponsored migrants who do not fulfil the UKVI Tier 5 requirements.
Operational	Uncertainty of predicting the volume of applications	<ul style="list-style-type: none"> Bring forward staff resources from later in the contract to deal with peaks, bring in temporary staff, prioritise certain applications, or share staff resource across the consortium to ensure that both parties are working at optimum capacity.
Operational	Complaints from stakeholders, NAs and applicants in EU countries due to range of issues (lack of understanding of rules, time taken to obtain a CoS and Visa) which may impact their project activity, or	<ul style="list-style-type: none"> We will regularly review application numbers and prioritise the CoSs which have the nearest start date, temporarily hold new applications with later start dates to process at a later stage, suggest that some participants push back their start dates and move volumes to ensure that both parties are working at optimum capacity. We will update guidance regularly and actively distribute that to stakeholders.

	delays or uncertainties caused by Covid 19 restrictions beyond our control.	
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1.4 Our previous Sponsorship Experience or service activities

Ecorys and The British Council have an exceptionally strong track record in managing and delivering the services required. We have been the appointed Temporary Worker Visa sponsor for the Erasmus+ and ESC programmes since 2014, and as outlined at the beginning of this response we bring the following direct experience to the service delivery:

- We are an approved Category 'A' Sponsoring organisation under T5 Government Authorised Exchanges and can offer immediate readiness to deliver the T5 Activity
- We have built up a strong understanding of UK visa and immigration rules, including eligibility to study and work in the UK.
- We have robust systems and procedures in place for dealing with queries, managing a Helpline, assessing applications and monitoring participants during their stay in the UK.
- We have already effectively scaled up our T5 Activities to meet the increased demand from EU nationals post 1 January 2021 and will have a fit for purpose T5 Tool, referred to in this proposal as the "T5 System", which will be available from the start of the contract.
- We are currently in the process of securing Premium Customer Service status from the Home Office and expect to have this in place upon contract commencement in November 2021.
- We have established strong stakeholder relationships within our consortium and externally with the EC, other National Agencies and DfE at all levels. We also have wide-ranging networks across the UK in the sectors covered by the Erasmus+ and ESC programmes; we are on the ground in all four Home Nations
- We have a highly skilled, well trained T5 team in place who have the required technical knowledge and expertise to manage the T5 activities effectively, including extensive knowledge of the sponsorship requirements and UKVI Sponsorship Management System (SMS)
- We have a strong track record of service and contract delivery as evidenced by our recent UKVI compliance audits
- We have the necessary skills, structures, relationships, systems and processes in place to mobilise immediately and provide continuity of service to Erasmus+ and ESC stakeholders and beneficiaries.

Our previous sponsorship experience is also complimented by the management of other large scale international mobility and grant management programmes in our existing consortium in the Erasmus+ and ESC programme, the Turing Scheme. Individually both organisations also deliver a range of programmes for the Department of Education, Department for Work and Pensions and Foreign, Commonwealth and Development Office.

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Ecorys UK Limited's response to Q2 Delivery Solution

[REDACTED]

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Ecorys UK Limited's response to Q3 Internal system, controls and governance

[REDACTED]

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Ecorys UK Limited's response to Q4 Expiry of the services

Question 4 Expiry of the services

Our response to this question provides an explanation of our approach to managing the expiry of the Tier 5 Sponsorship service and covers the following four areas as laid out in the Invitation to Tender:

- 4.1. An overview of the key phases of expiry that needs to be managed, and assumptions being applied.
- 4.2. An outline of the governance approach that will be applied to assess, make decisions (with the Department) and subsequently manage a controlled and progressive expiry of the Contract.
- 4.3. Explain how, in their approach, there will be effective management of resources to maintain service continuity but be reflective that the Contract is expiring.
- 4.4. Explain how the overall approach to managing expiry of Contract achieves value for money for the taxpayer.

