

This contract is made on day of 20

1 THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("**DFE**"); and

2 Deloitte LLP of OC303675 whose registered office is 2, New Street Square, London, EC4A 3BZ (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 11 – Terms and Conditions for Part B Services
 - (b) schedule 1 (Specification);
 - (c) schedules 3 to 9; and
 - (d) schedule 10 (Contractor's Solution).

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

SIGNED by the CONTRACTOR acting by

Authorised Signatory

In the presence of

Witness signature

Occupation

Address

Date

SIGNED by DFE acting by

Position

in the presence of

Witness signature

Occupation

Address

Date

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Schedule 1
The Specification

PART A: Accounting Services
Section 1: Core Service Functions

1. Consolidation Solution

DfE requires the Contractor to design, implement and operate a fully functioning Accounting Consolidation Solution for consolidating the accounts of the academies sector in England.

In line with the Strategic Change for these services, the Contractor must ensure that the solution has flexibility built-in from the outset such that it can facilitate the in-housing of the solution at the end of Phase 1, and will adjust the solution in line with findings during Phase 2 (see Section 5 – Managing the Strategic Change for full requirements).

The Contractor will:

Ref.	Service Requirement
CS1	<p>Consolidation Solution Design</p> <p>The Contractor is responsible for ensuring that the solution will:</p> <ul style="list-style-type: none"> ▪ Validate and adjust relevant data received from ATs in readiness for populating figures in the annual, audited SARA. ▪ Generate a consolidated extended trial balance and the financial statements in the SARA (including supporting non-trial balance disclosures). ▪ Provide a clear, robust audit trail for any amendments to data made both prior to and after submission to DfE, with data and supporting documents structured to promptly and efficiently support audit requests. ▪ Use automation where practicable in the validation and adjustment process and enable integration with other systems in the end-to-end Accountancy Services process. ▪ Be flexible, and able to iterate and change each year in line with the changing requirements including (but not limited to) significant changes in Government accounting standards (including IFRS16), more/less information required from ATs, inclusion of new returns such as Land and Buildings Collection Tool, tracking of Land and Buildings values over years and validation requirements. ▪ Be designed to decrease the burden on ATs in answering queries on returns. ▪ Ensure that the DfE's data (including AT data), for which the DfE will continually retain IP, is handled in line with Data Protection and Data Security provisions set out in this Service Requirement and Schedule 8 of the overarching contract. <p>Contractors must ensure that their solution is developed and delivered using industry-standard, supported technologies.</p>
CS2	<p>Consolidation Solution Capability and Features</p> <p>The Contractor will ensure the solution is:</p> <ul style="list-style-type: none"> ▪ Capable of consolidating, analysing and adjusting all ATs' accounts returns. ▪ Capable of storing, processing and interrogating both financial and non-financial data for over 7,000 academies. ▪ Have capacity to process large data sets, including validation and adjustments processes set out in these requirements.

	<ul style="list-style-type: none"> ▪ Be capable of expansion to cover an increase in volumes of ATs each year. ▪ Able to import AT financial data from the DfE (currently in .dat and MS Excel format). The future collection process and format will be part of the Contractor's solution to Part B: Automated Data Collection solution. ▪ Store data in a consistent structure, with documentation of this structure provided by the Contractor and agreed by the DfE. ▪ Allow copies of data to be taken at various stages of the process using agreed secure technical protocols (currently SMTP). ▪ Capable of being accessed remotely by third party users when authorised by DfE, such as National Audit Office (NAO) and internal DfE users. The DfE will determine the permissions. The external access provision will require identity assurance that the DfE will work with the Contractor to establish. ▪ Produce data and reports in an accessible manner, consistent with HMG guidelines found at https://www.gov.uk/service-manual/helping-people-to-use-your-service/making-your-service-accessible-an-introduction
CS3	<p>Operation and Maintenance</p> <ul style="list-style-type: none"> ▪ The Contractor will operate and maintain the proposed solution during the first two years of service delivery. This will cover the period to the laying of the 2018-19 SARA before Parliament, applying system changes and improvements as informed by DfE. ▪ The Contractor will be required to perform end-to-end system testing, ensuring that data is processed in accordance with the validation rules, and identifying any issues on the DfE-built Accounts Return online form. This end-to-end testing must be performed: <ul style="list-style-type: none"> a) in advance of the launch of the DfE Accounts Return (using dummy / prior year data), with sufficient time for Contractor and DfE to implement any required fixes; b) At the time of returns being received from ATs. ▪ The Contractor will give ongoing technology advice on the end to end process, including: <ul style="list-style-type: none"> a) Joining meetings with DfE on the development and rollout of the Accounts Return and Land and Buildings Collection Tool b) Leading end to end testing of the proposed solution. ▪ The Contractor will minimise the risk of system downtime, and have procedures in place to implement alternative ways of working. ▪ The Contractor must set out the cost of the annual upgrade of the proposed solution, including the cost of specialist contractors required to install, test and re-test required upgrades. ▪ The Contractor will be required to ensure that DfE staff have access to the Consolidation Solution. If a licence-based solution is proposed, the number of licences must be agreed with DfE.

2. Validations

The consolidation process will involve receiving ATs' Accounts Returns and Land and Buildings returns via the DfE, containing both financial and non-financial data.

Under the current system, data validation is essential to demonstrate the accuracy and completeness of the submitted data, and provide assurance and confidence that the data is a meaningful reflection of the audited accounts of individual ATs. Validations will cover consistency, completeness, reconciliations and reasonableness. It is estimated that on an

annual basis, the Contractor would be required to review approximately 5,000 comments submitted in relation to validation flags, based on the current number of ATs. Approximately 3,000 queries will need to be followed up directly with the ATs and enquiry results documented in an auditable manner. Approximately 2,000 queries may result in an adjustment.

In line with the strategic objectives of the Department, we are keen to reduce existing resource burdens on academy trusts. This may include, but not be limited to, maximising the validations carried out at source when the data is submitted, rather than validating data through follow-up queries post-submission.

In line with the Strategic Change for these services, the Contractor is responsible for undertaking validation activity during Phase 1 and Phase 2, before handing over to the DfE for the commencement of Phase 3 (see Section 5 – Managing the Strategic Change for full requirements). In the lead up to, and during Phase 2, the Contractor will provide full training to DfE staff and participate in dual run activity to ensure the efficient transfer of responsibilities at the end of Phase 2. During Phase 3, the Contractor will provide ongoing specialist Accounting and Technical Professional Services to the DfE.

Ref	Service Requirement
V1	<p>Validation Methodology</p> <p>The Contractor will:</p> <ul style="list-style-type: none"> Develop and document, in collaboration with the DfE, a clear methodology for the validation process (including the proposed thresholds / tolerance levels for specific validation tests). This methodology should cover both 'hard' validations (where a set calculation e.g. the Trial Balance balancing has failed) and 'soft' validations (where figures fall outside agreed tolerance levels). It should also cover both the information received in the Accounts Return and the Land and Buildings Collection Tool.
V2	<p>Validation Process</p> <p>The Contractor is responsible for:</p> <ul style="list-style-type: none"> Addressing 'hard' and 'soft' validation fails by use of other DfE data sources (e.g. the DfE's Asset Under Construction schedule) and direct enquiry with the ATs (by email or telephone) – with the level of follow up based on the size and nature of validation fails. Prioritise the relevance and importance of respective validation tests and results, and address accordingly (as determined by the agreed methodology set out in V1) – with a target of completing 90% of all required validations by the end of February (at the latest) each year. Verify that transfer in and out balances reported by different ATs are consistent and reported in the correct accounting period. Verification against information already held / provided by the DfE e.g. on revenue and capital funding. Where required, reconcile data fields in the returns to financial statements and resolve discrepancies. The volumes of such reconciliations shall be determined by the efficacy of the validation process, as well as factors such as ministerial questions. Undertaking further judgemental valuation by inspection of apparent errors and inconsistencies, contacting the relevant ATs to confirm entries.
V3	<p>Validation Reporting and Governance</p>

	<p>The Contractor will:</p> <ul style="list-style-type: none"> ▪ Report findings of the validation results to the DfE, at stages agreed with the DfE. ▪ Agree data adjustments required to AT data with DfE on a weekly basis, or sooner if a significant error is identified. ▪ Extrapolate, quantify and document unresolved issues / part validated returns and discuss with the DfE the impact of the combined un-adjusted transactions on the consolidation process. ▪ Proactively manage and constantly monitor the results of validation tests that could lead to an adjustment to the tests. ▪ Provide supporting documentation, proof of review and a full audit trail for any validations carried out, and an indication as to whether the adjustment is expected to repeat in the following year. ▪ Inform ATs of all changes made to their returns with supporting reasons. <p>NOTE: There are some adjustments where there is an error and the trust should correct for the following year. These should be notified in line with the above service requirement. There are other changes where the DfE/Contractor have made an adjustment for consistency, e.g. categorising certain types of debtor to be consistent across the SARA. For consistency adjustments, it is not necessary to inform Trusts.</p>
V4	<p>Validation Automation</p> <ul style="list-style-type: none"> ▪ The Contractor will be required to deliver automated validations in the Consolidation Solution – these must be based on validations performed using the DfE Accounts Return / Land and Buildings Collection Tool, to provide consistent evaluation of the accuracy and completeness of the returns.

3. Accounting Adjustments

In preparing the SARA, it is likely that several accounting adjustments will be required. The process of Accounting Adjustments requires the Contractor to apply their methodology and approach for working jointly with the DfE to agree accounting treatments and adjustments.

In line with the Strategic Change for these services, the Contractor will be responsible for identifying and applying the adjustments to the SARA accounts in Phases 1 and 2, before handing over responsibility to the DfE for the commencement of Phase 3 (see Section 5 – Managing the Strategic Change for full requirements). In the lead up to, and during Phase 2, the Contractor will provide full training to DfE staff and participate in dual run activity to ensure the efficient transfer of responsibilities at the end of Phase 2. During Phase 3, the Contractor will provide ongoing specialist Accounting and Technical Professional Services to the DfE.

Ref	Service Requirement
AA1	<p>Accounting Adjustments</p> <p>The Contractor must undertake the following minimum level of accounting adjustments to AT data provided by the DfE:</p> <ul style="list-style-type: none"> ▪ Perform the opening balance sheet reconciliation. ▪ Comparative / opening balances: reconcile and adjust opening balances where required e.g. adjusting balances for previous year non-returners submitting current year returns (currently circa 60 ATs).

	<ul style="list-style-type: none"> ▪ Land and Buildings: account for the value of the ATs' Land and Buildings using third party valuations provided by the DfE. ▪ Land and buildings recognition in conformity to SARA accounting policy. ▪ Accounting adjustments for assets under construction (AUC) using information provided by the DfE. Includes checks to eliminate potential double count of assets between AUC and Land and Buildings. ▪ Accounting for additions and disposals of assets. ▪ Indexation: to adjust the value of Land and Buildings to reflect the current market value. ▪ Other capital adjustments e.g. depreciation. ▪ Process estimates for current year non-returns (currently around 100 ATs annually) ▪ Adjustments in line with any significant changes in accounting standards including, but not limited to, IFRS 16. ▪ Consolidation adjustments as required, such as alignment of assets/ liabilities/ reserves transferred on conversion.
AA2	<p>Contractor Requirements</p> <p>As well as carrying out the above adjustments, the Contractor must:</p> <ul style="list-style-type: none"> ▪ Provide advice and feedback to the DfE on the scope and nature of the adjustments proposed ▪ Perform initial draft calculations and supporting working papers, and share with the DfE for review and sign off for all adjustments. ▪ Post and document (with supporting summary memos) all adjustments in the Consolidation Solution, some at AT level and some at academy level, and perform appropriate testing to confirm amounts recorded are as set out in the adjustment documentation agreed by the DfE. ▪ Present and discuss the consolidated impact of all unposted entries on the accounts. The extent of Contractor input will depend on the number and complexity of unposted entries on the accounts. This could include providing work papers and attending meetings with DfE and external parties such as NAO. ▪ Work jointly with the DfE to understand the implications and impact of accounting policies and changes required (particularly establishing the appropriate presentation of these adjustments in the SARA).
AA3	<p>Governance</p> <p>The Contractor must:</p> <ul style="list-style-type: none"> ▪ Maintain appropriate working papers on the status, risks and points for escalation of the projects, and share with DfE for review within agreed timescales. Documentation will be available to internal and external auditors, and may be applicable under the Freedom of Information Act 2000. ▪ Provide a clear, robust audit trail for any accounting adjustments, with data and supporting documents structured to promptly and efficiently support audit requests. ▪ Flag any issues with data received to the DfE within agreed timescales, and agree and take forward any follow-up actions with DfE. ▪ Ensure all work carried out is Financial Reporting Manual (FReM) compliant. https://www.gov.uk/government/collections/government-financial-reporting-manual-frem ▪ Must be compliant with Managing Public Money – HMT guide on regularity https://www.gov.uk/government/publications/managing-public-money

4. Production of the completed extended trial balance

In line with the Consolidation Solution(s), validations and adjustments work, DfE requires a production of the completed extended trial balance. DfE requires this process to be conducted by the Contractor in Years 1 and 2 of the contract with full training and support to DfE staff to enable DfE to dual run the service with the Contractor in Year 2. In Year 3 we aim for the process to be run entirely by DfE staff with access to Contractor to provide support, where required.

Ref	Service Requirement
TB1	Requirement of the extended trial balance to be produced by the Contractor: <ul style="list-style-type: none">▪ The adjusted consolidated ATs' accounts returns and Land and Buildings returns must be materially accurate and available on time (timeline 31 March each year; expected to be within one week of the conclusion of validations work), to allow the first SARA of this contract to be laid before Parliament in June 2019.▪ Analytics to explain large or unusual movements across reporting years on asset / liability balances must be carried out by the Contractor.▪ The Contractor should handover the consolidated trial balance, the financial statements and notes to the accounts where derived from Accounts Returns data, the complete accounts returns data set and other data sets specified by DfE by 31 March each year.
TB2	Preparation, production, review and audit of the SARA: <ul style="list-style-type: none">▪ Initial responsibility for the creation of the SARA through use of the agreed and updated accounts production tool.▪ Provision of the first draft of the financial statements, notes to the accounts and non-narrative financial elements of the Annual Report (e.g. Remuneration Report) in word format, including all primary statements and associated notes by 31 March each year.▪ Provision of the data specified by the DfE in relation to the Annual Report section of the SARA.▪ Two updated drafts, following the initial one, to reflect adjustments required by the DfE, or the NAO on completion of their audit.▪ To maintain appropriate working papers and support for all balances in the SARA.

5. Audit Support

The DfE expects the level of Audit Support to be in line with the level of engagement with the above core service functions of the contract, In line with the DfE's aim of publishing 'unqualified' accounts by mid-July at latest from 2017/18 onwards. We anticipate that the audit support will be maintained throughout Years 1 and 2, and decrease in Year 3 as the core service functions are brought in-house.

The DfE is unable to be specific about the exact requirements for audit support as:

- 1) NAO approach is outside of DfE control - NAO have a legal right to ask reasonable questions
- 2) DfE cannot control value for money engagement
- 3) The solution will directly play into how much/ little NAO engagement there is

The following functions are based on DfE expectations, informed by audit activities in the indicative high-level plan in the data room. As stated above, level of engagement may change based on NAO requirements.

The Contractor is required perform functions including but not limited to:

Ref	Service Requirement
AS1	<p>Demonstrate how the Contractor will:</p> <ul style="list-style-type: none"> Support the audit process and provide information requested. Provide system(s) access to the NAO. Produce required audit reports and information. Facilitate audit visits and ensure staff are available to support the audit. Provide guidance on end-to-end processes and model functions where required. <ul style="list-style-type: none"> provide information for control and substantive testing. Address audit queries promptly, within an agreed timeframe (to be set with the DfE). On authorisation of the DfE, to provide working papers to the NAO as required. To maintain the Contractor project plan, and confirm reporting and communication is maintained with the DfE throughout the contract period, to confirm fit with the NAO timetable. To escalate any identified audit issues to DfE within an agreed timeframe (to be set by the DfE), with sufficient information to allow follow up by the DfE. To maintain appropriately clear working papers to support the audit process, which will be provided to the NAO on the authorisation of the DfE.

6. Accounting and Technical Professional Services - Advice, Assurance & Forensics

The DfE will require access to Accounting and Technical Professional Services throughout the duration of the contract. It is likely that the DfE will require access to these professional services in a variety of areas, and it essential that the professional service is flexible in both regularity and specialism. The professional services will also be required to support the wider DfE Finance Function. Accounting and Technical Professional Services will be required in the following areas:-

Ref	Service Requirement
AT1	<ul style="list-style-type: none"> Accounting assessment of the recognition of a proportion of academy trust assets Specialist advice on the adoption of new International Financial Reporting Standards. This may be in connection with the SARA and DfE accounts, but also in connection with the Charity SORP for adoption by academy trusts in their accounts. Specialist advice on changes to disclosure requirements, including but not limited to, pensions, leases, staffing and remuneration. Specialist advice on adoption of HM Treasury guidance Accounting and Technical Professional Services to inform the SARA and DfE accounts. Including, but not limited to, provision of advice to inform the annual project planning lifecycle, using this expertise to inform all the above mentioned service requirements, introducing continuous improvement, apply lesson learnt, responding to NAO challenges/queries, responding to PQs and FOI. Accounting and Technical Professional Services to inform the Better Financial Reporting Programme. Provision of expert accounting advice for the purposes of informing a successful change programme. Including, but not limited to impact of changes on service users, impact on the end-to-end process of the accounts process, advising Programme Board and project planning. Strategic Change Support: Continued provision of expert guidance to the Department staff following service transition to the Department. Other specialist accountancy advice on an ad hoc basis for outcome based service aspects. <p>This support may require attending and contributing to relevant internal DfE</p>

	technical panel meetings and papers. DfE withholds the right to use a different external Contractor within the finance functions for the provision of Accounting and Technical Professional Services at its own discretion.
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Section 2: Non-Core Service Functions

1. Project Planning, Communications & Stakeholder Engagement

The DfE expects the level of project planning, communications and stakeholder engagement to be in line with the level of engagement with the above core service functions of the contract. We anticipate that the project planning engagement will decrease in Year 2 and Year 3 as the core service functions are brought in house. Active engagement and communication with several internal and external stakeholders such as DfE, NAO and the ATs are imperative to ensure a smooth and transparent process.

The Contractor is required to work jointly with the DfE and expected to demonstrate how they will comply with our governance by exercises including but not limited to:

Ref	Service Requirement
PP1	Required Plans <ul style="list-style-type: none"> Show a plan to and manage resources and activities in order to meet deliverables and deadlines. At planned stages with the DfE, conduct sessions to understand and address lessons learned from previous activities. Create and manage a robust risk management strategy aligned to the DfE Financial Reporting Programme, with clear methodology to identify, assess, manage and control uncertainties, risks and issues throughout the project. Create and manage a robust quality management strategy with a complete set of quality standards, procedures and responsibilities to plan and control delivery quality.
PP2	Governance <ul style="list-style-type: none"> Define a robust governance and management hierarchy showing approval and review structures that is approved by the DfE.
PP3	Communications plan between Contractor and DfE: <ul style="list-style-type: none"> Define and agree governance for information flow and decision making with DfE. Define and manage the stakeholder engagement and communication strategy and plan, jointly with DfE. Attendance at steering groups, workshops, technical panels, monthly contract management, monthly project board meetings, fortnightly programme review group and others. Normally these will be held face to face at the DfE London, although sometimes it may be required to travel within the UK to other DfE offices, dial in options may also be available. Manage and record communication with stakeholders. Support the DfE with AR-derived data in responding to ministerial queries and internal queries (ad hoc timing), Parliamentary Questions (24-hour turnaround) and Freedom of Information requests (within 5 business days).
PP4	Communications plan between Contractor and sector: <ul style="list-style-type: none"> Periodically attend and contribute to various meetings, workshops and papers.

PP5	<p>Escalation and governance plan:</p> <ul style="list-style-type: none"> ▪ Provide a weekly update report to, and attend meetings with, DfE key personnel to provide an update on project progress, explore decisions on issues – the reports must include recommendations about feasible solutions to the issues. ▪ Escalate high-level issues to DfE such as non-response from ATs on queries, more urgent issues will be expected to be communicated with the agreed focal points as part of your governance plan. ▪ Escalate potential audit and other issues within an agreed timeframe (to be set by DfE).
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Section 3: Implementation – see Schedule 5

Section 4: Programme Governance, Data & Systems Security and Exit Management

1. Programme Governance

Following the implementation of the service, the Contractor will be required to adopt a robust governance strategy to assure performance over both parts A and B of these service requirements. DfE's minimum requirements for this are set out below.

PG1	<p>Governance Documents</p> <p>The Contractor must produce the following documents and share these with the DfE prior to service commencement on 01 October 2018:</p> <ul style="list-style-type: none"> ▪ Operational Plan: the Contractor must hold an up-to-date forward look of its planned activities and key milestones during the lifetime of the contract, including any dependencies between these activities, which must be regularly synchronised with the DfE's own project plan. The agreed Operational Plan will form the basis for tracking the performance of the Contractor over the duration of the contract. ▪ Risks and Issues logs: the Contractor will be expected to identify the key risks to its work, their impact, owners, and the proposed mitigations via a risk register. The Contractor must also maintain an Issues Log containing new issues, matters for escalation, and resolution progress, and should update DfE of any major risks or issues arising outside of the normal monthly reporting cycle. ▪ Resource Plan: the Contractor must maintain an organisation chart detailing the personnel to be deployed by the Contractor to ensure sound governance, strong leadership and effective operational management of the requirements. ▪ Business Continuity Plan: that ensures essential and time-critical business can be continued in the event of foreseen or unforeseen disruption, including disaster recovery. ▪ Budget and Financial Plan: itemising actual and projected monthly spend over the duration of the contract period. <p>These must be updated and shared with DfE on a monthly basis, starting 20 working days after service commencement, or as requested by DfE.</p>
PG2	<p>Programme Governance and Reporting</p> <p>The Contractor will be expected to attend regular (currently monthly) programme governance meetings with DfE representatives to discuss, but not limited to:</p> <ul style="list-style-type: none"> ▪ The Contractor's Operational Plan and planned activities for future months

	<ul style="list-style-type: none"> ▪ The Contractor's performance against key milestones set out in the Operational Plan ▪ Monthly expenditure and invoicing, including any actual or anticipated deviation from the Contractor's Financial Plan, the reasons for any such deviation. ▪ The Contractor's management of data. ▪ Any existing or emerging risks or issues relating to provision of the contract. ▪ Any other issues, learning or emergent good practice. ▪ Cost down initiatives/improvement initiatives. <p>The DfE will require the Contractor to provide accurate and timely data 2 business days in advance of a schedule project meeting.</p> <p>The final format of the reporting will be agreed with the Contractor.</p>
PG3	<p>Service Standards and Service Levels</p> <p>The Contractor's performance will be measured against the following standards/levels:</p> <ul style="list-style-type: none"> ▪ Quality of work, meaning that it stands up to NAO audit; ▪ Achieving milestones that are defined in the project plan, ensuring that any deviation from the plan and the impact of any deviation is discussed and agreed in advance with DfE. ▪ The Service Levels detailed in Schedule 4 of the Contract Terms and Conditions.

2. Data and Systems Security and Assurance

As the successful contractor will receive DfE data throughout the course of this contract, they (and any systems used and produced over the life of the contract) must strictly adhere to Governmental, Departmental, ICO and international data security standards.

Due to the nature of the Strategic Change set out in Section 5: Managing the Strategic Change and Exit Management, and Part B: Automated Data Collection solution, the Contractor must also meet DfE Digital, Data and Technology (DDaT) requirements set out below.

Ref	Service Requirement
DS1	<p>Data Protection</p> <p>Schedule 8 of the Contract Terms and Condition defines the provisions that the Contractor must comply with when handling all data. The relevant provisions require compliance with the:</p> <ul style="list-style-type: none"> ▪ General Data Protection Regulations (GDPR); and ▪ Data Protection Act (DPA) 2018
DS2	<p>DfE Security Standards</p> <p>Schedule 8 of the Contract Terms and Condition define the provisions that the Contractor must comply with in respect of data security. Specifically, the contractor is responsible for:</p> <ul style="list-style-type: none"> ▪ Providing evidence of National Cyber Security Centre Cyber Essentials accreditation (https://www.cyberessentials.ncsc.gov.uk/), or ISO 20071 and ISO 20072 accreditation. ▪ Following the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing

	<p>this service, and will handle this data in accordance with its security classification.</p> <ul style="list-style-type: none"> ▪ Ensure that laptops have full disk encryption using either a CESG CAPS approved product or alternatively a product that complies to the FIPS 140-2 or equivalent Standard ▪ that DfE data is segregated from non-DfE data on their own IT equipment ▪ that USB devices used for transferring protectively marked DfE data are encrypted to the FIPS 140-2 Standard
DS3	<p>Governmental Security Requirements</p> <ul style="list-style-type: none"> ▪ The successful contractor must ensure that they and their solution is compliant with the Cabinet Office Contractor Assurance Framework throughout the duration of the contract https://www.gov.uk/government/publications/government-Contractor-assurance-framework

3. Exit Management

As outlined in the Strategic Change aspect of the service requirement, the services will transition to the Department – requirements associated with that activity is stated there. However, should there be a need to exit the contract in advance of Strategic Change occurring, or a decision is taken not to in-house the services and are delivered by a replacement Contractor in the future, the Department requires assurance that the Contractor has plans and procedures in place to fully support an effective and efficient exit from the contract. The contractor is therefore required to:

Ref	Service Requirement
EM1	<p>In-line with Clauses 25 of Schedule 2: Terms and Conditions in the draft contract, the Contractor will prepare and maintain a draft exit plan that can be invoked for the purpose of discharging its duties under the contract in the event of:</p> <ol style="list-style-type: none"> 1) Providing effective support to any future retender exercise 2) Enabling emergency exit from the contract if required 3) Enabling effective and efficient handover to the DfE or a replacement Contractor on expiry of the contract <p>The draft exit plan must comply with the wider provisions of the contract, specifically in respect of, but not limited to Asset Management; transfer of Intellectual Property (IP); Third Party Licences; Data management requirements.</p>

Section 5: Managing the Strategic Change

Systems Governance

The Contractor shall retain overall responsibility for the support, maintenance and performance of the proposed solution in Y1 and Y2. The DfE shall take responsibility for the maintenance and performance of the proposed solution in Y3, except in the circumstance where an issue has been identified as caused by the Contractor's error. In this case, the Contractor will be required to carry out preliminary investigations into the issue within 48hrs, and agree a timescale for rectification with DfE on a case-by-case basis. DfE shall engage the Contractor for any issues arising outside of these circumstances.

Transitioning To New Solution

It is imperative that the DfE maintains business continuity when transitioning to the new service provision. Contractors must describe how they would approach this transition, including (but not limited to) details of any additional technology requirements, intermediate architecture, plans, resourcing etc.

Resourcing

The DfE expects its own staff to have involvement and oversight of the build and running of the service. The Contractor must allow for full access to DfE staff, at the discretion of DfE. The Contractor will describe their approach and provide an outline plan to agree to work with the DfE to review and revise the plan as necessary.

Where extra resource is required from the DfE for business-as-usual processes (particularly in the run up to the in-housing of services), the Contractor should prepare an agreed resource plan with the DfE which identifies the key resources within the DfE that will be necessary to deliver the solution, including (but not limited to) the predicted effort. This plan is to be provided at the dates stipulated below.

It is crucial that the Contractor incorporates flexibility of in-housing into their bid. The DfE must have flexibility at any stage in the contract, especially in the build up to Phase 2 and Phase 3, to decrease or increase the level of in-housing (i.e. partial and full handover of services) going into the next phase.

The Contractor is required to demonstrate how they will provide transformation tasks including but not limited to:

PHASE 1

Ref	Service Requirement
ST1	Plan & Prepare for BAU Contractor Run Service The Contractor will prepare a project plan to transition functions (as detailed in Part A) for a BAU Contractor-run service of: <ul style="list-style-type: none">a) Consolidation Solution(s)b) Data Collection & Validationc) Accounting Adjustmentsd) Accounting and Technical Professional Servicese) Production of the Completed Extended Trial Balance - including the build of the Excel accounts model and population of the Word accountsf) Audit Supportg) Communication & Stakeholder Engagement
ST2	Plan & Prepare for dual running: Contractor must prepare, in collaboration with the DfE, an action plan on how the

	<p>service will be dual run in Phase 2:</p> <ul style="list-style-type: none"> • Prepare resourcing plan with agreed adequate lead-time with DfE should extra resource be required. • Plan for knowledge transfer/training. • Plan for transition of IP, licenses, software, technology etc. <p>Action plan will cover transition from Phase 1 into Phase 2 for dual running of the following functions:</p> <ul style="list-style-type: none"> a) Consolidation Solution(s) b) Data Collection & Validation c) Accounting Adjustments d) Production of the Completed Extended Trial Balance - including the build of the Excel accounts model and population of the Word accounts e) Audit Support f) Communication & Stakeholder Engagement <p>This dual running plan should be drafted in collaboration with the DfE and agreed by 1 March 2019.</p>
ST3	<p>Strategic Change Implementation Plan</p> <p>It is the responsibility of the Contractor to plan, manage and implement, in collaboration with the DfE, the transfer of service functions to the DfE. This includes but is not limited to:</p> <ul style="list-style-type: none"> ▪ Planned and timed strategy for managing the process of knowledge transfer, resourcing plans, training, systems support and any other transitional requirements to the DfE. ▪ Clear and timely plans for the transfer of assets (i.e. data, reports, IPR (intellectual property rights) in any software etc.) to enable a smooth transition in the most easy and efficient way. It must include detailed process maps for any processes transferring to DfE. All timescales must take into consideration realistic forecasts for the DfE's resourcing and training lead times. ▪ Contingency plans for running BAU should the DfE not be sufficiently prepared for dual running in Phase 2. ▪ Continuously identify opportunities throughout Phase 1 to improve efficiency, innovations and add value to the running of the end-to-end process. Complete end of Phase 1 handover. <p>The contractor must develop and maintain a strategy for managing the process of transferring the Part A services to the Department.</p>

PHASE 2

The contractor will retain overall responsibility for the Consolidation Solution once the laying of the 2019/20 SARA concludes. The contractor will also have responsibility for ensuring DfE have sufficient input to the dual running to prepare the Department for full handover and running in Phase 3. The Contractor will:

Ref	Service Requirement
ST4	<p>Implement Dual Run Service</p> <p>The Contractor shall implement their plan for the dual running (ie. Contractor and</p>

	<p>DfE jointly run) of the functions:</p> <ul style="list-style-type: none"> - Consolidation Solution(s) - Data Collection & Validation - Accounting Adjustments - Production of the Completed Extended Trial Balance - including the build of the Excel accounts model and population of the Word accounts - Project Planning & Strategic Management - Audit Support - Communication & Stakeholder Engagement <p>This dual running plan should be drafted in collaboration with the DfE and agreed by 1 March 2019.</p> <p>This will include:</p> <ul style="list-style-type: none"> - Continue knowledge transfer/training. - Fine-tune the systems, <i>document/Gts</i> etc. in-line with lessons learnt. - The Contractor shall provide assurance in Phase 2 that the DfE is conducting, producing and managing the process correctly and efficiently. - The Contractor shall identify opportunities throughout Phase 2 to improve efficiency, innovations and add value to the running of the end-to-end process.
ST5	<p>Dual Running of the Consolidation Solution(s):</p> <p>The Contractor will:</p> <ul style="list-style-type: none"> ▪ Ensure that appropriate training is in place for DfE staff taking on operation / maintenance of the system. ▪ Agree proposed roles and responsibilities with DfE over the dual running period, identifying work streams that DfE can begin to take over during this period. ▪ Provide advice on the resourcing requirements for DfE in taking on responsibility of elements of the System in the dual running period. ▪ Ensure relevant steps are in plan to facilitate full transfer of responsibility for the System at the date outlined above. ▪ Describe their incident and problem management processes, including escalations. Suppliers must follow ITIL (Information Technology Infrastructure Library) best practice for all support activities, including call-off support when required.
ST6	<p>Plan & Prepare for DfE run:</p> <p>Contractor must prepare, in collaboration with the DfE, an action plan on how the service will be DfE run in Phase 3:</p> <ul style="list-style-type: none"> • Prepare resourcing plan with agreed adequate lead-time with DfE should extra resource be required. • Plan for knowledge transfer/training. • Plan for transition of IP, licenses, software, technology etc. • Complete exit activity i.e. all data etc handed back to DfE. <p>Action plan will cover transition from Phase 2 into Phase 3 for DfE running of the following functions:</p> <ol style="list-style-type: none"> a) Consolidation Solution(s) b) Data Collection & Validation c) Accounting Adjustments

	<p>d) Production of the Completed Extended Trial Balance - including the build of the Excel accounts model and population of the Word accounts</p> <p>e) Project Planning & Strategic Management</p> <p>f) Audit Support</p> <p>g) Communication & Stakeholder Engagement</p> <p>This plan should be drafted in collaboration with the DfE and agreed by 1 March 2020.</p>
ST7	<p>Strategic Change Implementation Plan</p> <p>The Contractor must create a detailed transitional implementation plan from Phase 2 into Phase 3 (DfE run service). The Contractor is responsible for planning and managing the transfer of service functions to the DfE, in line Phase 3 this includes:</p> <ul style="list-style-type: none"> • The Contractor must provide a strategy with an associated roadmap for the transition of the service to the DfE for managing the process of knowledge transfer, resourcing plans, training, systems support and any other transitional requirements to the DfE. • The strategy/roadmap should provide milestones and deliverables must provide clear and timely plans for the transfer of assets (i.e. data, reports, IPR in any software etc.) to enable a smooth transition in the most easy and efficient way. • The Contractor must work with other DfE projects such as (but not limited to) the Corporate Services Transformation Programme (CSTP – more details in Service Requirements Annex document in the data room) to ensure solution is interoperable with future DfE solutions). • Contingency plans for running BAU should the DfE not be sufficiently prepared for full in-housing in Phase 3. • Complete end of Phase 2 handover. <p>This plan must be drafted in collaboration with the DfE and agreed by 1 March 2020.</p>
ST8	<p>Consolidation Solution(s) Transfer Management</p> <p>The Contractor will:</p> <ul style="list-style-type: none"> ▪ Ensure that at the point of transfer, the totality of the solution is transferred to the DfE, enabling a full transfer of ownership of the system, software, third-party licences and associated IP. ▪ Ensure that the operating condition of the solution (including but not limited to tools, materials, licences, data and documentation), will facilitate a streamlined transfer process and minimise any operational and service delivery risks to the DfE through provision of user friendly functionality. ▪ Manage the process of transferring the proposed solution to the DfE, delivering all necessary actions required to necessitate a successful and timely transfer of ownership – including but not limited to, end-to-end process maps and guidance documents. ▪ Where Third Party licences are used, facilitate the transfer of those licences to the DfE to avoid any gaps or delays (as examples) in the DfE's delivery of required services. <p>Provide advice on the resourcing requirements for DfE in taking on responsibility of the System.</p>
ST9	Software

	Software used to produce extended trial balance must sit on infrastructure in such a way that it is accessible to DfE at the end of the contract without reliance on the Contractor, with licenses and IP being the property of DfE.
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PHASE 3

Reference	Service Requirement
ST10	<p>Support and Advisory Management for the DfE Run Service</p> <ul style="list-style-type: none"> ▪ The Contractor must support the service as per the agreed SLAs (to be agreed upon contract award) on an ad hoc basis to implement the successful hand over of all the functions that have been in-housed to the DfE. ▪ Provide solution maintenance for support ▪ The Contractor shall provide assurance in Phase 3 that the DfE is conducting, producing and managing the process correctly and efficiently. ▪ The Contractor shall identify opportunities throughout Phase 3 to improve efficiency, innovations and add value to the running of the end-to-end process. The plan must cover the DfE running of the end-to-end process. ▪ Training for new staff.
ST11	<p>Exit Strategy</p> <p>The Contractor shall plan and implement a full exit strategy following either: a successful transition into full DfE running of the end-to-end process, or an Exit Plan that covers the procurement of a new contract potentially with a new Contractor.</p> <p>The Exit Strategy will include necessary support, maintenance, resourcing and transfer of IPR plans for the future running of the service.</p> <p>The Contractor shall ensure that they provide all documentation required to support the solution, including (but not limited to): design documents, decision logs, projects plans and artefacts. As well as all supporting material for the functions:</p> <ul style="list-style-type: none"> a) Consolidation Model b) Data Collection & Validation c) Accounting Adjustments d) Accounting and Technical Professional Services e) Production of the completed extended trial balance f) Project Planning & Strategic Management g) Audit Support h) Communication & Stakeholder Management

PART B: Automated Data Collection solution

Overview

The overarching vision of the DfE's Better Financial Reporting programme is to increase the value from, and reduce the burdens of, returning financial information to the Department. The current collection process is manually demanding, burdensome, costly and inefficient for the sector and DfE. This vision will be achieved through reforming the end-to-end process from collection and validation through to storage and oversight within DfE. The period for the delivery of the solution to achieve this objective is estimated to be up to three years. A key component in delivering the overall solution is to automate the financial returns collection process as much as possible, and in the most cost-effective way. The requirements for this are detailed below.

Please note, the Department's objective is to automate as much of the data collection process as is possible – hence the title of Part B. However, we do not believe that it is feasible to automate the collection of all data that we require. Rather, a blended solution is likely to be required; automating where possible and augmenting this with additional data collection mechanisms that enhance efficiency, effectiveness and the user-experience. Please read 'Automated Service' in that context.