4.1 An overview of the key phases of expiry that needs to be managed, and assumptions being applied, related to the Tier 5 service closure

Production of the Exit Plan

We will produce an Exit Plan during the transition and mobilisation which will outline the key activities required to manage the transition of the Tier 5 Service Temporary Worker Visa Sponsorship Services from ourselves as the service provider to the DfE and/ or a replacement contractor at the end of the contract term or in the event of an early contract termination.

We will prepare the exit plan for two scenarios. The first scenario is for the natural closedown of the service in June 2024 when the Tier 5 sponsorship service for Erasmus+ and ESC ends. The second scenario is for early contract termination which will require exit arrangements to be brought forward and may involve a transition and handover to a new supplier. For each scenario the exit plan will include:

- An Exit Plan Narrative document outlining the approach taken in developing the Exit Plan and Exit Information and the proposed methodology for achieving an orderly exit or transition of the Services
- an Exit Management Timeline

The Exit Plan will be completed by the end of January 2022, as defined in the draft contract, and once agreed with DfE will then be updated as needed and maintained throughout the contract. Management of the Exit Plan will form part of our internal governance structures and we will review and discuss our exit plan with DfE on a quarterly basis at our performance review meetings.

Preparing for exit

In a scenario where we are preparing for the natural closedown of the service we do not anticipate there to be any live CoS's beyond the 30 June 2024. We anticipate that the number of CoS applications will reduce during the financial year 2023/2024 in line with Erasmus+ and ESC project closure timelines. We will ensure this is monitored and managed with a decision to scale back service resources and support including staffing levels, applicant support, website and customer service taken where appropriate. These activities will be captured in the Exit Plan. We will also ensure that relevant stakeholders including all Erasmus+ and ESC National Agencies are informed about this change and the forthcoming closure of the sponsorship service.

In a scenario where we are preparing for early contract termination, we anticipate that in addition to handing over to a new supplier that there will be live CoS which will need to be transferred, via a change of circumstance application to UKVI. We have not undertaken this process previously and will need to investigate the application process and timeframes in order to prepare our exit plans for this scenario.

Exit Plan execution

Once the contract exit process is triggered, we will work with DfE to ensure that the exit activities are implemented quickly to ensure a smooth close down or hand over of the service which is in compliance with DfE and UKVI requirements. The Operational Leads will be responsible for managing the Exit Plan and ensuring all activities are delivered on time. During this phase we will produce detailed guidance to stakeholders.

Data deletion: Records will be kept in accordance to GDPR and UKVI requirements. We are working on the assumption that we will not be required to transfer CoS to another contractor.

Figure 1 summarises the key phases and indicative time for Tier 5 Exit Management in a scenario where we are preparing for the natural closedown of the service.

Figure 1: Tier 5 Exit Management timeline - natural closedown of the service

Key Expiry Phase and estimated timing	Associated Tasks	Jan-22	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jun-25
1. Exit Plan Agreed with the DfE	<ul style="list-style-type: none"> Exit Plan submitted by Operational Lead Agree with DfE including details such as date BAU tasks begin to wind down/cease. E.g., a final date when new CoS can be issued or for visit dates, closure date of helpline service 								
2. Expiry Trigger: Notification or confirmation of expiry date	<ul style="list-style-type: none"> Exit Plan reviewed Any final changes to exit timetable agreed Operational Leads mobilise the team to execute Exit Plan 								
3. Exit Plan Execution	<ul style="list-style-type: none"> Ongoing review of Exit Plan by Operational Lead and Updates provided to DfE Exit communication and detailed guidance provided to E+ NAs, stakeholders and participants including final dates for various stages of the service (e.g., applications, date of visits, date of placement completions) 								
4. Agreed Exit	<ul style="list-style-type: none"> Confirmation of contract closure Confirmation of Exit Plan completion Letters of satisfaction issued 								
5. Data Deletion	<ul style="list-style-type: none"> Subject to UKVI confirmation, all data by 30 June 2025 which is at least 12 months after the completion of the last mobility and in line with Retainer requirement until March 2025 Confirmation to DfE that data has been deleted. 								