Scope

The scope of the Service includes (but is not limited to):

- Accounts Return (AR) – A return by an AT detailing the financial activity of the trust during the previous academic year. This includes benchmarking data, which is provided at academy level rather than trust level. This return is subject to review by the trust external auditor who submits the final version to the DfE.
- Land and Buildings Collections Tool (LBCT) – ATs' aggregated return outlining the Land and Buildings being used by them and the relevant occupation routes / supporting evidence.
- Budget Forecast Return (BFR) – high level forecast of what ATs anticipate spending will be for the current and next three Academic Years.
- Budget Forecast Return Outturn (BFRO) – High-level review/comparison of what ATs actually spent compared to the previously submitted BFR.
- Financial Statements (FS) – Financial Statements detail the ATs' financial performance, which is signed off by an auditor for the previous Academic Year. This is submitted to the DfE with the trust's Audit Management letter. Trusts will separately upload their financial statements to Companies House and, for some, HMRC.

The Contractor will take on responsibility for designing (in consultation with DfE) and delivering the system/s necessary to collect the data in the above returns. The Department is seeking a cost-effective solution that provides benefits including, but not limited to:

- Improving user experience
- Removing process inefficiencies;
- Removing unnecessary requirements;
- Reducing existing demands on people's time;
- Increasing insight around financial management;
- Supporting better use of resources;
- Increasing timeliness;
- Supporting the Department to perform its financial reporting functions more effectively.

We are keen to hear potential bidders' views on the best approach to achieving these objectives. We believe – although this is not mandatory – that a blend of systems is likely to be the best approach, automating data collection wherever feasible and implementing complementary solutions where automation is not possible e.g. web forms.

When considering options for delivering this aspect of the Service Requirement, potential providers will want to consider the wider the wider context. In particular, bidders should outline the extent to which they plan to align with the Department's Data Exchange project (and confirm that their proposed solution is not inconsistent with the Data Exchange programme). There may be two elements to this: a) the supplier may be considering API technology to deliver automation of data collection – this approach will need to be consistent with, and take advantage of, the infrastructure that the Data Exchange programme has developed; b) where a user-need exists to return data manually, there is the opportunity to make use of planned infrastructure developed as part of the Data Exchange programme. See the Service Requirement Annex document in the data room for more information on Data Exchange.

Notes:

1. The Automated Service will need to import historical data which has been collected from a Web Form for the Land and Buildings Collection Tool, and migrate that data into the new 'non-automated data collection system'.
2. The DfE will facilitate conversations between the Contractor team and relevant stakeholders within the DfE to engage in the development of this project. The Contractor must specify in their bid their expectations of/dependencies on/assumptions regarding the DfE.
3. Extensibility/Portability - Contractors shall ensure that their solution is developed and delivered using industry-standard, supported technologies. Details of these must be included in the details of their bid response regarding the solution design.
4. Authorisation – the proposed solution(s) must be able to accommodate sign-off/approval by the trust's external auditors where this is currently required, e.g. data within the accounts return and financial statements.
5. It is not in scope to build in an Authentication mechanism for ATs' sign on to the platform – this is covered by a separate project 'DfE Sign-In' – see further details in Interoperability section and Service Requirements Annex document.
6. The Contractor should also note that the Department is considering the use of iXBRL tagging on academy trust financial statements outside of this contract. This may result in some data on the existing accounts return being able to be tagged on the trust's financial statements and extracted.
7. The output of the validated data will need to be stored in the DfE's Master Data Repository (MDR) on Azure or on a data storage facility as per the Contractor's preferential model for optimum consolidation processing. After any further processing and consolidation, the processed data will ultimately be stored within the MDR.
8. If data is stored on the MDR then the Contractor will need to get a copy to do the work needed for consolidation. The final version (and any intermediate versions we ask for) should be saved on the MDR as separate copies of the data.
9. The data needs to be in a format that is compatible with Power BI, which is a key tool within the DfE's Analytical Platform where the data from the MDR is analysed.
10. Similarly to Part A, the department will require all aspects of Part B to be performed in-house by the end of this contract. Should plans be required to implement an in-housing of Part B, the supplier must include these plans in their response to the service requirements set out later in this section.

Details on the current data flow / collection process (not automated) can be found in the Data Room.

Indicative Timeline

This timeline indicates where we would like to be with the development of systems within this contract, including future automation. However, we are open to the Contractor proposing alternative timeframes.

	Year 0: Jun-Dec 2018	Year 1: 2019	Year 2: 2020	Year 3: 2021
Automated Collection – AR	Private Beta (Dec)	Public Beta (Dec)	Live (Dec)	
Automated Collection – BFR/O		Private Beta (Mar) Public Beta (Jul)	Live (Mar)	
Non-Automated Data Collection System		BFRO Private Beta (Mar) BFR Public Beta (Jul) LBCT Public Beta (Oct) AR Public Beta (Dec)	Live (month tbd)	
FS Reader NB. <i>Not in scope for this contract, but included due to interoperability</i>		Live (Jan)		
iXBRL tagging of FS NB. <i>Not in scope for this contract, but included due to interoperability</i>	Private Beta (Dec)	Live (Dec)		
SARA Consolidation Process (Part A)	Build ahead of Year 1	Contractor Run Prep for Dual Run in Year 2	Dual Run Prep for DfE Run in Year 3	DfE Run Support from Contractor

Ref	Service Requirement
FA 1	<p>Overall Solution</p> <p>The contractor is responsible for designing, building and implementing a technical solution that addresses the scope and outline process detailed in the above contextual description of 'Part B'.</p> <p>Bids should show the potential provider's proposals on:</p> <ul style="list-style-type: none"> the most effective way to automate data collection, including the scope of the data that can be collected automatically

	<ul style="list-style-type: none"> the technology solution that will support automation, including how it will align with the DfE's wider technology programmes e.g. Data Exchange if relevant, the most effective way to collect the remaining data that is not suitable for automation if relevant, the technology solution/s that will be underpin the collection of data that is not suitable for automation, including how it will align with the DfE's wider technology programmes e.g. Data Exchange the projected benefits for the academy sector and the Department of the complete solution (e.g. areas where increased value or reduced burdens / costs will be delivered) Any solution developed by the Contractor must interoperate within the Department's framework – more details in FA2 <p>NOTE: The DfE can facilitate the sourcing of academy trusts to assist with the testing of any solutions.</p> <p>System Access</p> <p>The Contractor must provide a solution which can be run internally by the DfE in line with overall in-housing strategy detailed throughout this document, and in line with GDS principles</p> <p>Process Map of Data Flow:</p> <ul style="list-style-type: none"> Please include a high-level overarching process map of the data flow that you propose. This will need to include a <i>whole solution outline</i> and the commentary associated with that, within this should be a more detailed view of the <i>different</i> components. <p>NOTE: The data received through automation and other data collection systems (e.g. a web form) requires the functionality to be signed off by the auditor (to mirror the current AR process).</p> <p>NOTE: Contractors shall annotate each stage of the process map and refer to these in their bid responses.</p> <p>NOTE: The DfE's technical governance processes are aligned with those of the GDS Technology code Of Practice, and the Contractor shall ensure that they provide sufficient design (and other) artefacts that can be evaluated within this governance.</p>
FA 2	<p>Interoperability</p> <p>Within the GDS Technology Code of Practice, reference is made to the need to design and deploy new services and solutions that are interoperable with existing services and solutions.</p> <p>The Service must interoperate, where relevant, with:</p> <ul style="list-style-type: none"> DfE's future in-housed consolidation model (see Part A) DfE's Master Data Repository – this will sit within Azure.

	<ul style="list-style-type: none"> • Power BI – the DfE’s MI system that will sit within Azure. • ATs’ Financial Management Systems – the providers currently with, we believe, over 90% of the market share are: <ul style="list-style-type: none"> ○ PS Financials ○ Sage ○ Capita SIMS ○ Civica Correo ○ RM • ATs’ BPS systems to deliver budget data automation, where possible. Currently, the two main providers of BPS systems are: <ul style="list-style-type: none"> ○ HCSS ○ Orovia. • DfE’s Data Exchange programme (where relevant to the bidder’s planned solution) – the DfE’s wider strategy for the future is to have information submitted to us through a ‘Send to DfE’ API web portal operated and built by the DfE’s Data Exchange (DEX) team (see more details in Service Requirements Annex document). The proposed solution needs to be flexible enough to accommodate the current and future needs of the DfE. • ATs’ Financial Statements in PDF format and iXBRL tagged format (collected by the DfE) • DfE’s Corporate Services Transformation Programme – CSTP is the Department’s strategy for streamlining the future operational finance and HR back office function. Although CSTP and Automated Collection will not be overlapping, it is important that both are able to speak to each other. More info on CSTP can be found in the Service Requirements Annex document. • DfE Sign-In – A key element of interoperability for the procurement will be with the DfE Sign-in Authentication service, currently being developed and delivered. Details of this service can be found in the Service Requirements Annex document.
FA 3	<p>Digital Outcome Specialist Framework</p> <p>It is necessary for the technology Contractor covering the Part B services to be on the DOS framework http://ccs-agreements.cabinetoffice.gov.uk/sites/default/files/contracts/DOSAttachment2FrameworkAgreementv3.docx</p> <p>The contractor is responsible for securing and robustly managing the Digital Outcome Specialists to ensure successful delivery of the project outcomes.</p>
FA 4	<p>GDS Compliance</p> <p>The contractor will ensure that the project is delivered in line with Government Digital Service Standards and Security Protocols.</p> <ul style="list-style-type: none"> • This technology build must be compliant with Government Digital Standards (GDS) and security protocol, as set out in requirements DS1, DS2 and DS3 above. Please include in your bid plans how you, in collaboration with DfE, will engage with GDS and obtain approval – https://www.gov.uk/service-manual. Any solution that fails to comply with GDS will not be a viable option for this contract. • The Cabinet Office policy is that all Public Sector IT solutions should be compliant with the GDS code of practice. It covers guidelines for design, implementation and Accessibility, as well as standards and compliance with EU regulation - https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice • The Contractor will also need to comply with contractor / third party obligations - https://www.gov.uk/service-manual/the-team/working-contractors-third-parties

FA 5	<p>Governance</p> <p>The contractor is also responsible for the governance of the project to fulfil Departmental obligations. This includes:</p> <ul style="list-style-type: none"> - General management of the project; - Generation of relevant Statement of Works, for agreement with the DfE; - Management of all project documentation, decisions, and audit trails etc. - Arranging of project meetings and all papers to inform those meetings. - Managing interactions with the DfE to ensure project progress. - Providing required documents and support with the GDS approvals process. <p>The Contractor will ensure the processes and procedures are in place to provide effective governance of the project, responding to the above requirements.</p>

Schedule 2
Terms and Conditions

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1. DEFINITIONS AND INTERPRETATION

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

“Area” means the geographical area within England in respect of which the Contractor is appointed to provide the Services.

“Associated Company” means any company which is, in relation to another company, its holding company or its subsidiary or a subsidiary of its holding company. “Holding company” and “subsidiary” will have the meanings attributed to them in section 736 and 736A of the Companies Act 1985 and section 1159 of the Companies Act 2006.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“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” the Data Protection Act 2018 and any other applicable Laws relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or a relevant Central Government Body in relation to such Laws .

“Effective Date” means 19 June 2018.

“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 and employment benefit costs due in respect of (a) or (b) above, including claims for protective awards.

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

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

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

“General Anti-Abuse Rule” means:

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

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

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

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

“ICT” means information and communications technology.

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

“Initial Term” means the period from the Effective Date to **30 September 2021**.

“Intellectual Property Rights” means patents, inventions, trade-marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade and/or business names, rights in confidential information and know how, moral rights and other similar rights or obligations whether registrable or not in

any country (including but not limited to the United Kingdom) and the right to sue for passing off.

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

For the avoidance of doubt IP Materials includes:

- For Part A services, all materials associated with design and delivery of the end-to-end Consolidation Solution, including methodologies, workflow procedures, process documents, audit information, data, all project specific outputs and governance documentation.
- For Part A services associated with “strategic change”, all materials associated with knowledge transfer and staff training, and all systems and databases the Department requires to operate the Consolidation Solution following completion of strategic change delivery, save for any Third Party rights that exist in Commercial Off The Shelf software.
- For Part B services, IP materials as defined in accordance with Schedule 11 and in line with Government Digital Standards and Code of Practice:

<https://www.gov.uk/service-manual>

<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>.

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

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

“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, 15, 17 and 33 and in schedule 8.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

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

jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Performance Measures/Standards” means the standards which the Contractor will measured against in respect of the delivery of the Services aligned to defined Service Levels.

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

“Personal Data” takes the meaning given in the GDPR which is Processed by the Supplier or any Sub-contractor and or Sub-processor on behalf of the Authority or a Central Government Body pursuant to or in connection with this Agreement

“Personal Data Breach” takes the meaning given in the GDPR

“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 will be further detailed in the Specification. This specifically includes, but is not limited to:

- The International Financial Reporting Standards; and
- Government Financial Reporting Standards.

“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.

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

“Services” means the services described in the Specification.

“Services Commencement Date” means **01 October 2018**.

“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 Service Levels are not met in respect of Services.

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

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

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

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

“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.

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

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

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

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

- 1.2.1 references to a statute or statutory provision shall, unless the context otherwise requires, include a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted or consolidated and all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract which are in force prior to the date of the Contract;

- 1.2.2 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.3 the words “include”, “includes”, “including” and “included” will be construed without limitation unless inconsistent with the context;
- 1.2.4 the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa as the context shall admit or require;
- 1.2.5 any reference in the Contract to a clause or schedule is a reference to a clause or schedule of the Contract and references in any schedule to paragraphs relate to the paragraphs in that schedule;
- 1.2.6 the clause headings are included for convenience only and shall not affect the interpretation of the Contract; 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 The DFE may extend the Initial Term for further 12 month period, by giving not less than 3 months’ written notice to the Contractor prior to the expiry of the Initial Term.

3. THE SERVICES

- 3.1 The Contractor shall provide the Services in the Area 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 in the Area.
- 3.3 The Contractor shall, in performing its obligations under the Contract:
 - 3.3.1 conform in all material respects 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 all material respects 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 in all material respects and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - 3.3.6 comply with the Service Levels and Service Credit requirements set out in schedule 4 in all material respects;
 - 3.3.7 comply with the Implementation Plan in all material respects;

- 3.3.8 in so far as is reasonably practicable, comply with any policies and procedures adopted by the DFE from time to time within 14 days of the same being brought to the attention of the Contractor by the DFE;
 - 3.3.9 comply with applicable law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
 - 3.3.10 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the DFE and all other persons including members of the public; and
 - 3.3.11 comply with all safety, security, acceptable use and other policies of the DFE from time to time notified to it in all material respects and procure that the Personnel also comply in all material respects.
- 3.4 The DFE may provide data and materials to the Contractor and access to systems for the purposes of providing the Services that the Contractor may use but only to the extent necessary to enable the Contractor to provide the Services.
 - 3.5 All equipment and other property brought onto DFE Premises shall be at the Contractor's own risk and the DFE shall have no liability for any loss of or damage to any such equipment and property unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence of the DFE.
 - 3.6 Any land or DFE Premises made available from time to time to the Contractor by the DFE in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or DFE Premises as a licensee and shall vacate the same on completion, termination or abandonment of the Contract or the task in respect of which such land or DFE Premises was made available.
 - 3.7 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or any of the Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the DFE retains the right at any time to use any DFE Premises in any manner.

4. CONSORTIA

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

5. TRANSFER AND SUB-CONTRACTING

- 5.1 Save as set out in this clause 5 the Contractor may not sub-contract, assign, transfer,

charge the benefit and/or delegate the burden of the whole or any part of the Contract (a “**Transfer**”) without the prior written consent of the DFE.

- 5.2 If the DFE consents to a Transfer the Contractor will evidence the Transfer in writing and provide a copy of the Transfer document on request.
- 5.3 The Contractor may award Sub-Contracts with a value per annum not exceeding £10,000 without the DFE’s consent.
- 5.4 Where the DFE has consented to a Sub-Contract, copies of each Sub-Contract shall, at the request of the DFE, be sent by the Contractor to the DFE as soon as reasonably practicable.
- 5.5 The Contractor shall not terminate or materially amend the terms of any Sub-Contract without the DFE’s prior written consent.
- 5.6 The DFE may require the Contractor to terminate a Sub-Contract if the acts or omissions of the Sub-Contractor have given rise to the DFE’s right of termination pursuant to clause 23 unless the Sub-Contractor can remedy the breach to the DFE’s satisfaction within 21 days of receipt by the Contractor of written notice from the DFE requiring the Sub-Contract to be terminated.
- 5.7 The Contractor shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 5.8 If the DfE believes there are:
 - 5.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
 - 5.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the DfE may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.
- 5.9 The Contractor may use resources on a flexible basis where individuals are employed by the Contractor on short term contracts. While not employed as FTEs, the Contractor confirms that they will be under the Contractor’s instruction at all time. As such, the Contractor will remain responsible for such resources. The Contractor and DFE agree that these individuals will not be deemed “Sub-Contractors” for the purposes of this Contract.

6. PERSONNEL

- 6.1 The DFE may refuse admission to DFE Premises and/or direct the Contractor to end the involvement in the Services of any Personnel whom the DFE believes is a security risk.
- 6.2 If the DFE require the removal of any Personnel pursuant to clause 8.1, any Employment Liabilities and any other costs connected with that removal shall be at the Contractor’s cost.
- 6.3 The Contractor shall use its reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of Personnel is at least as good as the prevailing industry norm for similar services, locations and environments.
- 6.4 The Contractor shall ensure that no person who discloses a Relevant Conviction or who is found to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service Procedures or otherwise), is employed or engaged in providing the Services without the DFE’s prior written consent.
- 6.5 For each of the Personnel who, in providing the Services, has, will have or is likely to

have access to children, vulnerable persons or other members of the public to whom the DFE owes a special duty of care the Contractor shall (and shall procure that any relevant Sub-Contractor shall) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service, and the Contractor shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or what would reasonably be regarded as an inappropriate record.