Table 1 below provides a summary of the key assumptions around the exit of the service: **Table 1: summary of key assumptions**

Assumption 1:	Contract end date will be end of June 2024.
Assumption 2:	The service will expire and will not handover to another contractor. We therefore assume TUPE will not apply.
Assumption 3:	The EC do not extend the 2020 Erasmus+ delegation agreement.
Assumption 4:	Erasmus+ or ESC placements funded as part of 2021-2027 programmes will not be eligible for CoS under this contract.
Assumption 5:	After an agreed point all data and records may be hard deleted in line with GDPR subject to UKVI confirmation, we propose to delete all data by 30 June 2025 which is at least 12 months after the completion of the last mobility.
Assumption 6:	Should the contract be terminated prior to its end-date, we will need to agree the conditions for partial termination (i.e. maintaining live CoS until we have confirmed the placement is over, as defined by UKVI), as well as any handover conditions for a new supplier, such as transfer of files, the transfer of data and TUPE. Due to unknown circumstances of any possible early termination, early exit costs have not been included in the cost model.

4.2 An outline of the governance approach that will be applied to assess, make decisions (with the Department) and subsequently manage a controlled and progressive expiry of the Contract.

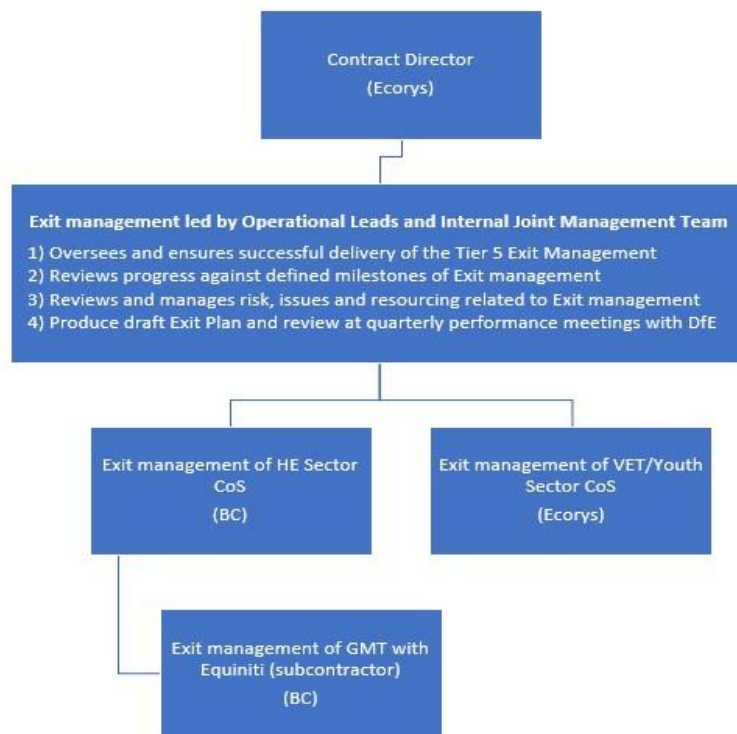
Ecorys and the British Council have been working together over the last seven years as the appointed Temporary Worker Visa sponsor for the Erasmus+ and ESC programmes. We have an established approach to governance which we will modify for the management of the expiry of the contract. Ecorys, as the lead legal entity for the Tier 5 service, will provide a Contract Director who will be the single point of contact for DfE and will be accountable for the delivery of the expiry of the Tier 5 service. We will work in an unincorporated consortium with the British Council to ensure that the Tier 5 service expiry is delivered to the required standards set out in the Exit Plan.

The Ecorys Operational Lead will provide the required management and operational oversight of exiting the contract with support from the British Council's Operational Lead. As defined in the Specification, we will review the Exit Plan at each quarterly review meeting with the DfE so that it is maintained in a good state of readiness throughout.

The Internal Joint Management Team will review the progress of the Exit Plan delivery against the defined milestones, review and manage risks, issues, and resourcing. The Team will also be responsible for contributing to the production of the reports, information and data required for the quarterly performance reviews with DfE.