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

7. TUPE

- 7.1 No later than 6 Months prior to the end of the Term the Contractor shall fully and accurately disclose to the DFE, within 30 days of the request, all information that the DFE may reasonably request in relation to the Staff including the following:
 - 7.1.1 the total number of Staff whose employment/engagement shall terminate at the end of the Term;
 - 7.1.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause 7.1.1;
 - 7.1.3 the terms and conditions of employment/engagement of the Staff referred to in clause 7.1.1, their job titles and qualifications;
 - 7.1.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

- 7.1.5 details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union

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

- 7.2 At intervals determined by the DFE (which shall not be more frequent than once every 30 days) the Contractor shall give the DFE updated TUPE Information.
- 7.3 Each time the Contractor supplies TUPE Information to the DFE it shall warrant its completeness and accuracy and the DFE may assign the benefit of this warranty to any Replacement Contractor.
- 7.4 The DFE may use TUPE Information for the purposes of any retendering process.
- 7.5 If TUPE applies 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:
 - 7.5.1 the provision of TUPE Information;
 - 7.5.2 any claim or demand by any Returning 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 Returning Employee on or before the end of the Term;
 - 7.5.3 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;
 - 7.5.4 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 Returning 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
 - 7.5.5 any claim by any person who is transferred by the Contractor to the DFE and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 7.6 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.
- 7.7 This clause 7 applies during the Term and indefinitely thereafter.
- 7.8 The Contractor undertakes to the DFE that, during the 12 Months prior to the end of the Term the Contractor shall not (and shall procure that any Sub-Contractor shall not) without written approval of DFE (such approval not to be unreasonably withheld or delayed):
 - 7.8.1 amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Personnel in the normal course of business and where any such amendment or variation is not in any way related

to the transfer of the Services);

- 7.8.2 terminate or give notice to terminate the employment or engagement of any Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- 7.8.3 transfer away, remove, reduce or vary the involvement of any other Personnel from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse effect on the delivery of the Services, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- 7.8.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

8. CHARGES

- 8.1 Except where otherwise expressly stated in the Contract the only payments to be paid by the DFE for the performance by the Contractor of its obligations under the Contract shall be the Charges which shall be inclusive of all costs and expenses incurred by the Contractor in the performance of its obligations.
- 8.2 In consideration for the provision of the Services the DFE shall pay the Charges in accordance with the schedule 3 subject to the receipt of correct invoices pursuant to clause 8.7 being issued by the Contractor.
- 8.3 Except where otherwise expressly stated in schedule 3 the Contractor shall not be entitled to increase the Charges or any rates identified in schedule 3 throughout the Term.
- 8.4 The Charges are 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.
- 8.5 Payment of the Charges by the DFE shall be without prejudice to any rights the DFE may have by reason of any Services, or any part thereof, failing to comply with any provision of the Contract and any breach by the Contractor of the Contract shall not be deemed to be accepted or waived by the DFE by reason of such payment.
- 8.6 The DFE may deduct from or offset against any monies due or becoming due to the Contractor under the Contract (including the Charges) any monies due from the Contractor under the Contract or otherwise under any other agreement or account whatsoever.
- 8.7 Invoices shall be submitted to richard.edwards@education.gov.uk and APinvoices-DFE-U@sscl.gse.gov.uk, and sent within 30 days of the end of the relevant invoicing date, to *Department for Education - PO Box 407, SSCL, Phoenix House, Celtic Springs Business Park, Newport, NP10 8FZ*. An invoice is a “**Valid Invoice**” if it is legible and includes:
 - 8.7.1 the date of the invoice;
 - 8.7.2 Contractor's full name and address;

- 8.7.3 Contract reference number / DFE Purchase Order number;
 - 8.7.4 the charging period;
 - 8.7.5 a detailed breakdown of the appropriate Charges including deliverables or milestones achieved (if applicable);
 - 8.7.6 days and times worked (if applicable);
 - 8.7.7 Service Credits (if applicable); and
 - 8.7.8 VAT if applicable.
- 8.8 The DFE shall not pay an invoice which is not a Valid Invoice.
- 8.9 The DFE intends to pay Valid Invoices within 10 days of receipt. Valid Invoices not paid within 30 days are subject to interest at the rate of 2% above the base rate from time to time of Barclays Bank. This clause 8.9 is a substantial remedy for late payment of any sum payable under the Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 8.10 The DFE shall not be responsible for any delay in payment caused by receipt of invoices which are not Valid Invoices and shall, within 10 Business Days of receipt, return to the Contractor for correction invoices that are not Valid Invoices together with an explanation of the need for correction.
- 8.11 At the end of the Term the Contractor shall promptly draw-up a final invoice which shall cover all Services provided up to the end of the Term which have not already been invoiced to the DFE. The final invoice shall be submitted not later than 30 days after the end of the Term.
- 8.12 The DFE shall not be obliged to pay the final invoice until the Contractor has carried out all of the Service.
- 8.13 The Contractor shall ensure that a term is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- 8.14 If the DFE disputes any amount specified in a Valid Invoice it shall pay such amount of the invoice as is not in dispute and within 10 Business Days notify the Contractor of the reasons for disputing the invoice. The DFE may withhold the disputed amount pending resolution of the dispute.
- 8.15 The Parties shall use all reasonable endeavours to resolve any dispute over invoices within 10 Business Days of the dispute being raised, after which period either Party may refer the matter for resolution in accordance with clause 36.

9. TAX and VAT

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

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

10. PREVENTION OF CORRUPTION

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

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

11. DISCRIMINATION

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

12. INTELLECTUAL PROPERTY

- 12.1 Part B Service Intellectual Property is as set out in Schedule 11. All Intellectual Property Rights in all other Service materials:
 - 12.1.1 furnished to or made available to the Contractor by or on behalf of the DFE (the "**DFE IP Materials**") shall remain the property of the DFE (save for Copyright and Database Rights which shall remain the property of the Crown); and
 - 12.1.2 prepared by or for the Contractor on behalf of the DFE in connection with the Contract (the "**Service Specific IP Materials**") shall vest in the DFE (save for Copyright and Database Rights which shall vest in the Crown)(together the "**IP Materials**").
- 12.2 The Contractor shall not, and shall ensure that Personnel shall not, use or disclose IP Materials without the DFE's approval save to the extent necessary for the performance by the Contractor of its obligations under the Contract.
- 12.3 The Contractor hereby assigns to the DFE or undertakes to procure the assignment to the DFE of all Intellectual Property Rights which may subsist in the Service Specific IP Materials (save for Copyright and Database Rights which it hereby assigns to the Crown or undertakes to procure the assignment of to the Crown). These assignments shall be given with full title guarantee, shall take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Service Specific IP Materials and shall include, without limitation, an assignment to the DFE (or the Crown as appropriate) of all rights arising in the United Kingdom and the world together with the right to sue for damages and other remedies for infringement occurring prior to the date of assignment. The Contractor shall execute all documents and do all other acts requested by the DFE and necessary to execute and perfect these assignments and to otherwise evidence the DFE's or the Crown's ownership of such rights.
- 12.4 The Contractor shall waive or procure a waiver on an irrevocable and unconditional basis of any moral rights subsisting in copyright produced by or in connection with the Contract or the performance of the Contract.
- 12.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the DFE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the DFE an authorised sub-licence, to use, reproduce, modify, develop and maintain the

Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the DFE to sub-licence, transfer, novate or assign to a Replacement Contractor. The Contractor shall notify the DFE of any third party Intellectual Property Rights to be used in connection with the Contract prior to their use in connection with the Contract or the creation or development of the Service Specific IP Materials.

- 12.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Contractor shall indemnify and keep indemnified the DFE and any Replacement Contractor from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the DFE may suffer or incur as a result of or in connection with any breach of this clause 14, except to the extent that any such claim arises from:

12.6.1 items or materials supplied by the DFE; or

12.6.2 the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract.

- 12.7 The DFE shall notify the Contractor in writing of any claim or demand brought against the DFE for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor.

- 12.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for infringement of Intellectual Property Rights in materials supplied and/or licensed by the Contractor to the DFE, provided always that the Contractor shall:

12.8.1 consult the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;

12.8.2 take due and proper account of the interests and concerns of the DFE; and

12.8.3 not settle or compromise any claim without the DFE's prior written consent (not to be unreasonably withheld or delayed).

- 12.9 Notwithstanding clause 12.8. the DFE may take any action it deems appropriate with respect to any such claim and shall have exclusive control of such claim. If the DFE takes action the Contractor shall at the request of the DFE afford to the Contractor all reasonable assistance to the DFE for the purpose of contesting such claim.

- 12.10 The DFE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the DFE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract subject to the Contractor indemnifying the DFE on demand and in full for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

- 12.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the DFE and, at its own expense and subject to the consent of the DFE (not to be unreasonably withheld or delayed), use reasonable endeavours to:

12.11.1 modify any or all of the Service Specific IP Materials and, where relevant, the Services without reducing the performance or functionality of the same, or substitute alternative materials or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of this clause 12 shall apply mutatis mutandis to

such modified materials or services or to the substitute materials or services;
or

12.11.2 procure a licence to use and supply the Service Specific IP Materials, other relevant Intellectual Property Rights and Services, which are the subject of the alleged infringement, on terms which are acceptable to the DFE.

12.12 If the Contractor is unable to comply with clauses 12.11.1 and 12.11.2 within 20 Business Days of receipt of the Contractor's notification the DFE may terminate the Contract with immediate effect by notice in writing.

12.13 The Contractor grants to the DFE and, if requested by DFE, to a Replacement Contractor, a royalty-free, perpetual, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights the Contractor owned or developed prior to the Effective Date or otherwise not in connection with the Contract ("**Contractor IP**") and which the DFE (or a Replacement Contractor) reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided and the use and further development of the IP Materials.

12.14 The DFE shall comply with the reasonable instructions of the Contractor in respect of the way in which it uses the Contractor IP.

12.15 If the Contractor is not able to grant to the DFE a licence to use any Contractor IP for any reason, including due to any Intellectual Property Rights that a third party may have in such Contractor IP, the Contractor shall use its reasonable endeavours to:

12.15.1 procure that the third party owner of any Intellectual Property Rights that are or that may be used to perform the Contract grants to the DFE a licence on the terms set out in clause 12.13; or

12.15.2 if the Contractor is itself a licensee of those rights and is able to do so under the terms of its licence, grant to the DFE a sub-licence on the terms set out in clause 12.13.

12.16 The Contractor shall not knowingly do or permit to be done, or omit to do in connection with its use of Intellectual Property Rights which are or are to be the DFE IP Materials any act or thing which:

12.16.1 would or might jeopardise or invalidate any trade mark application or registration comprised within the same or give rise to an application to remove or amend any such application or registration from the register maintained by the relevant trade mark registry; or

12.16.2 would or might prejudice the right or title of the DFE to any of the DFE IP Materials.

12.17 The Contractor shall comply with the DFE's branding guidelines and shall not use any other branding, including its own, other than as set out in the DFE's branding guidelines or as otherwise agreed with the DFE.

12.18 When using DFE Trade Marks the Contractor shall observe all reasonable directions given by the DFE from time to time as to colour and size and the manner and disposition thereof on any materials it provides to persons in connection with the Services. The Contractor may not:

12.18.1 adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, any DFE Trade Mark, or unfairly competes with any DFE Trade Mark; or

12.18.2 apply anywhere in the world to register any trade marks identical to or so nearly resembling any DFE Trade Mark as to be likely to deceive or cause confusion.

13. DATA, SYSTEMS HANDLING AND SECURITY

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

14. PUBLICITY AND PROMOTION

- 14.1 Subject to clause 15.2, without prejudice to the DFE's obligations under the FOIA, the EIR, the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- 14.2 The Contractor shall use reasonable endeavours to ensure its Personnel comply with clause 14.1
- 14.3 Without prejudice to the generality of clauses 12.18 and 14.1, the Contractor shall not itself, and shall procure that Consortium Members shall not, use the DFE's name, brand or DFE Trade Marks or the Personal Data of the DFE to sell, promote, market or publicise the Contractor's other programmes, courses, services or other activities.
- 14.4 Subject to clauses 12 and 15 DFE may disclose, copy and otherwise distribute to the public, including but not limited to, by way of the Open Government Licence, any information arising out of the Services or comprised in any work relating to the Services.

15. CONFIDENTIALITY

- 15.1 Except to the extent set out in this clause 15 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- 15.2 The Contractor hereby gives its consent for the DFE to publish the whole Contract including from time to time agreed changes to the Contract.
- 15.3 The Contractor may only disclose the DFE's Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that Personnel are aware of and shall comply with these obligations as to confidentiality.
- 15.4 The Contractor shall not, and shall procure that Personnel do not, use any of the DFE's Confidential Information received otherwise than for the purposes of the Contract.
- 15.5 Clause 15.1 shall not apply to the extent that:
- 15.5.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - 15.5.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 15.5.3 such information was obtained from a third party without obligation of confidentiality;
 - 15.5.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 15.5.5 it is independently developed without access to the other Party's Confidential

Information.

- 15.6 Nothing in clause 15 shall prevent the DFE disclosing any Confidential Information obtained from the Contractor:
- 15.6.1 for the purpose of the examination and certification of the DFE's accounts;
 - 15.6.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DFE has used its resources;
 - 15.6.3 to any other crown body and the Contractor hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department; or
 - 15.6.4 to any consultant, contractor or other person engaged by the DFE provided that in disclosing information under clauses 15.8.3 and 15.8.4 the DFE discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 15.7 Nothing in clauses 15.1 to 15.6 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 15.8 The DFE shall endeavour to ensure that any government department, employee, third party or sub-contractor to whom the DFE's Confidential Information is disclosed pursuant to clause 15.6 is made aware of the DFE's obligations of confidentiality.
- 15.9 If the Contractor does not comply with clauses 15.1 to 15.5 the DFE may terminate the Contract immediately on notice to the Contractor.
- 15.10 The delivery of the Contractor's Services to the DFE is as set out in this Contract is for the benefit and reliance of DFE only. Other than as stated in clause 15, all work performed by the Contractor is confidential and prepared solely for the DFE's benefit only. The DFE agrees not to refer to, or use the Contractor's name in documents for any purpose unless explicitly agreed with the Contractor in writing first (such agreement not to be unreasonably withheld). No other party is entitled to rely on the Contractor's work for any purpose whatsoever and thus the Contractor accepts no liability to any other party who is shown or gains access to the outputs of Contractor's work. For the avoidance of doubt, both Parties to the Contract confirm that work that the Contractor performs on behalf of DFE for this Contract will be shared with the NAO in their role as the DFE's external auditor as necessary, to discharge their responsibility as the DFE's external auditor.

16. FREEDOM OF INFORMATION

- 16.1 The Contractor acknowledges that the DFE is subject to the requirements of the FOIA and the EIR.
- 16.2 The Contractor shall transfer to the DFE all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receipt:
- 16.2.1 give the DFE a copy of all Information in its possession or control in the form that the DFE requires within 5 Business Days (or such other period as the DFE may specify) of the DFE's request;

- 16.2.2 provide all necessary assistance as reasonably requested by the DFE to enable the DFE to comply with its obligations under the FOIA and EIR; and
- 16.2.3 not respond to directly to a Request for Information unless authorised to do so in writing by the DFE.
- 16.3 The DFE shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.
- 17. OFFICIAL SECRETS ACTS AND FINANCE ACT**
 - 17.1 The Contractor shall comply with the provisions of:
 - 17.1.1 the Official Secrets Acts 1911 to 1989; and
 - 17.1.2 section 182 of the Finance Act 1989.
- 18. LIABILITY**
 - 18.1 Neither Party excludes or limits its liability (if any) to the other:
 - 18.1.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - 18.1.2 for personal injury or death resulting from the its negligence;
 - 18.1.3 under section 2(3) Consumer Protection Act 1987;
 - 18.1.4 any breach of clause 15 or schedule 8;
 - 18.1.5 for its own fraud; or
 - 18.1.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.
 - 18.2 Subject to clauses 18.1 and 18.3, the Contractor shall indemnify the DFE 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 Personnel on the 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.
 - 18.3 The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 12 (Intellectual Property) and 9 (Tax).
 - 18.4 Subject to clauses 18.1, 18.3 and 18.6, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:
 - 18.4.1 for any losses of an indirect or consequential nature;
 - 18.4.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
 - 18.4.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.

- 18.5 Subject to clauses 18.1 and 18.3, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:
- 18.5.1 in respect of damage to property is limited to £5,000,000 in respect of any one incident or series of connected incidents; and
- 18.5.2 in respect of any claim not covered by clause 18.5.1, is limited in each calendar year in aggregate to 150% of the sum of the Charges payable in that year.
- 18.6 The DFE may recover from the Contractor the following losses incurred by the DFE to the extent they arise as a result of a Default by the Contractor:
- 18.6.1 any additional operational and/or administrative costs and expenses incurred by the DFE, including costs relating to time spent by or on behalf of the DFE in dealing with the consequences of the default;
- 18.6.2 any wasted expenditure or charges;
- 18.6.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- 18.6.4 any compensation or interest paid to a third party by the DFE; and
- 18.6.5 any fine or penalty incurred by the DFE and any costs incurred by the DFE in defending any proceedings which result in such a fine or penalty.
- 18.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.8 All property of the Contractor whilst on the DFE's premises shall be there at the risk of the Contractor and the DFE shall accept no liability for any loss or damage howsoever occurring to it.
- 18.9 The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £5,000,000 for any one claim, for professional indemnity insurances for the sum and range of cover as the DFE deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the Term and for a minimum of 6 years following the end of the Term.
- 18.10 The Contractor confirms it holds insurance policies providing an adequate level of cover in respect of risks that may be incurred by it in connection with this Contract. The Contractor agrees to share with the DFE their certificates of insurance by way of evidence of compliance with this clause 18.10 and clause 18.9.
- 18.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 18.12 It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.
- 18.13 The Contractor will not be liable for losses directly arising as a result of the provision of false, misleading or incomplete information or documentation by, or withholding or concealment or misrepresentation of information or documentation by the DFE or third

parties, where this could not have reasonably been identifiable by the Contractor from the information supplied.

19. WARRANTIES AND REPRESENTATIONS

19.1 The Contractor warrants and represents that:

- 19.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- 19.1.2 in entering the Contract it has not committed any fraud;
- 19.1.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the DFE prior to execution of the Contract;
- 19.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;
- 19.1.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 19.1.6 the Service Specific IP Materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 19.1.6 shall not apply to any IP Materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
- 19.1.7 the use by the DFE of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;
- 19.1.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 19.1.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- 19.1.10 it has notified the DFE in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

20. FORCE MAJEURE

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

21. MONITORING AND REMEDIATION

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

provide any information and evidence reasonably required by the DFE.

- 21.6 The DFE may instruct the Contractor to take appropriate remedial action where the DFE reasonably considers that the Implementation Plan is not being complied with or is at risk of not being complied with and the Contractor shall take such remedial action.

22. STEP IN RIGHTS

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

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

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

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

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

22.1.5 it is necessary to discharge a statutory duty; or

22.1.6 the Contractor becomes insolvent.

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

- 22.3 The Step-In Notice shall set out:

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

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

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

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

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

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

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

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

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

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

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

23. TERMINATION

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

Insolvency Act 1986;

- 23.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 23.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 23.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 23.1.7 being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 23.1.8 any event similar to those listed in clauses 23.1.1 to 23.1.7 occurs under the law of any other jurisdiction.
- 23.2 The DFE may terminate the Contract with immediate effect by notice and without paying compensation to the Contractor where the Contractor is an individual and:
- 23.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors;
 - 23.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy;
 - 23.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
 - 23.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
 - 23.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days;
 - 23.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
 - 23.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
 - 23.2.8 any event similar to those listed in clauses 23.2.1 to 23.2.7 occurs under the law of any other jurisdiction.
- 23.3 The Contractor shall notify the DFE immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“**Change of Control**”). The DFE may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 months of:
- 23.3.1 being notified that a Change of Control has occurred; or
 - 23.3.2 where no notification has been made, the date that the DFE becomes aware

of the Change of Control

but shall not be permitted to terminate where approval was granted prior to the Change of Control.

23.4 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a partnership and:

23.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

23.4.2 it is for any reason dissolved;

23.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;

23.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;

23.4.5 the partnership is deemed unable to pay its debts within the meaning of sections 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

23.4.6 any of the following occurs in relation to any of its partners:

23.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;

23.4.6.2 a petition is presented for his bankruptcy;

23.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or

23.4.6.4. any event similar to those listed in clauses 23.4.1 to 23.4.6 occurs under the law of any other jurisdiction.