Figure 2 provides an overview of the governance approach that will be applied to manage a controlled and progressive contract exit.

Figure 2: An overview of the Contract exit governance approach



Underpinning the governance model and regular meetings we will integrate exit management as part of BAU, using the below key planning and management documents that we will regularly review as part of our internal management and governance:

- Operational and resource plan – a time-bound plan based on the Project Plan included in our response to Question 5. This plan is used to guide activities and resourcing and will include the mobilisation of staff resources for exit management.
- Risk and Issues Log – updated monthly and will include any risks and issues related to exit management
- Quality Management approach – our exit management will adhere to this approach
- Business Continuity Plan – our exit management will adhere to this plan

4.3 Explain how, in their approach, there will be effective management of resources to maintain service continuity but be reflective that the Contract is expiring.

To support delivery of the Exit Plan, the Ecorys Operational Lead will lead the creation of Exit Plan and oversee the closure process from 1 January 2024 by the team. They will be supported by the British Council Operational lead who will ensure that

The Exit Plan for a natural closedown of the service will be based on the timeline presented in figure 1 above with an assumed contract end date of 30 June 2024. The plan will outline all the key activities and milestones which will enable us to achieve an orderly exit of the Tier 5 service.

In the event of an early contract termination, we will require around six months' notice of expiry which will be reflected in our Exit Plan for this scenario. The plan will outline all of the key activities and will bring forward the key expiry phase milestones to enable the controlled and progressive expiry of the contract. This is particularly important so that we can manage the wind down of our CoS issuing process and hand over the live CoS, via the change of circumstance process, once the new sponsor is in place.

The pre-exit period will require some additional organisational resource to ensure that we are well positioned to fulfil UKVI's 2-year data retention obligations. We propose undertaking a review point to determine the likely volume and status of any in-country visas beyond December 2023 (in the first instance) and agree contractual arrangements and costs for management of these if it is agreed that any of these can take place after June 2024. Our working assumption is that there will be no open CoS at the time of exit however if there are, in the case of early termination, an agreement will need to be made with the DfE regarding the partial termination, as defined in our Assumption 6 as above.

4.4. Explain how the overall approach to managing expiry of Contract achieves value for money for the taxpayer.

Our approach to value for money throughout the delivery of the Tier 5 sponsorship service will continue to be the focus throughout the management of the expiry of the contract on the following criteria:

- Economy: spending less, minimising the cost of resources
- Efficiency: spending well, using resources to maximise outputs and outcomes
- Effectiveness: spending wisely, so resources deliver the results for which they were

granted Table 2 below table summarises how this criterion will be applied in day-to-day operation.

Table 2 Overview of Value for Money criterion for managing the Expiry of Services

Economy	Efficiency	Effectiveness
Ongoing monitoring of the draft Exit Plan to ensure it is fit for purpose and can be implemented quickly.	Immediate readiness to deliver – no start-up cost or time for mobilisation; instead, we will focus on initiating the plan quickly.	Immediate readiness to deliver – no start-up cost or time for mobilisation; instead, we will focus on initiating the plan quickly.
Ongoing cost-benefits of earlier investment in systems from 2021 onwards which reduces additional costs of service close down.	Excellent understanding of CoS requirements provides major efficiencies and reduces errors in the Exit Plan	Existing talent base to deliver the Exit Plan once initiated; highly trained staff with extensive knowledge of issuing CoS.
Issuing detailed guidance to NAs, participants and stakeholders on the exit arrangements in good time so they can make their own arrangements and not expose them or us to nugatory costs e.g., by not applying for placements that	Clear and detailed messaging to all stakeholders of the exit strategy and ending of Tier 5 sponsorship services for the Erasmus+ and ESC programmes.	Structured and planned exit of the services reducing costs over a specific time period.