23.5 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor where the Contractor is a limited liability partnership and:

23.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

23.5.2 it is for any reason dissolved;

23.5.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;

23.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

23.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;

23.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets;

or

- 23.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 23.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 23.5.9 any event similar to those listed in clauses 23.5.1 to 23.5.8 occurs under the law of any other jurisdiction.
- 23.6 References to the Insolvency Act 1986 in clause 23.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 23.7 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if the Contractor commits a Default and:
- 23.7.1 the Contractor has not remedied the Default to the satisfaction of the DFE within 21 Business Days or such other period as may be specified by the DFE, after issue of a notice specifying the Default and requesting it to be remedied
 - 23.7.2 the Default is not, in the opinion of the DFE, capable of remedy; or
 - 23.7.3 the Default is a Material Breach.
- 23.8 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.8.1 the Contractor's warranty in clause 19.1.10 is materially untrue;
 - 23.8.2 the Contractor commits a material breach of its obligation to notify the DfE of any Occasion of Non-Tax Compliance;
 - 23.8.3 the Contractor fails to provide details of proposed mitigating factors regarding an Occasion of Non-Tax Compliance which, in the DfE's reasonable opinion are acceptable; or
 - 23.8.4 the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.
- 23.9 The DFE may terminate the Contract with immediate effect and without paying compensation to the Contractor if:
- 23.9.1 the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
 - 23.9.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in the award of the Contract; or
 - 23.9.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations which has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
- 23.10 If the DFE terminates the Contract under clauses 23.7, 23.8 or 23.9:
- 23.10.1 and makes other arrangements for the supply of the Services, the DFE may

recover from the Contractor the cost reasonably incurred of making those other arrangements; and

23.10.2 the DFE shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the DFE), until the DFE has established the final cost of making the other arrangements envisaged under this clause 23.

23.11 Either Party may terminate the Contract (or any part of it) at any time by giving at least 6 months' prior written notice to the other Party.

23.12 If the DFE terminates the Contract under clause 23.11 the DFE shall make no further payments to the Contractor except 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.

23.13 If any funding from governmental or other sources for the provision of the Services, or for a programme or a project to which the provision of the Services relates is withdrawn, reallocated or no longer available in such a way that the Contract cannot reasonably continue the DFE may terminate the Contract (or any part of it) by serving [3] months' written notice on the Contractor.

23.14 If the DFE terminates the Contract under clause 23.13 the DFE shall pay to the Contractor for Services supplied prior to the termination and in accordance with the Contract, and any disengagement costs and other costs reasonably incurred by the Contractor as a direct consequence of such termination (excluding any loss of profit and any possible redundancy costs), provided that the Contractor shall use all reasonable endeavours to mitigate the amount of such costs and has provided written evidence of the reasonableness and unavoidability of such costs.

23.15 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the DFE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

23.16 If the DFE fails to pay the Contractor undisputed sums of money when due the Contractor shall give notice to the DFE of its failure to pay. If the DFE fails to pay such undisputed sums within 90 Business Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the DFE exercising its rights under clause 8.6 or to Force Majeure.

23.17 Save as otherwise expressly provided in the Contract:

23.17.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

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

23.18 The Contractor may terminate this Contract should a major professional conflict of

interest, legal regulatory or breach of professional obligation occur in relation to the Contract that cannot otherwise be managed. The Contractor will:

- a) To the extent that such conflict potentially will, or has arisen, as the result of the Contractor's action:
 - i) provide as much notice as practicable in advance of the termination taking effect, to enable the DfE to secure a replacement contractor;
 - ii) continue to fulfil its contracted obligations during that notice period.
- b) Where such conflict is not as a result of the Contractor's action and/or the notice period does not allow sufficient time for the DfE to secure a replacement contractor, the Contractor will continue to work with DfE to ensure that termination under this clause does not materially impact the DfE and will proactively seek to minimise any such impact.
- c) Pay all reasonable costs incurred by the DfE directly as the result of such termination.
- d) Comply with the Exit provisions set out at clause 25.

24. RETENDERING AND HANDOVER

- 24.1 Within 30 days of being requested by the DFE, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information reasonably necessary to enable the DFE to issue tender documents for the future provision of replacement services.
- 24.2 The DFE shall take reasonable precautions to ensure that the information referred to in clause 24.1 is given only to potential contractors who have qualified to tender for the future provision of the replacement services.
- 24.3 The DFE shall require that all potential Contractors treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the DFE; and that they shall not use it for any other purpose.
- 24.4 The Contractor shall allow access to the Premises in the presence of DFE's authorised representative, to any person representing any potential contractor whom the DFE has selected to tender for the future provision of the Services.
- 24.5 If access is required to the Contractor's Premises for the purposes of clause 26.4, the DFE shall give the Contractor 7 days' notice of a proposed visit together with the names of all persons who will be visiting.
- 24.6 The Contractor shall co-operate fully with the DFE during any handover at the end of the Contract including allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 24.7 Within 10 Business Days of being requested by the DFE, the Contractor shall transfer to the DFE, or any person designated by the DFE, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the DFE.

25. EXIT MANAGEMENT

- 25.1 If the DFE requires a continuation of all or any of the Services at the end of the Term, either by performing them itself or by engaging a third party to perform them, the

Contractor shall co-operate fully with the DFE and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

- 25.2 The Contractor will, within 3 months of the Effective Date, deliver to the DFE, a plan which sets out the Contractor's proposals for achieving an orderly transition of Services from the Contractor to the DFE and/or its Replacement Contractor at the end of the Term (an "**Exit Plan**").
- 25.3 Within 30 days of the submission of the Exit Plan, both Parties will use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan the dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.4 The Contractor will review and (if appropriate) update the Exit Plan in the first month of each year of the Term to reflect changes to the Services. Following such update the Contractor will submit the revised Exit Plan to the DFE for review. Within 30 days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the revised Exit Plan and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Parties are unable to agree the revised Exit Plan within 30 days, such dispute shall be referred to the dispute resolution procedure in clause 36.
- 25.5 If the Contractor:
- 25.5.1 does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Charges; or
- 25.5.2 reasonably incurs additional costs
- the Parties shall agree a variation of the Charges.
- 25.6 If the DFE requests, the Contractor shall deliver to the DFE details of all licences for software used in the provision of the Services including the software licence agreements.
- 25.7 Within one month of receiving the software licence information described above, the DFE shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the DFE a plan for licence transfer.
- 25.8 The Contractor shall co-operate fully with the DFE in order to enable an efficient and detailed knowledge transfer from the Contractor to the DFE at the end of the Term and shall provide the DFE free of charge with full access to Personnel, copies of all documents, reports, summaries and any other information requested by the DFE. The Contractor shall comply with the DFE's request for information no later than 15 Business Days from the date that that request was made.

26. AUDIT

- 26.1 The Contractor shall keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all Charges.
- 26.2 The Contractor agrees to make available to the DFE, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services
- 26.3 The Contractor shall permit duly authorised representatives of the DFE and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

- 26.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the DFE and for carrying out examinations into the economy, efficiency and effectiveness with which the DFE has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

27. ENTIRE AGREEMENT

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

28. PARTNERSHIP

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

29. WAIVER

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

30. CHANGE CONTROL

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

31. COUNTERPARTS

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

32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

33. CONFLICTS OF INTEREST

33.1 The Contractor shall:

33.1.1 not permit its obligations to its other clients and third parties (including other governmental bodies and organisations providing services to other governmental bodies) to interfere or conflict in any material way with its duty (which the Contractor hereby acknowledges) to comply with its obligations under the Contract to the required standards; and

33.1.2 take appropriate steps to ensure that neither the Contractor nor any of the Personnel is placed in a position where, in the reasonable opinion of the DFE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or any of the Personnel and the duties owed to the DFE under the provisions of the Contract in either case, referred to in this clause 33 as a “**Conflict of Interest**”.

33.2 If the Contractor becomes aware of any Conflict of Interest (or potential Conflict of Interest) or other situation which has arisen or may arise and which may cause a breach of this clause 33 the Contractor shall forthwith provide full particulars to the DFE.

33.3 In performing its obligations under the Contract the Contractor shall conduct its business, operations and activities in a politically neutral fashion.

33.4 Without prejudice to the foregoing provisions of this clause 33, if any Conflict of Interest (or potential Conflict of Interest) arises or is likely to arise, the Contractor shall:

33.4.1 take all reasonable steps to remove or avoid the Conflict of Interest or to prevent it occurring in each case, or to manage the conflict to the satisfaction of the DFE (acting reasonably); and

33.4.2 give the DFE a comprehensive and detailed written statement of the action it had taken.

33.5 If the DFE is not satisfied with the Contractor's actions, the Contractor shall, on request by the DFE promptly end any relationship it may have with any third party, where that relationship has given rise to the Conflict of Interest (or potential Conflict of Interest).

33.6 Without prejudice to any other right or remedy it may have, the DFE may terminate the Contract with immediate effect by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the DFE, there is any continuing breach by the Contractor of the provisions of this clause 33.

34. FURTHER ASSURANCE

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

35. NOTICES

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

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

- 35.2.1 if delivered by hand, when left at the proper address for service;
 - 35.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;
 - 35.2.3 if given or made by facsimile or e-mail, at the time of transmission, provided that a confirming copy is sent by first class pre-paid post or (where being sent to an address in a different country to where posted) airmail to the other Party within 24 hours after transmission and that, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).
- 35.3 If proceedings to which the Civil Procedure Rules apply have been issued, the provisions of Civil Procedure Rule 6 must be complied with in respect of the service of documents in connection with those proceedings.

36. DISPUTE RESOLUTION

- 36.1 Any Dispute shall be dealt with in accordance with this clause 36.
- 36.2 In the first instance, a representative of each Party will each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by such representatives within 15 days of the Dispute arising, it will be referred to a senior representative of each Party, who shall each use their reasonable endeavours to resolve the Dispute.
- 36.3 If a Dispute cannot be resolved by negotiation as referred to in clause 36.2 within 30 days of the Dispute arising, either Party may refer the Dispute for determination in accordance with the mediation procedure administered by the Centre for Effective Dispute Resolution, the costs of the mediator being split equally between the Parties, who shall otherwise bear their own costs.

37. GOVERNING LAW AND JURISDICTION

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

Schedule 3

Financials

1. The DfE shall pay the Contractor the Charges in accordance with the Contract, subject to successful delivery of the Services against the Service Levels set out in schedule 4. The Charges are inclusive of all expenses incurred by the Contractor in relation to its provision of the Services and unless agreed otherwise between the Contractor and the DfE, the Contractor shall not be entitled to claim any expenses in addition to the Charges.
2. The DfE may review the detailed costs set out in the Implementation Plan to ensure that the Contract is value for money.
3. Indexation shall not apply to the Charges.
4. The Contractor shall be entitled to invoice the Charges following acceptance by the DfE of satisfactory completion of the Services or, where performance of the Services will continue, either monthly in arrears or on satisfactory completion of milestones as set out in the delivery milestones, outputs or outcomes (as set out in the tables below).

The following tables, included in the Contractor pricing schedule submitted to DfE as part of the Contractor response to tender No 30323 dated 4 May 2018, provide the detailed cost matrix against which the Contractor shall invoice the DfE:

Table A1 – cost matrix for completion of implementation activity, [REDACTED]

Table A3 – cost matrix for delivery of accountancy services from 1 October 2018

Table A6 – cost matrix for delivery of strategic change

Table A5 – rate card for the provision of accounting and technical professional services

Table B1 – rate card for the automated data collection solution

Any changes to the Charges will be governed by the contract management process and agreed by both Parties.

The referenced pricing schedule is embedded here:

[REDACTED]

Schedule 4

Service Levels and Service Credits

- 1 The objectives of the Service Levels are to:
 - 1.1 ensure that the Services are of a consistently high quality and meet the requirements of the DFE;
 - 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
 - 1.3 incentivise the Contractor to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

SERVICE LEVELS (SLs)

- 2 This schedule 4 sets out the Service Levels against which the Contractor shall measure its performance in respect of Part A Services. Part B Services will be measured in accordance with Schedule 11.
- 3 The Contractor shall monitor its performance against each of the Service Levels in and send the DFE a report detailing the Service Levels which were achieved in accordance with the provisions of this schedule 4.

PERFORMANCE STANDARDS/MEASURES

- 4 The Contractor must meet the Performance Measure for each identified Service Level as set out in table 1 below.
- 5 If the Contractor achieves the relevant Service Level, no Service Credit ("reduction in total amount of charges payable to the Contractor") will accrue to the Contractor in respect of that Service Level.
- 6 If the Contractor is of the view that DFE cause has directly impacted ability to achieve a Service Level, the Contractor may present a case for relief against a relevant service credit for DFE consideration. The case must outline the reasons of DFE cause, the impact on service delivery outside of the Contractors control, and any reasonable mitigating steps the Contractor has taken in an attempt to achieve the Service Level. The DFE will review the case and make a decision as to whether the request for relief against service credits will be accepted. Where the DFE does not accept a request, it will outline its rationale in a written response to the Contractor.
- 7 The Contractor confirms that it has taken Performance Measures and Service Credits into account in calculating the Charges. Both Parties agree that the Performance Measures and Service Credits are a reasonable method of adjusting the Charges to reflect that key Service Levels have not been achieved.

CONSEQUENCES OF FAILURE TO ACHIEVE THE SERVICE LEVELS

- 8 A failure to meet at least the required performance level will be considered a "Service Failure" in respect of the Service Levels set out in Table 1 below
- 9 If performance level is a Service Failure in one or more of the Service Levels listed in Table 2, the DfE will be entitled at its sole discretion, to reduce the total amount of charges payable to the Contractor ("Service Credit") as set out in Table 1.

STRATEGIC CHANGE DEFAULT

- 10 For the avoidance of doubt, the Service Requirements associated with Strategic Change will be managed by applying the Default provision, taking account of relevant remediation activity.

Table 1 Service Levels

Description	Measure	Application	Service Credit
1. Import of Academy Trust data	All AT data submitted to the department by the agreed cut-off date for the AR will be imported into the consolidation solution within 5 working days'.	Service credit applied to relevant monthly invoice	5% reduction in overall charge associated with validation activity for the relevant financial year.
2. Validation of Academy Trust Data	i) Complete 90% of all necessary validations by the 28 February	Service credit applied to relevant February invoice	5% reduction in overall charge associated with validation activity for the relevant financial year.
	ii) Complete all necessary validations by the 15 March	Service credit applied to relevant March invoice	5% reduction in overall charge associated with validation activity for the relevant financial year.
3. Application of Accounting Adjustments	Complete all necessary Accounting Adjustments by 31 March	Service credit applied to relevant March invoice	5% reduction in overall charge associated with Accounting Adjustment activity for the relevant financial year.
4. Provision of the Consolidated Trial Balance	Complete all necessary activity and provide the Consolidated Trial Balance by 31 March	Service credit applied to relevant March invoice	5% reduction in overall charge associated with preparing the Consolidated Trial Balance for the relevant financial year.
5. Provision of a first draft of the Financial Statements	Provide a first draft of the Financial Statements, which complies with the Service Requirement, by 31 March	Service credit applied to relevant April invoice	5% reduction in overall charge associated with preparing the Financial Statements for the relevant financial year.
6. Parliamentary	Provide full	Service credit	Reduction to monthly

Questions	information to enable DfE to respond to a Parliamentary Question within 24 hrs of receipt of notification by DfE, or other longer timescale as set by the DfE	applied to month in which Parliamentary Question is raised.	invoice of of £2,500 for each occurrence of failure in a month.
7. Freedom of Information Requests	Provide full information to enable DfE to respond to a Freedom of Information Request within 5 working days of receipt of notification by DfE.	Service credit applied to month in which Freedom of Information request is raised.	Reduction to monthly invoice of of £2,500 for each occurrence of failure in a month.
8. Governance Information	Provide all information necessary to inform the monthly Project Board meetings, to be received by the DfE to issue at least 48 hours before the scheduled meeting.	Service Credit applied to month in which Project Board meeting is held.	Not applicable at Service Commencement. However, DfE reserves the right to introduce Service Credits if there are 3 occurrences of Service Level Failure.

Table 2 – DfE inputs

The ability of the Contractor to meet the Service Levels defined in Table 1 is, in the following cases, dependent on the following key DfE responsibilities in relation to the Service Levels in respect of their activities .

██████████

Schedule 5

Implementation Plan

Introduction

The DfE requires the contractor to implement robust planning and controls to ensure Part A services are effected within the specified time limits, in a controlled manner, to an acceptable level of quality. In line with the strategic drive to increase value and reduce burdens, the DfE is also keen to consider any improvements to the existing systems and processes identified by the Contractor and implementing them where appropriate as part of the partnership approach.

The Contractor will need, working with DFE , to establish and maintain good programme governance arrangements for Part A services, which must include clear roles and accountabilities for the individuals and / or bodies involved, both DFE and the Contractor, and a regularly updated programme plan (jointly governed) . These will include the use of appropriate project and risk management tools to support the delivery of all of the functions in this specification with clear escalation procedures .

The specific governance arrangements for Part A services, post implementation period will be agreed by DFE and the Contractor prior to service commencement, and those for the implementation period agreed with DFE within the first month post contract commencement. These will be proportionate, and where practical reflect wider DFE governance and programme approaches, as tailored to this context.

1. Service Commencement Implementation Plan

The table below sets out the DFE requirements of the Contractor associated with achieving implementation activity associated with service commencement.

Ref	Service Requirement
IG1	<p>Implementation</p> <p>By the target date of 31 October 2018, the contractor is responsible for managing the design, implementation and testing of their proposed solution, and secure the Department's approval of that the solution is ready to enable the Contractor commencement of delivery of relevant contracted services.</p>
IG2	<p>Implementation Plan</p> <p>Within 10 working days of contract signature, the Contractor must finalise and present their Implementation Plan to the Department for approval, covering (but not limited to):</p> <ul style="list-style-type: none"> ▪ All deliverables of the implementation phase, ensuring this entails all aspects of the services that need to be delivered from the target date of 31 October 2018. ▪ An implementation timeline, including details of key milestones, to be used as a measure of performance in delivering the implementation, and governed as set out in PG3 below. ▪ A detailed resourcing plan, setting out the type and amount of resource used at each stage. ▪ Details of contingency that has been allowed. ▪ A comprehensive description of what your 'consumable data' will need to look like to fit within your consolidation model.