last after 30 June 2024 as these will not be approved.		
Flexible and agile resource management across integrated team, reducing as volumes fall.	Integrated systems and teams reduce administrative burden and can deploy staff onto other areas of work.	A highly skilled and motivated team that can manage their outputs, increasing input when required.
Offices based outside London reducing accommodation and salary costs; reducing space as volumes fall.	Highly trained and skilled multi-tasking teams reduce risk of mistakes or duplication; flexibly deployed to gain economies of scale and amalgamation of services as volumes fall.	Structured performance monitoring and benchmarking, building on previous experience of largescale contract closures such as Lifelong Learning Programme and Youth in Action.
Large scale organisational procurement reduces transaction costs and cost of goods and services in organising archive and data wipe services.	In-house teams used for aspects of delivery e.g. IT, website maintenance, reducing as volumes fall.	Reducing and merging online content and support as volumes fall.

Ecorys UK Limited's response to Q5 - Implementation and mobilisation

(Please note this is the original response submitted on 25 August 2021 as part of the tender submission. See revised response to Q5 submitted on 07 December 2021 on pages 126-132)



Ecorys UK Limited's response to Q5 - Implementation and mobilisation

(Please note this is the revised response to Q5 submitted on 07 December 2021, reflecting date amendments to Figure 1 and Figure 2 due to the slight delay in the Contract Award process)



Action description	BC/ Ecorys	Tasks	Start date	Review date	End date	Expected outcomes	Success measures
Equality, Diversity and Inclusion commitment / Establish a race and ethnicity taskforce	Ecorys	Establish meeting schedule and agenda. Agree terms of reference.	Sep-Dec 2021	Jan-Mar 2022	May-Jun 2024	Taskforce established, leadership established, meeting schedule established.	Commitment from across the business. Metrics defined.
Review and publish the ethnicity pay gap report	Ecorys	Review ethnicity pay gap analysis. Publish on UK website.	Sep-Dec 2021	Oct-Dec 2022	May-Jun 2024	Staff have increased knowledge of board motivation and social value principles.	Published report. Staff awareness of activity, via employee engagement survey.
Develop a race equality action plan	Ecorys	Brainstorm actions. Prioritise most impactful actions.	Apr-Jun 2022	Oct-Dec 2022	May-Jun 2024	Action plan developed /communicated to staff. Further staff training and understanding via social value modules.	Plan launched, with priorities and target dates defined. Staff understanding and buy-in.

Organisational learning	British Council	Increased awareness and learning of issues of racism. Human resource policies and practices reviewed and revised. New skills acquired to benefit career progression and to deliver AntiRacism training. Leaders identify and address barriers to progression for Minority Ethnic staff.	JanMar 2022	Apr-Jun 2023	May-Jun 2024	Learning and awareness of issues of racism consistently embedded in learning and development plans within British Council. Staff have increased skills and are empowered to respond to issues of race with empathy and reflection. Senior staff ensures greater compliance with revised HR processes. Grievance processes reviewed and revised as appropriate	Staff survey results. Training records. Evaluation reports
Action description	BC/ Ecorys	Tasks	Start date	Review date	End date	Expected outcomes	Success measures
Programmes, products and services that are anti-racist	British Council	Audit of current programmes from EDI/anti-racism perspective. EDI and antiracism planning tools and approaches piloted.	Q1 2022	Q2 2022	May-Jun 2024	EDI and anti-racism planning tools fully embedded in Cultural Engagement programmes. Products and programmes across Cultural Engagement are deliberately antiracist and recognised as such by external experts and partners.	Feedback from partners, beneficiaries. Impact data created from programming.

Schedule 11

Data Handling and Systems Assurance (Security)

Definitions

1. Departmental Security Standards for Business Services and ICT Contracts

“BPSS” “Baseline Personnel Security Standard”	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
“CCSC” “Certified Cyber Security Consultancy”	is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC’s standards. See website: https://www.ncsc.gov.uk/scheme/certified-cyberconsultancy

“CCP” “Certified Professional”	<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:</p> <p>https://www.ncsc.gov.uk/information/about-certifiedprofessional-scheme</p>
“CPA” “Commercial Product Assurance” formerly called “CESG Product Assurance”	<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/commercialproduct-assurance-cpa</p>
“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 these providers:</p> <p>https://www.cyberessentials.ncsc.gov.uk/gettingcertified/#what-is-an-accreditation-body</p>
“Data” “Data Controller” “Data Protection Officer” “Data Processor” “Personal Data”	<p>shall have the meanings given to those terms by the Data Protection Act 2018</p>
“Personal Data requiring Sensitive Processing” “Data Subject”, “Process” and “Processing”	

"Department's Data" "Department's Information"	<p>is any data or information owned or retained in order to meet departmental 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 Contractor by or on behalf of the Department; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Department is the Data Controller;
"DFE" "Department"	means the Department for Education
"Departmental Security Standards"	means the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
"Digital Marketplace / G-Cloud"	means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.
End User Devices	means the personal computer or consumer devices that store or process information.
"Good Industry Practice" "Industry Good Practice"	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
"Good Industry Standard" "Industry Good Standard"	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
"GSC" "GSCP"	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at:</p> <p>https://www.gov.uk/government/publications/government-security-classifications</p>
"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
“ISO/IEC 27001” “ISO 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO/IEC 27002” “ISO 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing”	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
“Need-to-Know”	means the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	The National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for Information Assurance. The NCSC website is https://www.ncsc.gov.uk
“OFFICIAL ” “OFFICIAL-SENSITIVE”	the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP). the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP.
“RBAC” “Role Based Access Control”	means Role Based Access Control. A method of restricting a person’s or process’ access to information depending on the role or functions assigned to them.
“Storage Area Network” “SAN”	means an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage.
“Secure Sanitisation”	means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. NCSC Guidance can be found at: https://www.ncsc.gov.uk/guidance/securesanitisation-storage-media

	The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction
“Security and Information Risk Advisor” “CCP SIRA” “SIRA”	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-certifiedprofessional-scheme
“Senior Information Risk Owner” “SIRO”	means the Senior Information Risk Owner (SIRO) responsible on behalf of the DFE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arm's length bodies (ALBs), nondepartmental public bodies (NDPBs) and devolved information held by third parties.
“SPF” “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/securitypolicy-framework

- 1.1 The Contractor shall be aware of and comply the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable DFE Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2 Where the Contractor will provide products or services or otherwise handle information at OFFICIAL for the Department, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification](#) - Action Note 09/14 dated 25 May 2016, or any subsequent updated document, are mandated, namely that “contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials certification at the appropriate level for the duration of the contract. The certification scope shall be relevant to the services supplied to, or on behalf of, the Department.
- 1.3 Where clause 1.2 above has not been met, the Contractor shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements).

The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4 The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service and will handle all data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).

- 1.5 Departmental Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Contractor's or sub-contractor's own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required in line with clause 1.14.
- 1.6 The Contractor shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.
- 1.7 The Contractor shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Departmental Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Departmental Data or systems shall be considered to be sensitive data and must be protected accordingly.
- 1.8 The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to:
- physical security controls; ○ good industry standard policies and processes; ○ malware protection; ○ boundary access controls including firewalls, application gateways, etc; ○ maintenance and use of fully supported software packages in accordance with vendor recommendations;
 - use of secure device configuration and builds; ○ software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
 - user identity and access controls including the use of multi-factor authentication for sensitive data and privileged account accesses;
 - any services provided to the department must capture audit logs for security events in an electronic format at the application, service and system level to meet the department's logging and auditing requirements, plus logs shall be:
 - retained and protected from tampering for a minimum period of 6 months; -
 - made available to the department on request.
- 1.9 The contractor shall ensure that any departmental data (including email) transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 1.10 The contractor shall ensure that any departmental data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the department except where the department has given its prior written consent to an alternative arrangement.
- 1.11 The contractor shall ensure that any device which is used to process departmental data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-securityprinciples>.
- 1.12 Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.

The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".

- 1.13 When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.