	<ul style="list-style-type: none"> ▪ A clear statement of reasonable and appropriate Departmental dependencies applicable to each implementation stage.
IG3	<p>Reporting and Governance</p> <p>Following the approval of the Implementation Plan set out in IG2 above, the Contractor is required to provide fortnightly Implementation Project Updates to DfE, that:</p> <ul style="list-style-type: none"> ▪ Reviews the previous implementation period, detailing activity delivered and notable achievements ▪ Information on the progress against the Implementation Plan and the achievement of key milestones set out within it. ▪ An update on existing risks/issues, how they are being mitigated and managed, and raise issues for escalation. ▪ A review of relevant Milestone Payments due, supported by relevant evidence to inform decisions on payment. ▪ A view of the next implementation period, including a review of upcoming Departmental dependencies. <p>The Contractor will attend Implementation Progress Meetings with the Department's Project Manager on a fortnightly basis to review the Project Update. The contractor will supply the Project update to the Department's Project Manager 48hrs before the relevant review meeting.</p> <p>The Contractor must also provide the DfE with a draft risk register within 10 working days of the contract signature, clarifying:</p> <ul style="list-style-type: none"> ▪ the key risks associated with its Implementation Plan; ▪ An impact assessment of identified risks; ▪ Risk owners ▪ Proposed mitigations and contingencies. <p>The contract is responsible for maintaining the risk register and using it to inform the Implementation Progress Meetings.</p>
IG4	<p>Personnel</p> <ul style="list-style-type: none"> ▪ Within 10 days of the contract award, the supplier must name a Project Manager, responsible for the overall delivery of the Implementation Plan, and names of key individuals responsible for applicable strands of implementation work ▪ The Contractor must ensure that all personnel involved in the project and who have access to DfE data have security clearance to a minimum of Baseline Personnel Security Standard (BPSS) equivalent or above. The Contractor will ensure this is achieved before service delivery commences on 01 October 2018. (https://www.gov.uk/government/publications/government-baseline-personnel-security-standard) ▪ The Contractor must provide assurance that all personnel carrying out tasks in relation to the provision of the contract are qualified to a suitable level.
IG5	<p>Security Accreditation and Testing</p> <ul style="list-style-type: none"> ▪ The Contractor is responsible for ensuring the effective testing of their proposed solution. The contract will design the methodology and processes for carrying out the necessary level of testing to satisfy themselves, and the Department, that the proposed solution is fit for purpose. ▪ Specifically, the Contractor will engage in user acceptance testing of the data outputs with the DfE prior to final sign-off

	<ul style="list-style-type: none"> ▪ The Contractor must provide evidence that they and their solution have accreditation to the minimum standards set out in requirements DS1, DS2 and DS3.
IG6	<p>Implementation Sign-off</p> <p>Prior to issuing a Certificate of Readiness to the DfE, the Contractor is required to present to the DfE assurance that:</p> <ul style="list-style-type: none"> ▪ Testing demonstrates the readiness of the overall technical solution; ▪ Relevant work process and procedures have been prepared and ready for use; ▪ Resources are in place and ready to deliver the services, with relevant security and training needs complete; ▪ Other supporting documentation provides assurance of readiness; ▪ If applicable, demonstrate an effective process of handover from the implementation team to service delivery teams.

1. The Contractor shall deliver service commencement implementation activity in accordance with the Implementation Plan set out below.
2. The Implementation Plan shall be sufficiently detailed as is necessary to manage the Services and any proposed changes are subject to the Change Control Procedure.
3. The Contractor shall be responsible for implementing and managing the Services and for taking all such steps as may be necessary so as to ensure that from the Service 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 Implementation Plan and report to the DfE monthly (or more frequently if so required by the DfE) on its performance.
4. DfE will put in place appropriate arrangements to monitor their activities as part of the Implementation period and agree a similar fortnightly reporting which can be integrated into single programme governance for the programme, promoting the partnership approach.
5. Consumable Data - Where possible the DfE will provide the Contractor with consumable data for the Contractor's consolidation model. This should decrease the implementation cost, as the DfE and not the Contractor will conduct the transformation to the consumable data.

Implementation Plan

The Contractor Implementation Plan (Fig 15.1) submitted to DfE as part of the Contractor response to tender No 30323 dated 4 May 2018.

The Implementation Plan (Fig 15.1) as stated will be the basis of the Contractor's approach to achieving successful implementation, although the plan will potentially be refined and updated during contract mobilisation and as part of the contract management process.

Schedule 6

Change Control Procedure

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

Change Control Note

:

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

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

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

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

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

Schedule 7

Key Personnel and Key Sub Contractors

Key Personnel

During contract mobilisation both Parties will review and refine the indicative Contractor team structure (Fig 19.3) that was submitted to DfE as part of the Contractor response to tender No 30323 dated 4 May 2018. Senior appointments to the Contractor team will be agreed with DfE and reviewed as part of the contract management process. The Key Personnel will be agreed with DfE before service commencement on 1 October 2018.

For the mobilisation period from contract signing to 31 July 2018, we will define Key Personnel to be [REDACTED]

The individuals listed in the table below are Key Personnel:

Name	Role	Period of Involvement

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

Schedule 8

Data, Systems Handling and Security

DATA PROTECTION

Definitions:

“Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data Protection Officer”	has the meaning given in the GDPR;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
“Data Protection Legislation”	(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 Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“DFE Data”	<p>a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:</p> <p>(i) which are supplied to the Contractor by or on behalf of the DFE; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(b) which are any Personal Data for which the DFE is the Data Controller;</p>
“DPA 2018”	Data Protection Act 2018
“GDPR”	means the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>)

“LED”	Law Enforcement Directive (Directive (EU) 2016/680)
“Malicious Software”	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
“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.
“Sub-processor”	any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the DFE is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule A below by the Authority and may not be determined by the Supplier.
2. The Contract shall notify the DFE immediately if it considers that any of the DFE’s instructions infringe the Data Protection Legislation.
3. The Contractor shall provide all reasonable assistance to the DFE in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the DFE, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - (a) process that Personal Data only in accordance with Schedule A, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the DFE before processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the DFE as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A;
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; 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 EU unless the prior written consent of the DFE has been obtained and the following conditions are fulfilled:
 - (i) the DFE or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the DFE;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the DFE in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the DFE with respect to the processing of the Personal Data;
 - (e) at the written direction of the DFE, delete or return Personal Data (and any copies of it) to the DFE on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
5. Subject to paragraph 6, the Contractor shall notify the DFE within 72 hours of becoming aware of the same if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (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.
- 6. The Contractor's obligation to notify under paragraph 5 shall include the provision of further information to the DFE in phases, as details become available.
- 7. Taking into account the nature of the processing, the Contractor shall provide the DFE with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 5 (and insofar as possible within the timescales reasonably required by the DFE) including by promptly providing:
 - (a) the DFE with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the DFE to enable the DFE to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the DFE, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the DFE following any Data Loss Event;
 - (e) assistance as requested by the DFE with respect to any request from the Information Commissioner's Office, or any consultation by the DFE with the Information Commissioner's Office.
- 8. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
 - (a) the DFE determines that the processing is not occasional;
 - (b) the DFE determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the DFE determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 9. The Contractor shall allow for audits of its Data Processing activity by the DFE or the DFE's designated auditor.
- 10. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 11. The DFE authorises Contractor to use any subcontractor to process Personal Data as a sub-processor of Contractor provided that Contractor shall ensure that (a) such processing is subject to a written contract or other legal act with such sub-processor containing data protection obligations no less onerous than those set out in this Schedule 8; and (b) Contractor shall remain liable for the acts and omission of any such sub-processor with respect to the processing of Personal Data. A list of Contractor's material

sub-processors appointed, as at the later of the date of this Contract or 25 May 2018, is set out on the Deloitte website. Any objection to an amendment to the centralised list of sub-processors, may be escalated for discussion pursuant to the dispute resolution procedure

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

Schedule A: Processing, Personal Data and Data Subjects

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

Description	Details
Subject matter of the processing	<p>The processing of data for the purposes of producing the Sector Annual Report and Accounts (SARA) and other related activities e.g. financial benchmarking data, including the following basic processing activities:</p> <ul style="list-style-type: none"> - Data storage (record, host, log, archive, or otherwise store data) - Data access (retrieve, copy, examine, modeify, transport, scan or otherwise access data) - Data analysis (survey, test, study, interpret, organize, report, or otherwise analyse data)
Duration of the processing	<p>The majority of processing activities will take place following the collection of data from academy trusts (currently during January of each year) through to the laying of the SARA before parliament in July. There may be additional data processing activities at other times in the year for activities related to the production of the SARA.</p> <p>Data will be processed for the term of the Contract plus 8 years as per the Contractor's Data Retention Policy</p>
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>Data will be used for the purposes of:</p> <ul style="list-style-type: none"> - contacting the most appropriate employee of an academy trusts in relation to queries on the academy trust submitted data. - Contacting the most appropriate employee of DFE, and their

Description	Details
	<p>professional experts where required, in relation to delivery of the Contractor obligations under this contract</p> <ul style="list-style-type: none"> - Data will also be used for disclosure in the SARA where required by the Financial Reporting Mechanism (FReM) and other purposes related to the production of the SARA..
Type of Personal Data	Data for all data subjects is limited to contact details personal data (names, telephone numbers, mobile phone numbers, addresses and e-mail addresses). Other personal data is required to be stored and published in the SARA where it is a requirement of the Financial Reporting Mechanism (FReM) and other purposes related to the production of the SARA.
Categories of Data Subject	<p>DFE employees (including temporary or casual workers, volunteers, assignees, trainees, retirees, pre-hires and applicants)</p> <p>DFE's other professional experts, including but not limited to third party valuers and the National Audit Office</p> <p>Staff within academy trusts</p>
<p>Plan for return and destruction of the data</p> <p>once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Data for FReM disclosures will be required to be kept for the length of the contract and returned to the Department as part of exit strategy arrangements.</p> <p>Data will be archived by the Contractor for the term of the Contract plus 8 years as per the Contractor's Data Retention Policy.</p>

Departmental Security Standards for Business Services and ICT Contracts

<p>"BPSS"</p> <p>"Baseline Personnel Security Standard"</p>	<p>a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at: https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</p>
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<p>“CCSC”</p> <p>“Certified Cyber Security Consultancy”</p>	<p>is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website:</p> <p>https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</p>
<p>“CCP”</p> <p>“Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website:</p> <p>https://www.ncsc.gov.uk/scheme/certified-professional</p>
<p>“CC”</p> <p>“Common Criteria”</p>	<p>the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.</p>
<p>“CPA”</p> <p>“Commercial Product Assurance”</p> <p>[formerly called “CESG Product Assurance”]</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website:</p> <p>https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</p>
<p>“Cyber Essentials”</p> <p>“Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p> <p>There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to one of these providers:</p> <p>https://www.iasme.co.uk/apply-for-self-assessment/</p>
<p>“Data”</p> <p>“Data Controller”</p> <p>“Data Processor”</p> <p>“Personal Data”</p> <p>“Sensitive Personal Data”</p> <p>“Data Subject”, “Process” and “Processing”</p>	<p>shall have the meanings given to those terms by the Data Protection Act 1998</p>
<p>“Department’s Data”</p> <p>“Department’s Information”</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit</p>

	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 / GCloud”	the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.
“FIPS 140-2”	this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.
“Good Industry Practice” “Industry Good Practice”	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“Good Industry Standard” “Industry Good Standard”	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“GSC” “GSCP”	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: https://www.gov.uk/government/publications/government-security-classifications
“HMG”	means Her Majesty’s Government
“ICT”	means Information and Communications Technology (ICT) 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

<p>“IT Security Health Check (ITSHC)”</p> <p>“IT Health Check (ITHC)”</p> <p>“Penetration Testing”</p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>
<p>“Need-to-Know”</p>	<p>the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.</p>
<p>“NCSC”</p>	<p>The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Authority for Information Assurance. The NCSC website is https://www.ncsc.gov.uk</p>
<p>“OFFICIAL”</p> <p>“OFFICIAL-SENSITIVE”</p>	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.</p> <p>the ‘OFFICIAL–SENSITIVE’ caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.</p>
<p>“Secure Sanitisation”</p>	<p>Secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure Sanitisation” (“IS5”) issued by the former CESG. Guidance can now be found at: https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</p> <p>The disposal of physical documents and hardcopy materials advice can be found at: https://www.cpni.gov.uk/secure-destruction</p>
<p>“Security and Information Risk Advisor”</p> <p>“CCP SIRA”</p> <p>“SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</p>
<p>“SPF”</p> <p>“HMG Security Policy Framework”</p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. https://www.gov.uk/government/publications/security-policy-framework</p>
<p>“Tailored Assurance”</p> <p>[formerly called “CTAS”, or,</p> <p>“CESG Tailored</p>	<p>is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software</p>

Assurance"]	components to national infrastructure networks. https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology
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- 1.1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- *(Guidance: Providers on the HMG Digital Marketplace / GCloud or Public Service Network (PSN) that have demonstrated compliance, as part of their scheme application, to the relevant scheme's security framework, such as the HMG Cloud Security Principles for the HMG Digital Marketplace / GCloud, may on presentation of suitable evidence of compliance be excused from compliance to similar clauses within the DfE Security Clauses detailed in this section (Section 1).)*
- 1.2. Where the Contractor will provide ICT products or services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- *(Guidance: Details of the acceptable forms of equivalence are stated at Section 9 of Annex A of the [Action Note 09/14](#) 25 May 2016).*
 - *(Guidance: The Department's expectation is that the certification scope will be relevant to the services supplied to, or on behalf of, the Department. However, where a contractor or (sub) contractor is able to evidence a valid exception or certification to an equivalent recognised scheme or standard, such as ISO 27001, then certification under the Cyber Essentials scheme could be waived and this clause may be removed. Changes to the Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14 25 May 2016 will be tracked by the **DfE**)*
 - *(Guidance: The terms OFFICIAL and OFFICIAL-SENSITIVE are taken from the Government Security Classification Policy (GSCP). The Department's expectations are that all contractors shall handle the Department's information in a manner compliant with the GSCP – see 1.4 below. Details of the GSCP can be found on the GOV.UK website at: <https://www.gov.uk/government/publications/government-security-classifications>.)*

[Use the appropriate Clause 1.3 below]

[Either]

- 1.3 The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).

(Guidance: The Department's expectation is that suppliers demonstrating conformance to ISO/IEC 27001 will be able to provide the Department with copies of their Scope of Conformance and Statement of Applicability.)

[Or, for contracts involving the processing of particularly sensitive data]

- 1.3 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).

- *(Guidance: The Department's expectation is that suppliers claiming certification to ISO/IEC 27001 shall provide the Department with copies of their Scope of Certification, Statement of Applicability and a valid ISO/IEC 27001 Certificate issued by an authorised certification body. Where the provider is an SME that has a valid Cyber Essentials certification then certification under the ISO/IEC 27001 scheme could be waived and this clause may be removed.)*

1.4 The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).

- *(Guidance: The Department's expectations are that all contractors shall handle the Department's information in a manner compliant with the GSCP. Details of the GSCP can be found on the GOV.UK website at: <https://www.gov.uk/government/publications/government-security-classifications>.)*

- *(Guidance: Compliance with the GSCP removes the requirement for the department to issue a Security Aspects Letter (SAL) to the contractor).*

1.5 Departmental Data being handled in the course of providing an ICT solution or service must be segregated 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 the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 1.14.

- *(Guidance: Advice on HMG secure sanitisation policy and approved methods are described at <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)*

1.6 The Contractor shall have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas

- *(Guidance: Where the contractor's and sub-contractor services are wholly carried out within Departmental premises and all access to buildings or ICT systems is managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*

1.7 The Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.

- *(Guidance: Where the contractor's and sub-contractor services are wholly carried out within Departmental premises and all access to buildings or ICT systems is managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*

- 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 process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.
- *(Guidance: Where the contractor's and sub-contractor services are wholly carried out using Departmental ICT resources or locations managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*
- 1.9 Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- *(Guidance: The terms "public space" and "cyberspace" are used to describe the internet and any commercially provided third party network used to transmit Departmental information. Even where the contractor's and sub-contractor services are wholly carried out using Departmental ICT resources managed directly by the Department as part of the service, if there is still the possibility of emails being sent to external addresses, this clause should be included.)*
- 1.10 Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 1.11 and 1.12 below.
- 1.11 Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- *(Guidance: Where the use of removable media as described at Clause 1.10 above is either prohibited or not required in order to deliver the service this clause shall be revised as follows: - 'The use of removable media in any form is not permitted'.)*
- 1.12 All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- *(Guidance: Where there is no suitable FIPS140-2 encryption product available to provide the necessary full-disk encryption, the Department shall agree a suitable alternative product that meets 'industry good practice' in this area with the contractor or sub-contractor. Where the contractor's and sub-contractor services are wholly carried out using Departmental ICT resources managed directly by the Department as part of the service, the Department shall be responsible for meeting the requirements of this clause and it need not be included.)*
- 1.13 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.
- *(Guidance: 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".)*

- *(Guidance: Further advice on appropriate destruction and disposal methods for physical and hardcopy documents can be found at: <https://www.cpni.gov.uk/secure-destruction>)*
- 1.14 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.
- *(Guidance: 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 travelling outside of official premises or buildings).*
- 1.15 At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.
- *(Guidance: Where no departmental information or data shall be held by the Contractor or sub-contractor, in either physical or logical form this clause may be removed.)*
 - *(Guidance: Where there is no acceptable secure sanitisation method available for a piece of equipment, or it is not possible to sanitise the equipment due to an irrecoverable technical defect, the storage media involved shall be destroyed using an HMG approved method described at <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>.)*
 - *(Guidance: Further advice on appropriate destruction and disposal methods for physical and hardcopy documents can be found at: <https://www.cpni.gov.uk/secure-destruction>)*
 - *(Guidance: The term ‘accounted for’ means that assets and documents retained, disposed of or destroyed should be listed and provided to the department as proof of compliance to this clause.)*
- 1.16 Access by Contractor or sub-contractor staff to Departmental Data 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.
- *(Guidance: Further details of the requirements for HMG BPSS clearance are available on the website at: <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>)*
 - *(Guidance: Further details of the requirements for National Security Vetting, if deemed necessary for this contract are available at: <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)*

- 1.17 All Contractor or sub-contractor employees who handle Departmental Data must 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 supplier 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.
- *(Guidance: The business continuity and disaster recovery plans should be aligned with industry good practice and it is the Department's expectation that all vendors providing services or infrastructure to the Department will have plans that are aligned to the ISO 22301 standard in place. Further information on the requirements of ISO 22301 may be found in the standard.)*
- 1.19 Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- *(Guidance: The Department's expectation is that any suspected or actual breach of the confidentiality, integrity or availability of the Department's Data, or non-compliances, shall be reported as incidents through the Department's nominated system or service owner and investigated by the vendor 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 a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- *(Guidance: Further information on IT Health Checks and the NCSC CHECK Scheme which enables penetration testing by NCSC approved companies can be found on the NCSC website at: <https://www.ncsc.gov.uk/scheme/penetration-testing>.)*
- 1.21 The Contractor or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- *(Guidance: The offshoring of HMG information outside of the UK is subject to approval by the Departmental SIRO.*

- 1.22 DFE or its nominated representative (to be approved by Contractor) may with at least 20 working days written notice (but not more than once per annum during the term of the Contract) conduct a security documentation audit at DFE's own expense and shall communicate the scope and methods of the proposed audit to Contractor at least 15 working days prior to the audit in writing. Contractor may decline any aspect of the proposed scope and methods on the basis that it: a) includes any technical vulnerability or penetration testing of Contractor's system; b) may potentially breach Contractor's client confidentiality obligations; and/or c) is outside the scope of services provided to DFE under this Contract. DFE will perform the security documentation audit during normal office hours and in such a way to cause as little disruption as reasonably possible. An NDA must be signed in advance of this audit..
- 1.23 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.
- 1.24 The Contractor and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. Contractor and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the DfE Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). 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 NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA)
- *(Guidance: It is Departmental policy that suppliers of business services shall provide evidence of an acceptable level of security assurance concerning their organisation. Further advice and guidance on the Department's DSAM and BSAM processes can be supplied on request. Information about the HMG Supplier Assurance Framework can be found at: <https://www.gov.uk/government/publications/government-supplier-assurance-framework>*
 - *(Guidance: Further information on the CCP and CCSC roles described above can be found on the NCSC website at: <https://www.ncsc.gov.uk/scheme/certified-professional> and <https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy>)*

***** ICT-SPECIFIC CLAUSE ONLY *****

(This ICT-specific clause should be removed for Business Service Contracts)

- 1.25 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:
- Existing security assurance for the services to be delivered, such as: PSN Compliance as a PSN Customer and/or as a PSN Service; NCSC (formerly CESG) Tailored Assurance (CTAS); inclusion in the Common Criteria (CC) or Commercial Product Assurance Schemes (CPA); ISO/IEC 27001 / 27002 or an equivalent industry level certification. Documented evidence of any existing security assurance or certification shall be required.
 - Existing HMG security accreditations or assurance that are still valid including: details of the body awarding the accreditation; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement. Documented evidence of any existing security accreditation shall be required.
 - Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted.

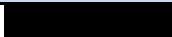
The Contractor shall provide details of who the awarding body or organisation will be and date expected.

- *(Guidance: Where the contract does not involve the delivery of an ICT solution dedicated to the Department security assurance will be achieved through the use of the BSAM process (see 12.24) and this clause can be removed).*

*****End of Department's Security Standards Clause*****

Schedule 9
Commercially Sensitive Information

The Commercially Sensitive Information provided to the DfE is documented in SRHP8.5 (i) Declaration of Confidential and Commercially Sensitive Information submitted to DfE as part of the Contractor response to tender No 30323 dated 4 May 2018.

Item	Document principal reference(s)	Duration of confidentiality
		

Schedule 10

The Contractor's Solution

The Contractor's solution was submitted to DfE in response to tender No 30323 dated 4 May 2018, including:

- Validations methodology (Q6, Document 6)
- Accounting adjustments process (Q9, Document 6)
- Production of the extended trial balance (Q11, Document 6)
- Audit support (Q12, Document 6)
- Programme governance, data & systems security and exit management (Section 2.5, Document 6)
- Managing the strategic change (Section 2.6, Document 6)
- consolidation solution (Fig 2.1); and
- automated data collection [REDACTED]
- The solution/ architecture diagrams will be updated by the Contractor, where required, following review and agreement of any changes with the DfE.

Schedule 11

Part B Service Governance

As set out in the Service Requirement (Schedule 1), the Part B Service, associated with Automated Data Collection solution will be delivered in line with GDS Service Standards, Code of Practice and associated digital delivery principles.

In line with that requirement, this Schedule 11 aims to clarify the key governing principles and terms and conditions that will apply to the delivery of the Part B Services – reflecting relevant aspects of the Digital Outcomes Specialists 2 Call-Off Contract - <http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1043iv>.

For the avoidance of doubt, the reference to “Services” in this Schedule, refers to Part B Services as set out in Schedule 1.

- 1. Statement of Work (SOW), including pricing arrangements and Key Staff**
 - 1.1** The Parties will agree and execute a SOW for each phase of Service delivery. Note that any ad-hoc Service requirements are to be treated as individual Releases in their own right (in addition to the releases at the delivery stage); and the Parties should execute a separate SOW in respect of each.
 - 1.2** The rights, obligations and details agreed by the Parties and set out in the SOW apply only in relation to the Services that are to be delivered under this SOW and will not apply to any other SOW's executed or to be executed under this Contract unless otherwise agreed by the Parties.
 - 1.3** The Parties will agree the Key Staff in respect of the SOW and will be detailed in a table that is an element of the SOW.
 - 1.4** For each individual Statement of Work (SOW), the applicable Charges will be calculated by applying the relevant rates provided in Schedule 3, and will reflect the following:
 - the agreed relevant rates for Contractor staff or facilities, which are inclusive of any applicable expenses and exclusive of VAT.
 - the number of days, or pro rata for every part of a day, that Contractor staff or facilities will be actively providing the Services during the term of the SOW.
 - a contingency margin of up to 20% applied to the sum calculated on the basis of the above two points, to accommodate any changes to the SOW Deliverables during the term of the SOW. The Contractor must obtain prior written approval from the Buyer before applying any contingency margin.
 - 1.5** The Contractor will provide a detailed breakdown of rates based on time and materials Charges, inclusive of expenses and exclusive of VAT, with sufficient detail to enable the DFE to verify the accuracy of the time and material Contract Charges incurred.
 - 1.6** The detailed breakdown for the provision of Services during the term of the SOW will include (but will not be limited to):
 - a role description per Contractor Staff;
 - a facilities description;
 - the agreed relevant rate per day;
 - any expenses charged per day, which are in line with the DFE expenses policy;
 - the number of days, or pro rata for every part day, they will be actively providing the Services during the term of the SOW; and
 - the total cost per role / facility
 - 1.7** The Supplier will also provide a summary which is to include:
 - Total value of this SOW
 - Overall Part B Service value
 - Remainder of value under overall Part B Service Charge

Where:

Remainder of value under overall Part B Service Charge = overall Part B Service value - sum of total value of all SOWs invoiced

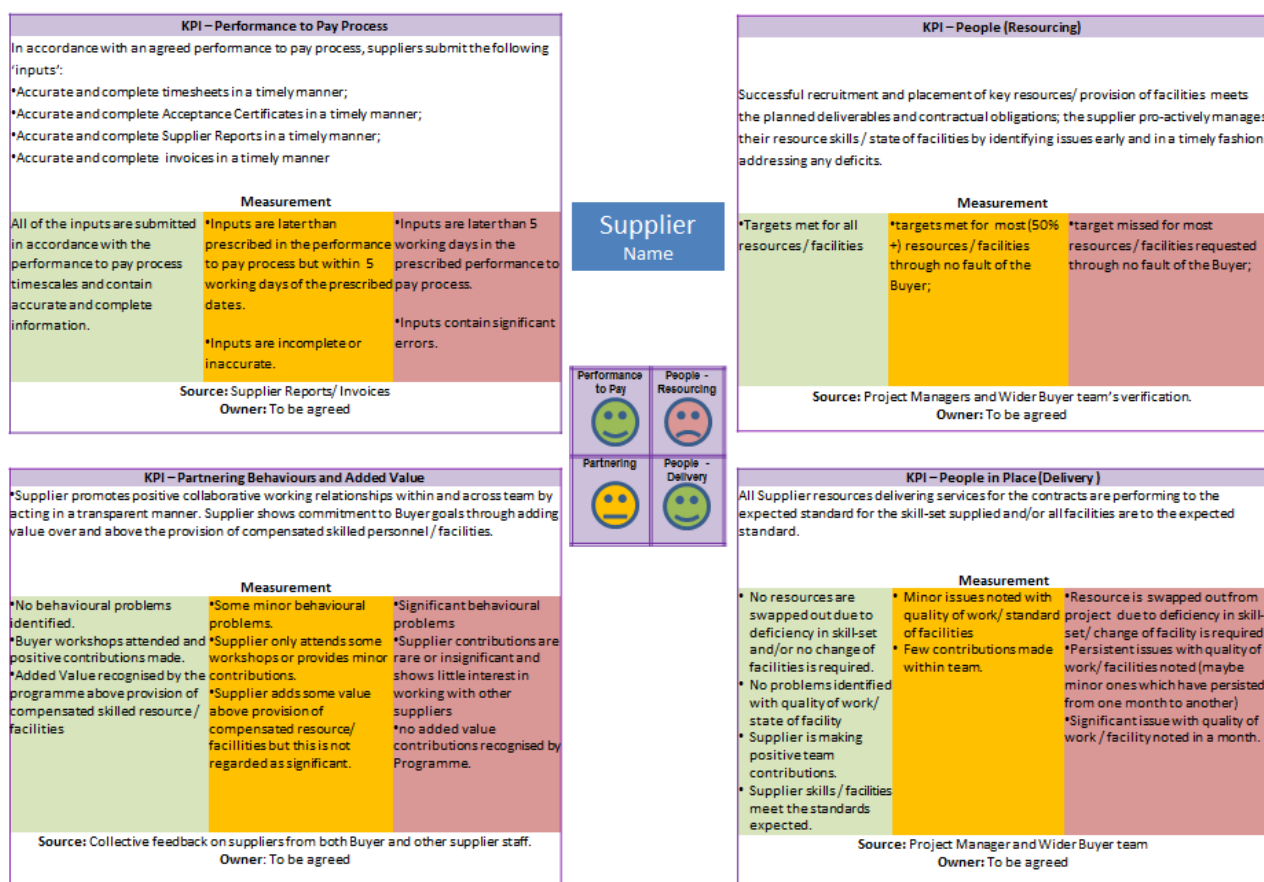
Whether there is any risk of exceeding Overall Part B Service value (and thereby requiring a Contract Change Note (CCN) to continue delivery of Services)

- 1.8** If a capped or fixed price has been agreed for a SOW:
- The Contractor will continue at its own cost and expense to provide the Services even where the agreed price has been exceeded; and
 - The DFE will have no obligation or liability to pay for the cost of any Services delivered relating to this order after the agreed price has been exceeded.
- 1.9** Risks or contingencies will be included in the Charges. The Parties will agree the assumptions, representations, risks and contingencies that will apply in relation to a relevant SOW and the Charges.
- 1.10** Any changes to the Contractor Staff should be agreed with the DFE and covered by a separate SOW where it cannot be accommodated within an existing SOW.
- 1.11** Multiple SOWs can operate concurrently.
- 1.12** The Contractor will keep accurate records of the time spent by the Contractor staff in providing the services and will provide records to the DFE for inspection on request.

2. Balanced Scorecard

- 2.1** In addition to the Contractor's performance management obligations set out in Schedule 4, the Parties will agree to the following Balanced Scorecard & KPIs for delivery of the Part B services (see Balanced Scorecard Model below):

Balanced Scorecard



2.2 The purpose of the Balanced Scorecard is to promote contract management activity, through measurement of the Contractor's performance against Key Performance Indicators, which the DFE and Contractor will agree before Part B service delivery commences. The targets and measures listed in the example scorecard (above) are for guidance and should be changed to meet the agreed needs of the DFE and Contractor.

2.3 The process for using the Balanced Scorecard is as follows:

- 2.3.1 The DFE and Contractor agree a templated Balanced Scorecard together with a performance management plan, which clearly outlines the responsibilities and actions that will be taken if agreed performance levels are not achieved.
- 2.3.2 On an pre-agreed schedule (e.g. monthly), both the DFE and the Contractor provide a rating on the Contractor's performance
- 2.3.3 Following the initial rating, both Parties meet to review the scores and agree an overall final score for each Key Performance Indicator
- 2.3.4 Following agreement of final scores, the process is repeated as per the agreed schedule

3. Schedule 11 Terms and conditions

3.1 SOW start date, length and methodology

- 3.1.1 The Contractor will start providing the Services in accordance with the dates specified in any Statement of Work (SOW).
- 3.1.2 Completion dates for Deliverables will be set out in any SOW.
- 3.1.3 The Contractor will plan on using an agile process, starting with user needs. The methodology will be outlined in the SOW. Waterfall methodology will only be used in exceptional circumstances, and where it can be shown to best meet user needs. Projects may need a combination of both waterfall and agile methods, playing to their respective strengths.

3.2 Contractor Staff

- 3.2.1 The Contractor Staff will:
 - fulfil all reasonable requests of the DFE
 - apply all due skill, care and diligence to the provisions of the Services
 - be appropriately experienced, qualified and trained to supply the Services
 - respond to any enquiries about the Services as soon as reasonably possible
 - complete any necessary vetting procedures specified by the DFE
- 3.2.2 The Contractor will ensure that Key Staff are assigned to provide the Services for their Working Days (agreed between Contractor and DFE) and are not removed from the Services during the dates specified in the relevant SOW.
- 3.2.3 The Contractor will promptly replace any Key Staff that the DFE considers unsatisfactory at no extra charge. The Contractor will promptly replace anyone who resigns with someone who is acceptable to the DFE. If the Contractor cannot provide an acceptable replacement, the DFE may terminate any SOW subject to paragraph 3.23.
- 3.2.4 Contractor Staff will comply with DFE requirements for the conduct of staff when on DFE's premises.
- 3.2.5 The Contractor will comply with the DFE's staff vetting procedures for all or part of the Contractor Staff.
- 3.2.6 The Contractor will, on request, provide a copy of the contract of employment or engagement (between the Contractor and the Contractor Staff) for every member of Contractor Staff made available to the DFE.

3.3 Swap-out

- 3.3.1 Contractor Staff providing the Services may only be swapped out with the prior approval of the DFE.

3.4 Staff vetting procedures

- 3.4.1 In accordance with Schedule 8.

3.5 Due diligence

- 3.5.1 Both parties acknowledge that information will be needed to provide the Part B services throughout the term. Both parties agree to share such information freely.

3.6 Warranties, representations and acceptance criteria

- 3.6.1 The Contractor will use the best applicable and available techniques and standards and will perform delivery of the Services with all reasonable care, skill and diligence, and according to Good Industry Practice.
- 3.6.2 The Contractor warrants that all Contractor Staff assigned to the performance of the Services have the necessary qualifications, skills and experience for the proper performance of the Services.
- 3.6.3 The Contractor represents and undertakes to the DFE that each Deliverable will meet the DFE's acceptance criteria, as defined in a relevant SOW.
- 3.6.4 The Contractor undertakes to maintain any interface and interoperability between third-party software or Services and software or Services developed by the Contractor.
- 3.6.5 The Contractor warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions to perform the Services.

3.7 Business continuity and disaster recovery

- 3.7.1 As per Schedule 8.

3.8 Payment terms and VAT

- 3.8.1 As per Schedule 3.

3.9 Recovery of sums due and right of set-off

- 3.9.1 If a Contractor owes money to the DFE or any Crown body, the DFE may deduct that sum from the total due to the Contractor.

3.10 Insurance

3.10.1 As per Schedule 2 - Liabilities.

3.11 Confidentiality

3.11.1 As per Schedule 2 – Confidentiality.

3.12 Conflict of Interest

3.12.1 As per Schedule 2 – Conflicts of Interest.

3.13 Intellectual Property Rights

3.13.1 Unless otherwise specified in the Contract:

- the DFE will not have any right to the Intellectual Property Rights (IPRs) of the Contractor or its licensors, including the Contractor Background IPRs and any IPRs in the Supplier Software.
- the Crown may publish any Deliverable that is software as open source.
- the Contractor will not, without prior written approval from the DFE, include any Contractor Background IPR or third party IPR in any Deliverable in such a way to prevent its publication;
 - and failure to seek prior approval gives the DFE right and freedom to use all Deliverables.
- the Contractor will not have any right to the Intellectual Property Rights of the DFE or its licensors, including:
 - the DFE Background IPRs;
 - the Project-Specific IPRs;
 - IPRs in the DFE Data.

3.13.2 Where either Party acquires, by operation of Law, right to IPRs that is inconsistent with the allocation of rights set out above, it will assign in writing such IPRs as it has acquired to the other Party on the request of the other Party (whenever the request is made).

3.13.3 Except where necessary for the performance of the Services (and only where the DFE has given its prior approval), the Contractor will not use or disclose any of the DFE Background IPRs, DFE Data or the Project-Specific IPRs to or for the benefit of any third party.

3.13.4 The Contractor will not include any Contractor Background IPRs or third-party IPRs in any release or Deliverable that is to be assigned to the DFE under this contract, without approval from the DFE.

3.13.5 The Contractor will grant the DFE (and any replacement Contractor) a perpetual, transferable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Contractor Background IPRs for any purpose connected with the receipt of the Services that is additional to the rights granted to the DFE under this Contract and to enable the DFE:

- to receive the Services;
- to make use of the Services provided by the replacement Contractor; and
- to use any Deliverables.

3.13.6 The DFE grants the Contractor a non-exclusive, non-assignable, royalty-free licence to use the DFE Background IPRs, the DFE Data and the Project-Specific IPRs during the term of the contract for the sole purpose of enabling the Contractor to provide the Services.

3.13.7 The DFE gives no warranty as to the suitability of any IPRs licensed to the Contractor hereunder. Any such licence:

- may include the right to grant sub-licences to Subcontractors engaged in providing any of the Services (or part thereof) provided that any such Subcontractor has entered into a confidentiality undertaking with the Contractor on the same terms as in paragraph 15 (Confidentiality) and that any such subcontracts will be non-transferable and personal to the relevant Subcontractor; and
- is granted solely to the extent necessary for the provision of the Services in accordance with the Contract. The Contractor will ensure that the Subcontractors do not use the licensed materials for any other purpose.

3.13.8 At the end of delivery of the Services, the DFE grants to the Contractor a licence to use the Project-Specific IPRs (excluding any information which is the DFE's Confidential Information or which is subject to the Data Protection Act (DPA)) on the terms of the Open Government Licence v3.0.

3.13.9 Subject to the above, the Contractor will ensure that no unlicensed software or open source software (other than the open source software specified by the DFE) is interfaced with or embedded within any DFE Software or Deliverable.

3.13.10 Before using any third-party IPRs related to the supply of the Services, the Contractor will submit to the DFE for approval, all details of any third-party IPRs the DFE requests.

3.13.11 Where the Contractor is granted permission to use third-party IPRs in a request for approval, the Contractor will ensure that the owner of such third-party IPRs grants to the DFE a licence on the terms informed to the DFE in the request for approval.

3.13.12 If the third-party IPR is made available on terms equivalent to the Open Government Licence v3.0, the request for approval will be agreed and the Contractor will buy licences under these terms. If not, and the DFE rejects the Request for Approval, then the Services and relevant SOW will need to be varied in accordance with paragraph 3.30 'Changes to Services'.

3.13.13 The Contractor will, on written demand, fully indemnify the DFE and the Crown for all losses which it may incur at any time as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the DFE in accordance with the Contract and relevant Services or the performance by the Contractor of the

provision of the Services or the possession or use by the DFE of the Services or Deliverables delivered by the Contractor, including the publication of any Deliverable that is software as open source, infringes or allegedly infringes a third party's Intellectual Property Rights (an 'IPR Claim').

3.13.14 Clause 3.13.13 will not apply if the IPR Claim arises from:

- designs supplied by the DFE;
- the use of data supplied by the DFE which is not required to be verified by the Contractor under any provision of the Contract; or
- other material provided by the DFE necessary for the provision of the Services.

3.13.15 The indemnity given in Clause 13.13 will be uncapped.

3.13.16 The DFE will notify the Supplier in writing of the IPR Claim made against the DFE and the DFE will not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. The Contractor will at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that the Contractor:

- consults the DFE on all substantive issues which arise during the conduct of such litigation and negotiations;
- takes due and proper account of the interests of the DFE;
- considers and defends the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the DFE into disrepute; and
- does not settle or compromise the IPR Claim without the prior approval of the DFE (such decision not to be unreasonably withheld or delayed).