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

- 1.14 In the event of termination of contract due to expiry, liquidation or non-performance, all information assets provided, created or resulting from the service shall not be considered as the Contractor's assets and must be returned to the department and written assurance obtained from an appropriate officer of the supplying organisation that these assets regardless of location and format have been fully sanitised throughout the organisation in line with clause 1.15.
- 1.15 In the event of termination, equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored by the Contractor must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC approved product or method.

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

Evidence of secure destruction will be required in all cases.

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

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

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

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

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

Schedule 12

Pensions

1. Definitions

"Actuary"

a Fellow of the Institute and Faculty of Actuaries;

"Broadly Comparable"

- (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and
- (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department, and **"Broad Comparability"** shall be construed accordingly;

"CSPS"

the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;

"CSPS Admission Agreement"

an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;

"CSPS Eligible Employee"

any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;

"Fair Deal Employees"

those Incoming Employees to whom TUPE and/or the Acquired Rights Directive apply on the Relevant Transfer Date to transfer their employment to the Contractor, and who at the Relevant Transfer Date are or become entitled to New Fair Deal protection;

"Relevant Transfer"

a transfer of employment to which TUPE and/or the Acquired Rights Directive applies;

"Relevant Transfer Date"

in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of this schedule, shall include the Effective Date, where appropriate;

"Service Transfer Date"

the date upon which the Transferring Employees transfer to a Replacement Contractor.

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

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

3. INDEMNITIES THE CONTRACTOR MUST GIVE

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

4. OTHER PEOPLE'S RIGHTS

- 4.1 The Parties agree clause 33 of schedule 2 (Contracts (Rights Of Third Parties) Act 1999) does not apply and that the CRTPA applies to this schedule 12 to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Contractor under this schedule 12, in his or her or its own right under section 1(1) of the CRTPA.

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

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

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

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

6. TRANSFERRING NEW FAIR DEAL EMPLOYEES

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

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

7. BROADLY COMPARABLE PENSION SCHEMES

- 7.1 If either:

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

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

- 7.2 Where the Contractor has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 7.1, the Contractor shall (and shall procure that any of its Subcontractors shall):
- 7.2.1 supply to the DFE details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Service Transfer Date;
 - 7.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
 - 7.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Contractor and/or CSPA and/or the DFE may reasonably require, to enable the Replacement Contractor to participate in the CSPA in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following the Service Transfer Date;
 - 7.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Contractor and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Contractor and/or Sub-contractor's Broadly Comparable pension scheme is terminated;
 - 7.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following the Service Transfer Date, the bulk transfer of past service from any such Broadly Comparable pension scheme into the CSPA and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate CSPA to fund day for day service ("**Shortfall**"), the Contractor or the Sub-contractor (as agreed between them) must pay the CSPA, as required, provided that in the absence of any agreement between the Contractor and any Sub-contractor, the Shortfall shall be paid by the Contractor; and
 - 7.2.6 indemnify DFE and/or CSPA on demand for any failure to pay the Shortfall as required under Paragraph 7.2.5 above.

8. CONTRACTOR OBLIGATIONS

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

- 8.1.4 co-operate with the DFE and the Replacement Contractor to ensure an effective consultation process and smooth transfer in respect of Transferring Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 8.1.5 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 8.1.6 fully fund any Broadly Comparable pension schemes set up by the Contractor;
- 8.1.7 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees); and
- 8.1.8 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Contractor relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract.

9. STAFF TRANSFER WHEN THE CONTRACT ENDS

- 9.1 A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which TUPE will apply. The DFE and the Contractor agree that where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Employee.
- 9.2 The Contractor shall comply with all its obligations in respect of the Transferring Employees arising under TUPE in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the CSPA and/or Broadly Comparable scheme.
- 9.3 Subject to Paragraph 9.4, the Contractor shall indemnify the DFE and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission of the Contractor or any Sub-contractor in respect of any Transferring Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Employee whether occurring before, on or after the Service Transfer Date.
- 9.4 The indemnity in Paragraph 9.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date.