3.13.17 If an IPR Claim is made (or in the reasonable opinion of the Contractor is likely to be made) in connection with the Contract, the Contractor will, at the Contractor's own expense and subject to the prompt approval of the Buyer, use its best endeavours to:

- modify the relevant part of the Services or Deliverables without reducing their functionality or performance, or substitute Services or Deliverables of equivalent functionality or performance, to avoid the infringement or the alleged infringement, provided that there is no additional cost or burden to the DFE;
- buy a licence to use and supply the Services or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the DFE; and
- promptly perform any responsibilities and obligations to do with the Contract.

3.13.18 If an IPR Claim is made (or in the reasonable opinion of the Contractor is likely to be made) against the Contractor, the Contractor will immediately notify the DFE in writing.

3.13.19 If the Contractor does not comply with provisions of this paragraph within 20

Working Days of receipt of notification by the Contractor from the DFE under clause 3.13.16 or receipt of the notification by the DFE from the Contractor under clause 3.13.18 (as appropriate), the DfE may terminate the Services for Material Breach and the Contractor will, on demand, refund the DFE with all monies paid for the Service or Deliverable that is subject to the IPR Claim.

- 3.13.20 The Contractor will have no rights to use any of the DFE's names, logos or trademarks without the DFE's prior written approval.
- 3.13.21 The Contractor will, as an enduring obligation throughout the term of the Contract where any software is used in the provision of the Services or information uploaded, interfaced or exchanged with the DFE systems, use software and the most up-to-date antivirus definitions from an industry-accepted antivirus software vendor. It will use the software to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the DFE and the Contractor).
- 3.13.22 If Malicious Software is found, the Contractor will co-operate with the DFE to reduce the effect of the Malicious Software. If Malicious Software causes loss of operational efficiency or loss or corruption of DFE Data, the Contractor will use all reasonable endeavours to help the DFE to mitigate any losses and restore the provision of the Services to the desired operating efficiency as soon as possible.
- 3.13.23 Any costs arising from the actions of the DFE or Contractor taken in compliance with the provisions of the above clause, and paragraph 3.20 will be dealt with by the DfE and the Contractor as follows:
- by the Contractor, where the Malicious Software originates from the Contractor Software or the DFE Data while the DFE Data was under the control of the Contractor, unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the DFE when provided to the Contractor.
 - by the DFE if the Malicious Software originates from the DFE Software or the DFE Data, while the DFE Data was under the control of the DFE.
- 3.13.24 All Deliverables that are software shall be created in a format, or able to be converted into a format, which is suitable for publication by the DFE as open source software, unless otherwise agreed by the Buyer.
- 3.13.25 Where Deliverables that are software are written in a format that requires conversion before publication as open source software, the Contractor shall also provide the converted format to the DFE unless the DFE agrees in advance in writing that the converted format is not required.

3.14 Data Protection and Disclosure

- 3.14.1 As per Schedule 8.

3.15 DFE Data

- 3.15.1 The Contractor will not remove any proprietary notices relating to the DFE Data.
- 3.15.2 The Contractor will not store or use DFE Data except where necessary to fulfill its obligations.
- 3.15.3 If DFE Data is processed by the Contractor, the Contractor will supply the data to the DFE as requested and in the format specified by the DFE.
- 3.15.4 The Contractor will preserve the integrity of DFE Data processed by the Contractor and prevent its corruption and loss.
- 3.15.5 The Contractor will ensure that any system which holds any DFE Data complies with the security requirements prescribed by the DFE at Schedule 8.
- 3.15.6 The Contractor will ensure that any system on which the Contractor holds any protectively marked DFE Data will be accredited as specific to the DFE and will comply with:
- the government security policy framework and information assurance policy;
 - guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems; and
 - the relevant government information assurance standard(s).
- 3.15.7 Where the duration of the Services exceeds one year, the Contractor will review the accreditation status at least once a year to assess whether material changes have occurred which could alter the original accreditation decision in relation to DFE Data. If any changes have occurred, the Contractor will re-submit such system for accreditation.
- 3.15.8 If at any time the Contractor suspects that the DFE Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Contractor will notify the DFE immediately and will at its own cost comply with any remedial action proposed by the DFE.
- 3.15.9 The Contractor will provide, at the request of the DFE, any information relating to the Contractor's compliance with its obligations under the Data Protection Act. The Contractor will also ensure that it does not knowingly or negligently fail to do something that places the DFE in breach of its obligations of the Data Protection Act. This is an absolute obligation and is not qualified by any other provision of the Contract.
- 3.15.10 The Contractor agrees to use the appropriate organisational, operational and technological processes and procedures to keep the DFE Data safe from unauthorised use or access, loss, destruction, theft or disclosure.

3.16 Document and source code management repository

- 3.16.1 The Contractor will comply with any reasonable instructions given by the DFE as to where it will store documents and source code, both finished and in progress, during the term of the Services.
- 3.16.2 The Contractor will ensure that all items that are uploaded to any repository contain sufficient detail, code annotations and instructions so that a third-party developer with the relevant technical abilities within the applicable role would be able to understand how the item was created and how it works together with the other items in the repository within a reasonable timeframe.

3.17 Records and audit access

- 3.17.1 As per Schedule 2 – Audit.

3.18 Freedom of Information (FOI) requests

- 3.18.1 As per Schedule 2 – Freedom of Information.

3.19 Standards and quality

- 3.19.1 The Contractor will comply with any standards as defined in line with Government Digital Standards and Code of Practice.

3.20 Security

- 3.20.1 As per Schedule 8.

3.21 Incorporation of terms

- 3.21.1 Upon the execution of a Statement of Work (SOW), the terms and conditions agreed in the SOW will be incorporated into the Contract.

3.22 Managing disputes

- 3.22.1 As per Schedule 2 – Dispute Resolution

3.23 Termination

- 3.23.1 The DFE will have the right to terminate the Services at any time by giving the notice to the Contractor specified in the SOW. The Contractor's obligation to provide the Services will end on the date set out in the DFE notice.
- 3.23.2 The minimum notice period (expressed in Working Days) to be given by the DFE to terminate under this Clause will be the number of whole days that represent 20% of the total duration of the current SOW to be performed under the Call-Off Contract, up to a maximum of 30 Working Days.
- 3.23.3 Partial days will be discounted in the calculation and the duration of the SOW will be calculated in full Working Days.

3.23.4 The Parties acknowledge and agree that:

- the DFE right to terminate Services under this section is reasonable in view of the subject matter and the nature of the Service being provided.
- the Charges paid during the notice period given by the DFE in accordance with this section are a reasonable form of compensation and are deemed to fully cover any avoidable costs or losses incurred by the Contractor which may arise either directly or indirectly as a result of the DFE exercising the right to terminate under this section without cause.
- Subject to paragraph 3.34 (Liability), if the DFE terminates the Services without cause, they will indemnify the Contractor against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Contractor, provided that the Contractor takes all reasonable steps to mitigate such Loss. If the Contractor holds insurance, the Contractor will reduce its unavoidable costs by any insurance sums available. The Contractor will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by the Contractor as a result of termination.

3.23.5 All other termination rights as detailed in Schedule 2 apply, with the exception of 23.11.

3.24 Consequences of termination

3.24.1 If the DFE contracts with another Contractor, the Contractor will comply with paragraph 3.29.

3.24.2 The rights and obligations of the Parties in respect of any executed SOW will automatically terminate upon the expiry or termination, except those rights and obligations set out in paragraph 3.24.6.

3.24.3 At the end of the a final SOW period (howsoever arising), the Contractor must:

- immediately return to the DFE:
 - all DFE Data including all copies of DFE Software and any other software licensed by the DFE to the Contractor under the Contract;
 - any materials created by the Contractor under the Contract where the IPRs are owned by the DFE;
 - any items that have been on-charged to the DFE, such as consumables; and
 - all equipment provided to the Contractor. This equipment must be handed back to the DFE in good working order (allowance will be made for reasonable wear and tear).
- immediately upload any items that are or were due to be uploaded to the repository when SOW was terminated (as specified in paragraph 3.27);
- cease to use the DFE Data and, at the direction of the DFE, provide the DFE and the replacement Contractor with a complete and uncorrupted version of the DFE Data in electronic form in the formats and on media agreed with the DFE and the replacement Contractor;
- destroy all copies of the DFE Data when they receive the DFE's written instructions to do so or 12 months after the date of expiry or termination (whichever is the earlier), and provide written confirmation to the DFE

that the data has been destroyed, except where the retention of DFE Data is required by Law;

- vacate the DFE premises;
- work with the DFE on any work in progress and ensure an orderly transition of the Services to the replacement Contractor;
- return any sums prepaid for Services which have not been delivered to the Buyer by the date of expiry or termination;
- provide all information requested by the DFE on the provision of the Services so that:
 - the DFE is able to understand how the Services have been provided; and
 - the DFE and the replacement Contractor can conduct due diligence.

3.24.4 Each Party will return all of the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where the Contract states otherwise.

3.24.5 All licences, leases and authorisations granted by the DFE to the Supplier in relation to the Services will be terminated at the end of the SOW period (howsoever arising) without the need for the DFE to serve notice except where the Contract states otherwise.

3.24.6 Termination or expiry of the SOW will not affect:

- any rights, remedies or obligations accrued under the Contract prior to termination or expiration;
- the right of either Party to recover any amount outstanding at the time of such termination or expiry;
- the continuing rights, remedies or obligations of the DFE or the Contractor related to:
 - 3.8 - Payment Terms and VAT
 - 3.9 - Recovery of Sums Due and Right of Set-Off
 - 3.11 - Confidentiality
 - 3.12 - Conflict of Interest
 - 3.13 - Intellectual Property Rights
 - 3.24 - Consequences of Termination
 - 3.28 - Staff Transfer
 - 3.34 - Liability
 - 3.35 - Waiver and cumulative remedies
- any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry will survive the termination or expiry of the SOW or Contract.

3.25 Contractor status

- 3.25.1 For the purpose of delivering the Services, the Contractor is an independent Contractor and no contract of employment or partnership is created between the Contractor and the DFE. Neither Party is authorised to act in the name of, or on behalf of, the other Party.

3.26 Notices

- 3.26.1 As per Schedule 2 – Notices.

3.27 Exit plan

- 3.27.1 The DFE and the Contractor will agree an exit plan during the initial SOW period to enable the Contractor Deliverables to be transferred to the DFE ensuring that the DFE has all the code and documentation required to support and continuously develop the Service with DFE resource or any third party as the DFE requires. The Contractor will update this plan whenever there are material changes to the Services. A specific SOW may be agreed between the DFE and the Contractor to specifically cover the exit plan.

3.28 Staff Transfer

- 3.28.1 The Parties agree that nothing in the Contract or provision of the Services is expected to give rise to a transfer of employment to which the Employment Regulations apply.
- 3.28.2 The Contractor will fully indemnify the DFE against all Contractor Staff Liabilities which arise as a result of any claims brought against the DFE due to any act or omission of the Contractor or any Contractor Staff.
- 3.28.3 The indemnity given in 3.28.2 will be uncapped.

3.29 Help at retendering and handover to replacement supplier

- 3.29.1 When requested, the Contractor will (at its own expense where the Services have been terminated due to Contractor cause) help the DFE to migrate the Services to a replacement Contractor in line with the exit plan (3.27) to ensure continuity of the Services. Such help may include Contractor demonstrations of the existing code and development documents, software licences used and DFE approval documents. The Contractor will also answer Service and development-related clarification questions.
- 3.29.2 Within 10 Working Days of a request by the DFE, the Contractor will provide any information needed by the DFE to prepare for any procurement exercise or to facilitate any potential replacement Contractor undertaking due diligence. The exception to this is where such information is deemed to be Commercially Sensitive Information, in which case the Contractor will provide the information in a redacted form.

3.30 Changes to services

- 3.30.1 It is likely that there will be changes to the scope of the Services during the delivery period. Agile projects have a scope that will change over time. The detailed scope (eg as defined in user stories) can evolve and change. These changes do not require formal contract changes but do require the DFE and Contractor to agree these changes.
- 3.30.2 Any changes to the high-level scope of the Services must be agreed between the DFE and Contractor. The Contractor will consider any request by the DFE to change the scope of the Services, and may agree to such request.

3.31 Contract changes

- 3.31.1 As per Schedule 6 – Change Control.

3.32 Force Majeure

- 3.32.1 As per Schedule 2 – Force Majeure.

3.33 Entire agreement

- 3.33.1 As per Schedule 2 – Entire Agreement.

3.34 Liability

- 3.34.1 As per Schedule 2 – Liability.

3.35 Waiver and cumulative remedies

- 3.35.1 As per Schedule 2 – Waiver.

3.36 Fraud

- 3.36.1 As per the various provisions in Schedule 2.

3.37 Prevention of bribery and corruption

- 3.37.1 As per Schedule 2 – Prevention of Corruption.

3.38 Legislative change

- 3.38.1 The Contractor will neither be relieved of its obligations under the Contract nor be entitled to increase the Service prices as the result of a general change in Law or a Specific Change in Law without prior written approval from the DFE.

3.39 Publicity, branding, media and official enquiries

- 3.39.1 As per the various provisions outlined in Schedule 2.

3.40 Non Discrimination

3.40.1 As per Schedule 2 – Discrimination.

3.41 Premises

3.41.1 As per the various provisions outlined in Schedule 2 and Schedule 8.

3.42 Equipment

3.42.1 Any Equipment brought onto the premises will be at the Contractor's own risk and the DFE will have no liability for any loss of, or damage to, any Equipment.

3.42.2 Upon termination or expiry of the SOW, the Contractor will remove the Equipment, and any other materials, leaving the premises in a safe and clean condition.

3.43 Law and jurisdiction

3.43.1 As per schedule 2 – Governing Law and Jurisdiction

3.44 Defined Terms

'Background IPRs'	For each Party: <ul style="list-style-type: none">• IPRs owned by that Party before the date of the Contract, including IPRs contained in any of the Party's know-how, documentation, processes and procedures;• IPRs created by the Party independently of the Contract; and/or• For the DFE, Crown Copyright which is not available to the Contractor otherwise than under the Contract; but excluding IPRs owned by that Party subsisting in DFE Software or Contractor Software
'DFE'	The Department for Education
'DFE Background IPRs'	Background IPRs of the DFE
'DFE Confidential Information'	All DFE Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Contractors of the DFE, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above Any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')
'DFE Data'	Data that is owned or managed by the DFE, including Personal Data gathered for user research, eg recordings of user research

	sessions and lists of user research participants
'DFE Software'	Software owned by or licensed to the DFE (other than under or pursuant to this Contract), which is or will be used by the Contractor for the purposes of providing the Services
'Contract'	<p>This legally binding agreement entered into for the provision of Services made between a DFE and the Contractor</p> <p>This may include the key information summary, Contractor's response to the DFE tender, Statement of Work (SOW), Contract Change Notice (CNN) and terms and conditions as set out in this Schedule and the wider Contract.</p>
'Charges'	The prices (excluding any applicable VAT), payable to the Contractor by the DFE under the Contract, as set out in the applicable SOW(s) and in line with the rate card provided in Schedule 3, in consideration of the full and proper performance by the Contractor of the Contractor's obligations under the Contract and the specific obligations in the applicable SOW
'Commercially Sensitive Information'	Information, which the DFE has been notified about (before the Contract start date) with full details of why the Information is deemed to be commercially sensitive, as set out in Schedule 9.
'Confidential Information'	<p>DFE's Confidential Information or the Contractor Confidential Information, which may include (but is not limited to):</p> <ul style="list-style-type: none"> any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')
'Crown'	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
'Default'	<ul style="list-style-type: none"> any breach of the obligations of the Contractor (including any fundamental breach or breach of a fundamental term) any other default, act, omission, negligence or negligent statement of the Contractor, of its Subcontractors or any Contractor Staff in connection with or in relation to the Framework Agreement or this Contract <p>Unless otherwise specified in this Contract the Contractor is liable to the DFE.</p>
'Deliverable'	A tangible work product, professional service, outcome or related material or item that is to be achieved or delivered to the DFE by

	the Contractor as part of the Services as defined in Schedule 1 and all subsequent Statement of Works
'Digital Marketplace'	The government marketplace where Digital Outcome Services are traditionally bought (https://www.digitalmarketplace.service.gov.uk/)
'Employment Regulations'	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time
'Equipment'	The Contractor's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from DFE) in the performance of its obligations under the Contract
'Good Industry Practice'	Standards and procedures conforming to the Law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances. The person or body must adhere to the technology code of practice (https://www.gov.uk/service-manual/technology/code-of-practice.html) and the government service design manual (https://www.gov.uk/service-manual)
'Intellectual Property Rights' or 'IPR'	means: a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations whether registerable or not; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off.
'Key Staff'	Means the Contractor Staff named in the SOW as such
'KPI Target'	The acceptable performance level for a key performance indicator (KPI)

'Loss'	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly
'Malicious Software'	Any software program or code intended to destroy, or cause any undesired effects. It could be introduced wilfully, negligently or without the Supplier having knowledge of its existence.
'Material Breach'	A single serious breach of or persistent failure to perform as required in the Contract
'Party'	<ul style="list-style-type: none"> for the purposes of the contract the Contractor or the DFE, and 'Parties' will be interpreted accordingly
'Project-Specific IPRs'	<ul style="list-style-type: none"> Intellectual Property Rights in items, including Deliverables, created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the Contract and updates and amendments of these items including (but not limited to) database schema; and/or Intellectual Property Rights arising as a result of the performance of the Contractor obligations under the Contract; but not including the Contractor Background IPRs
'Property'	The property, other than real property and IPR, issued or made available to the Contractor by the DFE in connection with the Contract
'Reporting Date'	The seventh day of each month following the month to which the relevant MI relates. A different date may be chosen if agreed between the Parties
'Services'	Digital outcomes, digital specialists, user research studios or user research participants to be provided by the Contractor under the Contract in line with Part B of the Service Requirement (Schedule 1)
'Statement of Requirements'	Part B of the Service Requirement (Schedule 1)
'Statement of Work' (SOW)	The document outlining the agreed body of works to be undertaken as part of the Contract between the DFE and the Contractor. This may include (but is not limited to) the Statement of Requirements, the Deliverable(s), the completion dates, the charging method.
'Subcontractor'	Each of the Contractor's Subcontractors or any person engaged by the Contractor in connection with the provision of the digital services as permitted by the Contract, and as detailed at Schedule 7.
'Contractor'	The supplier of the Accountancy Services and Automated Data Collection services who successfully bid for Contract as outlined in

	the Contract Notice within the Official Journal of the European Union (OJEU Notice). The identifying details of the Contractor to be bound by the terms of the Contract
'Contractor Background IPRs'	Background IPRs of the Contractor
'Contractor Software'	Software which is proprietary to the Contractor and which is or will be used by the Contractor for the purposes of providing the Services
'Contractor Staff'	All persons employed by the Contractor including the Contractor's agents and consultants used in the performance of its obligations under the Contract
'Contractor Staff Liabilities'	Any claims, actions, proceedings, orders, demands, complaints, Losses and any awards or compensation reasonably incurred in connection with any claim or investigation related to employment
'Working Day'	Any day other than a Saturday, Sunday or public holiday in England and Wales, from 9am to 5pm unless otherwise agreed with the DFE and the Contractor in the Contract